Chapter 6

CHILDREN AND THE STATE-I

State is the organ which enables the proper functioning of the society through law, which is one of the most important methods of social control. Modern writers usually divide the functions of the state into two categories, constituent and ministrant. Under the former class fall those functions of the state which are absolutely necessary for the civic organization of society, defense against foreign aggression, protection of person and property, preservation of peace and order and adjudication. Under the later class fall those activities of the state which it undertakes, to promote the welfare of the people, to increase their wealth by a cooperative effort, and to add to their amenities of life.\(^1\) The most important functions of the state in modern times are; to protect the rights of individual citizens, that is of their natural rights, the general promotion of material progress and the supervision of morals and education.\(^2\)

The modern state attempts to improve the functioning of society through legislation. In the eyes of law everybody counts for one and none for more than one. It affects every individual throughout his life, at numerous points of time from birth to death. Customary law has seldom been in keeping with the changing needs of the society. Therefore, in the colonial period social legislation was enacted to keep pace with the changing ideals, even to initiate, what was considered essential change in society.

The law in India and the Punjab, can be classed as unwritten and written law. As for the unwritten law, it consisted of customary law of the ‘natives’ of India, whether Hindus, Muslims, or others. These were


selected by the colonial authorities and then recorded as reports on customary law for each district. Custom was thus, selectively authorized by the state, on behalf of society, and, whenever, not provided for in any situation or in case of lapse in these, the court acted according to justice, equity and a good conscience.\(^3\) As regards the written law; (Indian Penal Code; Civil Code and Criminal Code), there were four kinds of legislative bodies from which the law applicable to the Punjab emanated in the beginning of the colonial period. They were the Imperial Parliament, Legislative Council, the Governor General of India, the Governor of the Punjab and his Council.\(^4\)

The State could not wait for custom to die a natural death nor could it allow custom to go on if it has permanent imprints of unrighteousness inbuilt in it. The abolition of Sati and infanticide would never have been possible, had the State remained passive in its reforms. Law is an efficient instrument of education or social change, although public opinion cannot be neglected. Childhood is the base of any healthy society. Besides this, childhood in any society is a vulnerable group for the reason of its dependence. Therefore, the problems of children needed State interference to ensure the protection of this group. In the colonial period, the Government took up several social issues which were concerned either with the health or family life of the child or with their life outside the family i.e., their training through education and controlling their labour by legislation. Legislation on children in the colonial Punjab may therefore be classified into two categories, one on the health and family life of children and the other concerning their milieu outside the family.

In the present chapter Acts related to health and family life, like Vaccination Act of 1880 and Prohibition of Tobacco among Juveniles1918.

\(^4\) Punjab Government, Administration Report, Lahore, 1901-02. 83
Female Infanticide Prevention Act 1870, Age of Consent Act 1891 and Child Marriage Restraint Act 1929 are discussed. In the next chapter Acts pertaining to the life of the child in the outside world, such as Apprentice Act 1850. Reformatory School Act 1897. Indian Factories Act (1881, 1891, 1911, 1922, and 1934) The Children Pledging of Labour Act II of 1933 Employment of Children Act XXVI of 1938, and Compulsory Education Acts of 1919 and 1940 are taken up.

The present chapter is an attempt to analyse the colonial Government’s effort to legislate upon the matters which affected the health and family life of children. The first section traces the plans and policies on health such as, public health legislation which helped in liberation from the ravages of small-pox under the Vaccination Act of 1880, Prohibition of Tobacco among Juveniles, child welfare work and medical examination of school children. The second section traces the Female Infanticide Prevention Act 1870. In the third section the issue of saving girls from consummation of marriage before puberty by Age of Consent Act 1891 and Child Marriage Restraint Act 1929 to curb the practice of early marriage is taken up. The fourth section sums up the efforts of the colonial Government’s legal intervention to improve the health and family life of children in the Punjab.

I

The reasons for high mortality among children, as the District Gazetteers and Census reports suggest were insanitary conditions, childhood diseases and epidemics, inattention or carelessness for female children and early marriage and child bearing in girls. The commonest diseases were fever; small-pox and plague. In the backdrop of a series of epidemics breaking out in British India at regular intervals, and claiming a large number of lives, the fevers in the Punjab accounted for
2,32,82,935 deaths, whereas the plague claimed 34,75,066 victims, small pox 850591 lives and 357,260 perished of cholera in the Province. Colonial Government devised plans and policies for the health of children through maternity and child welfare schemes, medical examination of school children, prevention of malaria among children, and for the eradication of small-pox. A Vaccination Act was passed in 1880 and another health measure through legislation was also taken to with the prohibition of the use of Tobacco among Juveniles in 1918.

The prevention of smallpox by vaccination had been proved beyond any shadow of doubt to be successful throughout the civilized world in the Colonial times. Since the people of Punjab or elsewhere were against the British for certain reasons, they looked askance at every measure adopted by them. Another reason of even great importance was that the masses were uneducated and they did not fully understood and appreciate the value of the social welfare measures like vaccination initially.

The Government of the Punjab however, was rather enthusiastic and issued circular as early as 1864 to all the Commissioners and Superintendents of Divisions in the Punjab to encourage vaccination amongst the people. The masses were ignorant and orthodox, fearful and suspicious of the British and were skeptical of all new scientific developments. They did not present themselves before the vaccinations voluntarily in fact, they even avoided it as far as they could.

The law for compulsory vaccination was, therefore, to be brought forward. Sir Sayad Ahmad one of the progressive-minded Indians, was a member of the Viceroy’s Legislative Council and a situation like this proved for too provocative for him. He introduced a Bill to Prohibit Inoculation and make Vaccination Compulsory in certain areas. At the

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6 India Code. VOL. III.1956 Vaccination Act XIII of 1880. Section.3.
outset of his speech in the Viceroy’s Legislative Council he said,
“.......I am supported by a sincere conviction that I am suggesting a law consistent with a policy of humanity and toleration.......Small pox attacks persons of all classes usually at the period of life when its victim is still in its cradle and his intellect still in the infancy. Its ranges extend chiefly to the innocent children too young to take care of their lives too young to have adopted any preventive remedies which science has provided. Infection carried it from neighbour to neighbour and those who suffer from calamity might said to be instrumental in inflicting it upon others.” 7

In 1880 the Vaccination Act came into operation with the prohibition of inoculation.8 This Act was applied to local areas under the authority of District Boards and cantonments situated in Uttar Pradesh, Punjab, Madhya Pradesh, Assam, Delhi Ajmer and Coorg.9 It gave the power to prohibit inoculation,10 and to make the vaccination of children compulsory, in certain Municipalities and local areas under the authority of district boards and cantonments. It was recommended that any inhabitant of such municipality, or part thereof, who objects to such extension may, within six weeks from the date of such publication, send his objection in writing to the Secretary to the Government, and the Government shall take such objection into consideration. And if the objections were not coming forth within six weeks or they were

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7 Extract from the speech of Sir Sayad Ahamad Khan in the Governor General’s Legislative Council Debates. 30.9.1879
8 In any local area to which the provisions of this Act apply, inoculation shall be prohibited; and no person who has undergone inoculation shall enter such area before the lapse of forty days from the date of operation, without a certificate from a medical practitioner, of such class as the State may, from time to time by written order, authorize to grant such certificates, stating that such person is no longer likely to produce small-pox by contact or near approach. Section 7. Act XIII of 1880.
9 Section 1. Act XIII of 1880.
10 Which means any operation performed with the object of producing the disease of small-pox in any person by means of variolous matter.
insufficient, might by like notification effect the proposed extension.\textsuperscript{11} The Act specifically laid down that if a child above 6 months and below 14 in the case of boys and eight years for girls resided in the said territory where the provisions of this Act applied, the parent or the guardian of such a child was to take him/her to be vaccinated, or send for a vaccinator to vaccinate.\textsuperscript{12} In certain cases when the child was unfit for vaccination, a certificate was granted under section 9 showing the unfitness of a child for vaccination for the period stated therein and on being fit he might be vaccinated and if the vaccination season was over at that time, in the next vaccination-season the parent or guardian of such child had to take the child, or procure its vaccination at his own house by a vaccinator.\textsuperscript{13} However, if the Superintendent of vaccination was of opinion that a child who had been three times unsuccessfully vaccinated was insusceptible of successful vaccination, he would deliver to the parent or guardian of such child a certificate under his hand to that effect; and the parent or guardian would thenceforth not be required to vaccinate the child.\textsuperscript{14}

