

THE  
**CHILD MARRIAGE  
RESTRAINT ACT**  
(ACT XIX OF 1929).

—  
WITH

An Analytical Introduction, Critical Comments,  
Original Bill, Statement of Objects and  
Reasons, Reports of the Select Com-  
mittees (with Minutes of Dissent)  
and Select Speeches in the  
Assembly

—  
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## PREFACE.

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The law relating to the age of consent in marital cases, though it has been on the Statute Book for about forty years, is unknown to the vast majority of the people of this country as is stated in the Report of the Age of Consent Committee. It is only desirable that the law of the minimum age of marriage should be given as much publicity as possible. That is my only apology for placing the present publication in reach of the public.

The book is not intended to be an exhaustive commentary on the Child Marriage Restraint Act. The object is merely to introduce the Act to the public and to familiarise them with the broad principles underlying it.

Under each section a sort of running commentary is made as an attempt to elucidate the idea contained in it.

It is hoped that the reader will find the Introduction and Appendices useful.

MYLAPORE, } A. S. SRINIVASA AIYAR.  
 1st January, 1930. } *Advocate, High Court, Madras.*

## INTRODUCTION.

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*The Child Marriage Restraint Act (XIX of 1929)* came into law on the 1st October 1929. It was first introduced into the Legislative Assembly as 'A Bill to regulate marriages of children amongst the Hindus' by Rai Sahib M. Har Bilas Sarda on the 1st February 1927. The necessity for its introduction was made clear in the Statement of Objects and Reasons.

The main objects of the Bill in the words of the author himself are:—(1) To put a stop to child-widow-hood and (2) to remove the principal impediment to the physical and mental growth of the youths of both sexes and the chief cause of their premature decay and death. There was a preponderance of public opinion in favour of the principle embodied in the Bill that there ought to be some legislative check on the early marriage system in vogue; but however, the method adopted in the original Bill namely, declaring all marriages of boys or girls below a certain age to be invalid, naturally roused a storm of opposition from all parts of India, and objections were taken both on religious and on legal grounds. To declare marriages invalid which amongst Hindus are held as a religious sacrament was at variance with the basic notions of Hinduism and Hindu Law. The legal difficulties arising from

the invalidating of such marriages were also pointed out.

The Bill was referred to a Select Committee to make such recommendations as would be favourable to the consensus of public opinion. The Bill, as it emerged from the Select Committee was entirely a fresh piece of legislation. Realising the volume of opposition to the clause as to the invalidity of marriage, it substituted the punishment of those participating in a child marriage in its stead. The Select Committee made two important radical changes; (1) it declared the solemnisation of 'child marriage' an offence, and made it punishable, (2) it also extended its scope to all classes and communities within British India.

The Act in its present form is what the Select Committee made out of the original Bill introduced by Mr. Sarda. Section 67, sub-section 2 (b) of the Government of India Act lays down "It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of (either Chamber of the Indian Legislature) any measure affecting the religion or religious rites and usages of any class of British Subjects in India." The sanction of the Governor-General was no doubt obtained for introducing the original Bill as drafted by Mr. Sarda. But the Select Committee made changes in it and they recognised that the Bill as amended by them was a new one. The changes introduced by the Select Committee involving changes both in the principle and in the scope of the

Bill have not received the sanction of the Governor-General. The Indian Legislature has only such powers as are conferred by the Government of India Act and those powers can be exercised only subject to the conditions and restrictions prescribed therein. Therefore, it might be contended that the consideration of the Bill by the Indian Legislature as drafted by the Select Committee is *ultra vires* of its powers and therefore, the Act itself is invalid.

Even the Bill as redrafted by the Select Committee is not a measure which carries with it the whole-hearted support of the public. It has many opponents among the educated orthodox community. They base their objections on the ground that the legislature has no business to interfere with religion, cite scriptures to show that their religion obliges them to marry their girls before they attain puberty, and point out that the custom or practice of early marriage, common among them, has come down from a very long time. In short they view it as a "seismic interference with an age long practice" and contend that social reform must evolve from within.

Legislative Enactments to check social evils which on account of their chronic character have assumed an air of religious sanction are sure to meet with opposition from orthodox people.

Social Reformers, on the other hand, feel legislation on such a vital matter as this highly desirable, and hail this Act as a nation-building

measure in its character and one calculated to help progress towards well being and physical amelioration. They have all along maintained that the practice of early marriage has led to untold ills. They say that the results accruing from child marriage are appalling and statistics are shown in support of the same. The odious practices connected with early marriage, the consequent manufacture of child-widows and the gruesome tale of the growing number of infanticides are some of the strongest indictments against the existing morale of society, necessitating reforms. According to them the Sarda Act is a significant piece of social legislation aiming at the destruction of child marriage which has hitherto been sapping the precious life-blood of the people of this country.

The discussions in the Legislative Assembly over this Bill clearly indicate the hot-bed of faction between the orthodox party on the one side and the social reformers on the other. The false prestige which compels one to stick to the position once taken up rhetorical flights and reference to the results arrived at by others, have clouded the vision of most of the people that have taken part in the discussion.

For the first time in the annals of social history, an Act has been passed, an infringement of which carries penal consequences. The difficulty is not in the enactment of law by votes in the Assembly but in its enforcement. There are Indian States in



which laws similar to this have been passed and their experience has been that the marriage laws remain a dead-letter. There is force in the objection raised that this law also might remain a dead-letter and that the penal provisions therein might be used by unscrupulous persons as an engine of oppression.

It is unfortunate that the exemption clause moved by Pandit Neelakantha Dass did not find favour with the Assembly. The Age of Consent Committee recommended that the marriage law, when enacted, should provide for exemptions in genuine cases of hardship. In the Indian States where laws similar to this have been passed, we find that exemptions have been provided.

(See Appendix XI of the Report of the Age of Consent Committee.)

**Indore:—(Child Marriage Prevention Act)—Exceptions:—**

- (1) Parents or guardians are not likely to live long till the girl's majority or there is no other person fit for being a guardian:
- (2) parties would lose all chances of marriage:
- (3) equally unavoidable difficulty. In these circumstances permission of the munsiff must be obtained before hand and the girl must not be less than 9.

**Rajkot:—(Child Marriage Prevention Act—1927)—Exceptions:—**

The same as in Indore State. For taking advantage of the exceptions licence from Sir Nyayadesh or Mamlatdar must be obtained and the girl must not be below 13.

**Mandi :—***(Child Marriage Prevention Act)—Exceptions:—*

- (1) Betrothals existing for six months prior to the passing of the Act. To operate for one year only.
- (2) Cases in which parents or guardians of a girl not below 11 are not likely, owing to old age or disease to live to perform the marriage after the girl attains majority, or there is no other relative willing to undertake the performance of the marriage in the event of their death. Sanction to be obtained before hand.

**Baroda :—***(Infant Marriage Prevention Act):—Exceptions:—*

- (a) Those in Indore State
- (b) There is no likelihood of consummation within one year of any of the couple being major. In such cases permission is to be applied for. Infant marriage and contravention of the law not void.

It is only by propaganda which ought to be primarily the work of the social reformers who clamoured for this reform that the benefits and implications of this Act could be brought to the knowledge of the masses who are mainly affected by it. The Government also should not rest content with a mere publication of the laws. It should try its best to adopt measures to secure wide publicity and to carry on an educative propaganda as recommended by the Age of Consent Committee.

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# THE CHILD MARRIAGE RESTRAINT ACT

(ACT XIX OF 1929).

## AN ACT TO RESTRAIN THE SOLEMNISATION OF CHILD MARRIAGES.

*(Received the assent of the Governor-General  
on 1st October 1929).*

WHEREAS it is expedient to restrain the solemnisation of child marriages, it is hereby enacted as follows:—

### COMMENTS.

The preamble is an introduction to an Act. It enables us to know the meaning and scope of the Statute. "A preamble of a Statute has been said to be a good means to find out its meaning, and as it were, a key to the understanding of it; and as it usually states or professes to state the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity or fixing the meaning of the words, which may have more meanings than one, or of keeping the meaning of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt"<sup>1</sup>. The preamble can only explain but not control the enacting part of any

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1. Maxwell on Interpretation of Statutes 5th ed., ¶ on page 69.

Statute<sup>1</sup>. The preamble to the Child Marriage Restraint Act 1928 says "whereas it is expedient to *restrain* the solemnisation of child marriages." The word 'restrain' means "keep in check or under control or within bounds" and is different from 'prohibit,' 'avoid' or 'invalidate.' Note that the Act does not regulate or prevent child marriages but only restrains the solemnisation of child marriages.

The objects of the Act as explained by Mr. Sarda the author of the Bill are twofold (1) to put a stop to child widowhood and (2) to remove the principal impediment to the physical and mental growth of the youths of both sexes and the chief cause of their premature decay and death. The Bill, as it emerged from the Select Committee and passed into law, differed materially from the Bill as originally introduced by Mr. Sarda into the 'Legislative Assembly.' The original Bill imposed restraint upon child marriages by declaring such marriages to be invalid. As marriage is a sacrament in Hindu and other communities, such a penal sanction is certainly objectionable and has been waived by the Select Committee. A different form of sanction has been devised by the Select Committee *i. e.*, the imposing of punishments like fine or imprisonment or both upon persons participating in such child marriages. But it is not made clear in the enactment that nothing contained therein shall render a marriage actually performed invalid in law.

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1. *Vithu v. Govind*, 22 Bom. 321 (F.B.); see also 11 All. 262.

In regard to interpretation of Statutes relating to marriages, it has been laid down that mere prohibitory words are not to be interpreted as creating a nullity, where the Statute does not so specifically declare.\*

Reference may be made to sections 66 to 77 of Act XV of 1872. The Indian Christian Marriage Act, Sec. 77, says that a marriage shall not "be void merely on account of any irregularity in respect of the following matters" each of which irregularity is made punishable by the preceding sections.

Even under the Act as it is, it may reasonably be argued that child marriages are forbidden by law and opposed to public policy.

If so, such marriages in so far as they are contracts would be held void under section 23 of the Contract Act and the issue of such marriages would be held illegitimate. The further question may arise as to whether a second marriage during the life time of the parties would amount to a bigamy.

So far as Hindus are concerned it may be urged that marriage is not a contract. A Hindu marriage is complete as soon as rites, as prescribed under Hindu Law, have been performed. In regard to these, the question will arise whether the doctrine of *factum valet* is not applicable. There is much

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\* *Cotteral v. Sweetman*, 1 Robert 317.

room for doubt and difference of opinion. If it is not intended to invalidate child marriages it would have been better if the Act had expressly stated so. There is also another serious objection. If the Act does not render child marriages illegal, the original Bill which rendered child marriage among the Hindus illegal having been withdrawn, it would appear that the present Act penalises the solemnisation of child marriages which are legal according to the personal law of the parties and which have not been declared invalid by any Statute. The result would be that the Act punishes persons for doing acts which are legal.

The Original Bill applied to Hindus, Jains, Sikhs, Brahmos, Arya Samajists and Buddhists, that is to say, to people who are Hindus or people who profess systems of faith which are off-shoots of Hinduism, *i. e.*, persons governed by the Hindu law. The Bill, as re-drafted by the Select Committee and passed into Law, applies to all classes and communities in British India. Child marriage though common among the Hindus cannot be said to be altogether unknown to the other communities. The object of the Act being to restrain child marriages, it must be prevented wherever it is found. Therefore, it is only right that the law should govern the whole people of British India.

Short title, extent and commencement.

**Section 1.** (1) This Act may be called THE CHILD MARRIAGE RESTRAINT ACT, 1928.

(2) It extends to the whole of British India, including British Baluchistan and the Santal Parganas.

(3) It shall come into force on the first day of April, 1930.

### COMMENTS.

The Act is called The Child Marriage Restraint Act, 1928. This is a better description of the Act as it extends to the whole of British India including British Baluchistan and Santal Parganas. The Act will be applicable to Burma. The Act is an improvement over the original Bill both in the title and the operative sections. The dropping of the word 'Hindu' is to be welcomed as the root evil sought to be remedied is by no means exclusive to the Hindus. It is suggested that the addition of the word 'Indian' before the word 'child' in Section 1 (1) would further improve and add precision to the title. It is also suggested that the words 'and penalise' be added in the Preamble, after the word 'restrain' and alter the Title in section 1(1) accordingly.

With regard to the remaining sub-sections of section 1, exclusion of the Indian States Territory from the scope of the Act may be pointed out. The Act does not say anything with regard to the procedure to be adopted if any child marriage is contracted by British Indian Subjects in a Native

State so as to defeat the provisions of law. The question whether child marriages of British Indian subjects contracted or conducted outside British India could be brought within the mischief of the Act is not free from difficulty. The Act simply says that it extends to the whole of British India and proceeds to render the conducting or contracting of child marriages punishable.

As was laid down by *Russel-Lord Chief Justice in R. v. Jameson* <sup>1</sup>. "It may be said generally that the area within which a Statute is to operate and the persons against whom it is to operate are to be gathered from the language and purview of the particular Statute. But there may be suggested some general rules, for instance, if there be nothing which points to a contrary intention, the Statute will be taken to apply only to the United Kingdom.....  
.....".

The principle that extra territorial legislation should be clearly conferred by the Act, exemplified by the enactment in the Indian Penal Code which specially makes acts done outside British India offences, when committed by specified persons, should serve as an argument that, in respect of a child marriage contracted outside British India, there cannot be a conviction for any substantive offence.

Section 108 (a) L.P.C. says "a person abets an offence within the meaning of this Code, who in

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1. (1896) 2 Queens Bench 425.



British India abets the commission of any act without and beyond British India which would constitute an offence if committed in British India". So it seems that a person instigating or aiding another to conduct or contract a child marriage, for example, the parents, may be held liable for the abetment of the offence under the Act whether the act amounting to such abetment is done within British India or beyond it. But under Section 196, Cr.P.C., a prosecution for this must be initiated by a complaint made by order of or under authority from the Governor-General-in-Council, the Local Government or some Officer authorised by the Governor-General-in-Council in this behalf. Probably this is not intended by the legislature. As remarked by the Age of Consent Committee it is only the "silent pressure of the example of British India that should force Indian States to come into a line on the subject and enact similar laws."

This Act comes into force from first April, 1930. Amendments proposing to bring the Act into operation in 1931 or 1932 have been negatived.

**Section 2.** In this Act, unless there is anything repugnant in the subject or context ;—

**Definition.**

- (a) "Child" means, a person, who, if a male, is under eighteen years of age, and if a female, is under fourteen years of age ;

- (b) "Child marriage" means a marriage to which either of the contracting parties is a child ;
- (c) "contracting-party" to a marriage means either of the parties whose marriage is thereby solemnised ;  
and
- (d) "minor" means a person of either sex who is under eighteen years of age.

#### COMMENTS

Section 2 Cl. (a) deals with the minimum age at which marriage should be solemnised. The age of the boy is fixed at 18 and the age of the girl at 14 years. A great deal of controversy has raged round the latter age. Those who represented orthodox Hindu views and who sat on the Select Committee expressed the opinion that it should be lowered to 12 years. The fixing of age-limit is not an easy matter and there are bound to be divergent opinions. Having regard to the conviction of orthodox Hindus that a girl ought to be married before she attains puberty, the age 14 fixed for girls in the Act is high. A statement of the ages of marriage which obtains in other countries which is found in Appendix 10-B at page 343 of the Report of the Age of Consent Committee is reproduced below. (For detailed information see the Report of the Age of Consent Committee.)

| Names of places.  | Age of Marriage<br>subject to no<br>exception. | Age of Marriage<br>subject to exception<br>or to dispensation. |
|---|--|--|
| Denmark, Iceland, Norway, Sweden ... ..   | ...  | 18   |
| Finland ... ..  | ...  | 17   |
| China, Egypt, Estonia Latvia ... ..   | 16   | ...  |
| Danzig, Germany, Netherlands (European Territory) ...   | ...  | 16   |
| Turkey ... ..   | 15   | ...  |
| Belgium, Dominican Republic, France, Haiti, Japan,<br>Luxemburg, Monaco ... ..                                    | ...  | 15   |
| Austria, Spain (Ecclesiastical marriage), Spain (civil<br>marriage), Salvador ... ..                              | 14   | ...  |
| India (in respect of the consummation of marriage) ...  | 13   | ...  |
| Great Britain, Greece, Hungary, Irish Free state, Italy,<br>New Zealand, South Africa, Uruguay, and Venezuela ... | 12   | ...  |

Summaries of the laws of marriage in Native States are found in Appendix XI of the Report of the Age of Consent Committee.

A Statement of ages of marriage as obtained in Native States is furnished below :—

| NATIVE STATES | AGE OF MARRIAGE                              |                |
|---------------|--|----------------|
|               | <i>Males</i>                                 | <i>Females</i> |
| INDORE        | ... 14                                       | ... 12         |
| RAJKOT        | ... 19                                       | ... 15         |
| KOTAH         | ... 16                                       | ... 12         |
| MANDI         | ... 18                                       | ... 15         |
| MYSORE        | ... Marriage of girls below<br>8 prohibited. |                |
| BARODA        | ... 16                                       | ... 12         |

The provision in the original Bill was for invalidating the marriage of boys and girls under 15 and 12 years respectively. The Select Committee has fixed the minimum marriageable age for boys at 18 and for girls at 14 years.

