

Child Marriage Restraint Act (1929) – A Historical Review

R.Kalaivani

*Assistant Professor of History, The Standard Fireworks Rajarathnam College for Women, Sivakasi
Virudhunagar District, Tamil Nadu, India.*

ABSTRACT: *Men and Women are two inseparable parts of human society and they have always shared sorrows and joys together. If men have endeavoured to free themselves from slavery, women have not lagged behind. As late as the middle of the nineteenth century it was a common belief that women were fit only for household work that their place was in the kitchen and at best they might come in the drawing room.*

THE FRIEND OF INDIA in its issue of August 31, 1866, supported the view expressed above: “Born and bred upto strictest seclusion, and married whilst yet a child, she is devoted to a life of domestic quietude, varied only by the rites of religion and the ordinary events of the family. Some of the customs which affected their contribution to Indian nationalism were: infanticide, child marriage, conditions of widows, polygamy, offering girls to the deity and prejudice against women’s education.

KEY WORDS: *Child Marriage, Seclusion, Prejudice, Customs*

I. INTRODUCTION

During the early Vedic period, women were educated, civilized, enjoyed equal rights to men and they had high status in the society. But this high status of women started to deteriorate with the advent of the sutra period (600-300 B.C).^[1] During the Sangam age, the women of Tamil Nadu were treated well and they enjoyed high status in the society. Tolkappiyam clearly tells the status of women during the Sangam period. The status of women under the Pallavas, Imperial Cholas and Pandyas was high but the education imparted to women was different when it is compared to men.^[2] During the Vijayanagar period, the position of women was good and they occupied an honourable place in the society. Some women under Vijayanagar Empire were highly educated and were good poets.^[3] During the Modern period; the national movement gave an opportunity for women to participate in the political activities of the country. During this period both the men and women participated in the national movement and their unity and sacrifice paved way for the success of national movement and success of women in political movement. This laid the foundation for the political awareness among women and this served as a natural cause for women to start women’s movement which aimed at equal rights for both men and women. Political participation is closely related to the women’s franchise and the right to vote enjoyed by the women helps in determining the degree of women’s political participation as well as in decision-making.^[4]

II. CHILD MARRIAGE

The girls who escaped the cruel custom of infanticide were married very young i.e., between the ages of five years to ten years, having no opportunity for the improvement of their mental or physical self. It might be argued that since girls did not go to school and had no social life, they were married young. It also secured their purity. Marriages were arranged by parents. Early marriage was convenient because the younger a girl the easier her adjustment to the new environment. The custom involved a number of abuses. The awareness of the importance of marriage and its responsibilities were absent in such marriages. For the child-wife, marriage was associated with sweets, beautiful dresses, fireworks and for a few days to be the centre of attraction with perhaps a ride on the horse or in a palanquin in the gay evening procession. After the marriage her companions, most often, were a husband much older in age or a few elderly women in the house. Thus “the girl child from the moment of her birth to her death undergoes one continuous life long suffering as a child-wife, as a child-mother and very often as a child-widow”. The practice of child marriage was responsible for the high rate of infant mortality. Fuller observes: “Children born every year, only about half the number reach the age of 30 years”.^[5] The custom was answerable for millions of widows in the country, abnormal deliveries, prolonged illness of mother after confinement, sterility in some cases and prolonged debility or chronic diseases in others.

III. SOCIAL REFORM MOVEMENTS

The social reform movement for the emancipation of women was set in motion by Raja Rammohan Roy who stood on the threshold of the old and the new. He interpreted the East in the light of the West. He was a socio-religious reformer, a politician and an educationist. Rammohan Roy was the first man who espoused the cause of women. Associations like the Brahma Samaj and the Arya Samaj took up the cause of child marriage. There was the need of a special law to save the child-wife from physical suffering and harassment at the hands of the husband. It was at the instance of Ishwar Chandra Vidyasagar that the first step was taken in this direction in 1860. The Indian Penal Code prohibited the consummation of marriage if the girl was less than ten years old. This age was considered low by later reformers like Keshab Chandra Sen and Behramji Malabari. Keshab Chandra Sen of the Brahma Samaj introduced a novel marriage ceremony whereby the consent of the bridegroom and bride had to be secured. It was a step toward the recognition of women's individuality, and marriage ceased to be a contract between the parents. Moreover, marriage ceremony could now be performed without any restrictions of caste, creed or religion. Sen also issued circulars to the medical authorities with a view to ascertaining the marriageable age. Thus he initiated propaganda against child marriage. The marriageable age fixed under the Brahma Act 1872, as it later came to be known the Native Marriage Act, for girls was 14 years and for boys 18 years. Under this Act, bigamy, polygamy and infant marriages were made impossible. Sen sought to promote social reforms through schools and organizations which would educate people against social evils. Malabari was another social reformer of this time. He took up the cause of enforced widowhood and child marriage in the nineties of the last century. Malabari wanted to have legislation on the subject. He started the crusade against this evil all over again. He published a pamphlet entitled 'Infant Marriage and Enforced Widowhood'.