The vaccination of a child would ordinarily be performed with prescribed lymph by the rules. In case the prescribed lymph provided was animal-lymph, the parent or guardian of any child desired that such child should be vaccinated with human-lymph, it should be so vaccinated. Contrary to it, human-lymph was so prescribed in certain area and animal-lymph was procurable, and the parent, or guardian of any child desired that such child should be vaccinated with animal lymph, and they could get it done it with fee, not exceeding one rupee, or might be fixed by such rules in this behalf, by the local authority.\textsuperscript{15}

\begin{footnotesize}
\begin{enumerate}
\item[12] Section 17.
\item[13] Section 9.
\item[14] Section 14.
\end{enumerate}
\end{footnotesize}
The Superintendent of vaccination along with his other duties, should ascertain whether all unprotected children, under the age of fourteen years if boys, and under the age of eight years if girls, within the local area under his superintendence had been vaccinated; and if he had reason to believe or come to his notice, that provisions of the Act were applied and the parent or guardian did not comply with, he would personally go to the house of such parent or guardian, and there made enquiry, and should, if the fact was proved, forthwith deliver to such parent or guardian, or cause to affixed to his house, a notice requiring that the child be vaccinated or (as the case may be) that it be presented for inspection at a time and place to specified in such notice. 16

In case the notice was not complied with, he would report the matter to the Magistrate of the district and he on receiving such report should summon the parent or guardian of the child and demand his explanation. In case, such explanation was not satisfactory, order in writing directing such parent or guardian to comply with the notice before a date specified in the order.17 If the order had not been obeyed by such date the Magistrate would summon the parent or guardian before him without specified excuse would deal with the disobedience as an offence punishable. Even after the procedure laid down in the Act on the due date the parent or guardian did not get the child vaccinate he could fined up to the extent of fifty rupees and on subsequently offence “with simple one thousand rupees or imprisonment for a term extending to six months or with both”.18

The amount of all fees realized and the amount of all expenditure incurred under this Act in any municipality, or area under the authority of a district board shall respectively be credited to and paid from the

16 Section 17.
17 Vaccination Act XIII of 1880. Section 17.
18 Section 22.
municipal fund, district fund, notified area fund, or town fund as the case may be.\textsuperscript{19}

The Act was carefully drafted and left no loopholes for subsequent evasions.\textsuperscript{20} They were strictly enforced as the reports showed more and more of education among people meant greater respect for the scientific knowledge, which enlightened them about the usefulness of vaccination. The vaccination legislation has been obeyed due to its usefulness. The executive authorities too had been no less vigilant about its enforcement. The Act in the Punjab led to ‘commendable’ results in the opinion of the Government officials.\textsuperscript{21}

Initially to combat smallpox the British resorted to segregation and disinfection. Their main emphasis however, was on vaccination, which was intended to be a long term measure.\textsuperscript{22} The provincial government set up an elaborate framework for vaccination by 1856, changes was made in the vaccination establishments by 1889. Vaccination work was carried out by four establishments; dispensaries, district, cantonments and special staff. From 1906, vaccinators were employed by the local bodies and were under their administrative control.\textsuperscript{23} In September 1926, vaccination work was placed under the district medical officer of health. In 1929, the province was divided into vaccination circles, corresponding to the area of the police stations. For each vaccination circle the district board appointed a vaccinator who worked under the district medical officer of health. For six vaccination circles, the district board appointed superintendent of vaccination. The vaccinator was required to visit each village in the vaccination circle twice during the vaccination season by

this time were carried out generally in school or sarai (a shelter for transients)\textsuperscript{24}

The British made efforts to popularize vaccination. In 1881, persons with ‘standing’ were imparted training and employed as vaccinators. \textsuperscript{25} In 1882, the native superintendent of vaccination supervised the operations of the district staff, worked with Zaildars and Lambardars for giving assistance to vaccination in carrying out the vaccination work. In 1884, committees and sub-committees were appointed to investigate and report on the unpopularity of the vaccination. In 1891, the tehsildars and naib-Tehsildars were asked to enquire about the conduct of the vaccinators from the people and the difficulties they faced during vaccination operations.\textsuperscript{26}

Vaccination was enforced mainly in the cities and the summer capital at simla. Gradually it was extended to some other urban areas of the province. In 1891 the position of vaccination in the province of Punjab was that compulsion was in force in four municipalities only.\textsuperscript{27} By 1895, Compulsory Vaccination Act was in force in Rohtak, Beri, Delhi, Ambala, Shimla, Kausauli, Sabathu, Daghshai, Jhang-cum-Maghiana, Lahore, Amritsar, Edwardesabad, Dera-Gazi-Khan, Leiah, Dharmasala, Jullundur, Dalhousie, and Murree—that is 18 towns.\textsuperscript{28} This progress continued under the Act XIII of 1880. This figure rose to 22 towns in 1896; to 33 in 1897; to 35 in 1898; 36 in 1899; 126 in 1925; 146 in 1926; 165 in 1927; 176 in 1928; 190 in 1929; 201 in 1930; 223 in 1931 and 250 in 1932,\textsuperscript{29} leaving no option to the local areas to decide about vaccination. Again, it is not the total number of areas coming under

\textsuperscript{25} Proceedings Home and Sanitary. February 1881. Serial Number. 13.84-85.
\textsuperscript{26} Proceeding Home. Medical and Sanitary. July. 1891. Serial Numbers. 30. 60. Quoted by Shasa The State Society And Epidemics in Colonial Punjab. 98.
\textsuperscript{27} Government of India Report of the Sanitary Commissioner for 1891.147.
\textsuperscript{28} These areas were cantonments, hill station cantonments and administrative areas with high number of Europeans.
\textsuperscript{29} Compiled from the Government of India. Annual Reports of Sanitary Commissioner.
Table 6.1:- Conviction under the Vaccination Act XIII of 1880 in the Punjab; Number of cases offences reported.

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases reported</th>
<th>Pending from previous</th>
<th>Acquitted or discharged</th>
<th>Convicted</th>
</tr>
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<tbody>
<tr>
<td>1899</td>
<td>42</td>
<td>205</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>1914</td>
<td>251</td>
<td>296</td>
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<td>1915</td>
<td>391</td>
<td>90</td>
<td>251</td>
<td>34</td>
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<td>1917</td>
<td>94</td>
<td>83</td>
<td>15</td>
<td>63</td>
</tr>
<tr>
<td>1918</td>
<td>115</td>
<td>93</td>
<td>88</td>
<td>3</td>
</tr>
<tr>
<td>1919</td>
<td>288</td>
<td>292</td>
<td>53</td>
<td>131</td>
</tr>
<tr>
<td>1920</td>
<td>298</td>
<td>124</td>
<td>193</td>
<td>100</td>
</tr>
<tr>
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<td>30</td>
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<td>1922</td>
<td>155</td>
<td>125</td>
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<td>6</td>
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<td>1925</td>
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<td>115</td>
<td>34</td>
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<td>1927</td>
<td>125</td>
<td>167</td>
<td>78</td>
<td>8</td>
</tr>
<tr>
<td>1928</td>
<td>238</td>
<td>529</td>
<td>135</td>
<td>34</td>
</tr>
<tr>
<td>1930</td>
<td>551</td>
<td>252</td>
<td>453</td>
<td>30</td>
</tr>
<tr>
<td>1931</td>
<td>271</td>
<td>772</td>
<td>235</td>
<td>23</td>
</tr>
<tr>
<td>1932</td>
<td>822</td>
<td>1507</td>
<td>648</td>
<td>112</td>
</tr>
<tr>
<td>1934</td>
<td>1538</td>
<td>1583</td>
<td>1190</td>
<td>319</td>
</tr>
<tr>
<td>1935</td>
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<td>336</td>
</tr>
<tr>
<td>1936</td>
<td>1535</td>
<td>1338</td>
<td>1044</td>
<td>312</td>
</tr>
<tr>
<td>1937</td>
<td>1430</td>
<td>993</td>
<td>748</td>
<td>598</td>
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<tr>
<td>1938</td>
<td>1134</td>
<td>550</td>
<td>529</td>
<td>451</td>
</tr>
<tr>
<td>1939</td>
<td>652</td>
<td>980</td>
<td>390</td>
<td>156</td>
</tr>
<tr>
<td>1940</td>
<td>1036</td>
<td>853</td>
<td>718</td>
<td>313</td>
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<td>217</td>
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<td>1942</td>
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<td>705</td>
<td>1307</td>
<td>700</td>
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<td>1943</td>
<td>740</td>
<td>885</td>
<td>129</td>
<td>479</td>
</tr>
<tr>
<td>1944</td>
<td>954</td>
<td>334</td>
<td>427</td>
<td>223</td>
</tr>
<tr>
<td>1947</td>
<td>345</td>
<td>334</td>
<td>149</td>
<td>254</td>
</tr>
</tbody>
</table>

compulsion that matters, what matters is the total number of operations performed from just 72,846 in 1944 to 4,295,239 an increase of 59 times by 1944. It may be noted that number of operations Primary and revaccination had been gradually and consistently increasing year by year. The number of operation would not have alone increased so much if the law courts also had not helped to check substantially the evasion of vaccinations. The number of offences reported and convictions obtained for the infringement of the Vaccination Act also increased about 20 times in 1946 as compared to those in 1899.