There are two classes of people who are mainly affected by this legislation, (1) The Depressed Classes, and (2) Orthodox People.

(1) The custom of early marriage is more largely prevalent among the depressed classes than among the higher ones can be seen from the statistics furnished below :—

| Name of place | Community or caste | Total Population of Community or Caste as per census of 1921. | Total Hindu Population | No. of Girls per mille married before 12 years. |
|---------------|--------------------|---|------------------------|---|
| Punjab        | Chamars            | 1,140,000   | 9,000,000              | 175   |
|               | Rajputs            | 2,000,000   | do                     | 98  |
|               | Kummhars           | 574,000   | do                     | 135   |
|               | Kanets             | not available   | do                     | 133   |
|               | Lohars             | do  | do                     | 134   |
|               | Julabas            | do  | do                     | 121   |

*Delhi.* "The Marwaries appear to marry their girls below 12 and the Jains after 14. As regards Muslims, it seems that their girls are married at about the age of 13 or 14. The lower classes amongst them however, effect

child marriages which are sometimes performed at 3, 4, 7 and 8 years of age."

*Bombay.* "The age of puberty in the Presidency ranges from 12 to 15. The age is slightly lower for Guzarat and higher for Sindh, within these limits. The practice of *Anu* or *Garbhadhan* or *Ritu Shanti* generally prevails in many parts of the country and actual consummation is usually postponed till puberty. Among the lower castes, consummations before puberty are not, however, uncommon, in some castes."

*Deccan.* "In rural areas, there has been a tendency for the age of marriage to rise. It appears that the depressed classes are the worst offenders in this respect. They marry their girls at the age of 2, 4 and 6. The backward classes in general, effect the marriages of their girls before 10. For the remainder of the population, the average age of marriage is between 10 and 11, while the Indian Christians marry at about 14 or 16."

*Gujerat.* "These remarks apply more particularly to the town of Ahmedabad. Among them the marriage age does not appear to be below 13. Agricultural and artisan classes, Audich Brahmins, Ghanchies, Kunbis and Kolies marry early and so also do the lower classes of Muslims. The marriage age of the girls of these classes is anywhere between 4 and 10".

(2) Orthodox people who believe that according to the Shastras it is essential to give their girls in marriage before they attain their puberty are also affected much.

With regard to the working of this Act it must be pointed out that there is the difficulty of determining the exact age of boys and girls. Even though birth registers are maintained in Municipalities, it is very difficult to fix the age of a particular person as the names of persons are not given. In the case of ignorant persons who form the large majority of the population, it is impossible to get any evidence as to the year or date of a child's birth. Unless there is an accurate machinery to ascertain the age it is not possible to work the Act satisfactorily. If India has compulsory registration of births, deaths and marriages, the Act would be more satisfactorily workable and it is, therefore, submitted that such legislation should be undertaken for supplementing the provisions of this Act.

The Age of Consent Committee also draw attention to this fact. In paragraph 44 page 20 of their Report they say: "The difficulty in ascertaining the age of the girl is another impediment to the efficient working of the law. Excepting the literate classes, few people can give the correct age of their girls; and when cases come to court the oral evidence of the witnesses regarding age is likely to be uncertain. The registration of births excepting in a few places is defective, particularly in rural areas. It is not certain that all births are registered; the

name of the child generally does not appear in the register; and there is no sequence of birth given regarding the particular child entered therein. All these things tend to make the ascertainment of the age of the child difficult and uncertain. No doubt medical evidence and X-Ray apparatus may help to overcome these difficulties; but Doctors often differ and even the X-Ray test does not ensure the exact age. The X-Ray apparatus is rarely available and even when available makes a mistake of one year while the range of error in the case of medical opinion can be even greater".

The Special Marriage Act, III of 1872, lays down the conditions for celebrating marriages.

- (1) The declarations as to the fulfilment of the conditions are to be signed by the bride-groom and the bride and also by the witnesses.
- (2) The parties as well as witnesses are made punishable in making, signing or attesting a false statement known or believed to be false or not believed to be true.
- (3) The marriage under the Act is not *void* except when any of the parties had a previously married husband or wife living.
- (4) The Christian Marriage Act also provides certain age limits for Native



Christians. The Act also prescribes various penalties for breach of the provisions of the law.

- (5) According to the English Marriage Act, a marriage can be contracted only with the free consent of both the parties and the age at which a person is capable of giving the necessary consent and, therefore, of marrying is 14 in the case of males and 12 in the case of females. The marriage under the age of consent is not void but is only voidable by either party on the person under age reaching the age of consent.
- (6) In several Indian States, such as Baroda and Mysore, child marriage has been prohibited by law and parents who marry their children below a certain age are liable to punishment.

Section 2. cl. (b)—The word 'Marriage' has not been defined in the Act. It would have been desirable to define this word clearly. A comprehensive definition of the term so as to apply to all the communities is no doubt not easy. Marriage contains three elements; (1) a contract between the parties; (2) a status imposed by the Law; and (3) a sacrament. The one or the other predominates in each community.

## AMENDMENTS NEGATIVED.

"That to clause 2 of the Bill the following be added: (e) 'widower' means a male who has lost his wedded wife by death'. (f) 'widow' means a female who has lost her wedded husband by death'".

(2) "That to Clause 2 the following may be added at the end: 'The affidavits of the parents or the guardian or respectable relations of the child male or female, will be *prima facie* evidence of the age of the child in question'".

(3) "That to Clause 2 the following may be added 'The solemnisation of the marriage as distinct from consummation, of any girl below 14 years of age shall not be deemed to be child marriage as defined above'".

(4) "In Clause 2 (a) for the word 'Fourteen' the word 'eleven' be substituted".

(5) "That in Clause 2 (a) of the Bill for the word 'fourteen' the word 'twelve' be substituted".

(6) "That in Clause 2 (a) of the Bill for the word 'Fourteen' the word 'thirteen' be substituted."

(7) "That in Clause 2 (a) of the Bill for the word 'fourteen' the word 'sixteen' be substituted."

(8) "That for sub-clause (b) of Clause 2 of the Bill the following be substituted: 'Child marriage' means the lawful living together under some recognised ceremony or declaration, as man and wife of

parties of whom either is a 'child', but does not include the marriage sacrament as distinct from consummation of a girl not under ten years of age"

**Section 3.** WHOEVER, being a male above 18 years of age and below 21, contracts a child marriage shall be punishable with fine which may extend to one thousand rupees.

Punishment for male adult below 21 years of age marrying a child.

#### COMMENTS.

A male above 18 years of age and below 21 is treated as a person who is still under the *patria potestas* of his parents or guardians. This seems to be the right view, and such persons are accordingly dealt with less rigorously. If such a male violates the law he shall be punished with fine only which may extend to rupees one thousand. The addition of the word 'knowingly' in Section 3 would, it is suggested, be better, lest the innocent should be made to suffer.

It is felt by some that the offence under Section 3 should be made cognizable by the police. Section 3 read along with Section 7 will show that the punishment laid down is not likely to be effective. The section as it stands and read along with Section 7 would enable many people to defeat the purpose of the Act by simply pleading poverty. It is suggested, therefore, that even in Section 3 a term of simple imprisonment should be added to the fine so

that these punishments may be imposed alternatively or even concurrently. If the object is to make it penal for a man of that age to contract a child marriage there should be punishment for all offenders and not only for those who are possessed of such property that can be seized for recovery of fine and none for those who do not own or can make it appear that they do not own any property.

The fine imposed seems to be high except in the case of persons who are paying income-tax or land-revenue of more than rupees one hundred a year. The fine imposed should only be a nominal sum, at any rate it should not exceed rupees one hundred since the offences are committed by persons of low rank who might be liable to harsh treatment at the hands of the magistrates.

#### AMENDMENTS NEGATIVED.

“That for Cl. (3) of the Bill the following be substituted :

(1) ‘Whoever being a male above 18 years of age and below 21, knowingly contracts marriage (a) with a girl aged less than 10 shall be punishable with fine which may extend to Five Hundred Rupees; (b) with a girl aged between 10 and 14 shall be punishable with fine which may extend to One Hundred Rupees’.”

(2) “That in cl. (b) of the Bill, the words ‘being a male above 18 years of age and below 21’ be omitted”.

(3) "That in Cl. (3) of the Bill for the words 'and below 21' the word 'knowingly' be substituted."

(4) "That in Cl. (3) of the Bill after the words 'twenty one' the words 'knowingly' or 'having reason to believe' be inserted".

(5) "That in Cl. (3) of the Bill for the word 'Thousand' the word 'hundred' be substituted".

(6) "That in Cl. (3) of the Bill for the words 'one thousand rupees' the words 'two hundred and fifty rupees' be substituted".

(7) "That in Cl. (3) of the Bill, for the words 'One thousand rupees' the word 'hundred' be substituted".

**Section 4.** WHOEVER, being a male above 21 years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees or with both.

Punishment for male adult above 21 years of age marrying a child.

### COMMENTS

A male adult above 21 years of age is no longer under *patria potestas* and may be presumed to be in a position to exercise his own free will. The punishment prescribed for him is simple imprison-

ment which may extend to one month or fine which may extend to one thousand rupees or both.

The converse case of female adults marrying young boys has not been included in this section. Suppose a girl of 19 years of age marries a boy of 17 years of age. As a contract the boy of 17 may not be bound. In cases where the personal law allows the valid solemnisation of a marriage between such parties, there is no provision in the Act under which either of the parties could be punished. Such practices are very common in the province of Burma. The practice of marrying an adult girl to an immature boy is as damaging to the well being of the race as any other practice connected with child marriage and should, therefore, be included in the necessary prohibition. The system of marrying adult girls with a boy under age is common among Reddies, Naicks, Kammas, Kallas, Kambalans, Maravars, Vanians, Vallas, Parayas and Chukliars.

Note the distinction which sections 3 and 4 of the Act make between the cases of males who contract child marriages when they are above 18 years of age and below 21 on the one hand and when they are above 21 years on the other.

It is suggested that the word 'knowingly' may be added in this section also. There is difference of opinion with regard to the question whether a sentence of fine alone is not sufficient in respect of

this social offence. The punishment of fine which is the only form of penalty under the marriage law in the State of Baroda has not been successful in checking the evil of early marriage to any considerable extent. The Act treats all offences alike, whether the offence consists in marrying a girl of 3 or a girl of 13 years. A graduated scale of punishment, which is in the inverse ratio to the age of the girl married, may have been prescribed.

#### AMENDMENTS NEGATIVED

(1) "That Cl. (4) of the Bill be omitted."

(2) "That for Cl. (4) of the Bill the following be substituted 'whoever, being a male above 21 years of age, contracts a marriage (a) with a girl less than 8 shall be punishable with simple imprisonment which may extend to one month, (b) with a girl aged between 8 and 14 shall be punishable with fine which may extend to two hundred rupees'."

(3) "That in Cl. (4) the words 'with simple imprisonment which may extend to one month or' be omitted."

(4) "That to Cl. (4) of the Bill the following Sub-clause be added: '(a) whoever being a widower above 40 years of age marries any woman who is not a widow shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both'."

**Section 5.** WHOEVER, performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Punishment for solemnising a child marriage.

### COMMENTS

The words 'conducts' or 'directs' are somewhat vague. The section does not provide for the general liability of abettors of a child marriage whether by actually performing, conducting or directing, any part of the ceremony. The question when a marriage could be said to be "performed", "conducted" or "directed" is not free from difficulty. Can a person be punished for performing a betrothal? The betrothal is strictly speaking a contract for marriage and not a contract of marriage. In Hindu Law "the betrothment generally precedes marriage but is not a necessary part of the nuptial rite. Betrothment is a promise to give a girl in marriage. It is called *Vagdana*, or Gift by Word, as distinguished from actual delivery of the bride; and its form is that of a promise by the father or other guardian of the bride in favour of the bride-groom to give him the bride in marriage. After betrothal and sepa-



rated from it by a variable interval there comes the marriage ceremony." \*

It would, however, appear that the intention of the legislature is to refer to any ceremony or part of a ceremony *which is an irrevocable step* in the solemnisation of marriage in general. Such a ceremony is a necessary accompaniment of any kind of marriage whether the contracting parties are adults or minors. This section should be made applicable only to persons who knowingly promote child marriages, and the burden of proof may be thrown upon such persons to show that they had reason to believe that the marriage was not a child marriage.

The difficulty of defining what is "an irrevocable step in the solemnisation of marriage", will be an hindrance to bringing home to the offender the offence defined in this section. Suppose a Christian 'child' or 'adult' having a validly married wife living, contracts another marriage with a 'child' can he be punished under this section? He could be punished only if the second marriage could be considered as a valid Christian marriage. §

Under this section a priest who participates in the marriage ceremony will incur the penalty. It may be well and good in theory that child marriages would be curtailed if the priests were thus threaten-

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\* (Gurudas Banerjee's *Marriage and Stridhana*, 2nd Edn. P. 83).

§ See 17 Mad 235.

ed with punishment. But it would be unjust to expect a priest to satisfy himself before-hand as to the age of the spouses.

### AMENDMENTS NEGATIVED

(1) "That clause 5 be omitted".

(2) "That for clause 5 of the Bill the following be substituted:

"5. Whoever knowingly or having reason to believe, performs or conducts or directs any child marriage shall be punishable with fine which may extend to five hundred rupees."

(3) "That in clause 5 of the Bill, after the word 'whoever', the words 'knowing or having reason to believe that either of the contracting parties to a marriage is a child' be inserted."

(4) "That in clause 5 of the Bill for the words 'performs, conducts or directs' the words 'is actually instrumental in bringing about' be substituted".

(5) "That in clause 5, the words 'unless he proves that he had reason to believe that the marriage was not a child marriage' be omitted."

**Section 6.** (1) WHERE a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or

Punishment for parent or guardian concerned in a child marriage.

permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Provided that no woman shall be punishable with imprisonment.

(2) For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that, where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

### COMMENTS

This section is sure to bring in many mischievous consequences. Note the presumption embodied in this section. Acting on such presumption, it is likely that gross injustice may be done to parents and guardians who will find it difficult to displace the burden laid on them under such presumption of law. As this is a penal statute, some caution is necessary to put into execution the presumption underlying in the section. This section is silent as to quantum of due care and attention that is demanded of the parents. In these days when boys and girls live away from their parents, for their studies or otherwise, the parents may have to take extraordinary care to avoid such conjugal calamities taking

place. Further, if boys and girls live in hostels, then the Warden or the Principal of the institutions should be held responsible for these offences.

A person having charge of a minor 'negligently failing to prevent child marriage from being solemnised' and the person who being in charge of the minor 'promotes it or permits it to be solemnised' are meted out the same kind of punishment.

In view of the conditions prevailing in Burma, it is suggested that intermediaries who promote or arrange for a child marriage should also be punished in a similar manner. The words "negligently fails to prevent it from being solemnised" are too vague. The words "who does any act to promote the marriage or permits it to be solemnised" are wide enough and the phrase "permits it to be solemnised" is wide enough to cover all possible cases of any positive act on the part of the parent or guardian. In view of this and in view of the fact that it is very difficult to prove a negative act it is suggested that the words "or negligently fails to prevent it from being solemnised" are unnecessary.

#### AMENDMENTS NEGATIVED

- (1) "That in Sub-Cl. (1) of Clause 6 of the Bill the words 'or permits it to be solemnised or, negligently fails to prevent it from being solemnised', be omitted".

- (2) "That is Sub-Cl. (1) of Clause 6 of the Bill the words 'or negligently fails to prevent it from being solemnised' be omitted".
- (3) "That is Sub-Cl. (1) of Clause 6 of the Bill the words 'with simple imprisonment which may extend to one month, or' be omitted".
- (4) "That in Sub-Cl. (1) of Clause 6 of the Bill for the words 'one thousand rupees, or with both' the words 'one hundred rupees' be substituted".
- (5) "That Clause 6 (2) be omitted".

**Section 7.** NOTWITHSTANDING anything contained in Section 25 of the General Clauses Act, 1897, or Section 64 of the Indian Penal Code, a Court sentencing an offender under Section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment.

Imprisonment not to be awarded for offences under Section 3.

### COMMENTS

The section says that though a Magistrate may fine an offender under Sec. 3 he may not enforce the fine by imposing imprisonment in default.

This section has got to be read along with Sec. 3. If a fine is imposed under Sec. 3 and if the person fined has no property which could be seized for reco-

very of fine it becomes useless to impose fine under Sec. 3. Therefore, it is suggested that this section is illogical and should be dropped.

*General Clauses Act (X of 1897) Sec. 25—Recovery  
of Fines*

Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants, for the levy of fines shall apply to all fines imposed under any Act, Regulation, Rule or Bye-law, unless the Act, Regulation, Rule or Bye-law contains an express provision to the contrary.