Another event which accelerated legislations on the subject was the lawful case of Phulmani Dasi, a child aged 11 years who was married to an adult husband. He raped her, as a result of which she died.^[6] The death of Phulmani Dasi was an important factor in forcing the lady doctors to send a memorandum to the Government requesting suitable legislation to prevent child marriages. This request was supported by 1,500 Indian women who sent a representation to Queen Victoria beseeching similar reforms.^[7] A committee of influential persons was formed to go into this question. On the recommendations of this committee in 1891 the Age of Consent Bill was passed by the Government whereby cohabitation with a wife under the age of 12 years was prohibited. This question was examined by the Joshi Committee (1925) and on its recommendations the Child Marriage Restraint Act commonly known as Sarda Act was passed in 1929 which raised the marriageable age for girls to 14 and for boys to 18 years. The Act, however, remained a dead letter. It was obeyed in its breach more than in its observance. Moreover, the Act did not reach the population in the villages for lack of publicity. Another cause of its failure was that there was no adequate machinery to enforce it. The Act was complicated by the fact that a complaint against the offending parties had to be lodged before they could be punished. The only way of punishing the party was by imposing fine. The contracting party considered it as an extra expenditure on marriage and thus the fine was paid.

Two years after the enactment of Child Restraint Marriage Act, 1939, the census of 1941 revealed the high rate of child marriages being performed.

| Sl. No. | Age Group | Percentage Married |
|---------|-------------|--------------------|
| 1. | Less than 1 | 0.30 |
| 2. | 1 to 2 | 1.20 |
| 3. | 2 to 3 | 2.00 |
| 4. | 3 to 4 | 4.20 |
| 5. | 4 to 5 | 6.60 |
| 6. | 5 to 10 | 19.30 |
| 7. | 10 to 15 | 38.10 |

However all these secular causes which encouraged child marriage are disappearing.^[8]

Ideal Corresponding Ages of Marriage according to Swami Dayanand.

| Sl. No. | Wife | Husband |
|---------|------|---------|
| 1. | 16 | 25 |
| 2. | 17 | 30 |
| 3. | 18 | 36 |
| 4. | 20 | 40 |
| 5. | 22 | 44 |
| 6. | 24 | 48 |

During 1928-1929, Rao Sahib Haribilas Sarda introduced the Sarda Bill for the prevention of child marriage in the Legislative Assembly in the Government of India.^[9] Madras Legislative Council for raising the age of marriage for girls and it was unanimously accepted by the council.^[10] She recommended to the government that the minimum age for marriage be raised to at least 21 for boys and 16 for girls.^[11] The child marriage Restrains Act 1929 popularly called the 'Sarda Act' after its author, Harbilas Sarda, fixed the minimum marriageable ages to boys and girls at 18 and 14 respectively.

IV. WOMEN AND SOCIAL LEGISLATION

In the ancient times, India had a golden era where women had an equal rights and responsibilities par with men. They had all avenues of development open and many of them had immortalized themselves as poetess, philosophers, warriors, mathematicians, social scientists, teachers, doctors, political thinkers etc. irrespective of caste, creed and religion. Even womanhood was defined as 'Shakti', the cosmic energy inseparable from the lord of Universe. Our Mahatma Gandhi and Pandit Jawaharlal Nehru had dreamt of a society in which women will enjoy the same rights and responsibilities as men, in which the poorest shall feel that it is their country in whose making they have an effective voice. The reforms in personal laws governing marriage and inheritance, labour laws ensuring human conditions in the work place, maternity benefits and welfare of the workers, and social laws seeking in protection of women against immoral traffic and exploitation etc. On the other hand, the policies and programmes for economic and social development, initiated by the government, aim at positive action to improve and widen opportunity for women to participate in the social processes in a more effective manner. So, there is a constitutional provision in India permitting the state to discriminate in favour of women, if such discrimination is necessary for them. In today's society, child marriage, especially for the girl child, is common, widow marriage was prohibited, even if she succeeded in escaping from the funeral pyre of her deceased husband where she was expected to be burnt alive; a divorce was looked upon and her marriage was socially disapproved. Government has been adopted a number of laws with a view to ensuring equality of status and opportunity for them, but it in reality this is not enough to control and promote equality and social justice.