Notwithstanding, the elaborate machinery, initially, small pox progressed and evasion of the measures of this Act continued for some time. However, vaccination was the best of the measures enacted in Public health. Gradually, the people who were reluctant to adopt these measures, they realized its importance and adapted to it. Consequently small-pox was eradicated to a large extent.

Another health measures for children was the legislation Preventing Smoking by Juveniles. It received the assent of the Lt. Governor of the Punjab on the 6th June, 1918 and was first published in the Punjab Gazette of the 12th July, 1918. In India, children especially in the rural areas took to smoking whether in the form of cigarette or ‘hooka’ at a tender age. When they grew into fathers they became hooka-

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31 See Table 6.1
32 The United Nations define “child” as an individual below twenty-one years of age. Juvenile delinquency then deals with children, minor or youth below twenty-one years of age who breaks laws or fails to do what law require.
33 In December, 1899, the Japanese House of Representative in Tokyo discussed and passed a measure preventing the smoking by juveniles and during this discussion one of the members said “If we except to make this nation superior to the nations of Europe and America, we must not allow our youths in the common schools who are to become the fathers and mother of our country. Punjab Juvenile Smoking Act VII of 1918.
slaves which ‘sapped their vitality and decreased the efficiency of their work’. 34

It was laid down in the Punjab Juvenile Smoking Act VII of 1918 that whoever sells or gives or attempts to sell or give a child apparently under the age of sixteen years any tobacco, whether for his own use or not shall be liable on conviction by a magistrate in the case of first offence to a fine not exceeding ten rupees and in the case of the second offence to fine not exceeding twenty rupees and in the case of third or subsequent offence to Punjab Act VII OF 1918.35 It was also provided that if anybody apparently under the age of 16 was found smoking tobacco in any public place it was lawful for any Lambardar, Zaildar, teacher of recognized school or affiliated college, member of Municipal Committee, legal practitioners, registered medical practitioner or magistrate to seize such tobacco and destroy it. 36 The Deputy Commissioner of Ludhiana Sheikh Asghar Ali wrote about the bill as follows:-

“I am in favour of the juvenile smoking bill. My experience is that the habit of smoking among the juveniles is on the increase. I have personally noticed guardian-less boys of tender age, belonging to good families smoking cheap cigarettes and it is with difficulty that I have resisted the impulse of snatching the cigarette and giving a smash to the boy”. Punjab legislative Council prosecutions under the Act were actually launched but they were highly insufficient in comparison with the offences Actually committed.37

34 Ibid.
36 Ibid. Section.14
37 Debates of Punjab Legislative Council 14.3.1918
The Hon'ble Khan Sahib Mirza Ikram Ullah Khan, member of the legislative assembly, while protesting against the measure and this provision especially in the Punjab Legislative Council on 14.3.1918 said, “Imagine the deplorable condition of a very poor old blind or invalid male or female smoker who sends his minor son or daughter to fetch a piece of tobacco from the bazaar and imagine the indignities to which minor boy or girl will be suspected. The habit of smoking among juveniles is bad and may lead in the near future to smoking. The measure adopted by this bill is worse than the disease.” 38

The main cause of the failure of the Act was attributed by the Government to the fact that the offences under the Act were not cognizable by the police and that its enforcement rested with public and local bodies who lack the necessary zeal for reforms. 39 The number of cases reported under the Act. 40 The Government authorities knowing fully well that the Act had become obsolete had persistently refused to take any action to improve the implementation. 41 The law had not provided any punishment for the juvenile smoker but only tobacco could be seized and destroyed. The law was infringed frequently because only a small category of people could take any Action on it and out of those who could do it there were only a few people who use their power and conscience. The Act was actually very rarely used. Offences under the Act were not cognizable by the police. The numbers of prosecution were minor upto 1931 ranging from 1-15 and were at maximum one to three in a year. In 1935, there were 30 convictions while 2 years later the

38 Debates of Punjab Legislative Council 14.3.1918.
39 Debates of Punjab Legislative Council 14.3.1926
40 See Table. II
41 Question No.902 by R.B.L.Mohan Lal;Question No.1511.1.8.1922. By R.S.L. Thakur Das. quoted by Iqbal Nath. Social Legislation in Punjab Since Annexation. 290
Table:-6.2:- Convictions under the Punjab Juvenile Smoking Act VII of 1918 in the Punjab

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Cases</th>
<th>Returned as true</th>
<th>Convicted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1919</td>
<td>nil</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>1920</td>
<td>2</td>
<td>nil</td>
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</tr>
<tr>
<td>1921</td>
<td>1</td>
<td>nil</td>
<td>nil</td>
</tr>
<tr>
<td>1922</td>
<td>4</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>1924</td>
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</tr>
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<td>1925</td>
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</tr>
<tr>
<td>1926</td>
<td>1</td>
<td>1</td>
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<tr>
<td>1928</td>
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<td>1</td>
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</tr>
<tr>
<td>1930</td>
<td>52</td>
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<td>265</td>
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<td>1938</td>
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</tr>
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<td>1943</td>
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<td>88</td>
<td>71</td>
</tr>
<tr>
<td>1944</td>
<td>17</td>
<td>17</td>
<td>13</td>
</tr>
</tbody>
</table>

_Punjab Government Criminal Justice Administration Reports Annual. Lahore and Simla._

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number was 250 up to 1939 conviction exceeded 100 but then petered out in the 1940's. In the Colonial period the state also supported child welfare work, which augmented its concerns about children. In 1902 the Victoria Memorial Scholarship Fund was inaugurated by Lady Curzon with an income of Rs. 40,000 per annum. This work progressed with some rapidity, due partly to the organization for training health visitors and largely to the work of the Lady Chelmsford League. Individual efforts were made from about 1915 onwards, some by local bodies and some by charitable associations. In 1918 an organization for the training of Health Visitors and maternity supervisors was started, and in 1920 an exhibition for Maternity and Child Welfare was held to which exhibits were sent from all over India and which was visited by delegates from an equally wider area. This exhibition roused a great deal of public interest and was most valuable in calling attention to the need for child welfare work and the way in which it could be organized. Shortly afterwards Lady Chelmsford, launched an All-India League for Maternity and Child Welfare.

In the Punjab the work was largely into Government hands as regards provincial organization and the appointment had been made of a woman officer under the Director of Public Health for the sole purpose of organizing and inspecting the maternity welfare work. So far as the rural areas were concerned, this movement was in the initial stages. The principle followed was to demarcate areas where an Infant Welfare Centre could be established and put a qualified Lady Health Visitor in that area to establish such a centre, undertake the training of indigenous midwives, and generally provide ante-natal supervision. The District

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44 Ibid. 90
45 Ibid. 91.

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Medical Officers of Health were responsible for all local arrangements in this respect and were ex-officio the administrative officer for any local health associations receiving a grant-in-aid from the Public Health Department for this work. Maternity and child welfare work included the training of Health Visitors at the Punjab Health School, and the work carried on the Maternity and Child Welfare Centres throughout the Province.

The Punjab Health School was provincialized from first April 1927. Eight students obtained the Health Visitor’s diploma and the number of Health Visitors rose from 19 to 28. The most important duty of Health Visitors was the training and supervision of indigenous dais, of whom 456 were trained during the year 1927. During 1939, 627 dais obtained certificates and 2,246 previously certified dais were practicing in the areas served by the various Health Centres by 1941. The number of infant welfare centers in effective operation in 1929-30 was 34 as compared to 25 in 1928, and the number of qualified health visitors was also increased from 34 to 41. By 1932-33 the number of health centers rose to 42. In 1939 the number of maternity and child welfare centers stood at 102. The majority of these centers included work in rural areas as part of their routine activities, although all were not situated in villages. Thus, child welfare received initiative in the colonial period and the newly established maternity and child welfare centers in the Province paved the way to reduce the ratio of infant mortality.