*Indian Penal Code (XLV of 1860) Sec. 64—Sentence  
of Imprisonment for Non-payment of Fine*

In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain time, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

**Section 8.** NOTWITHSTANDING anything contained in Section 190 of the Code of Criminal Procedure, 1898, no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act.

Jurisdiction  
under this Act.

### COMMENTS.

This section lays down that no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act. Sub-Divisional Magistrates like District Magistrates exercise first class powers and deal with very important offences under the Indian Penal Code. There seems no reason why they should not also be empowered to investigate offences under this Act. The reasons given for this in paragraphs 11 and 12 of the Report of the Select Committee does not appear convincing. It may also be noted that it will be more troublesome and expensive for parties to go to District Magistrates to conduct and defend prosecutions than before Sub-Divisional Magistrates. So the jurisdiction may be extended at least to all magistrates of the First Class. Otherwise those who have to make a complaint will, in some cases, have to go a long way in order to reach the Headquarters of the district and it is likely that with all these troubles they may not be able to find the District Magistrate who may be

away on tour. The section as it stands makes prosecutions difficult.

*Criminal Procedure Code (V of 1898) Sec. 190—  
Cognizance of offences by Magistrate.*

190 (1). Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate especially empowered in this behalf, may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in *writing* of such facts *made by any police officer*; (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c) of offences for which he may try or commit for trial.



## AMENDMENT NEGATIVED.

“That in Cl. 8 of the Bill, for the words ‘ Presidency Magistrate or a District Magistrate ’ the words ‘ Magistrate First Class ’ be substituted.”

**Section 9.** NO COURT shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnisation of the marriage in respect of which the offence is alleged to have been committed.

Mode of taking cognizance of offences.

## COMMENTS.

The section says that a complaint must be made within one year of the marriage. It is not quite clear on whose complaint cognizance should be taken. It does not indicate as to who is entitled to make a complaint. As it stands, any one may complain. This will open a door for attempts to satisfy the private grudge of persons who have no interest in the parties contracting the marriage. It is a question whether cognizance can be taken on a police complaint.

In this section it might be made clear at whose instance or by whom the complaint can be lodged. The section is not clear as to whether the complaint should be made direct to the Presidency Magistrate or to the District Magistrate or through the police within whose jurisdiction the offence is committed.

## AMENDMENTS NEGATIVED.

- (1) "That in Cl. (9) of the Bill after the word 'complaint' the words 'of the lawful guardian of the child' be inserted".
- (2) "That in Cl. (9) of the Bill for the words 'one year' the words 'three months' be substituted".
- (3) "That in Cl. (9) of the Bill for the words 'one year' the words 'one month' be substituted".
- (4) "To Cl. (9) the following be added at the end 'No one is entitled to complain unless he is a resident of the locality in which the marriage has taken place or he belongs to the sect or sub-sect to which the parties to the marriage belong'".

**Section 10.** THE COURT taking cognizance of an offence under this Act shall, unless it dismisses the complaint under Section 203, of the Code of Criminal Procedure, 1898, either itself make an inquiry under Section 202 of the Code, or direct a Magistrate of the First Class subordinate to it to make such inquiry.

Preliminary inquiries into offences under this Act.

## COMMENTS.

This and the following sections appear to restrict considerably the operation of the Act. The initiation

of the proceedings in Court is left to individual complainants who are required further to furnish security for purposes of compensating the persons complained against, under Section 250 Cr. P. C. Under such circumstances people may not be willing to come forward to make complaints even in genuine and most flagrant cases, except probably some enemies of the parties and social reformers of an extreme type.

This section requires the enquiry under Sec. 202 Cr. P. C., to be made either by the District Magistrate or a Magistrate of the First Class. It is likely that, as a result of the preliminary enquiry, the prosecution gets an opportunity of preparing its evidence and so the Act takes extra care as regards the conduct of such inquiries.

*Criminal Procedure Code (V of 1898). Sec. 202—  
Postponement for Issue of Process.*

1. Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under Sec. 192, may if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the Third Class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or, by a

police-officer, or, by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint :

Provided that save where the complaint has been made by a court no such direction shall be made unless the complainant has been examined on oath under the provisions of section 200.

(b) (Omitted by Act II of 1926, Sec. 6).

(2). If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police station, except that he shall not have power to arrest without warrant.

(2-A). Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

*Criminal Procedure Code. (V of 1898) Sec. 203—  
Dismissal of Complaint*

The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under Sec. 202, there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

**Section 11.** At any time after examining the complainant and before issuing process for compelling attendance of the accused, the Court shall except for reasons recorded in writing, require the complainant to execute a bond, with or without surities, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under Section 250 of the Code of Criminal Procedure, 1898; and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed.

Power to take security from complainant.

(2) A bond taken under this section shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, and Chapter XLII of that Code shall apply accordingly.

#### COMMENTS

Section 11 provides for taking security from complainants. The Court is bound to take security except for special reasons, which the complainant may have to pay under section 250, Cr. P. C. This provision is intended to avoid frivolous and vexatious complaints. Strangely however, the Act requires that the Court shall presume that a complaint would be frivolous or vexatious as well as false in the absence of proof to the contrary.

Sec. 250 of the Cr. P. C., provides a safeguard against frivolous or vexatious accusations and to require complainants to execute a bond might deter many from coming forward. The object of the Act being to ensure that *bona fide* complaints alone should come to Court; the safeguards mentioned in this section are wise and necessary. It is true that the combined operation of Secs. 8 to 11 is likely to minimise the number of complaints and to some extent to impair the effectiveness. But at the same time it must be noted that it is essential to guard against the danger of this Act being utilised to satisfy personal animosities and to provide opportunities for extortion.

The Act does not give powers to a Magistrate to prevent an intended child marriage or stop the course of one before it is completed.

The Act does not provide for any exemptions. An amendment was proposed by Pandit Neelakanta Das in the Assembly that at the end of the Bill the following new clause be added:—

“Nothing in the Act shall apply in the case of child marriage when the girl married is not below 12 years of age and when any one of the contracting parties or their parents or guardians has obtained the sanction of the Principal Court of civil jurisdiction upon application made prior to the solemnisation of the marriage taking the circumstances under which he is compelled to solemnise the marriage the non-performance of which would mean hardship to the

‘girl’ or her ‘family.’” It is not impossible to conceive of cases, where circumstances are such as to compel a parent to give his daughter in marriage before the girl has reached the age prescribed by the Act. If we look to the laws obtaining in some of the Indian States, we find that such exemptions have been provided in many States like Baroda, Indore, Rajkot and Mandi. The exemption clause, it is said, has worked very well in the Baroda State.

*Criminal Procedure Code. (V of 1898) Sec. 250*

*False, frivolous or vexatious accusations.*

Sec. 250 (1). If, in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may

show, and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one hundred rupees, or, if the Magistrate is a Magistrate of the third class, not exceeding fifty rupees, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(2-A). The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2-B). When any person is imprisoned under sub-section (2-A), the provisions of sections 68 and 69 of the Indian Penal Code shall, so far as may be, apply.

(2-C). No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the



second or third class to pay compensation or has been so ordered by any other magistrate to pay compensation exceeding fifty rupees may appeal from the order, in so far as the order relates to payment of the compensation, as if such complainant or informant had been convicted on a trial held by such magistrate.

(4). Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed or, if an appeal is presented before the appeal has been decided and where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

#### AMENDMENTS NEGATIVED

(1) "That clause 11 of the bill be omitted".

(2) "That in sub-clause (1) of clause 11 of the Bill, for the words 'At any time after' the words 'Prior to' shall be substituted".

(3) "That in sub-clause (1) of clause 11 of the Bill, for the words 'shall, except for reasons to be recorded in writing' the words 'may for reasons to be recorded in writing' be substituted".

(4) "That in sub-clause (1) of clause 11 of the Bill, the words 'except for reasons to be recorded in writing' be omitted".

(5) "That in sub-clause (1) of clause 11 of the Bill, for the words 'To execute a bond, with or without surities, for a sum not exceeding one hundred rupees' the words 'to deposit in cash rupees two hundred and fifty' be substituted".

(6) "That in sub-clause (1) of clause 11 of the Bill, for the words 'for a sum not exceeding one hundred rupees', the words 'for any sum which shall not be less than one hundred rupees but may extend to one thousand rupees' be substituted."

(7) "That to clause 11 of the bill the following new sub-clause be added:

" (8) If the complainant is proved to have lodged false information the trying Magistrate shall forthwith order prosecution of the complainant who shall be punishable with rigorous imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both."

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APPENDIX A.  
THE ORIGINAL BILL

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*The following Bill was introduced in the  
Legislative Assembly on the 1st February, 1927:—*

LEGISLATIVE ASSEMBLY BILL No. 21 OF 1927.

*A Bill to regulate marriages of children  
amongst the Hindus.*

Whereas it is necessary to regulate marriages of children amongst the Hindus and to lay down the age under which such marriages shall be invalid; It is hereby enacted as follows:—

Short title and extent.                      1. (1) This Act may be called the Hindu Child Marriage Act, 1927.

(2) It extends to the whole of British India, including the Scheduled Districts.

Definitions.                      2. In this Act,—

(a) "Hindu" includes Jains, Sikhs, Brahmos, Arya Samajists and Buddhists.

(b) "Guardian" means a guardian as defined in the Guardians and Wards Act, 1890. (Act VIII of 1890).

3. Notwithstanding any provision to the contrary existing anywhere, no marriage of a Hindu girl, except as provided in section 5, shall be valid, unless she has, on the day of her marriage, completed her twelfth year.

Marriageable age of a girl.

4. No marriage of a Hindu boy shall be valid unless he has, on the day of his marriage, completed his fifteenth year.

Marriageable age of a boy.

5. The marriage of a Hindu girl who is under twelve years of age shall be valid if her guardian obtains, before such marriage, a licence for the performance of such marriage from the Magistrate of the District in which the girl ordinarily resides, authorising or permitting such marriage;

Marriage of girl below 12 valid if guardian obtains licence.

Provided that no such licence shall be granted, where the girl is under eleven years of age.

6. The Magistrate of the District shall grant a licence for the marriage of a Hindu girl to her guardian, who files a written application for the grant of such licence with an affidavit swearing to the fact that the girl has completed her eleventh year, and that the guardian conscientiously believes that the tenets of the religion which the girl professes enjoin that the girl should not be kept unmarried any longer.

#### STATEMENT OF OBJECTS AND REASONS

1. The object of the Bill is two-fold. The main object, by declaring invalid the marriages of girls below 12 years of age, is to put a stop to such girls becoming widows. The second object, by laying down the minimum marriageable ages of boys and girls, is to prevent, so far as may be, their physical and moral deterioration by removing a principal obstacle to their physical and mental development.

2. According to the Census Report of 1921 A. D., there were in that year 612 Hindu widows who were less than one year old, 2,024 who were under 5 years, 97,857 who were under 10 years, and 3,32,024 who were under 15 years of age. The deplorable feature of the situation, however, is that the majority of these child widows are prevented by Hindu custom and usage from re-marrying. Such a lamentable state of affairs exists in no country, civilised or uncivilised, in the world. And it is high time that the law came to the assistance of these helpless victims of social customs, which, whatever their origin or justification in old days, are admittedly out of date and are the source of untold misery and harm at the present time.

3. According to the Brahmanas the most ancient and the most authoritative book containing the laws of the Hindus, the minimum marriageable age of a man is 24 and a woman 16. And if the welfare of the girl were the only consideration in fixing the age, the law should fix 16 as the minimum age for the valid marriage of a girl. But amongst the Hindus, there are people who hold the belief that a girl should not remain unmarried after she attains puberty; and as in this country some girls attain puberty at an age as early as 12, the Bill fixes 12 as the minimum age for the valid marriage of a Hindu girl.

4. In order, however, to make the Bill acceptable to the most conservative Hindu opinion, provision is made in the Bill that for conscientious reasons, the marriage of a Hindu girl would be permissible even when she is eleven years old. No Hindu Shashtra enjoins marriage of a girl before she attains puberty, and the

time has arrived and public opinion sufficiently developed, when the first step towards the accomplishment of the social reform so necessary for the removal of a great injustice to its helpless victims and so essential to the vital interests of a large part of humanity, should be taken, by enacting a law declaring invalid the marriages of girls below 11 years of age.

5. With regard to boys, the Shastras do not enjoin marriage at a particular age. Thoughtful public opinion amongst the Hindus would fix 18 as the minimum marriageable age for a boy. But as some classes of the Hindus would regard such legislation as too drastic, the Bill takes the line of least resistance by providing 15 years as the age below which the marriage of a Hindu boy shall be invalid. Even in England, where child marriages are unknown and early marriages are exceptions, it has been found necessary to fix the ages below which boys and girls may not marry.

(Sd.) M. HARBILAS SARDA.

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## APPENDIX B.

### REPORT OF THE FIRST SELECT COMMITTEE.

The following Report of the Select Committee on the Bill to regulate marriages of children amongst the Hindus was presented to the Legislative Assembly on the 22nd March, 1928 :—

We, the undersigned, Members of the Select Committee to which the Bill to regulate marriages of children amongst the Hindus was referred, have considered the Bill and the papers noted in the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

The object of the Bill as introduced into the Legislature was to impose restraint upon the solemnisation of child marriages, and the method adopted was, broadly speaking, that of declaring all marriages of boys or girls below a certain age to be invalid. The Bill has been circulated under the orders of Government and has elicited a strong expression of feeling that it is objectionable, both on religious and on legal grounds, to interfere with the validity of a marriage which has been performed. In our opinion, these objections are at present insuperable, and we have accordingly acted upon a suggestion, which has been widely made, that the Bill should effect its purpose of restraining child marriages, not by declaring such marriages to be invalid, but by imposing punishments upon those who participate in them.

We, therefore, set ourselves the task of recasting the Bill with this object in view. To begin with, we considered the propriety of our action in so materially amending a Bill whose principle had been accepted by the Legislative Assembly in referring it to us, and we came to the conclusion that the principle of the Bill which had been endorsed by the Legislative Assembly was the principle that child marriages should be restrained by legislation, and that it was open to us to vary the method of imposing the restraint from that contained in the Bill to another which is undoubtedly in accord with public opinion and seems to ourselves the only method which is at present expedient. Nevertheless, we do recognise that the substitution in Select Committee of what is formally a new Bill is an unusual step, and we desire that further stages in the Bill should be undertaken deliberately and only after public opinion has been fully elicited on its details.

The Bill, as introduced, applied to Hindus, Jains, Sikhs, Brahmans, Arya Samajists and Buddhists and was a measure relating to the validity of marriage. As we propose to amend the Bill by making it a measure imposing criminal penalties on participants in a child marriage, it seems invidious that it should be restricted to these particular communities, since child marriages do occur, though not so frequently, in other communities. We propose, therefore, that the amended Bill should be general in its scope and apply to all classes and communities in British India.

The first provision which required our decision is also the most important, namely, the determination of the ages of boys and of girls below which participation in their marriage should be punishable. After much



discussion we decided that this age for boys should be eighteen years. For girls we considered the ages of eleven, twelve and fourteen, and finally, came to the conclusion that we should adopt the age of fourteen. We recognise that these ages will be regarded by many people, whose opinion is entitled to great weight, as being too high; but we also recognise that there is a strong body of opinion, particularly among those who advocate social reform, which will not willingly accept any lower age. We also gave weight to the considerations that there are communities in India among whom the marriage of girls under fourteen years of age is infrequent, and that the backward elements in those communities might regard the fixing of a lower age limit in a statute as a recognition by the State of that age as being a suitable age for marriage, and even an encouragement to adopt it.

These decisions, that the limiting age for a boy should be eighteen and for a girl fourteen, are embodied in sub-clause (a) of clause 2 of the Bill as amended by us.

The next important principle to be determined was the interpretation of the phrase "participants in a child marriage"; in other words, which of the possibly numerous persons in any way concerned with a child marriage should be liable to punishment. We decided that the following classes should come within the penal provisions of the Bill, namely :—

- (a) male adults who marry young girls.
- (b) persons who perform any essential ceremony of a child marriage, and
- (c) parents and guardians who promote or permit a child marriage.

Our decisions as regards (b) and (c) are embodied in clauses 5 and 6 of the Bill.

Our decisions as regards (a) were not so simple and were arrived at only after much discussion. To begin with we concluded that it is not expedient to punish a woman who marries a young boy, as cases of this sort are rare, and in most of them the woman is likely to be so young that she is entirely under the control of her parents and should not be made criminally liable. Further, even in such marriages the new Act will not be inoperative, as the other contracting party will be a child, and the guardian of the child and the persons who solemnise the marriage will be punishable.

