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The age of consent bill: Clash between reformists and realists

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Abstract: *This paper analyses the Age of Consent Bill of 1891 which was a landmark legislative reform in colonial India. It sought to raise the age of consent for sexual intercourse for girls from ten to twelve years. This bill was Introduced by the British colonial government, but the bill was largely a response to public outcry which followed cases like that of Phulmoni Das a young girl who died after being raped by her husband in 1889. The bill aimed to address the issue of child marriage and improve the legal protection of minor girls within the institution of marriage. While it faced opposition from conservative elements who viewed it as an intrusion into religious and social customs. But it also garnered support from Indian social reformers such as Behramji Malabari. He played a great role in this legislative reform. The legislation marked a significant moment in the history of social reform in India. It highlights tensions between tradition, reform, and colonial governance. The paper will deal with the different views of Indian social reformers on this bill.*

Key Words: *age of consent, child marriage, marital rape, gender justice, orthodoxy.*

1. INTRODUCTION:

On 19th March ,1891 the age of consent bill also known as Act X of 1891 was passed under the Viceroy of Lansdowne. In this act the marriageable age was raised from 10 to 12 years for girls. It sought to amend section 376 of Indian penal code, it clarified that if someone made physical relationship with the girls below 12 years, was considered as rape[1]. Behram ji Malabari was a prominent person behind the passing of age of consent bill. He was a social reformer in England as well as India during nearly ten years. He was supported by the patriotic zeal and learning of his friend Dayaram Gidumal to pass the Age of Consent Act. The Age of Consent Act of 1891 became saviour for the many girls as it raised the age for sexual intercourse. It saved lives of many girls which died because of their child marriage. The Phulmoni Dasi rape case was a tiring point in the historty of India. This case was a major factor for passing the consent bill of 1891. It was a case of child marriage and subsequent marital rape in India in 1889, which resulted in the death of the 10-year-old girl, Phulmoni Dasi. The case led to the conviction of the husband in 1890 and triggered several legal reforms.[2]

The Census Report of the Bengal Presidency of 1881 shows that out of a total number of 2,236,058 girls in the age group 0–9 the number of married girls was about 245,388 (11%), which included 11,928 widows (about 5%). This bill created debate between Indian leaders. They are divided into two groups, one is reformists who want to change society by colonial laws whereas on the other hand they are realists, they don't want the interference of colonial rulers in matters of Indian society. Whereas the Medico Legal Returns submitted by the Civil Surgeons of Bengal indicated that during 1868-1869, the year being taken as a sample, there were 48 cases of 'rape' by husbands in about half of which the victims were below ten. In two cases actually children defiled were five years of age and in 17 cases between six and ten years[3]. That's why it was considered important to raise the age of girls for marriage.

[1] Kaur Manpreet, The age of consent act of 1891 through the lens of vernacular press, international journal for innovative research in multidisciplinary field, 30 April 2023.
[2] https://en.wikipedia.org/wiki/Phulmoni_Dasi_rape_case
[3] Yashudami , S.age of consent bill at 12:Bengal : a hot plate of public debate, June, 2012.

Behram ji Malabari was one of the reformist leaders who supported this act. He was deeply concerned with the plight of women in Indian society, particularly child marriage and the associated dangers of early consummation. He viewed the Age of Consent Bill as a moral and humanitarian necessity to protect young girls from harm. Malabari believed that child marriage and premature consummation of marriage were harmful to the health and well-being of young girls. He argued that Indian society needed legal reform to protect children from exploitation under the guise of tradition.He strongly criticized both conservative Hindu and Muslim leaders who opposed the bill. He believed that religious orthodoxy should not be used to justify inhumane practices like child marriage and early consummation. He used his newspaper **The Indian Spectator** and widely circulated pamphlets like **Notes on Infant Marriage and Enforced Widowhood** to gather public support. He also appealed to British authorities and Christian reformers. He emphasised that social reform was crucial for the progress of India. Malabari gained support from British politicians and reformers such as William Wedderburn and Florence Nightingale. In his scholarly work infant marriages in India, he said "A too early consummation of the nuptial troth, the breaking down of constitutions and the ushering in of disease... They tell disastrously on the physical and social well-being of not only the contracting parties, but even their children and their children's children."[4]

Rukhmabai was a pioneering Indian woman doctor and social reformer in the late 19th century. She strongly believed that child marriage and early consummation of marriage were harmful to girls' health and well-being. She openly supported the bill and advocated for even higher age limits. As a doctor, she argued from a medical standpoint, emphasizing the physical and psychological damage caused to young girls by early sexual relations. Which sometimes led them to death. She criticized Hindu leaders who opposed the bill. She openly came in favour of Behram ji Malabari. Rukma bai talks about her experience of early marriage and said Sir, I am one of those unfortunate Hindu women, whose hard lot it is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice has destroyed the happiness of my life. It comes between me and that thing which I prize above all others—study and mental cultivation. Without the least fault of mine I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked upon with suspicion, and is interpreted in the most uncharitable manner. We have a proverb, which says that 'we can philosophically bear the misfortunes of our neighbours." This is quite true. To realize another's misery you must feel it yourself. Men cannot, in the least, understand the wretchedness which we Hindu women have to endure." [5]