School medical inspection also aimed at improving child health and was started first in Baroda City in 1909. In the succeeding years practically every Province introduced some form of school health

46 Report on League of Nations Health Organization in British India Jan- Feb, 1928. 223
programme. The area covered by the service varies widely as well as the types of schools in which medical inspection was carried out. The Joint Committee of the Central Advisory Boards of Education and Health dealt with this subject in great detail in year 1941. Another useful report was issued by the Central Advisory Board of Education in 1944. This Committee, however, did not visualize the possibility of a comprehensive health service combining in it both preventive and curative health functions for all sections of the community. It recommended on the basis of the practice in England, the creation and maintenance of a school health service which would be separate from the existing provincial service, preventive and curative and which would be under the administrative control of the education department.50 The Health Survey and Development Committee (1946) suggested a modified scheme. It stated "In proposing a scheme for India, where we are practically in the position of starting the organization from the beginning, we believe it will be of advantage to recognize that the question should be considered primarily from the stand-point of the school child for whom the service is being provided. From his point of view, continuity requires that the provision of medical care for school children should not be isolated from the general health services." 51

A resolution was passed at the Punjab Sanitary Conference held in August 1913, to the effect that the existing Provincial Medical Department should be utilized as far as possible for the inspection of schools and scholars, supplemented by such additional medical men provided at the cost of the educational grant for school hygiene and of local bodies as may be found necessary. Six assistant Surgeons were to be Medical Inspectors of Schools, one officer for every division in the Punjab and a special officer was appointed for schools in the Lahore City

50 Report of the School Health Committee. 9
51 Ibid.
w.e.f. 1st April 1915. Medical inspection of school children was also introduced in the province in 1926-27. Under this scheme all medical officers incharge of hospitals and dispensaries had been appointed medical examiners of the recognized educational institutions, within three miles of their headquarters. All children examined would have to, unless their parents wish to send them to private practitioners, come to the hospitals and dispensaries in due course for treatment.

In the town of Simla, school medical inspection had been thoroughly elaborated in 1928. It provided for the inspection of all school children once every second month, free treatment at hospital, the provision of free dental treatment, and the provision of spectacles. Working in conjunction with the Maternity and Child Welfare Centre, the system provided for a continuous medical history of children born in Simla from birth to the date of leaving school. In the remainder of the Province, systematic school medical inspection with facilities for treatment had been introduced experimentally in six districts. In these districts, schools within three miles of a dispensary were inspected by the Medical Officer of the Dispensary once a year, the Civil Surgeon of the District being the administrative officer on the Medical side, and the District Medical Officers of Health supervising officer who authorizes payment to the Inspectors.

As malaria was most prevalent amongst the children and spleen rate was as high as sixty percent, the Chief Malaria Medical Officer prepared a scheme for the spleen census of school children in 1914. The scheme was applicable to all children studying in primary schools recognized by the education department, primary schools in towns and notified areas, and the villages where a Government dispensary or a

52 Proceedings for December 1914, Nos. 11-16 B, File No. 306 H/ General 3-7 School Sanitation and appointment of six Assistant Surgeon to be Medical Inspectors of Schools.
54 League of Nations Health Organization in British India Jan- Feb. 1928.232
hospital existed. The assistant surgeon or the sub-assistant surgeon was to examine all male children below ten years twice a year in May-June and November-December. A scheme for 'quininisation of school children was started in 1916. Local bodies were asked to bear the cost of quininisation of school children. After three to four years the parents were asked to bear the cost in the school fees. The headmasters were asked to explain the disease, the havoc caused by it and its effect on the physical and mental health. They were also asked to maintain a quinine register.\textsuperscript{55} Due to the war; this scheme was not carried out until 1918-19, when, six medical inspectors were appointed in the province to carry out a spleen census. However in 1925, the scheme was extended to all schools and colleges and boys studying in certain classes.\textsuperscript{56}

By 1939, medical inspection of school children was properly organized in eight of the larger towns under the supervision of Municipal Medical Officers of Health and in four small towns and five large villages. At the end of 1939, there were 44,810 boys and 8900 girls being regularly examined a majority of them were receiving treatment where necessary.\textsuperscript{57} The important information was also collected about the general health of these children i.e., from 60.28 percent boys and 58.64 percent girls had good physical condition, 23.85, and 14.96 respectively below par and 15.87 percent and 26.40 percent girls had poor physical condition.\textsuperscript{58} Chief defects found were malnutrition 9.66 percent, defective vision, 8.38, diseased tonsils and adenoids 19.94, enlarged spleen 1.21, Tuberculosis (Pulmonary) 24 children, Tuberculosis (non-Pulmonary) were 88 boys.\textsuperscript{59} Medical Officer of Health inspected the school premises of 770 schools during 1939. The questions relating to ventilation, lighting,
drinking water-supply and general sanitation were investigated and school authorities were advised regarding improvements. Thus, medical care of school children was an innovative attempt of the colonial period and made some headway by the 1940's.

In the colonial period health of the new born and infant mortality was a matter of concern and it was attempted to be checked up by the second quarter of the 20th century. The modern health care services for children were started with maternity and child welfare department. From 1929 to 1939, 102 maternity and child welfare centers were opened in the Province. Public health policies combined the health of children in the schools. These measures were enthusiastically started, especially for children, as it was the need of hour in the wake of epidemics; small-pox, plague and malaria. The total number of vaccination operations performed from just 72,846 in 1854 to 4,295,239 an increase of 59 times by 1944. Consequently, these brought positive results by reducing mortality ratios as well as eradication of small-pox. However, the Juvenile Smoking Act did not have a desired effect and soon it became 'lost in the air'.

II

Another issue of prime importance that had an impact on children directly was infanticide and this was also taken up by the State in the context of protection of female children. Infanticide was one of the social evils prevalent in many parts of India. Desire for a male offspring has

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60 Report on the Public Health Administration of the Punjab for the year 1939. Lahore. 1941.

61 In New Zealand, female-infants were put to death by adopting the practice of ro-mea or squeezing the nose, as soon as they were born, as the girl children were of no use to them in war. Among the Eskimo, conditions of life were so severe that it was sometimes a practice to kill female children after birth, fearing that there may not be husbands able to support them. In Polynesia, where population often reached high density, similar practices prevailed. Infanticide was also prevalent in Japan, where it was called mabiki and it was adopted by those parents, who were unable to rear their children. Similarly, it was also prevalent in China and in many European countries, as late as up to the 19th century, where unwanted infants were disposed of by abandonment and exposure. In Europe, infanticide included the practice of
always been very pronounced, yet there is nothing to show that the birth of a female child was unwelcome. At the same time the gift of a daughter in a marriage was considered sacred and a duty which every married man has to discharge in order to repay the debt he owes to the society and to his creator in respect of having received a similar gift at his own marriage. By the medieval period we find mention of female Infanticide in the Punjab. There are references in the writings of Guru Gobind Singh to show that he severely condemned Kurimars i.e., persons who killed their female infants. Several reasons have been put forth to explain the practice. Here, superstition, pride, poverty, prejudice, preference for sons, the existing dowry-system, the exorbitant demands of the Charans and the Bhats in Rajasthan, the endogamous, the exogamous, the hypergamous and the isogamous marriage rules and the illicit relationships resulting in illegal pregnancy led the people to opt for the practice of female infanticide. In India nature of infanticide, was very much different from other parts of the world. There were popular sayings:

'Dena bhala na bap ka beti bhali na ek' 64  
(it is not good to owe a debt even to the father, or to have even one daughter)

attest the feeling in respect of the so-called difficulties created by daughters in social relationships. The son-in-law was supposed to be a source of great worry. It is said:

'Jis nahin dakhea sher or dekhe bilai, jis nahin dekhea jam oh dekhe jawai' 65

'over-laying' (smothering) an infant, sharing a bed with his/her parents. Samobodh Goswami, Female Infanticide and Child Marriage, Rawat Publications. 2007. 69.

62 Punjab Census Report 1911. 249
64 Punjab Census Report 1911. 249.
65 Census Report Punjab. 1911. 250.
(whoever has not seen a tiger may see a cat, whoever has not seen the Yama may see a son-in-law).