The first point to be decided as regards male adults was the age at which they should be regarded as responsible for their own actions and, therefore, criminally liable if they contract a child marriage. We decided that the ordinary age of majority was a suitable limit in these cases; but we also recognise that young men between the ages of eighteen and twenty-one are still under the influence of their parents to a considerable extent, and we considered it inexpedient that these boys should be sent to jail for undertaking a course of action in which they may not have been entirely free agents. We decided, therefore, that where a boy between the ages of eighteen and twenty-one marries a child he shall be liable to fine, and that where a man above the age of twenty-one marries a child he shall incur the full penalty prescribed for offences under the Act. We have, therefore, provided separately in clause 3 for a fine of Rs. 1,000 for offenders above the age of eighteen years and under twenty-one; and in clause 7 we have made

provision that imprisonment shall not be imposed on these offenders under any circumstances. Clause 4 relates to offenders above the age of twenty-one years.

The next point which we decided was the extent of the punishment to be provided generally for offences under the Act, and this we have fixed at simple imprisonment up to one month, fine up to one thousand rupees, or both. These punishments appear in clauses 4, 5 and 6 of the amended Bill.

These decisions cover the substantive law contained in the Bill. We have added to them certain provisions of procedure which are designed to avoid the risk of frivolous prosecutions and harassment. We consider these provisions to be very important safeguards in a measure of social reform directed against a custom so long established and so widely prevalent as that of child marriage. It may be that in future these provisions may be abrogated and the penal provisions of the Act allowed to operate in the normal way, but, for the immediate future at least, we are strongly of opinion that we must go cautiously.

In pursuance of this policy we have provided in clause 8 that only Courts of Presidency Magistrates and District Magistrates shall have jurisdiction in cases concerning child marriages. In clause 9 we have provided that cognizance can be taken only upon complaint made within one year of the solemnisation of the marriage. In clause 10 we have laid down that the Court, unless it dismisses the complaint, shall in all cases

make a preliminary inquiry under section 202 of the Code of Criminal Procedure, 1898. In clause 11 we have added a provision requiring the complainant to give security for the payment of any compensation that may be awarded against him under section 250 of the same Code.

In view of the altered machinery of the Bill we have re-drafted the long title and the preamble to the Bill. In sub-clause (1) of clause 1 we have also recast the short title, and in sub-clause (2) we have provided that the Bill shall extend to all classes in the whole of British India. In sub-clause (3), in accordance with the policy of caution which we strongly advocate, we have provided that the Act shall not come into force until the 1st day of April, 1930, by which date we trust the provisions of the Bill will be widely known among all classes and communities. To this end we recommend that Government should take exceptional measures in publishing the Act as finally passed.

The Bill, as introduced, was published in the Gazette of India dated the 5th February, 1927.

The Bill, though it still carries out its original purpose of imposing restraint upon child marriages, has been so materially altered by us that in our opinion it requires republication. We propose that no further step should be taken to pass the Bill in the present Session of the Legislative Assembly and that between now and the next session the Bill should be published as widely as possible in English and in all the important

vernaculars. We desire to emphasise strongly this need for deliberation and wide publication.

(Sd.) Md. YAKUB  
J. CRERAR\*  
HARBILAS SARDA  
LAJAPAT RAI  
RANGBEHARI LAL  
M. R. JAYAKAR\*  
H. A. J. GIDNEY  
M. M. MALAVIYA\*  
H. S. GOUR  
W. A. COSGRAVE  
S. SRINIVASA IYENGAR  
K. C. ROY  
J. C. CHATTERJEE  
D. CHAMAN LALL\*  
GANGANAND SINHA\*

*The 21st March, 1928.*

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### MINUTES OF DISSENT.

I am glad that the Bill has been recast very much on the lines I suggested when it was considered by the Assembly. But I do not agree with the majority of my colleagues on two important points. The proposal to make marriages of girls below the age of 14 years punishable by law will rightly rouse much opposition among the large body of orthodox Hindus. I urge that the age should be fixed at 11 so that a law the need for which is pressing might be passed with the unanimous support of all the sections of the community. If even twelve is fixed as the age, marriages below which shall be punishable, it is possible that a section of orthodox opinion may be reconciled to it. But in my opinion in view of the fact that marriage is a religious sacrament

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\* Subject to minutes of dissent.

among Hindus, and in view of the belief which has prevailed on the question of the age of marriage among them for a very long time, to make a marriage above the age of 12 and below the age of 14 punishable by law will be clearly wrong. I think we should leave the raising of the age of the marriage of girls beyond 12 to the greater spread of education and of ideas of social and physical well-being among the people. Their effects are already visible and should not be ignored.

I am also opposed to imprisonment being awarded as a punishment to any person who offends against the provisions of the proposed law. I expect that if the Government and the public will co-operate to have a knowledge of the provisions of the Act made universally known among the people, the fear of the infliction of a fine which may extend up to a thousand rupees and the opprobrium of being exposed to a prosecution, will act as effective deterrent to prevent people from celebrating child marriages in contravention of the provisions of the proposed law. In any event, I would not provide imprisonment as an alternative punishment for the first few years of the new legislation.

(Sd.) MADAN MOHAN MALAVIYA.

*21st March, 1928.*

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I wish to make it clear that, while Government accept and support the principle of making the celebration of child marriages a penal offence, they must reserve judgment on some of the provisions of the Bill until they are in possession of the results of the consultation of public opinion recommended in the Report.

(Sd.) J. CRERAR.

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I agree, subject to the insertion of the article "the" before the word "marriage" in the fifth line of clause 5.

(Sd.) M. R. JAYAKAR.

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I agree, subject to the following propositions :--

- (1) In Clause 2 (a) the age of the female child should be raised to "under sixteen";
- (2) Power should be taken to compel the registration of all marriages;
- (3) Punishment for those who perform child marriages should be deterrent.

(Sd.) D. CHAMAN LALL.

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I think fourteen years will be considered too high to be the minimum marriageable age for girls by a large section of the Hindu community. I am aware of the fact that communities like the Mahomedan, the Christian, the Parsi and even a considerable section of the Hindu community to all of whom this Bill has now been made applicable, will regard the declaration of the legal age for marriage of girls below 14 years as a retrograde measure and a possible incentive to reduce the age of marriage in their respective societies. But I am also not oblivious of the strong opinion in favour of pre-puberty marriage, held by a very large section of the Hindu community. They look upon marriage as a sacrament; and generally speaking, to them, the celebration of marriage does not necessarily mean the consummation of marriage.

We see that the Hindu Maha Sabha having within its fold various sections of the Hindu community fixes

12 years as the minimum age for the marriage of girls and so does the All India Sanathana Dharma Maha Sabha representing the most orthodox section of the Hindu community. Its resolution No. 7 passed at its sitting held at Allahabad in January 1928, under the presidency of Pandit Madan Mohan Malavia when translated into English will read thus :—

7. (a) "In the opinion of this Sanathana Dharma Maha Sabha no marriage of a Hindu boy should take place till he is 18 years of age.

(b) This Maha Sabha exhorts the Hindu community that the marriage of girls should never be celebrated before they have entered upon their 12th year."

But in the subsequent resolution No. 8, it clearly indicates that the consummation of marriage should not take place before the girl attains her 16th year.

The translation of the resolution is as follows :—

8. "In the opinion of this Sanathan Dharma Maha Sabha, it is extremely necessary in order to make the community physically and religiously strong, that even when the wedding ceremony has been performed the consummation of marriage should not take place till the girl has attained the age of 16 years.

This measure is the first effort of its kind and I am of opinion that the line of least resistance should be adopted in this matter by all those who want its success. The fixing of minimum age limit has by no means a binding effect on the higher age. For instance, we see that in several Western countries, the age of consent is much below the age in which marriages usually take place. That being so, I think that it is but proper that



the views of such a large number of people should not be ignored and that the minimum marriageable age for girls should be fixed at 12 years. If any legal protection be deemed necessary in respect of the consummation of marriage, that might be afforded to the girls by further raising the age of consent. Of course, it might be argued that the age of consent clause of the Indian Penal Code is a dead-letter. But it must also be recognised that any social legislation if it has to succeed must not be so drastic as to make it wholly un-acceptable to a large number of people. I hope, therefore, that those who advocate the raising of the minimum marriageable age of girls higher than 12, would appreciate the difficulties underlying its acceptance and be content with fixing the minimum marriageable age of girls at 12 years. We should wait to see the measure of success that the piece of legislation achieves in this modified form.

(Sd.) GANGANAND SINHA.

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## APPENDIX C.

### REPORT OF THE SECOND SELECT COMMITTEE

We, the undersigned Members of the Select Committee to which the Bill to regulate marriages of children amongst the Hindus as reported by the Select Committee was recommitted have now considered the Bill and the papers noted in the margin. We have also heard a representative of the Child Marriage Protest Conference (South Arcot District) who appeared in person before us. We have now the honour to submit this our Report with the Bill as amended by us annexed thereto.

(2) We have considered the Bill and the opinions in considerable detail, and a number of matters were discussed to which we do not think it necessary to refer in this report, as no serious difference among the members of our Committee was disclosed in regard to them. We shall, therefore, refer only to the decisions which either have resulted in an amendment of the Bill or have been arrived at by a vote of the majority of the Committee.

*Clause 2:—*We considered a suggestion that the minimum age to determine whether a female is a child for the purposes of sub-clause (a) should be reduced to 11 and another suggestion that it should be reduced to 12 years. The Committee, however, were emphatically of opinion that any such reduction would nullify the whole object of the Bill.

*Clause 5:—*We considered that this clause, as originally drafted by the Select Committee, would include

within its scope a betrothal ceremony which, though it might be a necessary preliminary to a marriage, would not constitute a marriage without a further ceremony.

We are further of opinion that the clause would spread the net too wide by including too large a number of persons, and that it is only necessary to penalise the person who actually officiates in that part of the ceremony which finally renders the marriage tie indissoluble.

We consider it necessary to exempt any person who has officiated at a child marriage but who can prove to the Court that he had taken reasonable precautions to satisfy himself that the contracting parties were over the minimum age.

Finally, we negatived a proposal to re-insert a provision on the lines of clause 6 of the Bill as introduced, whereby a guardian could obtain a certificate enabling him to celebrate a child marriage on the ground that he conscientiously believes the marriage to be enjoined by his religion.

*Clause 6* :—We have provided that the punishment of imprisonment shall not be inflicted in the case of a female parent or guardian; and we rejected a proposal for the omission of the presumption contained in the second part of this clause, as we consider the presumption reasonable in itself and necessary to enable the provisions of the clause to have their proper effect.

*Clause 11* :—We rejected two proposals in regard to this clause; one that the bond should be a personal bond without sureties, and the other that security should not be required in the case of a complaint made with the

sanction of a Magistrate competent to try the offence. The latter provision might, we consider, lead to two separate inquiries and unnecessary recapitulation of evidence.

(3) We have made a few drafting changes to which it is unnecessary for us to refer in detail, and we have rejected a proposal which is to be found amongst the opinions upon the Bill that the Act should be applicable locally by Notification of the Local Government. We think that a provision of this kind would greatly facilitate evasion of the law by enabling a child marriage to be conducted in a province in which the law was not in force, although the contracting parties belonged to a province to which it had been applied.

(4) The Bill was published as follows:—

| <i>Gazette</i>              | <i>In English Date.</i> |
|-----------------------------|-------------------------|
| Gazette of India            | 31st March, 1928.       |
| Fort Saint George Gazette   | 10th April, 1928.       |
| Bombay Government Gazette   | 24th May, 1928.         |
| Calcutta Gazette            | 26th April, 1928.       |
| United Provinces Gazette    | 7th & 21st April, 1928. |
| Punjab Government Gazette   | 13th July, 1928.        |
| Burma Gazette               | 28th April, 1928.       |
| Central Provinces Gazette   | 28th April, 1928.       |
| Assam Gazette               | 11th April, 1928.       |
| Bihar and Orissa Gazette    | 22nd May, 1928.         |
| Coorg District Gazette      | 1st May, 1928.          |
| North-West Frontier Gazette | 11th May, 1928.         |

*In the Vernaculars.*

| <i>Province</i>   | <i>Language</i> | <i>Date</i>      |
|-------------------|-----------------|------------------|
| Madras            | Tamil           | 15th May, 1928.  |
|                   | Telugu          | 8th May, 1928.   |
|                   | Kanarese        | 12th June, 1928. |
| Bombay            | Marathi         | 5th July, 1928.  |
|                   | Gujarathi       | 5th July, 1928.  |
|                   | Kanarese        | 5th July, 1928.  |
| Central Provinces | Urdu            | 28th June, 1928. |
|                   | Marathi         | 19th May, 1928.  |
|                   | Hindi           | 19th May, 1928.  |

(5) We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

(Sd.) J. CRERAR  
 H. B. SARDA  
 LAJPAT RAI  
 M. R. JAYAKAR  
 Md. YAKUB  
 H. A. J. JIDNEY\*  
 M. M. MALAVIYA\*  
 H. S. GOUR  
 S. SRINIVASA IYENGAR  
 RANG BIHARI LAL  
 J. C. CHATTERJEE  
 NILAKANTHA DAS\*  
 GHANSHYAM DAS BIRLA  
 GANGANAND SINHA\*  
 THAKUR DAS BHARGAVA\*  
 M. YUSUF IMAM  
 Md. RAFIQUE\*  
 J. A. SHILLIDY.

*the 13th September, 1928.*

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\* Subject to minutes of dissent.

## MINUTES OF DISSENT.

The principle of the Bill affects the personal law of the Mussalmans and therefore it should not be applicable to the Mussalmans at all. I am therefore of opinion that the Mussalmans should be exempted from the operation of the Bill.

(Sd.) MUHAMMAD RAFIQUE

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I think that provision relating to the throwing of the burden of proving want of knowledge on the person who operates at a marriage is not justifiable. This burden should always be on the prosecution. I am also not in agreement with the provision that the parent or guardian should prove that he did not fail negligently to prevent a child marriage of his son or daughter or ward.

The provisions relating to the furnishing of sureties is another matter where I feel myself unable to agree. I would further favour a provision for registration of marriages.

(Sd.) THAKURDAS BHARGAVA

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I agree to the Report of the Committee with the following observations:—After the Report of the last Select Committee the Bill was re-circulated for eliciting opinion thereon. I have carefully gone through the opinions collected from representative quarters, and the Committee have ascertained the Orthodox South Indian view in the matter in other ways. There is no denying the probability that there are influential sections among our people who may be out to arrest the progress of the operation of the Act, and this will mean extreme hard-

ship to many. People may be in danger of being compelled to lose occupation and means of their livelihood. I may here, for instance, indicate the cases of many temple priests. This seems more probable when in many cases leaders of our community have nothing to do with marriage or family life. I should like to put in a clause making it illegal for people, especially people having no family life, to associate themselves in any attempt at excommunication of the man performing marriage under provisions of this Act. But under the circumstances such a provision may not be possible.

There may be other instances also where a poor man may require to marry two girls together, or a dying parent may like to see the child married before death for various reasons, and other cases of like nature.

I, therefore, feel that some room should be given to such hard cases. It is not however easy to give an exhaustive list of these cases as a Schedule to this Act. Then the question arises as to the authority competent to deal with such hard cases and give relief in the best exercise of its discretion. It seems to me that such power should not be entrusted to a Criminal Court which is not quite in touch with cases of hardship of various kinds. I will therefore entrust the power to the principal Court of civil jurisdiction in the districts and the City Civil Court in the metropolis or a Court corresponding to it in the provinces. I wish that a general provision be made to the following effect:

Nothing in this Act shall apply to a case of child marriage where the girl married is not below 12 years of age and where the contracting parties or the parents or guardians have obtained the sanction of the

principal Court of Civil jurisdiction upon an application made prior to the solemnisation of the marriage stating the circumstances under which they are compelled to solemnise the marriage the non-performance of which would mean hardship to the girl or her family.

In section 9, I think the period should be less than one year, at most 3 months.

(Sd.) NILAKANTHA DAS.

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I sign the report subject to the observation that an overwhelming majority of the Mussalmans, including eminent and distinguished Olanas, is strongly against the application of this Bill to the Muslim Community on the ground that it interferes with their religion.

(Sd.) MUHAMMAD YAKUB.

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Subject to note of dissent that the Bill as now drafted is shorn of all utility and amounts to a pious resolution at social reform.

(Sd.) H A. J. GIDNEY.

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I do not agree with the majority of my colleagues on two important points. The proposal to make marriages of girls below the age of 14 years punishable by law has rightly roused much opposition among the large body of orthodox Hindus. I urged that the age should be fixed at 11 so that a law to restrain child marriages might be passed with the unanimous support of all sections of the community. Kumar Ganganand Sinha proposed that 12 should be substituted for 14. But that also was rejected by the majority. If even 12 is



fixed as the age, marriages below which shall be punishable, it is possible that a section of orthodox opinion will be reconciled to it. But in view of the fact that marriage is a religious sacrament among Hindus, and in view of the belief which has prevailed on the question of the age of marriage among them for a very long time, to make a marriage above the age of 12 and below the age of 14 punishable by law will be a violent interference with the Hindu religion which I consider it my duty strongly to oppose. We must not forget that even in England the legal marriageable age for girls is 12 years. I think we should leave the raising of the age of the marriage of girls beyond 12 to the greater spread of education and of ideas of social and physical well-being among the people. Their effects are already visible and should not be ignored.