Surendernath Banerjee also came in support of the rising age of girls for marriage. Surendranath Banerjee, a prominent Indian nationalist and social reformer, held a nuanced position on the Age of Consent Bill of 1891. The Indian Association supported the Bill but with reservations. He urged the Government to reconsider if cohabitation with an immature wife could be regarded as heinous an offence as 'rape.' Rape so far as a woman was concerned, meant a social stigma and life-long ignominy. Ramesh Chandra Dutta of the Indian Civil Service favoured the Bill. There were a large number of instances of consummation of girls before they attained puberty, hence according to him, raising the age of consent was necessary. Raja Durga Charan Laha of the Subarna Banik Community also supported the consant Bill. He said that Kulin Brahmins often kept their daughters unmarried up to a good old age, the Raja found no reason why other sections of the society could not follow their example.[6]

On the other hand, the e bill faced intense opposition from conservative Hindu leaders, especially those aligned with revivalist movements. They argued it was an interference in Hindu religious and social customs, particularly marriage practices. To prove them right, they said that a belief was common among the Hindus that the Sastras required every married man to perform garbhadhana (formal impregnation of the wife) within 16 days after she had her first sign of puberty. Another popularly held view in Bengal was that if a son was born of a woman in whose case garbhadhana was not formally performed, the son would not be entitled to offer pindas (symbolic food) to his ancestor. The major objective of marriage being procreation of legitimate offspring, marriage of a girl before puberty was considered obligatory. Furthermore, the elderly women preferred child marriage for another reason. Accustomed to living within the four walls of the house leading a dull and monotonous life. When the new bride would come, the elder females of the house could enjoy their participation in preparing a sumptuous feast and enjoy the company of a newly married couple for a few short weeks until familiarity diminished curiosity. A good section of the Bengalis nevertheless found

[4] Malabari, Behramji M. Notes on Infant Marriage and Enforced Widowhood. Education Society's Press, 1887.

[5] https://scroll.in/article/1063583/the-child-bride-who-challenged-patriarchy-and-became-one-of-indias-pioneering-women-doctors

[6] Yashudami , S. ,age of consent bill at 12:Bengal : a hot plate of public debate , June , 2012.

a number of ills associated with the practice[7]. The other version gave a reverse picture. The meeting at the Serampore Vernacular School on 15 February, under the chairmanship of Zamindar Nandalal Goswami also supported the Bill. But a memorandum was prepared suggesting that a sub-clause should be added to Section 375 of the Indian Penal Code so that in case a girl attained puberty before twelve consummations of marriage with her should not be considered 'rape.' Nawab Bahadur Abdul Latif Khan of Mohammedan Literary Society observed that the Islamic Law allowed consummation only when the wife had reached puberty and had also attained such physical development which rendered her fit to cohabit with her husband. Moulvi Abdul Jabbar, a Deputy Magistrate agreed with the above view but he expressed his fear that in particular, for instance, the amendment might affect the interests of married Muslim girls. In the absence of consummation, the wife, if divorced, would not be entitled to alimony, the subsistence allowance. The larger section of the Muslim community, especially the poorer section who, out of indigence, were married their daughters early, was apprehensive of the impact of the Bill. Ahmadi, a fortnightly journal of Tangail observed on 12 February 1891 that the Bill went against the precepts of Islam[8]. Bal Gangadhar Tilak opposed the Age of Consent Bill for interfering with the social customs of the people. At the same time, he proposed that people should voluntarily bind themselves to agree that girls should not be married before they were 16 years old and boys before 20 and that if men above 40 years wanted to remarry, they should marry only widows. He argued that social reforms should come from within Indian society, not be imposed by colonial rulers.

Tilak felt that legislation like this threatened traditional Hindu practices and cultural autonomy. His stance reflected a nationalist perspective, prioritizing self-rule (Swaraj) and cultural sovereignty over colonial reform measures.[9]

Mr Javeril umashankar yajnik, a member of Bombay legislative council, supported the bill. But he also doesn't want the interference of colonial rulers in Indian traditions.

2. CONCLUSION:

The Age of Consent Bill of 1891 symbolized a significant moment in colonial India's social and political landscape. It brought to light the deep ideological divide between the reformists, who advocated for social change and the protection of women and children, and the revivalists, who viewed the bill as an attack on traditional Hindu customs and an unwarranted interference by the British colonial state.

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