Lord Dalhousie gave a vigorous and deliberate impetus to the measures of suppression of infanticide. After the annexation of the Punjab in 1849, Major Lake, the Deputy Commissioner of Gurdaspur, drew the attention of the Board of Administration to the enormity of the practice. The Board however was not in a position to take any effective measures unless a thorough investigation was made by several Commissioners into the nature and extent of the practice. In the Jullundur Doab it attracted the attention of John Lawrence after he became the Commissioner of Trans-Sutlej States. His biographer, Robert Cust, had given a graphic description of the promulgation of the three new Commandments:-

‘Bewa mat jalo; Beti mat maro; Korhi mat dabao.’ (Thou shall not burn thy widow; thou shall not kill thy daughter; thou shall not bury alive thy leper)\(^66\)

Towards the close of 1851, the Judicial Commissioner made enquiries on the subject, and Herbert Edwards, who was then Deputy Commissioner of Jullundur, sent in a long report in June 1852. The Bedis and Khatris were seen as the principal offenders, and it was implied that the practice was very rare among the Jats of the Doab. Later enquiries pointed to the conclusion that the Jats in certain Jullundur villages, commonly got rid of their female offspring's.\(^67\) The practice was probably very old, although its existence among the Jats was of comparatively recent at that time. The Muhiyals, Militant Brahmans as were they called also adopted the custom of killing daughters. Although suspicion of killing female infants had been aroused from time to time in the Ludhiana, Jullundur, Lahore, Ferozepore and Delhi Districts, yet the only place where it has reached the stage of moral certainty is a group of

\(^{66}\) Ibid. 243.

\(^{67}\) Ibid. 245.
villages in and on the border of the Phillaur Tahsil in the Jullundur District, inhabited mainly by Darbari Sikh Jats.68 The crime of female infanticide was supposed to be practiced chiefly among the Hill Rajputs. Colonel Jenkin from Kangra also admitted that the custom was prevalent among the Brahmins and Rajputs.

The Deputy Commissioner of Lahore was also of the view

"I suspect that the practice of Female Infanticide is not extinct in this district. Actual violence perhaps seldom employed, but the child’s death is no less effectually secured in other ways."69

In the whole of Punjab only eight district officers supported the existence of infanticide the official at Jhang writes: ‘Girls were not actually ill-treated; but their birth was often considered a misfortune, and in Gurdaspur infanticide was said to be practiced ‘if at all, only among the Bedi Khathris’ Colonel Gordon of Jalandhar was of the view, that there was “only neglect, not murder; and even that only among high-class Rajputs or Jats.”70 The Deputy Commissioner of Hissar discussed that “although men were often unable to marry because girls were so expensive, yet girls were not taken so much care of as boys”, Mr Smyth was of opinion that there was now no infanticide in the Delhi district, but that Hindoos treated their girls carelessly, while Musalmans did not. Mr. Benton of Karnal also suppoed the existence of infanticide among the agricultural population. Mr. Coldstream of Hoshiarpur had examined the whole subject at great length and supported its existence in the district.71

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69 Census Report Punjab. 1868.54.
70 Ibid.54.
71 However as the census Commissioner 1881 remarked in the report, of the thirty two Deputy Commissioners twenty four gave it as their deliberate opinions that infanticide was unknown. Many point out that a girl was ‘marketable commodity’ ‘valuable piece of property which can be ‘disposed of for a price,’ and that many classes depend upon their daughters to procure wives for their sons by exchange of betrothal. Census Report Punjab.1881.XI
In November 1855 Moore was appointed Special Commissioner to report on the extent and nature of the practice and devise ways and means for its eradication. Moore submitted his report in April 1856, reviewing the progress of the preventive and persuasive measures so far taken in the different districts of the North-Western provinces and proposed various measures which in his opinion would prove effective in suppressing the crime.72

On the basis of the report, a draft bill was prepared by John Strachey with the suggestions of Edmonstone and Robert Montgomery. The Bill, apart from proposing new rules, aimed at giving to the local Government, legal authority to effectively enforce the measures, which had been ‘imperfectly’ carried out in the past. Subject to the approval of the Governor-General-in-Council, the local Governments were given wide and optional powers to make rules for the effectual prevention of the practice.73 Lord Mayo gladly gave his assent to the bill which became ‘An Act for the Prevention of the Murder of Female Infants’ law in April 1870.

This Act, in the first instance extended only to the North Western Provinces, to the Punjab and to Oudh; but the Governor General of India in Council could by order extend it to any part of the territories (other than Oudh) under the immediate administration of the Government of India and the Local Government of any other official Gazette, extend it to any part of the territories under the administration of that Local Government.74

73 Lalita Panigrahi. British Social Policy and Female Infanticide in India. Delhi. However the killing of a male child is in the Punjab believed to be a certain remedy for bareness and was, as the Police records show, not infrequently perpetrated by a woman who had no children, or on her behalf. There were various ideas and superstitions which led, possibly in former times, to the sacrifice of children, or to their exposure, and a survival of these usages was found in the custom of faqirs. It was also within the bounds of possibility that superstition is even yet strong enough to cause infanticide in a few cases. Census Report. 1901.241.
This Act of Government prescribed that, whereas the murder of female infants was believed to be commonly committed in certain parts of colonial India, to take up the cause of rooting out this custom, powers were given to the local Government for the abolition of the same. If it appeared to the Local Government that the said offence was commonly committed in any district, or by any class or family, or persons residing therein, the Local Government might declare by notification published in the official Gazette, according to the manner the Local Government so prescribed. However, the Act would be applied only to such class, or family or persons. The Local Government could make rules consistent with this Act, for making and maintaining registers of birth, marriages and deaths occurring in such district, or in or among the class, under this section on all or any of the above. A Census of such persons, or of any other persons residing within such district was to be held by the deployment of police-force, in excess of the ordinary, fixed establishment of police, or for any officers or servants, by whom information shall be given to proper officers of all births, marriages and deaths occurring or about to occur, for the regulation and limitation of expenses incurred for the celebration of marriage or of any ceremony or custom by any person to whom such notification applied.

The subjects who disobeyed such rules on conviction before any officer exercising the powers of a Magistrate, were to be punished with imprisonment for a term which could extend to six months, or with fine which could extend to one thousand rupees, or with both. In case it appeared to the Magistrate of the district that any person, neglected to make proper provision for the maintenance of any female child for whose maintenance he was legally responsible, and that the life or health of such child was thereby endangered, such Magistrate therefore, could use

75 An Act for the Prevention of the Murder of Female Infants Act No. VIII of 1870. Section. I.
76 Section.II.sub section.1,2,3,4,5,6
77 Section.4
his own discretion. He would place the child under the supervision of a proper person and if necessary, remove the child from the custody of such person and order him to make a monthly allowance for the maintenance of the child at such monthly rate not exceeding fifty rupees, in the event of neglect of his order, and for every breach of the order, a fine was to be levied. 78

The Board, however, was confident that in the then existing circumstances, the only effectual method of putting down this 'vice' was by carrying the people with them and 'by destroying the motives of the crime, by making its commission profitless, and by the 'gradual diffusion of morality'. Judging from the past experience of other areas, they doubted the efficacy of preventive measures which they believed to be rather susceptible of abuse than of advantage, unless, of course, they were more discreetly applied.79

No proclaimed village or family was to be exempted from the operation of these rules except by the orders of the Local Government, or in virtue of authority to that effect vested by Government in any officer. A village or family so exempted would then be struck out of Register A and the erasure initialed by the Magistrate of the district or by the District Superintendent of Police.” 80

A proclamation denouncing female infanticide was issued, and a great Darbar was held at Amritsar, which was attended by some of the ruling chiefs, leading Sardars and others, at which agreements were entered into by the representatives of various tribes in different parts of the country to restrict marriage expenditure within certain limits.81 The matter was taken up again after the lapse of ten years. The Deputy

78 An Act for the Prevention of the murder of Female Infants Act No. VIII of 1870. Section. 79 Report of the Board of Administration, 19Aug, for the years 1850-51 Henry Lawerence, John Lawemce and Robert Montgomery were members of the Board. SRGOI Punjab.1853.Vol.1. quoted by Lalita Panigrahi. British Social Policy and Female Infanticide in India. 103. 80 Census Report Punjab.1911 .244-45 81 Ibid.243
Commissioner of Jullundur then reported that in the seven Phillaur villages which have since been put under the Act and in another small estate, Chak Andian, of the same tahsil there were 3051 boys and 1225 girls. Recognizing the source of the mischief, he induced a number of the leading Jats of the district to enter into an agreement fixing marriage expenditure for their tribe. Mr. Lewis Gordon, Extra Assistant Commissioner, made a special enquiry, and took Censuses in the villages of Samrala, Jandiala, Bundala, Bilga, Rurka Kalan, Barapind, Dosanj, Pharal, Chak Andian and Banga. The first eight of these estates and Jamshar in the Jullundur tehsil came under the Act.