I am also opposed to imprisonment being awarded as a punishment to any person who offends against the provisions of the proposed law. I expect that if the Government and the public will co-operate to have a knowledge of the provisions of the Act made universally known among the people, the fear of the infliction of a fine which may extend up to a thousand rupees and the opprobrium of being exposed to a prosecution will act as effective deterrents to prevent people from celebrating child marriages in contravention of the provisions of the proposed law. In any event, I would not provide imprisonment as an alternative punishment for the first few years of the new legislation.

(Sd.) M. M. MALAVIYA,

13th September, 1928

I think 14 years will be considered too high to be the minimum marriageable age for girls by a large section of the Hindu Community. I am aware of the fact that communities like the Mahomedan, the Christian, the Parsi and even a considerable section of the Hindu community to all of whom this Bill has now been made applicable, will regard the declaration of the legal age for marriage of girls below 14 years as a retrograde measure and a possible incentive to reduce the age of marriage in their respective societies. But I am also not oblivious of the very strong opinion in favour of pre-puberty marriage, held by a very large section of the Hindu community. They look upon marriage as a sacrament; and, generally speaking, to them, the celebration of marriage does not necessarily mean the consummation of marriage.

We see that the Hindu Mahasabha having within its fold various sections of the Hindu community fixes 12 years as the minimum age for the marriage of girls and so does the All-India Sanatana Dharma Mahasabha representing the most orthodox section of the Hindu community. Its resolution No. 7 passed at its sitting held at Allahabad in January 1928, under the presidency of Pandit Madan Mohan Malaviya, when translated into English will read thus:—

7. (a) "In the opinion of this Sanathana Dharma Mahasabha no marriage of a Hindu boy should take place till he is 18 years of age.

(b) "This Mahasabha exhorts the Hindu Community that the marriage of girls should never be celebrated before they have entered upon their 12th year."

But in the subsequent resolution No. 8 it clearly indicates that the consummation of marriage should not take place before the girl attains her 16th year.

The translation of the Resolution is as follows :-

8. "In the opinion of this Sanatana Dharma Mahasabha, it is extremely necessary in order to make the community physically and religiously strong, that even when the wedding ceremony has been performed the consummation of marriage should not take place till the girl has attained the age of 16 years".

This measure is the first effort of its kind and I am of opinion that the line of least resistance should be adopted in this matter by all those who want its success. The fixing of minimum age limit has by no means a binding effect on the higher age. For instance, we see that in several Western countries, the age of consent is much below the age in which marriages usually take place. That being so, I think that it is but proper that the views of such a large number of people should not be ignored and that the minimum marriageable age for girls should be fixed at 12 years. If any legal protection be deemed necessary in respect of the consummation of marriage, that might be afforded to the girls by further raising the age of consent. Of course it might be argued that the age of consent clause of the Indian Penal Code is a dead-letter. But it must also be recognised that any social legislation if it has to succeed must not be so drastic as to make it wholly unacceptable to a large number of people. I hope, therefore, that those who advocate the raising of the minimum marriageable age of girls higher than 12, would appreciate the difficulties underlying its acceptance and be con-

tent with fixing the minimum marriageable age of girls at 12 years. We should wait to see the measure of success that the piece of legislation achieves in this modified form.

(Sd.) GANGANAND SINHA.

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## APPENDIX D.

### THE ASSEMBLY DEBATES

**Mr. M. S. Sesa Ayyangar :** Sir, this morning when I came into the Assembly building, I was greeted with a big placard with these words in bold print, "If you oppose Sarda's Bill, the world will laugh at you." I am glad, Sir, that I shall have an opportunity of being laughed at by the world. I am equally glad that, in that position, I am in the company of very great men : I am in the company of the ancient Rishis of this country : I am in the company of the great legislators of this ancient country ; I am in the company of the modern savants of the Continent ; I am in the company of great doctors, sociologists, medical experts and gynæcologists. If that is so, I would certainly like to be laughed at by that section of the world who would laugh at me if I oppose this Bill. I would in turn, after opposing this Bill, laugh at that section of the world which would laugh at me for having opposed this Bill.

Sir, I oppose this Bill with all the vehemence that I can command. The Bill, Sir, I feel, is not a social reform legislation, but a religious revolution, and not merely a revolution, but in the words of Mr. Justice Mackay of the Madras High Court, "a seismic disturbance of age-long practice". That, Sir, is the real character of this Bill.

In opposing this Bill, Sir, let me consider the various arguments that were advanced by the Honourable Mover when he moved this motion last time. In the last Delhi Session he started, observing that the views of the women of this country have to be considered, for it affects them more, and he instanced three All India Ladies' Conferences supporting his position, and he threw out a challenge by asking, "Do you find a single protest meeting by the ladies of this country?" I dare say that he has by this time come to know that very many ladies' meetings and conferences have been held since then loudly protesting against his Bill, and not only against his Bill but also against the other Bill of Dr. Gour. And I may inform this House and the Honourable Mover that there have been at least half a dozen meetings,—decent gatherings of which I am aware,—meetings held in Kumbakonam, of ladies, meetings held in Triplicane, Madras, meetings held in Benares, and last but not least, there was a meeting held in Cocanada just a week ago. Now, all these ladies' gatherings were very influential, were well-attended and were thoroughly representative, and in every one of these meetings loud and vehement protests were made against this Bill. They called it a most pernicious Bill, and they protested against it on the sole ground that it undermined the Hindu religion in this country, and they also went to the length of saying that, so far as their own experience was concerned, there was absolutely nothing to justify the demand for a legislation like this. That, Sir, is the burden of the song in all these ladies' conferences, and I dare say that, by this time the Honourable Mover will have been satisfied at the proceedings of these conferences, that there really have been very many ladies' gatherings

that have protested against this Bill; and if there are not more conferences held, the principal reason is this. This House knows that Indian womanhood is principally in-door; and if here and there there are a few meetings convened by interested social reformers consisting of ladies, these meetings consist, in the words of 'an itinerant lecturer on Hindu religion and usage,' of ladies strayed out of the ancient Indian manner of feminine ideal and conduct and who therefore are not free from criticism by their sister folk." That, Sir, is the situation, and in every one of these ladies' gatherings, giving support to this Bill, you will find that invariably one or two or a handful of social reformers are also at work. That is significant.

Then, Sir, the Honourable the Mover cited with approval the opinion of one Mrs. Gomati Ammal of Tinnevely in my constituency. This lady, as the House will find in page 56 of part III of the opinions collected, confesses that she really does not know what the Shastras say in this matter. The entire burden of our song is that this Bill is un-Shastric and goes against the fundamental tenets of the Hindu religion. When a lady of that stamp proclaims that she does not know what the Shastras say and yet gives her support to this Bill, the House will really see what that approval comes to.

Then, Sir, the Honourable the Mover cited with approval the opinion of one Mrs. Bhagirathi Ammal of Madras. She openly avows that she is not concerned with the Shastras at all, she openly avows that she is not concerned with the life beyond death but only with the life here. "Save us from the situation that we are in" was the plaintive cry alleged to have been made by

this lady to the Honourable the Mover. Here, again, is a case of directly flouting the Shastric injunctions upon which we take our stand. That this lady should absolutely reject the Shastras and claim only the pleasures of life in this existing life when our ancient ideal looks also to the life beyond, that clearly is a line of demarcation as to where you must collect opinions, as to what opinions you must record and what not. In fact, Sir, the whole difference between these two view-points is this. They think lightly of the life beyond; and our entire religion concerns itself with the Shastras, which Proclaim their faith in and which also inspire confidence in us as to the existence of a life beyond this; and if the whole Shastric injunctions relating to our course of conduct absolutely devolve upon that central idea of a past life and a future life, and if these are the basic ideals upon which our courses of conduct have been enjoined by the Shastras, and if these are clearly lost sight of, I submit to the House that the opinions of these people who do not realise these Shastric injunctions and the ideals lying underneath them, are not entitled to any weight, especially when the orthodox section is crying itself hoarse that it entirely rests its opposition to this Bill upon the Shastras and upon the ancient texts of this land.

Then, Sir, the Honourable the Mover was obliged to fall back upon a resolution passed by a meeting of the ladies of Kumbakonam, which is largely an orthodox centre. I submit that I know Kumbakonam myself. The deputation from Southern India, which waited upon His Excellency the other day contains gentlemen from Kumbakonam. But what is this ladies' meeting which the Honourable Member wanted to rely on? That, I gather, was a meeting which was attended by five ladies'



or four and a half, as it was humorously called by one of the reporters. Only five ladies met on that occasion. All of them happened to be Theosophists whose belief in Shastras is well known. These five Theosophical ladies met in Kumbakonam and sent out their voice by way of support to this Bill, and if the Honourable the Mover has to fall back upon that kind of support in his favour, I simply pity him for the support upon which he relies.

Then, Sir, he went on to say that, so far as the Madras Brahmins are concerned, they are hardly three per cent. of the population in that Presidency, and that any amount of protest which may be sent by the Brahmins of Southern India would not be of much avail. But he must have, by this time, realised that, since then, all other *Dwija* communities, *i. e.*, Sourashtras, Komati Chettis, and Vaishyas, etc., who believe in a second birth from the *Upanayan Samskara* have held meetings of protest against this Bill on the main ground that it fundamentally affects the structure of Hindu society and is diametrically opposed to the Hindu Shastric injunctions. So that the opposition is not confined to the Brahmins of Madras alone, but extends to all the *Dwija* communities of the Province of Madras. All the sections of the *Dwijas*, people who believe in a second birth by the *upanayana samskara*, all these people, Kshatriyas, Vaisyas, Komati Chettis, Sourashtra Brahmins, and other communities who believe in the existence of a second birth, and who also themselves undergo the purification ceremony of *upanayana* for being spiritually re-born, all these people have clearly protested against this pernicious Bill. In the collection of opinions from the various districts of Madras,—I am glad that the Government of India have taken care to

see that in Madras the Collector of almost every district was addressed and asked to collect opinions in each district—I find from those opinions—I will not weary the House by going into them in detail and reading extracts from every opinion—I shall only mention collectively that the Collectors of Salem, Anantapur, Bellary, Krishna, Chittoor, Ramnad, Tinnevely, West Godaveri, Kurnool, Coimbatore, Madras, Nellore, North Arcot, Cuddappah, Trinchinopoly, East Godaveri, Madura, South Arcot and Tanjore have all invariably given expression, in their opinions collected, to the fact that within their district, there exist all the *Dwtja* communities who have invariably raised their voice of protest against this Bill. Is there not enough for the Honourable Member to be convinced of the stout opposition which this Bill has evoked in the Madras Province in almost every district that counts there?

Sir, I am very much pained to see that the Honourable the Mover was rather cruel upon the High Court Judges of Madras. He flouted the opinions of these eminent men on the simple ground that Madras is a province which has not solved the problem of untouchables to his satisfaction, and therefore the gentlemen who are appointed as Judges in that backward province are not entitled to have their opinions considered by him. That was the line of reasoning taken by the Honourable the Mover. I say that that does not disclose that balance of mind which must characterise a legislator who has come forward with a Bill of this kind. I shall read a few extracts from the opinions of these eminent Judges of the Madras High Court. They are entitled to the greatest weight obviously for this reason: some of them happen to be Indian Judges and some of them Brahmin Judges as well; most of them have had district

experience as District Judges and as Sub-divisional Officers; they have risen from the lower ranks of the I. C. S., and they have got up to the High Court Bench, after having served in various districts as executive officers and as district judges throughout the Presidency. Therefore their opinions are entitled to great weight, and some of them are European Judges. I am speaking so strongly and so vehemently for the obvious reason that Madras feels very strongly over this matter. It is Madras opinion that must count with you, for this reason, that the opinion in Madras is very strong against this Bill, probably because it is the place where orthodoxy still remains in its pristine simplicity and purity. That is why I submit to my Honourable colleagues in this House that Madras opinion is so strong.

I shall invite the attention of the House to three or four extracts only from these opinions. Justice Ramesam is an ardent social reformer himself; but all the same he does not relish the idea of this penal legislation on the lines suggested by the Select Committee. This is what he says :

“Incidentally, one observation I wish to make, that the statement of Sir H. S. Gour made at least twice, *i.e.*, once in his Statement of Objects and Reasons to his Bill, and once in the discussion in the Legislative Assembly, after the Report of the Select Committee on Mr. Sarada's Bill, *viz.*, that Hindu girls do not attain maturity until the age of 14, though it may be correct as to Northern India, is absolutely incorrect as to Southern India. It is a matter of common knowledge that in Southern India Hindu girls attain puberty generally, as an average, at the age of 12..... I am not going to waste time by considering how far the belief is justified, whether the *smṛiti* on which it is based contains an interpolation, or whether the primitive Hindu societies imposed such an

injunction. The fact is there, that such a belief now exists and it is a religious belief."

He also says, "In my opinion the law ought to be more enabling and less compelling." (*An Honourable Member*: "He is not opposed to this measure.") He is opposed to it in the form which is now before the House.

Justice Mackay says:

"I would only observe that, so far as South India is concerned, it is certain to provoke vehement opposition.. ..... That would be not merely a revolution, but a seismic disturbance of age-long practice.....".

Justice Pakenham-Walsh says:

"I agree with Justice Mackay that the Act, if passed, will create vehement opposition at least in South India. If there were any widespread feeling against the existence of child-widows it would surely be reflected on a large and growing use of the widow Re-marriage Act. That Act has always been and still remains a dead letter, the cases of re-marriage under it being infinitesimal. I would take the use of that Act as a barometer to gauge the real degree of popular support behind the present Act. When we find it extensively used, we may conclude that public opinion has really moved. I agree with Reilly, Jackson and Mackay JJ. in their criticism as regards procedure."

Now, this is a very important observation because there are two aspects to be considered in this connection. If the Widow Re-marriage Act has been in existence on the Statute-book for nearly 75 years, and if it has remained a dead letter, what does it mean? It means that conservative opinion still holds good in the country. It means that the reformer has not been able to advance a bit during the last 75 years in the direction in which he wanted to. That Act was a permissive legislation:

and again, if after fifty years of social reform activities, these social reformers should come to the Legislature and ask that we should pass penal measures to aid them in their work does it not betray failure on their part? If they have worked for social reform for the last fifty years and if they have not been able to do anything at all in that direction, but have to come here and ask for more powers, and penal powers in addition, to enforce their fashionable fads, as I would call them, what does it show? It shows an utter confession of failure.

I shall now read a few extracts from the opinion of Mr. Justice Tiruvenkata Achariyar :

"I do not see how the Government can by legislation interfere to prevent or penalise the marriages of girls between 11 and 14, which is the period when 90 per cent. of the marriages take place, without seriously offending the religious feelings of the orthodox section of the community, who still wield much influence over the rest of the community, and at the same time causing among the moderate and most influential section of the community, which prefers to progress in social matters on sound lines though slow, taking the community as a whole with them, save a few impatient idealists, who with more conceit than wisdom, consider that the social and material salvation of the Hindu community can be attained only by their being forced to cast off wholesale their age-long customs and adopt in their stead the (according to these idealists) rational and beneficial customs of modern Europe and America, ignoring the fact that you cannot have a common standard between countries which differ from each other materially in the conditions of life."

He also remarks :

"It should not be overlooked that the choice of the bride or bridegroom is subject to various restrictions, legal as well as social, and that the parents or those who stand in *loco*

*parentis* are the best judges of what is conducive to the welfare of their children, and that neither the State nor the Legislature can usefully take over their responsibilities on its shoulders."

In spite of this, what is aimed at by the Honourable the Mover now is to ask this Legislature to intervene, and the State to intervene, to put this Bill on the Statute-Book. That is hardly a thing that should be favoured by this Assembly. And further on he says :

"Coercive legislation like that proposed in the Bill will not only be of doubtful utility, but like quack remedies may produce evil consequences, which we either do not at all or only dimly foresee at present".

Then, Mr. Justice Venkatasubba Rao would agree with Pandit Madan Mohan Malaviya and fix the age at eleven for girls.

Then again Mr. Justice Devadoss, a Christian Judge, says this :

"The Bill attempts at impossible things. Who is to determine what the age of the girl is. Births are not registered and horoscopes are notoriously unreliable."

Mr. Justice Odgers says that :

"The Bill seems to have small chance of passing into law."

And lastly, Mr. Justice Kumaraswami Sastri says this :

"I do not think this is a matter on which the Legislature should interfere. It is rather for educated public opinion to assert itself and to take steps by educating the masses to put an end to this and other social evils."

I submit, Sir, that these are the considered opinions of the Judges of the Madras High Court, and the

Honourable the Mover was certainly not in the right when he brushed aside these valuable opinions of the Madras High Court Judges by adopting the line of argument that he chose to adopt.