V. THE CHILD MARRIAGE RESTRAINT ACT 5TH OCTOBER 1929

Published in the Gazette of India Part -IV, it comes into force on the first day of April 1930. With reference to Para 1 of the Government Memorandum read above the Board submits that the number of copies of the Pamphlets on the Child Marriage Restraint Act in the different vernaculars required for distribution in the several towns and villages in this Presidencies is noted below: The main aim of the act is to restrain the solemnization of child marriages in India and it applies to all classes of people throughout British India. The Act prohibits the marriage of Boys below 18 years and girls below 14 years of age. Male above 18 below 21 years, punishable with the fine of Rs.1,000 those who contracts child marriage. Clause 5 of the act, insist the persons engaged or parents/guardians are punishable with fine of Rs.1,000.^[12]

| Sl. No. | Vernaculars | No. of Copies as worked out in statement | No. of Copies in round figures | No. of Copies actually required |
|--------------|-------------|--|--------------------------------|---------------------------------|
| 1. | Tamil | 2,11,360 | 2,12,000 | 2,16,000 |
| 2. | Telugu | 2,20,498 | 2,21,000 | 2,25,100 |
| 3. | Kanparese | 11,713 | 12,000 | 12,250 |
| 4. | Oriya | 61,979 | 62,000 | 63,000 |
| 5. | Malayalam | 22,830 | 23,000 | 23,450 |
| 6. | Hindustani | 10,000 | 10,000 | 10,200 |
| TOTAL | | 5,38,380 | 5,40,000 | 5,50,000 |

Source: Census Report of 1921

VI. AIM

This Act relates to both the boys and girls because child marriage has a direct bearing on physical and mental health. Carrying the burden of motherhood at an immature age shatters the health of women and therefore, an attempt was made way back in 1929 to restraint child marriages through the Child Marriage Restraint Act, 1929, which is also known as Sarda Act. This Act was passed with a view to 'restrain solemnization of child marriage'. Under this Act, a 'child' means a person who, if a male has not completed 21 years of age, and if female has not completed 18 years of age'. Child marriage means a marriage to which either of the contracting parties is child. This Act, prescribed 15 as the minimum age for girls, and 18 for boys, but such was the impact of the social reality and notions that the child marriage were made neither void nor voidable, but once performed they were perfectly valid. Later on this position was maintained by Hindu Marriage Act, 1955.

The Child Marriage Restraint (Amendment) Act, 1978 now raises the minimum age of marriage to 18 years for girls and 21 for boys. However, the marriage performed in violation of this condition is valid. To this may be added the prohibition of Child Marriage Act, 2006. This act aims at 'the prohibition of solemnization of 'Child Marriage' within the meaning of Section 2(b) "means a marriage to which either of the contracting parties is a child". The child marriage has been made voidable at the option of the contracting party who was a child at the time of marriage. A child begotten or conceived of a child marriage shall be deemed to be a legitimate child in spite of such marriage being annulled by a decree of nullity under Section 3 of the Act. Marrying a child by a male adult above 18 years of age is punishable with imprisonment or fine or both.

VII. ROLE OF PRESS ON CHILD MARRIAGE

It is the duty of the Government to take steps for the immediate repeal of these old rusty laws, especially in view of the fact that there is already a complaint against the Government that they have not brought the Sarda Act to force in an effective manner. This new trouble would not have arisen if a clause had been added to the Sarda Act in the very beginning that all previous laws, which are contrary to the object of that act are thereby repealed. The Dravidian Writes.¹ The decision of the Calcutta High Court has endangered the Sarda Act. It will paralyze the hands of reformers. As every one will begin to celebrate child marriage hereafter, we hope that immediate steps will be taken for repealing the old rusty laws passed during the time of the East India Company which are contrary to the object of the Sarda Act.^[13]

VIII. GOVERNMENT AND THE SARDA ACT

The Sri Dharma writes in its English Columns: Our thanks are due to the government of India and to the Assembly for having rejected the Bill of Mr. Krishnamachariar to repeal the Sarda Act. If the real purpose of the Act is to be achieved the Act should be amended as to enable the authorities to take action before the Act is actually violated. Now the Act is broken with impunity and the parties who violate the law are only fined a few rupees which is usually a very small amount compared with the actual marriage expenses.^[14]