In 1885, the rules to be followed for the implication of the Act were published and the local officers were directed mainly to follow conciliatory measures with a view to persuade the Jats and other castes suspected of the practice, to reduce marriage expenses. A number of rules were applied to the nine villages named above. On the introduction of these rules a nominal register (in Form A) of all proclaimed tribes and families was to be drawn up by the police under the orders of the Magistrate of the district. In this register recognized heads of families or masters of separate households were to be entered as the heads of families, and every member of the family habitually resident in the village was to be entered by name. All persons younger than fewer than 12 years were to be identified as children, except married female children living with their husbands, who were deemed to be ‘adult’ females. A special register (form B) of all births and marriages of females, and of all deaths of unmarried female children and of married females under 12 years of age and not living with their husbands, occurring in the Jat families of the villages specified was to be maintained by the officer in charge of the police station within whose jurisdiction these villages was situated.

82 Census Report Punjab. 1911.244
83 Ibid.244
The person who was registered as the head of a proclaimed family was responsible to report immediately to the Chaukidar of the village of every birth, marriage and death of a female in his family as aforesaid, and also the illness of any female child. He also had to produce all children of his family for the inspection of a police officer not below the rank of a Deputy Inspector, visiting the village, when so required. Every midwife knowing of, or having reason to believe in, the occurrence in a proclaimed family in the village in which she reside, of a birth or of the illness of a new born child was to at once report the fact to Chaukidar of the village.

The Chaukidar of the village was to immediately report to the officer in charge of the police station the occurrence, whether reported to him or not, of a birth. Illness of a married female under 12 and not living with her husband, and the removal of a pregnant woman to another village was also reported to. He was also on his periodical visits to the police station, report pregnancies which had been reported to him or had come to his knowledge. The Lambardars of each village were to be held responsible for the working of the Chaukidars and supervise the duties. They were all expected to provide assistance in their power to the police in drawing up Register A and in obtaining information of all births, marriages and deaths occurring or about to occur in proclaimed families.

Among the Jats of the village to whom these rules applied, no person giving a female in marriage, nor anyone on his behalf, was to incur any extra expense upon any ceremony or custom connected with her marriage in excess of that specified. Milni 1rupee, kamin lag 2, lag on occasion of phera 2, marriage feast 25, khat 51, vessels 10, jewels15, cloths 8, expenses on lagis on occasion of ‘khat’84 15, on the occasion of muklava 30. Similarly, no person receiving a female into his family in

marriage was to incur on account of the marriage, nor any ceremony or custom connected therewith, expenses exceeding the total of the list.

It was held to be the duty of the father or other head of the family celebrating the marriage to produce immediately before the Deputy Commissioner, or an officer deputed by him on demand by the same, an account showing the actual expenses incurred, and to prove the correctness of the expenditure. All expense incurred on carrying out these rules into effect in any village to which they may be made applicable, would be recoverable as an arrear of land revenue from the Jats of that village.85

The Government also kept tabs on the situation. In May 1889, the Commissioner of Jullundur applied for the extension of the provisions of the Act VIII of 1870 to the Gill Jats of village Kokari Kalan in the Moga Tahsil, in which there were 40 married women but no female children. In 1891, Mr. Coldstream, Deputy Commissioner of Hoshiarpur, who had examined the whole subject at great length and with great ability and completeness, wrote

'\nthis difficulty of marrying daughters suitably has operated in past generations probably for many hundreds years to foster the barbarous custom of infanticide. Forty years ago probably many hundreds of female children were annually buried in this district immediately after birth. When several female children were born in succession the destruction of the last born was carried out with the following observance- a piece of gur was placed in the mouth of the child, skein of cotton was laid on her breast, and the following incantation recited two or three times:-

'Gur Khaien, Puni Katti, App Na Aavin, Virre nu Bhejin. (Eat gur, spin your thread, We don't want you, but a

85 Census Report Punjab, 1881. 246.
And he expressed his suspicion as to the prevalence of female infanticide in village Mahalpur (district Hoshiarpur). In 1896, the Commissioner of Lahore recommended the extension of the Act to the Jats of village Sur Singh in the Lahore District, the Act was not applied due to inadequate justification however, and the reduction on marriage expenditure was applied.87

In the light of this information the Government of India accepted the Punjab Government's proposal of renewing or applying revised rules suitable for giving effect, after some ifs and buts on 12th February 1901 for bringing all the Jat residents of the said five villages out of previous nine under the operation of the Act. These Village, viz., Jandiala, Bilga, Samra, Bundala and Rurka Kalan in the Phillaur Tahsil which has 756 females to every 1000 males. The revised rules had minor changes, a medical officer not below the rank of Hospital Assistant was to appointed by the District Magistrate for each village, or for several villages jointly, for the purposes of carrying out and supervising the provisions. The District Magistrate with the sanction of the Commissioner was to entertain a suitable subordinate staff, and incur necessary contingent expenses on medicines, medical instruments, house rent and other identical charges. Every Zaildar within his own circle and every village officer was bound to render every assistance in carrying out the provisions of Act VIII of 1870.88 The Census report 1911 remarked;

“Female infanticide, which evidently prevailed to a considerable extent at the time of annexation of this Province, has dwindled down to insignificance; that wherever it now exists it is confined to individual families, or groups of families and that its extent is not sufficient to influence the proportion of sexes in any particular caste or locality as a whole, much less, that of

86 Census Report Punjab, 1881. 246.
87 Ibid.
88 Ibid.247.
any caste or religion in the whole Province.” 89

Undoubtedly the conditions had improved since 1911 as evidenced by the figures which show the proportion of Sikh-Jat females of all ages to 1000 males in the four districts where the practice was believed to be most prevalent. The figures of Hindu Rajputs of Kangra had also improved from 947 in 1911 to 958 in 1921 and 952 in 1931.90

This Act reflected the concern of the colonial Government for the survival of the female child and attempted to awaken the social fabric towards this evil. Although, the British did not aim at revolutionizing Hindu society nor did it contemplate shaking it to its roots. Yet they

Number of Females to 1,000 Males among Sikh-Jats

<table>
<thead>
<tr>
<th>District</th>
<th>1911</th>
<th>1921</th>
<th>1931</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lahore</td>
<td>664</td>
<td>714</td>
<td>780</td>
</tr>
<tr>
<td>Ferozepore</td>
<td>744</td>
<td>757</td>
<td>794</td>
</tr>
<tr>
<td>Jullundur</td>
<td>666</td>
<td>685</td>
<td>749</td>
</tr>
<tr>
<td>Ludhiana</td>
<td>707</td>
<td>734</td>
<td>747</td>
</tr>
</tbody>
</table>

Figures from Census of Punjab Report. 1931

envisaged a programme of social regeneration and incidentally helped motivating the general masses to shun this practice. The Act was applied to selected villages or areas where the practice was most suspected. The Jats of the village to which these rules applied, were encouraged not to incur any expense upon any ceremony or custom connected with a girls marriage in excess of that specified. Persuasion thus, supported the legislation on infanticide to promote it among the people.

III

89 Punjab Census Report, 1911, 230.
The colonial Government also pushed for legislation relating to the 'age of consent'. Child marriage was prevalent in the Punjab as elsewhere. Children aged 8 to 10 years were usually married without having the least understanding of the ceremonies of the marriage or the significance of the institution of marriage. The process of legislating and constraining early marriages began in India in the second half of the nineteenth century. As early as 1828 there were provisions, regarding an offence of rape of a girl below eight years, which was punishable with death and in other cases it was imprisonment. This had been a part of the criminal code of justice administered in the towns of Calcutta, Madras and Bombay.  