Then, Sir, lastly he said there is a cry that religion is in danger and that it is a false cry. The Legislature ought not to be misled by this cry that religion is in danger because it is a false cry in his opinion. I submit, Sir, that is a prejudiced view. He betrayed prejudice by attributing prejudice to us, the orthodox community. My friend is entirely wrong in his view. Unfortunately, the cry that religion is in danger is very real and sincere. If that were not real, Sir, how do you account for the fact that these deputationists have travelled for thousands of miles and come up to Simla to place their case before the authorities here and before His Excellency the Viceroy. There are, as the House probably knows, two lady members in the deputation. How does the House account for the numerous petitions and memorials from various parts of the country and for the one thousand and one ways of making known the representations to the powers that be, urging that this measure should not be passed, and that if the Legislature passes it, praying His Excellency the Viceroy to veto it at once if the feeling behind it is not genuine and strong? Why should all these things be done if the cry that religion is in danger is not a true cry, a sincere and an honest cry? The House should consider all the hardships to which the deputationists have voluntarily submitted themselves to, to come up to Simla in this cold season to present their case to the powers that be. I would go further and submit to the House that there is a good deal of truth and force in this statement, because this

Bill really jeopardises the religion of the Hindus in this country.

Sir, it has been said over and over again that marriage with Hindus is a religious sacrament. I remember a learned lawyer of great legal eminence in this Assembly once put a question, "What is a sacrament?" Sir, I would satisfy the House by giving the definition of the word "sacrament", as obtains in the Oxford Dictionary. Sacrament is a religious ceremony or act regarded as an outward sign of inward and spiritual grace. It cannot be improved at all. If that is so, Sir, the definition placed authoritatively upon the word "sacrament", that it is a purification ceremony for spiritual re-birth, cannot be disputed for a moment, and if we Hindus believe that marriage is a sacrament, and if sacrament is a purification ceremony which is performed at the age of spiritual birth, then it becomes a religious performance, and it is directly a religious act fit to make a man or woman spiritual and divine through service and self-control. She is in material existence already, but in addition to her material existence, she is re-born as a spiritual agent. So, for the creation of a spiritual existence to enable her to evolve out her own existence, this initiation ceremony of marriage is necessary for a girl. Now, if *Upanayana* is a sacrament enjoined upon every Brahmin boy at the age of 8, the only *Samskara*, or purification ceremony, the spiritual ceremony which is enjoined on a Hindu girl is the sacrament of marriage. So that, if marriage is a sacrament which a Hindu girl is enjoined by Shastras to submit to, does it not necessarily follow at once that marriage is a religious sacrament? And that is a ceremony which is enjoined by



Shastras to which the girl must submit herself. It is also obligatory as a *Samskara*. Now, what is a *Samskara*? It is a religious act, fit to make a man or woman spiritual and divine through service and self-control. If that is the definition of the word *Samskara* and if marriage is a *Samskara* which is enjoined obligatorily on the Hindu girl, and if it is not performed at the right time, then at once the religion lying underneath it is in danger. So that there is absolutely no ground to distrust the statement that religion is in danger if you introduce this pernicious measure, because the fundamental idea of Hindu society is that marriage is an obligatory purificatory ceremony, and the Hindu Shastras fix the age at which this *Samskara* ought to be performed for a girl, and if that age falls far short of that which is stated in the Bill, which is 14, then religion is really in danger, because our Shastras lay down the age of 8 for the marriage of a Hindu girl. Eight is the minimum age for a Hindu girl to be given in marriage, because that is the age fixed for the boy for his *Upanayana* ceremony. In fact, what *Upanayana* is for a boy at the age of 8, so marriage is for the girl. It is equally a *Samskara*; it is equally a sacrament, so that the minimum age at which the girl can be given in marriage, according to Shastras, is 8; but it can be prolonged. If circumstances would not enable her to be given in marriage at the age of 8, it might be extended to 11 or 12. No age is fixed, but it must be performed before she attains puberty. That is the limit beyond which the marriage cannot be postponed. To start with, 8 is the minimum age laid down, but she can be given in marriage at any age before she attains puberty. That is the limit, the range within which the girl ought to be given in marriage according to Hindu Shastras, and the medical opinion,

as this House knows, never puts the age of puberty in this country beyond 12. 87 per cent. of girls attain puberty, according to the best medical testimony, only at the age of 12. So that, if 12 is the age generally when girls attain puberty in this country, and if this Bill introduces the minimum age of 14 instead of 12, does it not directly contravene the Shastric injunctions? That is a question which I want to put to every Member of this House. If the hypothesis that I have placed before the House is correct, if the Shastras do lay down the injunction that the girl ought to be married before puberty, and if the medical opinion fixed the age of puberty generally in this country to be 12, and if you try to fix the minimum age at 14 in spite of the medical opinion, then I submit you are acting directly in contravention of the Shastric injunctions.

Sir, I have practically come to this conclusion. If the hypothesis which I have enunciated is correct, then this Bill is certainly a flagrant violation of the religious principle of marriage as recognised in the sacred Dharma-shastras. So the only question is, should this House be a party to committing this flagrant violation? Sir, I am very much pained to see that my Honourable friend the Mover, the author of "Hindu Superiority", should now give up his respect for the ancient ideals and plead for a Bill, a Bill which sets at nought the Shastras altogether, a Bill which sets at nought our ancient ideals of marriage altogether. With us, Sir, marriage is religion, and if the author of that famous book "Hindu Superiority" condescends to persist in setting at nought all the religious injunctions and the Shastras, I must say that his fall has been very great. Sir, it pains me to think of his fall. As I have said, the Shastric injunctions are

clear; pre-puberty marriage and early post-puberty consummation are ordained by the Shastras. In this connection I might also remind the House that there are certain texts from various Smrithi writers which are here and there relied upon by the Honourable Mover in support of the position that he has taken. I admit that in the texts of the Smrithis we do find passages which, on the one hand invariably persist in maintaining that marriage ought to be performed before the girl attains her age, but in only one sloka of Manu there is a passage that if the girl having attained the age has not been given in marriage in time by her parents or guardian, they can choose for her a husband within three years, and if even then her parents and guardians do not do it, she can choose her own husband. There is no doubt of the existence of this text. Upon this text the interpretation is this, "Look here. The Smrithi writers certainly accept the position that even post-puberty marriages are allowed." Sir, the interpretation of statutes we know, we lawyers are familiar with. If there is an apparent conflict, and I appeal to my Honourable friend the Law Member, if there is a conflict of texts, the best thing is to reconcile the texts, and not to emphasise the conflict—there cannot be conflict. If all of them have the same end in view, real conflict there cannot be, apparently there may be a conflict. If there is a conflict, we must try to reconcile them. Our Shastras invariably enjoin pre-puberty marriages as the ordinary rule. Now, there are two aspects; there is the material aspect of marriage, sonship, inheritance, etc., etc.; there is the spiritual outlook also. If, in addition to the material advantage, you must also have the spiritual outlook in view, then marriages must be pre-puberty. That is the general rule. If the girl remains unmarried owing to

causes beyond the control of the girl, she commits no sin by remaining a spinster. She is entirely under the control and guidance of her guardians for the time being, and if for some mistake, or inadvertence, or owing to other causes, she could not be given in marriage earlier, she can wait for three years and then she can marry herself. Thereby her marriage is legalised for all material purposes—her sonship is recognised for the purpose of inheritance, etc., etc., but the spiritual advantage is gone. She has not committed any sin because other people are guilty of having omitted to give her in marriage in proper time. That is the only way in which these two apparently conflicting texts can be reconciled, and I submit to the House that these texts would not by themselves give any handle or ground whatsoever to the Honourable Mover to persist in his interpretation of them by saying, "Look here, there is a text which apparently authorises marriage which apparently sanctions marriage postpuberty." It does not sanction the marriage for spiritual purpose because for spiritual outlook *Samskara* is ordained, and the only way to reconcile these texts would be this and nothing else. If material and spiritual outlooks are necessary, pre-puberty marriage is ordained, but if, owing to inadvertence, etc., pre-puberty marriage becomes impossible, then the marriage is recognised legally with reference to sonship, succession, inheritance, etc. The Smrithis are therefore clear. If the social reformers or those who have lost faith in our Hindu Shastras do really believe that this state of things ought not to continue, they have no reason to wound the susceptibilities of their brethren in this country. Either they are in the majority or they are in the minority. If they are in the majority, no statute is necessary. If they are in the minority, they

cannot force their fashoinable fads down the throats of unwilling men simply because they have lost all faith in the Shastras. It is no good, therefore, to force certain texts out of the context and then try to misinterpret them to give a handle or to give support for certain imaginary positions,

The whole thing considered, I think there is no parallel in the civilised world for inflicting punishment on marriage which is valid in law, ordained by religion and sanctioned by immemorial usage.

We are also told in season and out of season,

“Look here. Other countries have moved far ahead. They have got similar marriage laws passed by their legislatures. Why not in India too?”

Sir, our lives, our visions, our standards are entirely different. Is there any parallel anywhere in the civilised world which has got this outlook on marriage which we Indians have? If that is the distinction between the outlook of other civilised countries and the outlook which we Indians are accustomed to from very far off times, that clearly is a ground why we should not apishly follow what is going on in the countries of the West. If one instance can be given of similar conditions obtaining where legislation has been attempted, then I can take that as a precedent, otherwise not. It is no good, therefore, advancing the argument that other countries are moving in this direction and why not we also,

The question, then, that arises is who are the best judges to remove the defects.....

**Mr. President:** Will the Honourable Member now conclude his observations?

**Mr. M. S. Sesha Ayyanger:** Very well, Sir, I am not going to repeat my arguments; in fact, I am not accustomed to repeat them at all. I assure you that I won't repeat one word or one argument that I have advanced. The question will be, who are the best judges to find out what really pinches this country; what really is necessary, what remedial measures, if at all, are necessary. The best judges are not the laymen who are at it, are not the Brahma Samajists who are not Hindus according to ancient ideals, nor the Arya Samajists, nor the Theosophists, but the real judges who are competent to judge of the effect of this law upon our customs in this country would be our spiritual heads in the first place.

**Mr. Amar Nath Dutt:** Sir James Creer or Rai Sahib Harbilas Sarda?

**Mr. M. S. Sesha Ayyanger:** We Indians have got several sects and each sect has got its own spiritual head. To-day there are these sects or associations working, over which the Archbishop so to say presides. We have the Sankaracharya Mutt, we have the Dwaita Mutt and we have the Visishta Dwaita Mutt. The Sankaracharya of the Adwaita Mutt has given his opinion in this matter, and that is recorded in one of the petitions sent to us. This is from Sri Sankaracharya Swamigal Mutt and dated the 15th February 1928. Their opinion is this:

"The proposed legislation is clearly against the religious tenets and principles of Brahmins, which every orthodox Brahmin ardently believes and follows. While even a permissive measure of this kind is calculated to disturb the religious and social amity of the community, a penalising legislation such as the one now proposed is, to say the

least, most unwarranted and unjust and ought not under any circumstances be permitted to become law."

Then it is stated that,

"The Bill introduced by Harbilas Sarda is in direct opposition to the sacred principles of Hindu religion practised by the orthodox Brahmin community from time immemorial without any interference till the present moment".

That, Sir, is the considered opinion of the spiritual head of the Sri Sankaracharya Swamigal Mutt, which has got disciples all over India and commands immense influence among its followers.

Then there is the Ahobilum Mutt. It has also got disciples all over India. This is the *Mutt* to which I have the proud privilege to belong and this *Mutt* has given this opinion :

"Marriage among Hindus is not a civil contract even when the parties to the marriage possess full contractual capacity, but a religious sacrament; in the case of girls it is a samskara enjoined by the Sastras to be performed before the girls attain a certain age. The non-performance of the samskara is a transgression and is believed to be productive of spiritual ruin. .... The policy of the so-called social reformers who pilot the Child Marriage Bill is short-sighted and cannot therefore be accepted by the Government as a wise course to follow. The one aim of these reformers is material prosperity of the country..... They are totally ignorant of the virtues of the rules of conduct laid down in the Shastras and of the spiritual efficacy which our customs and practices possess. In the Hindu mind is implanted a firm and unshaken faith in those rules and customs, and no Westernised savant can eradicate it without injuring the society which he wants to help."

Then, Sir, there is the Udipi Mutt. The Swamiji of this Mutt actually presided over the Varnashrama

Dharma Conference held in March last in Madras and he helped the Conference with his guidance and advice and he also came to the conclusion that the Bill is opposed to the Hindu Shastras altogether. Then there is the Prathivadi Bhayankar Mutt of Bombay, which has also a large following.

**Mr. Jamnadas M. Mehta:** How many followers?

**Mr. M. S. Sesa Ayyangar:** I am told not less than two lakhs of followers.

**Mr. Jamnadas M. Mehta:** Out of two crores?

**Mr. M. S. Sesa Ayyangar:** Anyway he has got two lakhs of followers, and commands a large following in Bombay, and if he is not able to command such a large following as the other two Mutts whose opinions I have quoted, there is no reason why the opinion of this Mutt should not be entitled to weight. The head of this Mutt also distinctly says that the Bill is opposed to the Hindu Shastras. If the Bill is passed into law, it will prove to be a calamity to the Hindu community and not a blessing. That is his opinion. Then again "According to Hindu Shastras a marriage cannot be dissolved." The Mutt also questions the competence of this Legislature to pass a law of this kind. I am only concerned here with the point that he also is of opinion that this Bill affects Hindu society, and that it is against the Hindu shastras.

**Mr. President:** I think the Honourable Member must now give a chance to the next speaker.

**Mr. M. S. Sesa Ayyangar:** In addition to this, there are various conferences in my part of the country and also throughout India—in Benares, Calcutta and other



places. In the districts of the Madras Province several conferences have been held and several memorials have been sent. I would instance principally the All-India Conference held at Benares. In fact, I think all the leading communities of this country have raised their voice of protest. I submit that the main objections to this Bill resolve themselves into 12 or 13. I would simply mention them categorically. The Bill destroys the foundations of Hindu society because marriage is religion. It creates a conflict between positive and religious law. It is against custom, long established and widely prevalent. Marriage is not only permitted but enjoined. The orthodox far outnumber the heterodox reformers. There is no mandate or demand from the communities affected. The Bill will inflict untold miseries upon millions of people all for a fashionable fad of social reformers. To say that the human species is unfit for matrimony before 18 and 14 is a mere fad. It is not an established fact and it is opposed to biological science. Medical experts are agreed in thinking that it is difficult to fix the age and that it involves immodest examination and interrogation. Those most competent to speak are arraigned as accused. Early marriage by itself is not an evil requiring legislative interference and the "enlightened individuals" should not force their views upon the unwilling many. According to Havelock Ellis, marriage legislation is unnatural. Sir, I would not encroach upon the time of other members, but I would confine myself to one or two medical opinions which have a bearing upon this matter. The usual grounds upon which this Bill is made to rest are the fundamental grounds that early marriages produce sickly children and cause infantile mortality. I shall produce the opinion of two experts. Dr. C. A. Bentley, Director of Public Health,

Bengal, attributed the abnormal death rate among children under fifteen in Bengal chiefly to want of a good and nourishing diet and Colonel Mac Taggart also mentions that the only potent cause which really accounts for this heavy mortality is the want of nourishing diet. In Europe, where it was very high, although no child marriage existed, it was brought down by the amelioration of the economic and sanitary condition of the people. Then in the Census Report of India for 1921, it is mentioned that in Burma, where there is no child marriage, the infantile death rate is greater than that of Bihar and Orissa, which is the most early married part of India. Then, though Europeans have a general prejudice against child marriages, we find the following in page 303 of the Census Commissioner's report:

"In spite of the general prevalence of early marriages, the percentage of feminine mortality to male mortality is 89 in Behar, 91·2 in Bengal as against 90·5, the average in Europe. Behar is the most early married part of India. .... The Hindu woman's chances of life are better than those enjoyed by the adherents of any other religion, male or female. .... In point of longevity there is little difference between Muhammadan and Hindu males. But Hindu women appear to live longer than their Muhammadan sisters though the proportion of Muhammadan females married below the age of ten is half and that between 10 and 15 is three-fourths of that of the Hindus."

Sir, there is another point upon which this Bill is made to rest, and it is that there is not sufficient growth of physical development of the children, and that consummation during immaturity is improper. That assumes that there is a relationship between the growth of the body and its healthy reproductive capacity. That

is an assumption which is in itself unwarranted. Dr. Weissman, the celebrated German biologist, found that the reproductive cells are independent of the somatic cells which build up the body. If the mother is weak and sickly, the growth of the germ cells is arrested, and this would be so whether the parents are young or old. In Nature we do not find reproduction commencing after the cessation of growth, for example, animals and plants. The capacity to bear children begins and ends with catamenia. Its commencement is Nature's sign that the reproductive organs are now fit to perform their function. When sex attraction and craving commence, that is a natural indication that girls are now fit to be mothers. I submit, Sir, under the circumstances, to intervene arbitrarily and fix an age arbitrarily would be absolutely unwarrantable, regard being had to high medical opinion. Lastly, Sir, it has been found that early pregnancy yields good result. One of the greatest authorities on sexual matters, Havelock Ellis, says in "Studies in the Psychology of Sex", page 6:

"Wide observation supports the Hindu view that girls become fit to be mothers on the first onset of menstruation."