IX. AGE OF CONSENT

The Kerala Patrika, of the 6th March approves of the object of the bill introduced in the Legislative Assembly for raising the age of consent of 14 years but thinks that it would be more advisable to pass a law fixing minimum age of marriage of girls at 14 years.^[15] Lending its warm support to the Child Marriage Restraint Act, the Viswabandhu remarks that since the majority of the elected representatives of the people themselves demanded that such a measure should be enacted, the government have in no way acted against the spirit of the Queen's Proclamation of 1857 and that the contention put forward by the agitators of the government should have obtained the approval of the religious heads does not stand to reason, and advises people not to unnecessarily misunderstand the Government.^[16]

X. THE SARDA ACT

Referring to the Resolution passed by the All India Sana thane Dharma Conference that all Orthodox persons should celebrate the marriages of their children subsequent to 1st April and thus disobey the provisions of the Sarda Act, the Kesari takes strong objection to the foreign government's interference in the social customs of the people which are based on their scriptures and observes that when petitions and prayers come to be of no avail, civil disobedience is the only refuge and exhorts the Orthodox section of the people to act up to the resolution of the conference.^[17]

XI. THE GOVERNMENT AND THE CHILD MARRIAGE RESTRAINT ACT

Reference to the question asked by Mrs. Rathbone in the parliament recently whether the government would consider what steps should be taken to make the people in India realize the evils of child marriage, the Tamil Nadu Observes: It is an undeniable fact that the governments are very lenient in the matter of enforcing the Sarda Act only because they do not wish to incur the displeasure of the orthodox. It is indeed disgraceful that Sir Samuel Hoare, who says that everybody admits the need for carrying in propaganda regard the evils of Child Marriage, should consider that it is the best that the government should allow this propaganda to be carried on by order without them interfering in the matter. No other e.g. than this is needed to show that it has become the traditional habit of the government to say that they are keen about social progress and at the same time speak on behalf of the orthodox, who are great obstacles to all progress. Commenting on this subject, the commenting on this subject, the India observes: If it is not possible to do anything definite to prevent child marriages, why should not be Sarda Act be repealed? It is not shameful to the government that the people should boldly contravene a law enacted by them. Is it impossible for the government, who promulgated Dozens of ordinances for checking those that contravene Civil laws, to check those that contravene the Sarda Act.

XII. CONCLUSION

In this scenario of violence, women's equality is still a distant dream and constitutional provisions to empower them are only words in paper. Despite legal prohibition, child marriage is still practiced in many parts of India. Economic constraints also so cripple women that they are made non-entities and reduced to the status of animals. Most of our women are housewives, who perform alone all household drudgery. In villages, they help cultivation in every stage. Gathering of fuel, wild nutritious plants and vegetables, fetching water, tendering domestic animals and birds, taking care of children and the aged in-laws are considered as only their duty. But they do not receive due recognition for the great service they render to their husband's family members. On the other hand, they are humiliated and tortured. In many backward societies, while women tender animals and birds, the right to sell them and get the money is the sole privilege of men. Many husbands spend this money to purchase liquor or items of his luxury only.

REFERENCES

- [1] Neelam Upadhyay, Women in India, Past and Present, Allahabad, 1990, P.2-3.
- [2] Premalaths, Nationalism and Women's Movement in South India 1917-1947, New Delhi, 2003, P.17.
- [3] Venkata Ramanappa, Outlines of South Indian History with Special Reference to Karnataka, New Delhi, 1975, P.186.
- [4] Saxena, Women's Political Participation in India, Jaipur, 1999, P.76.
- [5] Fuller, M., The Wrongs of Indian Womanhood (1900), P.33 & 36.
- [6] Fuller, M., The Wrongs of Indian Womanhood (New York), 1900, P.18.
- [7] Indian Social Reformer, 1889, Vol.9, P.250.
- [8] Hindu Marriage Act, 1955, has raised the marriageable age of girls to 15 years and that of boys to 18 years.
- [9] Muthulakshmi Reddy, Autobiography-a pioneer Women Legislator, Madras, 1964, P. 59-60.
- [10] Proceedings of the Madras Legislative Council, Vol.XXIX, 1928, P.1254.
- [11] V. Rajalakshmi, op.cit., P.125.
- [12] G.O. No. 1661. Law (General), dt.10.04.1930.
- [13] Native Newspaper Report, 1932, Tamil Nadu, Madras, 7th April 1932 & Dravidian, Madras 8th April 1932.
- [14] Native Newspaper Report, 1932, April to December, Stri Dharma, Madras, October 1932, P. 831.
- [15] Native Newspaper Report, 1922, Keralapatrika, Calicut, 6th March 1922, P. 299.
- [16] Native Newspaper Report, 1930, December, Viswabandhu, Mysore, 19th December 1929, P.34.
- [17] Native Newspaper Report, Kesari, Tenali 8th December 1929, (Received on 30th January 1930), P. 247.