In 1846 the Law Commission who drafted the Indian Penal Code for the first time, felt it was necessary, to extend the penalties of rape to husbands who consummated their marriages with underage wives. Among Indian social reformers a concern for fixing the minimum age for marriage of men and women by law was voiced as early as the mid nineteenth century by Iswar Chandra Vidyasagar and Keshab Chandra Sen. Vidyasagar attacked the institution of child marriage for causing misery and blamed the practice on "out mooted shastras". In response to Vidyasagar's article, the Government of India decided on 10 years as the "age of consent" for sexual consummation with a girl child whether married or unmarried. In 1850 any violations of this, i.e. intercourse with girls under 10 years of age, was considered statutory rape and was punishable under section 376 of the Indian Penal Code of 1860.

Social reformers attempted to build up public opinion in favour of legal sanctions against child marriage in the latter half of the nineteenth century. The major reason for the prevention of child marriage was to protect young wives who suffered enormously due to forcible sexual

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91 Local Rules and Orders Made Under Enactments Applicable to the Punjab, Volme.I.
intercourse with their husbands before they reached the age of puberty or immediately after reaching menarche. Another reason for demanding the legal sanctions against child marriage was to check the increasing population of young widows. The grave evil of child marriage and premature maternity and the right of the state to take cognizance of it and intervene had been recognized by Indian administrators.

Hindu and Muslim law had serious note of and severely punished the offence of rape outside marriage, but the notion of 'rape' within marriage if the wife was below a certain age and therefore illegal seems to have originated with the Law Commission which drafted the Indian Penal Code. The code was finally enacted in 1860, and prescribed a punishment which could extend to transportation for life for the husband who consummated his marriage when the wife was under ten years old. Over thirty years later, in 1891, public attention was aroused by a number of cases in Bengal to the intense suffering, often death, caused by premature cohabitation.

In the 1880, a serious campaign was launched to raise the age of consent, a man was not held guilty of the offence of rape even if he had forcible sexual intercourse with his wife who was above ten years of age. This age of consent of married girls being fixed at ten in 1860 had caused great agony and mortification among the ranks of child wives above ten. Phulmonee's case highlighted the then existing inadequacies of law in the 1880.

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94 Jaya Sagde. Child Marriage in India. 37.
95 Ibid.
96 Dagmas Engel refers to a number of cases in the Rajshahi division of Bengal, in which young wives both over and fewer than twelve were murdered by their husbands for refusing them the exercise of their so-called conjugal right. Engel Dagmas. Beyond Purdah? Women in Bengal. 1890-1930. Delhi 1999.
97 Phulmonee's case was tragic and galvanized public support for the age of consent bill, and many ways silenced the opposition. Phulmonee, a girl aged eleven years and three months, had died because of hemorrhage from a rupture of the vagina caused by her husband who had forcible sexual intercourse with her. He was charged with the offence of murder. But the court exonerated him of the charge of murder as the girl was above ten years. Abhijit Dutta. Child Marriage An Adult Obsession. 38
and ultimately led to an amendment in the law of rape.\textsuperscript{98} Legislation for the raising of age of consent started with the publication of Malabari’s notes together with his campaign against child marriage both in India and abroad. At home, the Parsi social reformer had made deep inroads among both by his free distribution of the notes. British bureaucrats and natives of position and eminence called for speedy Government legislation which should be effected.\textsuperscript{99}

The first bureaucrat who corresponded with Malabari on this issue was J. Gibbs, Judicial member of the Government of India. Gibbs, in his letter, expressed his awareness of the physical maladies that followed the custom, and the impact on the health of both young mothers and children. Legislation to solve the problem, according to Gibbs, was out of the question. On the contrary, the suggestion was advanced that constant influencing of all classes of native society, especially the leaders against the evil would initiate steady reform in this matter by doing away with child marriage in their respective families.\textsuperscript{100} The then Governor General Ripon, said,

"...We regarded ‘suttee’ as a crime, and pronounced it to be a crime, and prohibited as such, but we could not treat infant marriage or enforced widowhood in same way. He said, however, these practices undoubtedly, indirectly lead to great evils; but they do not in themselves involve crime nor they so necessarily and inevitably mischievous as to


\textsuperscript{99} Usha Sharma (ed) Marriage in Indian Society from Tradition to Modernity. 76

\textsuperscript{100} C.P. Ilbert C.S.I., Law member to the Government of India, letter to Malabari Dated Calcutta, 17\textsuperscript{th} March, 1886, as contained in Infant Marriage and Enforced Widowhood in India, being a collection of opinion for and against, received by Mr. Behramji M. Malabari, From Representative Hindoo gentleman And Official and Other Authorities; Bombay. 100-101. Quoted by Abhijit Dutta. Child marriage An adult obsession. 86.
call for suppression by law if they are sanctioned by the
general opinion of the society in which they prevail.”

In view of the attitude of non-interference in matters of social
reform by the Government of India, Malabari, in accordance with the
suggestion of Prof. Max Muller, decided to appeal to the people of
England, particularly to its women. He visited the ‘mother’ country
thrice and by his speeches and writings helped to arouse public
sympathy. He was actively supported there by the ‘National Indian
Association in Aid of Social Progress and Female Education in India’,
established in 1871 by Miss Mary Carpenter. The association organized
his public appearances and brought out his writings in its Journal The
Indian Magazine and Review highlighting insights and question of early
marriage and the possible reform. To arouse the conscience of the
educated class of England, Malabari, in 1890, published ‘An Appeal on
behalf of the Daughters of India’ and succeeding in creating a strong
public opinion in England. Influenced by his writing skills, his
arguments, his untiring zeal, a committee was formed in England, under
the auspices of the Association, which included eminent persons like
Lord Northbrook, Lord Dufferin, Lord Tennyson, Herbert Spencer, Max
Muller, James Bryce, etc. to initiate action against this problem. In India
K.T. Tellang one of the reformers, kept the fires burning and sought to
translate the growing national interest into social legislation.

The age of consent controversy in Bengal juxtaposed an orthodox
opposition against social reform measures moved by the Government. In
1883 the Government of India ordered local Governments, universities
and leading social organization to be strong enough to initiate reform in
the matter. Malabari and M.G. Ranade’s views preferring legislation

101 A Mackenzie to Malabari. Secretary to Government of India as contained in Ibid.
102 Sambodh Goswami. Female Infanticide and Child Marriage. 33-34. 160
103 S.N. Tagore and Manmohan Ghose to Malabari. Quoted by Abhijit Dutta Child
Marriage An Adult Obsession, 103.
was supported by people like B.N. Pitale, T. B. Rani, G.W. Kantikar, and Rao Bahadur Gopalrao Hari Deshmukh.\textsuperscript{104}

Despite the vehemence of the opposition to the Age of consent Bill it was passed as an Act 1891, by the Viceroy’s Legislative Council. A committee comprising of influential British and Anglo-Indian Statesmen established in London had submitted recommendations to the colonial Government including the change in the age of consent. The law was signed on 19 March 1891 by the Government of Lord Lansdowne raising the age of consent from ten to twelve years. The prescribed punishment that existed of transportation for life for the husband who consummated his marriage when the wife was under ten years old was then extended upto the age of twelve.

Thereby, whereas educated folks refused to marry off their daughters below twelve as such marriages interfered with their urge to educate their females’ wards, the bulk of the uneducated multitude continued religiously to follow the custom of pre-puberty marriages, did not bother about the needy child wives who were subjected to sexual exploitation by their husbands.\textsuperscript{105} In 1891 the age of consent was raised to 12 year, but due to insufficient publicity and propaganda thereafter, the existence of the law was barely known and this social problem continued to persist.

However, these efforts continued in the early 20\textsuperscript{th} century. An Act was passed for the first time in 1925, which made distinction between marital and extra-marital sexual consummation. It also raised the age of consent to 13 years in the case of the former and 14 years in the case of latter.\textsuperscript{106} In 1928 the age of consent committee under the Presidentship of Mr. N.M.Joshi was appointed by the Government of India. The committee recommended 15 years as the age of consent in the case of

\begin{footnotes}
\item[104] Ibid. 104.
\end{footnotes}
marital relations. In September 1929, of the Child Marriage Restraint Act, which is also known as the Sarda Act, (as the name of the chairman of the committee was Harbilas Sarda) provided penalties for the solemnization of marriage of male children under 18 and of female children under 14 years of age from April 1, 1930.