Ellen Key, a prominent leader of the feminine movement, advocating free love, free divorce and motherhood without marriage observes:

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

If this House will consider the verdict of the medical world, I would ask this House to pause before it gives its assent to the Bill.

**The Honourable Sir James Crerar (Home Member):** Sir though my original intention was to deal somewhat more fully with the grave issues which are before this House, in view more particularly of what fell from you, Sir, in regard to the course of the debate, I am reluctant to encroach unduly upon the opportunities which other Honourable gentlemen may desire to have to intervene in this important debate; and I shall therefore, in what I have to say, confine myself to the fewest issues and the fewest words possible. I desire, Sir, in the first instance, to re-affirm what I have already on more than one occasion affirmed in this House, that this measure has the most cordial sympathy and the strongest support of Government. (Loud applause.) The Honourable Mover has on a previous occasion been good enough to acknowledge that Government and the officers of Government have given him material assistance in the formulation and in the promotion of his measure. I thank him for the acknowledgment, but that indeed, Sir, is no more than the truth; and I should like to add this, that if Rai Sahib Harbilas Sarada has the satisfaction of seeing this measure placed upon the Statute-book during the course of this Session, I hope to be one of the very first to congratulate him upon that happy consummation. I understood the Honourable Member from Madras, Mr. Acharya, to do me the honour of quoting me in more than one passage in a sense which, if I have understood him correctly, represented me and the Government of India as advocates of the doctrine of leaving things as they are, of the practice of being purblind to facts, and of being slow to take or to assist in any remedy that may be proposed. On the other hand, the Honourable gentleman opposite, Mr. Amar Nath Dutt, charged me and Government with a totally

different offence. In respect of the attitude and conduct of Government with regard to this Bill, he charged us with the sinister and Machiavellian design of instigating and inspiring this measure with the object of promoting discord among different classes of His Majesty's subjects in India. May I remind the Honourable Member that on the first occasion when this Bill was debated in this House, and on subsequent occasions, three of the most strenuous advocates of the measure were the Deputy Leader of the Congress Party, the late Lala Lajpat Rai and my Honourable and learned friend from Bombay, Mr. Jayakar, whom I am glad to see in our midst to-day. Is the charge then, Sir, credible that Government, with a design so sinister, succeeded in having on their side champions so redoubtable? The real truth, Sir, with regard to the attitude of Government in this matter, as in other matters of social legislation, is one which I think I may state in a few words. It occupies, I frankly admit, a middle course. I suggest, indeed I most strenuously contend, that in the extreme of rash, hasty and intemperate legislation and the opposite extreme of obscurantism and purblind conservatism the dangers which lie are hardly distinguishable in their magnitude. What I have always contended for is that, if important projects of social legislation are to be undertaken as they must be undertaken, it should be after a careful and deliberate examination of the evils which you are endeavouring to correct, and after the fullest ventilation and consultation of public opinion; and that in matters of that kind we should make every possible endeavour to ensure that, behind such measures as we undertake, we should have that degree of public support which is in fact essential to the effective administration of any legislation in such matters.

Now, Sir, when, in the last Session of this Assembly, Government supported the motion for postponement of the consideration of this Bill, we were exposed to a great deal of misrepresentation and blame. At the time I confess I was very sensitive to that criticism. But the reason which was then propounded as the reason for postponement of discussion was that a committee of inquiry was then on foot, which would probably find it necessary to consider, as an incidental though a very important incidental inquiry, the subject-matter of this Bill. I hoped, Sir, that the inquiries of that Committee would have the effect of concentrating public opinion upon this grave and important issue, that it would give the amplest opportunity for opinion of every grade of every complexion to express itself, and that we should have the considered opinion of that Committee if we in this House were to resume consideration of this measure. Now, Sir, I venture to say that every one of these anticipations has been fully realised. I say that the country is now more alive to the gravity of the evils with which this Bill is intended to deal. I say that public opinion has had very ample opportunity of expressing itself, and that the committee have taken the amplest opportunity of considering and weighing that opinion in framing their recommendations and, as a result, much valuable and additional material is now before the House. An Honourable Member, I think it was Mr. Acharya, contended that the Committee was not a representative Committee. Sir, I do not think that any Honourable Member who takes the trouble to read and study that Report with the care and attention which it deserves, can fail to recognise or be compelled to admit that it constitutes a landmark, and I hope and trust a landmark of advance,

in the controversy with which it deals. (Hear, hear.) I maintain, Sir, that the Committee was representative; it was representative of different classes and different races in this country. I contend that it had a high measure of the legal, the administrative and the medical qualifications which are most essential qualifications for the consideration of this question. And I am the more surprised that the Honourable Member should have so disparaged the qualifications of the Committee when it appeared that his immediate purpose was to demand a longer time for the consideration of its recommendations. Sir, I repeat that in my opinion—and I think it will be the opinion of every one who, without prejudice and with adequate care, reads, re-peruses and studies that Report,—Sir Moropant Joshi and his colleagues on that Committee have rendered a very great public service for which the gratitude of this House and the country is due. (Applause.) And, Sir, what is the first conclusion that can reasonably be drawn from the contents of that Report? The first and the most reasonable conclusion, the inevitable conclusion in reference to the particular contents of this Bill, is that there exists a great and a corroding evil in this country which is clamorous for a remedy. That evil, Sir, is one which afflicts, in the first instance, the most defenceless, innocent section of the community those who have the greatest claims for our protection. The evil is not only limited to that. It is not merely the large number of young girls who year by year either die or sustain serious bodily injury, but those who are acquainted with the case, those who have studied the evidence, those more particularly who have come into contact with the practical facts and the practical consequences, cannot contemplate them without—I put it no higher than this—

the most serious searchings of mind, heart and conscience. (Hear, hear.) It is not merely that generation after generation of young girls should be exposed to or should suffer from these evils, but there are dangers to the future generations of the country from which, if the country is not willing to adopt a remedy, it will undoubtedly suffer in its most vital and important interests.

Well, Sir, when I have said so much, I do not desire it to be understood that I in any way underestimate or depreciate the earnestness and the sincerity of the opposition to this Bill. I do so fully and frankly, and I do feel this, that any measure which modifies the law in a social matter, any measure which it is anticipated will disturb the customs and habits of long duration, is one which for a time will naturally provoke a large measure of opposition. But I hope myself, Sir, that the improvements in these matters which we have reason to hope will result from this Bill will in course of time—and I hope in no long time—reconcile to the principle of this Bill and to its practical application even the most stringent opposition with which the measure is at present confronted. At any rate, Sir, I wish to make my position, the position of Government perfectly clear beyond any shadow of doubt. It is this. We are convinced that this evil exists; we are convinced that the measure of Rai Sahib Harbilas Sarda is, at any rate, a first step in the direction of seeking a practical remedy. Where we find so great an evil and where we find a promising remedy, we feel that we must support what we think to be right. I trust, Sir, the great majority of this House will concur in that view. I trust they will concur in the view that this measure is a measure in the right direction and that it is their duty to support it with their suffrage. (Applause.)



## APPENDIX D. (1)

### THE ASSEMBLY DEBATES.

**Rai Sahib Harbilas Sarda** (Ajmer-Merwara : General): I rise to move that the Bill, as amended by the Select Committee, be passed. In doing so, I do not propose to traverse the whole ground covered by the Honourable Members in this House during the seven days debate this Session.

As regards the religious aspect of the question, I would only say that the Vedas are the highest religious authority amongst the Hindus and the Vedas inculcate adult marriage. (*Some Honourable Member*: "No".) They do, the Vedas,—Rig Veda and Atharva Veda,—say that brides should choose their husbands, and no girl of 1, 2, or 3 or 8 is in a position to choose her husband.

\* \* \* \* \*

I was saying, Sir, that the Vedas inculcate adult marriage. Dr. Moonje has stated that the Shastras in different times prescribed 12, 14 and 16 years as the marriageable age for girls. He has divided India into two parts, Southern and Northern India, and by some manipulation of medical topography,—because he is a doctor,—he has included Bengal in Southern India. Now, as regards the Madras Presidency, the collection of opinions which the Government have received clearly shows that the Madras Presidency is in favour of the Bill. 97 per cent. of the people of that Presidency are non-Brahmins.

**Mr. M. K. Acharya** (South Arcot *cum* Chingleput : Non-Muhammadan Rural) : No.

**Rai Sahib Harbilas Sarda** : If my friend is prepared to throw overboard everything that is authoritative, the Census Reports and others, he is at liberty to do so. 97 per cent. of the population unanimously supports the Bill, and of the remaining 3 per cent., the opinions show that a majority of them are in favour of the Bill. I will give you one instance. Mr. Williams, Joint Magistrate at Guntur, says that he consulted 22 respectable people of the district and of these 22, 13 were Brahmins. Of the 13, only 3 were against the Bill, and 10 were in favour of it. Sir, I am receiving telegrams daily from every part of the Madras Presidency demanding that the Bill be passed at once. I will refer to only one of them. It is about a meeting promoted by Sir Sivaswamy Aiyer and Dewan Bahadur Rangachariar. Both these Brahmin gentlemen are well known to Members of this House. A public meeting was held under the presidency of Sir Sivaswamy Aiyer and a resolution was passed that the Bill should be passed at once, and the telegram says that this was attended by many orthodox Brahmins. It reads :

"To-day's public meeting presided over by Sir P. S. Sivaswamy Ayer and led by Diwan Bahadur Rangachariar, the Honourable V. Ramdas, T. R. Venkatrama Sastri and other Brahmin orthodox leaders have accorded its whole-hearted support to the policy and principles of the Child Marriage Bill."

But the complete crushing answer to the opponents' objection is the fact that the Madras Legislative Council has unanimously passed the following Resolution :

"This Council recommends to Government that it may be pleased to communicate to the Government of India that, in the

opinion of this Council, legislation raising the marriageable age of boys and girls to at least 21 and 16, respectively, is necessary."

There was not one single dissentient voice, though there are many eminent Brahmins as Members of the Council.

As regards Bengal, much has been made of the fact that the Provincial Hindu Conference at Dacca refused to accord its support to this Bill. Those who are acquainted with the circumstances of that Conference know the peculiar condition in which this was done. But, here is the opinion of the Bengal Provincial Hindu Sabha. The Secretary of the Provincial Bengal Hindu Sabha wires:

"Bengal Provincial Hindu Sabha in general meeting unanimously passed resolution supporting Sarda Bill."

And my Honourable friend, Dr. Moonje, the President of the All-India Hindu Mahasabha, will not disown the Bengal Provincial Hindu Sabha. The telegrams which I have received every day, almost every hour, during the last few days that meetings have been held in different towns of Bengal and many by ladies in Eastern Bengal and all unanimously demand that the Bill should be passed, and say that those who say that East Bengal does not want the Bill, do not represent the opinion of that province. (Hear, hear.) I have received telegrams from almost every part of India, Sir, asking when the Bill is going to be passed. They show that people in the different parts of India are anxiously waiting to see that the Bill is passed.

Sir, I come now to the charge brought against me by my Honourable friend, Mr. Kelkar. Speaking on the

amendment of the Honourable Pandit Nilakantha Das for making exemptions in cases involving hardship, he said :

“ That first point is this that this was an idea originally embodied in Mr. Sarda's own Bill when it was first introduced. I do not think he will deny it, if I put it to him. The Honourable Member unfortunately is in the hands of the Select Committee. If he has convictions of his own, he will stand up and say, 'I accept this amendment, whatever the fate of other amendments.' I cannot sympathise with him over this matter when he is going against his own convictions by not supporting this amendment.”

My answer to my Honourable friend is : I deny that this idea as supposed by Mr. Kelkar was embodied in the original Bill. I deny that I am going against my convictions. My Honourable friend was not right in saying that, if I had any convictions of my own, I would have accepted the amendment. There is no connection whatever between the amendment proposed by the Honourable Pandit Nilakantha Das and the provision which I made in clause 6 of my Bill. That clause reads as follows :

“ The Magistrate of the district shall grant a licence for the marriage of a Hindu girl to her guardian, who files a written application for the grant of such licence with an affidavit swearing to the fact that the girl has completed her eleventh year, and that the guardian *conscientiously believes that the tenets of the religion which the girl professes enjoin that the girl should not be kept unmarried any longer.*”

This clause, Sir, provides for the conscientious objector. The objection is founded on religious tenets. The amendment supported by Mr. Kelkar has nothing to do with the “ conscientious objector.” It provides for cases in which guardians are compelled to solemnise a

marriage the non-performance of which would involve a hardship to the girl or her family. Hardship to the girl or to the family, for instance, the illness of a guardian or the lack of means, is certainly not the same thing as a conscientious objection. I am sure, Sir, that had it not been for the annoyance caused to my Honourable friend by the House summarily rejecting all his amendments, or had he had the provision of my Bill, which I have just quoted, before him at the time he was speaking, he would not have been unfair to me. He has to-day objected, Sir, that Government gave me several days which were reserved for official business for this Bill and that this was a very peculiar thing and was not warranted. Probably, the Honourable Member will remember that when during the last Session Government voted for the postponement of this Bill, they promised the House that in the Autumn Simla Session they would *provide sufficient time* for the passing of this Bill and would place at the disposal of the House as many days as necessary in order to see that this Bill was passed. No one can therefore complain that Government, in fulfilment of that promise, are giving all the facilities necessary for the passing of this Bill.

A word, Sir, with regard to what fell from the Honourable Pandit Madan Mohan Malaviya. Sir, he is the Leader of the Party to which I belong. I have the highest respect for him, as I am sure every body else in the House has, for his high sense of duty and sincerity of purpose, his undoubted patriotism, and for the great services he has rendered to this country. It gives me pain to differ from him. It was a little disappointing to see him use all those great oratorical gift

with which God has endowed him in support of a dialtury motion. And only the other day in mellifluous accents, in those soft, persuasive tones, so characteristic of him and which we all admire, he moved for lowering the marriageable age of girls. Much as I should like to follow him, Sir, I feel that more powerful than his eloquence are the tears of the child widows, the woes of the child wives, the sufferings of the victims of this evil custom that call for justice and that beckon us to the path where lies our duty to the women of our country and our motherland. It is, however, a matter of some satisfaction that I do not differ from him in this Bill on any important matter of principle. He supports the Bill; he does not want that the Bill should be wrecked, he wants that it should be passed. He only differs in a matter of detail; he wants that the minimum marriageable age of girls which is fixed in this Bill at fourteen should be reduced to twelve.

Sir, he said the other day that for the first time in the history of the world penal legislation in respect of the marriage age was being passed in this country. Is this, Sir, not a concession to orthodox opinion? When the Bill was first introduced, no penal clauses were attached to it. But the orthodox people would not have it. In other countries where marriage legislation has been enacted, the legislation is far more drastic. In those countries, marriages contracted below the minimum marriageable age are void. It is not so in this country. Even when this Bill is passed, the marriages of girls of two and three and eight will still remain marriages, and will not be held to be void, which is not the case in other countries. Consequently, Sir, it serves no purpose to compare the marriageable age

fixed in this Bill with the marriageable ages fixed in other countries.

It is a matter of satisfaction, Sir, that all the Honourable Members of this House recognise the evil of child marriage. There may be difference of opinion with regard to the method to be pursued, and the measures to be employed to remedy this evil.

A request was made by one of the Honourable Members that Government should not vote for the Bill but should remain neutral. That request, Sir, is tantamount to a demand that Government should not perform its primary function, which as everybody knows is to protect an individual or a class of its subjects from the invasion of his or its rights by another; and, Sir, when Government finds that this evil exists on a very large scale, Government is bound to interfere. The Honourable the Home Member in the brilliant speech which he delivered on the 4th September in this Assembly on this Bill said:

“The first and the most reasonable conclusion, the inevitable conclusion in reference to the particular contents of this Bill, is that there exists a great and a corroding evil in this country which is clamorous for a remedy. That evil, Sir, is one which afflicts, in the first instance, the most defenceless, innocent section of the community, those who have the greatest claims for our protection. The evil is not only limited to that. It is not merely the large number of young girls who year by year either die or sustain serious bodily injury; but those who are acquainted with the case, those who have studied the evidence, those more particularly who have come into contact with the practical facts and the practical consequences, cannot contemplate them without—I put it no higher than this—the most serious searchings of mind, heart and conscience. It is not merely that generation

after generation of young girls should be exposed to or should suffer from these evils, but there are dangers to the future generations of the country from which, if the country is not willing to adopt a remedy, it will undoubtedly suffer in its most vital and important interests."

And he concluded by saying :

" We are convinced that this evil exists ; we are convinced that the measure of Rai Sahib Harbilas Sarda is, at any rate, a first step in the direction of seeking a practical remedy. Where we find so great an evil and where we find a promising remedy, we feel that we must support what we think to be right. I trust, Sir, the great majority of this House will concur in that view. I trust they will concur in the view that this measure is a measure in the right direction and that it is their duty to support it with their suffrage."