The object of Child Marriage Restraint Act (CMRA) was to prevent child marriages.\textsuperscript{107} It was applicable to all citizens of British India irrespective of their religion Marriages solemnized. In about 600 native states were beyond the purview of the Act. Some of these States reached to the growing pressure of the time but measures taken were much below expectations.\textsuperscript{108} In 1929, CMRA defined 'child as a person who, if a female has not completed fourteen years of age, and if a male, has not completed eighteen years of age. Every person, of either sex, who is under eighteen years of age, was described as a 'minor'. Child marriage was defined as a marriage to which either of the contracting parties is a child. The term contracting parties to a marriage was explained as either of the parties whose marriage was or was about to be solemnized. CMRA merely attempted to restrain child marriage by providing penal sanctions for contracting such marriage. A number of important provisions that could have helped to prevent child marriage were missing from CMRA though it provided punishments for violations of its provisions.

Punishment for male adult below twenty one years of age marrying a child whoever, contracts a child marriage was punishable with simple imprisonment which may extend to fifteen days, or with fine which could extend to three months and liability of fine to whosoever, underwent a marriage ceremony with a minor. Guardian of a person in charge of a minor who promoted, permitted, or negligently failed to prevent child marriage faced simple imprisonment up to one month or and a fine up to Rupees 1000. One who violated an injunction issued to prohibit a proposed marriage faced simple imprisonment up to three months or/

\textsuperscript{107} Government of India Report of the Age of Consent Committee 1929. 102
\textsuperscript{108} K.M.Kapadia. Marriage and Family in India. 155
and fine (amount not mentioned) 109

A number of important provisions that could have helped to prevent child marriage were missing from the CMRA. Consent of the Parties to marriage and compulsory registration of a marriage, are some of the important provisions that should have been incorporated in CMRA.110 CMRA did not provide either for the validity or invalidity of an under age marriages. It is silent about the legal impact of child marriage. The issue of the validity of child marriage was kept out of the scope when the CMRA was drafted according to the suggestions of the N.M.Joshi Committee.

Implementation of the Act too was rather difficult. In the beginning and also after the substantial amendments were introduced, they were not declared cognizable. Reasons being that once a girl was married the presumption would was that there would have been the loss of her virginity, which became a great barrier to her subsequent marriage.111 The Act therefore, was silent on the legality of such marriages. The law even enforcement machinery, the police, were not allowed to arrest those persons who were involved in organizing and solemnizing child marriages without a warrant of arrest. The different religion -based personal laws of marriage prevalent in India for Hindus, Muslims, Christian, Jews and Parses in India were separate and prescribed different ages of marriage for the bride and bridegroom. The personal laws practically nullified the secular CMRA, in spite of the constitutional mandate of a uniform civil code. The discriminatory religious base of marriage laws continued to remain in force in India i.e. The Indian Christian Marriage Act (ICMA) 1872 applicable to Christians, initially prescribed thirteen and sixteen years of age for girls and boys respectively. Age at marriage was changed through CMRA in 1929 and1938. ICMA was brought on parity with

110 Jaya Sagade Child Marriage in India.57
111 Government of India, Report of The age of Consent.1929, 99-100 quoted by Ibid. 52
CMRA in 1952 and the age of marriage was raised to 18 and 15 for boys and girls respectively.\textsuperscript{112}

Personal law, for the Sikh community Sikh Rahit Maryada and Anand Marriage Act 1909, according to the Act the marriage of a boy and a girl is prohibited in the early adolescence.\textsuperscript{113} Mainly the opposition came from the Muslim community, based apparently on the arguments that any Act controlling the age of marriage must \textit{ipso facto} be an encroachment on the authority of the Shariat, and that Quran itself, at any rate by implication, provided for child marriage in certain cases. On the other hand it has been stated that consummation before puberty is forbidden by the Shariat and in any case a female married as a minor is entitled to repudiate the marriage on attaining majority, hence, no restrictions required. They voiced their displeasure at public meetings and took out protest processions in some cities. As a result of the CMRA, a great rush of child marriage was seen during the period which elapsed between the passing and coming into force of the Act.\textsuperscript{114} Generally speaking, the Act was supported by the educated classes interested in social reform.

Infant marriage did not stop when the Act came into operation. The law was obeyed more in breach than in observance and was not acted upon in villages, mainly owing to insufficient publicity as well as the absence of adequate Governmental machinery to enforce it. The law required that a complaint against the offending party should be first lodged in the law-court before it should penalize. Except the social workers, no one was interested in lodging the complaints and hence child marriage, though legally banned, continued to be practiced.\textsuperscript{115}

\begin{footnotes}
\item[112] Section 60 of ICMA, 1872.
\item[113] Dr. Surinder K. Joyoti. Marriage Practices of the Sikhs, 195.
\end{footnotes}
Nevertheless, the social and political leaders did not own defeat in the face of such difficulties. They continued their endeavors, as before to educate the public regarding the danger of early marriage. Various religious organization such as the Arya Samaj, the Brahma Samaj, the Dev Samaj and Sanatan Dharm Sabha were also actively engaged in such educative propaganda. Reform societies were also set up by most of the important castes of down to the masses Hindus. The Rajput Sabha, The Khatri Sabha, the Arora Bans, the Mohyal Sabha and the Brahman Sabha were some of the organisations advocating abolition of early marriage. Unfortunately their activities were confined to the educated classes only and did not reach down to masses. Despite the opposition, a fairly large number of the Indian States had already passed legislation on the lines of the Child Marriage Restraint Act, 1929 and some were contemplating legislation on these lines. Some others which have not passed much legislation were prepared to penalize child marriages by British Indian subjects in state territories, and there were only a few of them who considered that such legislation was not necessary.

IV

The colonial authorities and then legal actions relate to the health of children, the right to life of female infants and preventing them from early marriage. To meet these concerns the state took two kinds of measures- legal actions through the passing of Acts and government supported measures to help the mitigation of these social problems. In connection to health the government passed two laws, the Vaccination Act and the Juvenile Smoking Act in 1880 and 1918 respectively. The former eventually proved to be a success in protecting children from smallpox, but latter was ineffective as the provisions of the Act did not allow for proper implementation, and it was therefore futile to meet the concern of health among children who took to smoking tobacco.

The government was however, somewhat successful in initiating a healthcare system for children through support of non-government
organizations and through the medical and education departments of the government. The Victoria Memorial Fund worked for the training of health visitors and maternity supervisors. The training of indigenous dais and establishment of health centers added considerably to the overall arrangements or improved healthcare. Thousands of dais were trained and the number of maternity and child welfare centers were 25 in 1925. This number rose to four fold by 1939, to 102. The working of these centers would have definitely led to improved child care. It did indeed initiate a new era of child welfare, and spread awareness about the necessity of such programmes for children. The second measure of the government was the school health programme introduced through the medical and education departments of the provincial government. This scheme, though largely on paper created the theoretical basis for the implementation of a large scale programme. In a small way this led to the bringing of a complete school health scheme by involving local bodies. The statistics collected through these surveys gave new information about children and their health problems. This measure was therefore, an innovative in child health.

The state concern about the right to life of the girl child was a serious and necessary one. Female infanticide had been practiced for centuries in the Punjab and caught the attention of government officials in the early 1850s soon after the annexation of the region. Initially the government, was reluctant to take legal measures and tend to use persuasive measures to combat the problem. Finding them ineffective the government turned to the legal world and passed an Act in 1870 prohibiting the killing of female infants. This Act was however, introduced in limited areas only and did not cover the entire province at any time. At the same time the persuasive efforts were also taken. The onus actually lay on the people rather than the government to counteract this 'social evil'. The state, depicts legal action, was hesitant to intervene in social issues, however, significant they might be. They put up no fight
for the right to life of the girl child but relegated the issue to the realm of
government records and registers; and a tradition bound people.

The second legislation for the girl child was the regulations relating
to age of consent and the Child Marriage Restraint Act of 1929. Colonial
authorities had recognized the need for legal measures in the early 19th
century but introduced them in the Colonial cities only, largely to avoid a
clash with public opinion. From 8 years the age of consent was increased
to 10 in 1850 and later to 12 years in 1891. Social reformers pushed for
a higher age of consent, but the masses were largely unaware of such
debates and continued to marry their daughter at a young age. The
passing of the Act in 1929 rather hastened a considerable number of
child marriages. However by 1951, Limitations in implementing the Act
and prosecuting offenders brought a high change in the life of young girls.

State concerns toward the life, health and marriage of children
were half hearted measures, limited in provision and lacking in
implementation. They brought only partial solutions to issues related to
children, with the probable expectation of the Vaccination Act which had
been largely succeeded in controlling smallpox to great extent. The States
attitude to the education of children and child labour was not much
different.