I take this opportunity to offer my grateful thanks to the Honourable Sir James Crerar for the very eloquent, able and closely reasoned speech in which he announced the fullest support of Government to this measure. That announcement has been received from one end of the country to the other with satisfaction and thankfulness. (*A voice*: "With horror"). It reminds me of a line of Shakespeare. The greatest of the poets says :

"That the divine quality of mercy is doubly blessed: it blesseth him who gives as well as him who takes."

The support of Government to this measure is also doubly helpful—it will help the people to get rid of a widespread and a corroding evil, and it will also help Government inasmuch as it will strengthen the bonds between the Government and the people, as the people think that the Government is trying to help them in remedying this evil. In giving this support, the



Honourable Sir James Crerar has therefore done a service to the Government.

Sir, in order to show with what intense anxiety and almost breathless suspense, people in different provinces of India are waiting to see this Bill passed into law, I will read a few lines from a telegram which I have received. It is from Montgomery. Rai Bahadur Ram Rakha Mal wires :

" Kindly accept and convey all concerned sincerest gratitude and congratulations on Government's just wise support for wealth and honour, may, life-giving and nation-building Sarda Bill, for which millions helpless minor daughters, sisters and sons now sacrificed at altar of superstition like old *Suttee* will bless all supporters for saving them from ruination by atrocities on minors which are cognizable offences like grievous hurt or rape under every civilized constitution."

Then he goes on to say that he is sending a cheque of Rs. 500 for a certain purpose.

**Several Honourable Members :** What purpose ?

**The Honourable Sir James Crerar (Home Member) :** May I say, Sir, that I have returned the cheque with many thanks for the donor's intentions.

**Rai Sahib Harbilas Sarda :** He says that the names of all supporters to this Bill should be engraved on a column in the Assembly. That is, however, a matter with which I have no concern. I have quoted the telegram to show that the country appreciates the support given by Government to the Bill.

This Bill, Sir, is a very moderate and a very mild measure. Moderate as it is, it will go a long way to rehabilitate this country in the world opinion. Only the other day, we read a telegram published in the *Pioneer*

and other papers saying that the *Observer* of London, a powerful paper, says that the welcome given to the Child Marriage Bill in the Assembly shows that a new India is in the making. In this connection, Sir, I will read to the House a passage which gives the opinion of one who is entitled to the highest respect and consideration. That passage will show that child marriage and forced widowhood, *pardah* and other similar customs have been reacting against the liberties of our nation. I read from a book called "The India we served", by Sir Walter R. Lawrence, where he describes an interview between the Prince of Wales and Mr. Gokhale :

"Mr. Gokhale was the ablest Indian of his time. He was just then President of the Indian Congress and was newly arrived from Benares, where he had made an important speech which had interested the Prince. 'I gather', said the Prince, 'that you think that the people of India would be happier if they were governed by Indians rather than by the British. I may be wrong, for I can only read by their eyes, but my impression is that the people I have seen are fairly happy. Are you sure that they would be happier if you changed the present system of Government?' 'I cannot say, Sir, that they would be happier, but at any rate they would feel a pride in thinking that they were managing their own affairs, and taking their place among the self respecting nations of the world.' 'Ah,' said the Prince, 'I can quite understand that ambition, but how can you achieve this while the women of India remain as they are at present in the unenlightened dark background?' Mr. Gokhale admitted that this was the blot, the weak point in the Progressive Programme."

This Bill, Sir, is the first step towards removing that blot. The Prince of Wales is now our King-Emperor. In conclusion, I ask the Honourable Members to remember the times we are living in and act accord-

ingly. When India was self-contained, when it was more or less isolated, when steamships, telegraphs, railways and airships had not conquered distances and broken the barriers, behind which India lived a sheltered and independent life, when these had not pulled her out of her isolation into the full blaze of publicity and exposed her to force emanating from all quarters of the world, much of what is evil passed without doing her serious material or moral injury. But things have changed now and the impact of foreign influences is not only disintegrating our life but, unless we fortify ourselves with all the strength that we can command and get rid of the evils which are eating into the vitals of our nation, they will shatter our society into pieces. It is absolutely necessary that every man, woman and child in this country should grow to his or her full growth and be able to work without shackles for the good of the country till we reach the goal which we have set before ourselves. I beg you gentlemen to brush aside all objections, sacerdotal or profane, ancient or modern, based on tradition or custom which stint our growth, or stand in the way of our achieving our goal. Listen not, gentlemen, to antediluvian notions which have spent their force; stick not to the worn out dead ideas, but live in the present, the living present, and fix your eyes steadfastly on the future, the glorious future of our country which we must achieve if we are to prove ourselves true and worthy offspring of our worthy forefathers, whose bones lie mingled in the dust of our sacred land and call upon us to uplift our country from the slough of degradation, wretchedness and slavery into which our own deeds, our own sins of commission and omission have thrown her.

Sir, I move that this Bill be passed.

**Maulvi Sayyid Murtuza Saheb Bahadur (South Madras: Muhammadan):** Sir, seeing that a mighty drama has been enacted in this House in connection with this Bill, the Government being the chief actors thereof, I do not propose to inflict any speech on the House, but I want to make a statement on behalf of the elected Muslim Members who are dead against the Bill which undoubtedly tampers with our personal law. We are fully convinced that this measure, if passed by a non-Muslim majority, will be an infringement of our *shariat* (Islamic law) which we regard as more important than any legislation made by this House. In this connection, I cannot help expressing the view that we are being subjected to the tyranny of the majority in this House. Need I bring to your notice, Sir, that when I rose to meet the arguments put forward by my honourable friend Mr. Shervani, and to explain to him and to the House the religious point of view, an additional dramatic turn was taken.....

**Mr. President:** Order, order. The Honourable Member is not entitled to reflect on the vote of this House, namely, the acceptance of closure by this House.

**Maulvi Sayyid Murtuza Saheb Bahadur:** There can be no Parliamentary objection, Sir.

**Pandit Madan Mohan Malaviya (Allahabad and Jhansi Divisions: Non-Muhammadan Rural):** Any Member of the House is entitled to express his opinion upon a decision of this House. I do not think it is wrong.

**Mr. President:** It is the rule of Parliamentary practice that no Member is entitled to reflect on the vote of the House.

**Pandit Madan Mohan Malaviya** : I submit that that should not be the practice of this House.

**Maulvi Sayyid Murtuza Saheb Bahadur** : I wanted simply to refer to the fact that an additional dramatic turn was given by the part which the Government played in successfully making Mr. K. Ahmed a tool in their hands. (Laughter.) I do not criticise the decision of this House. I am only criticising the action taken by the Government. The Government have already treated our oral and written representations with contempt, and they have displayed a spirit of intolerance by carrying the motion for closure and thus depriving the Muslim Members of the right of expressing their opinion on such a momentous question, that too, knowing full well that an overwhelming majority of the Muslim public is opposed to the Bill. We have therefore decided that the only self-respecting course open to us is not to take any part in the further discussion either by speeches or by votes, but to allow the Government to carry the day with them in the teeth of Muslim public opposition. Before concluding my remarks, Sir, I will quote one couplet of that famous Persian Poet, Saadi, who says :

*"Ai zabardast zairdast azar  
Garm to kai bimanad een bazaar,"*

which, when translated, means.

"Oh! tyrant, you take delight in oppressing the helpless who are now under you. You should realise that this kind of business, this state of affairs cannot be kept up long". (Hear, hear.)

With these remarks, Sir, I beg your permission to withdraw myself from the Chamber for the present.

(The Honourable Member then walked out of the Chamber.)

**Sardar Kartar Singh (East Punjab: Sikh):** Sir, I rise to support the motion that the Bill be passed. Before submitting my reasons, I may at once clear the ground by saying that my community will remain substantially unaffected by the Bill, for in my province, *i.e.*, the Punjab, especially among the Sikh community to which I have the privilege to belong, post-puberty marriages are more common than child marriages, and my duty to my country in this connection is my only excuse for my participation in this debate. As a practical man concerned more with the hard facts of actual life than with an academic discussion of what our forefathers in the past considered to be right or proper according to the circumstances of the time in which they lived, I cannot but express my surprise that, in this House, gentlemen of erudition and learning who have always advocated the application of reason and rationalism to every measure that has come up here for discussion should have raised the cry of religion in danger against a measure which is intended to improve the race physically, morally and intellectually, and which is admitted on all hands to be necessary for this purpose on medical grounds. Sir, the world has had enough of the exploitation of the name of religion for maintaining the established order of things, and every rational society has come to one and the only proper conclusion that religion proper as distinguished from ceremonial and superstitions has really very little to do with matters of detail relating to secular life. I maintain, Sir, that in marriage matters, the only principle of religion involved is that sexual intercourse between persons not

married to each other is a sin. It necessarily follows therefore, that true religion prescribes restraint upon the gratification of sexual desire and it is, I humbly submit, nothing short of a perversion to exploit the name of religion for the purpose of enabling persons of undeveloped physique to indulge in this gratification, simply because the offsprings of child marriages attain precocious puberty. The question as to the age at which people should marry and other matters of detail such as prohibitive degrees and so on are mere matters of detail which every community and society has to decide in the light of reason and medical science and with which religion as such has, in my humble opinion, no real connection. I, therefore, submit that the cry of religion in danger has no force. I feel fortified in this view by the fact that I have been told by my Hindu and Muhammadan friends that neither the Vedas nor the Holy Koran say anything against post-puberty marriages; rather they favour such marriages.

**Pandit Nilakantha Das** (Orissa Division: Non-Muhammadan): Is not the Honourable Member criticising the decision of the House?

**Mr. President:** Order, order.

**Sardar Kartar Singh:** As far as Smritis are concerned, they cannot be said to contain the commandments of God, and it is also doubtful whether they can be looked upon as books of law as distinguished from mere compilations of custom in vogue at the time of their preparation. The point is however not of importance. The real point, as I have already submitted, is that, even if they are

supposed to contain laws, these laws have in my opinion outlived their utility, and a change in them is long over due, and as a matter of fact laws contained in the Smritis have on many points, particularly in regard to the succession, been long superseded by custom. I take this opportunity of reminding the Honourable Members of this House, and I take particular pride in this fact, that no culture in the world has probably produced more free thinkers than Hindu culture. In the domain of spiritual philosophy itself it has produced six different schools of thought. It is really surprising that the descendants of such free thinkers and tolerant people, even in matters relating to strict religion, should raise the cry of religion in danger against this Bill simply because some of the *Smrithikaras* considered it proper to enjoin pre-puberty marriages on account of the circumstances of the time in which they lived. The Bill therefore should be judged on its merits and not in the light of what is contained in the Smritis. The present Indian nation is perfectly entitled to have a Smrithi of its own according to modern conditions of the country.

As far as Islam is concerned, it is a clear principle of Muhammadan law that any pre-puberty marriage of a girl by a person other than her father or grandfather can be repudiated by her on attaining puberty unless she has already ratified it by consenting to consummation. I take it to mean that Islam is not in favour of pre-puberty marriages. It is true that father and grandfather have the power to give the girl in marriage before puberty, but this provision of Muhammadan Law is only an enabling one and does not enjoin the pre-puberty marriage of a girl on any father or grandfather. This



power was moreover given to them because they were considered to be the best custodians of the interests of their minor daughter or grand-daughter and was to be exercised in their interests. Experience has however shown that pre-puberty marriage is not in their interest and therefore any interdiction of them cannot be said to be opposed to true Islam.

Sir, I have so far made an attempt to show that this Bill, if passed into law, would not offend against any religion.

The next argument advanced is that the masses are not in favour of the Bill and that this House has no moral right to inflict it upon them and that its advocates are not their true representatives. My Honourable friend Mr. Belvi has even gone to the extent of indulging in a quotation from Burke and has compared them to half a dozen grasshoppers making a noise in the forest while the masses are compared to hundreds of big animals resting under the oak. Sir, we on this side of the House have been too long accustomed to hear an argument like this from the Treasury Benches in reply to our demand for political reforms to take it seriously. An argument like this is always advanced by the non-changers and should not deceive anybody as to its motive. Could slavery in England have been abolished if Parliament had decided to wait for a demand for its abolition from slave dealers before legislating on the point? Did the masses ever demand the abolition of Suttee and female infanticide, and did they ask for the creation of this House? Have they even now asked for further advance for the reforms? Do they know what Dominion Status is, which is at present the most lively political issue in the country? The answer must be an

emphatic No. Merged in ignorance and superstition they are not in a position to know what a baneful influence child marriage is exercising upon the development of the future generation, and they cannot therefore demand its abolition. It is for us and us alone to prevent them from doing what is baneful to themselves. It is not only in our power to do so but also our duty. In all climes and ages, reforms, whether social, political or economical, have always been demanded and introduced by men of light and learning, and it is idle to expect the contrary in the matter under discussion.

The Bill therefore should be considered, not from the point of view of the evil practice among the masses on the point at issue, but from the point of view of its utility to the people at large. And I have not yet heard a single word against its utility, except a hint from my Honourable friend Dr. Moonje that it might lead to an increase in abductions of minor girls. Even those gentlemen who have advocated the cause of child marriage are unanimously against pre-puberty consummation. I take it therefore to be the sense of the House that pre-puberty consummation should not be allowed. As a matter of fact the Indian Penal Code has raised the age of consent to 14 years and there does not seem to be any serious objection to its being further raised to 16. If that is so, I as a practical and commonsense Punjabee am unable to appreciate the insistence on pre-puberty marriage upon what appears to me to be merely sentimental grounds. This insistence ignores the fact that the performance of marriage before the age of consummation involves the risk of widowing the bride even before consummation in a society in which widow remarrige is not popular and is therefore capable of doing

a lot of harm to the country without any corresponding good. This point was certainly in favour of my friend Mr. Mukhtar Singh's amendment, but I have also to consider the fact that the present day boys and girls are the offsprings of child unions, and as such peculiarly prone to precocious puberty. I am therefore of opinion that it would not be safe in the present state of society to raise the marriageable age to 16 at once, and we must proceed cautiously in the matter. I have therefore decided to vote for the age fixed in the Bill itself, not because I consider it to be the ideal minimum but because I want to be cautious.

I do not propose to discuss the question of economic waste caused by early marriage, but cannot help submitting that they unduly interfere with the education of both boys and girls, which interference means a national loss.

Now I come to the question of abductions raised by my Honourable friend Dr. Moonje. He has not, in his speech, stated who the abductors are and what the causes of abduction are, and my Honourable friend will correct me if I am wrong, but I take it that the abductors belong to communities who do not practise early marriage and are therefore sexually and physically stronger than the males of the communities to which the abducted girls belong and which probably practise child marriage resulting in precocious puberty in females and sexual weakness in males. The only way to meet the evil is to remove the root cause, *viz.*, child marriage, and not to leave things as they are. Nor has my Honourable friend stated the percentage of child widows among the abducted girls, and I venture to think it must be fairly high. Prevent

child widowhood and precocious puberty among females and make the race physically stronger by raising the marriageable age and the abductions will automatically cease. The abductions referred to by him therefore are in my opinion a further and stronger argument in favour of this Bill.

My friend Dr. Moonje wants Indians to be a self-reliant nation. He wants that Indians should be made fit for military service and that they should be given military training. He also wants that the military schools at Jhelum and Jullundur should be thrown open to all Indian boys, irrespective of the fact whether they be sons of Indian soldiers or not. May I ask him if he expects that the products of child marriages could ever be efficient officers in the Army? If he wants that Indians should become fit to defend their country and if he wants the future generations to be strong and healthy, he should support the age given in the Bill. As an experienced medical man, he has told us that girls should not become mothers before they are 16 years old. Then he should rise equal to the occasion and vote for 14 as the minimum marriageable age for the girls.

The only other point to which I should like to refer is that some Honourable Members have, in a bantering tone, asked the advocates of the Bill whether they want to follow Eastern or Western culture in its entirety. While doing so, they probably wanted to convey a warning against what they believe to be the craze for an apish imitation of Western life. My reply is that no society contains only angels and therefore none is free from defects. Abuse is no argument, and to adopt such a course serves no useful purpose. Instead of wasting time in such scurrilous attacks upon each other, retain

what is best in Indian culture and supplement it by what is best in the other.

With these remarks I do whole-heartedly support the motion that the Bill be passed.

**Mr. B. P. Naidu** (Guntur *cum* Nellore : Non-Muhamadan Rural) : Sir, I feel not a little nervous to speak on this occasion, for mine is a cry in the wilderness. We are about to place on the Statute-book a piece of legislation which is acknowledged to be the first large step in social reform in this country. This legislation has had a chequered career. It began with eleven years as the age limit and it is about to end with fourteen years. It began as a civil law, but it is to end as a criminal law. So, whichever way you look at it, it is an extraordinary piece of legislation, which is going to affect the vast millions of India either for good or for evil. Sir, if we only think of the ruthlessness with which all the amendments that have been moved by various Members of the House have been thrown out one after another, with machine-like precision and regularity, we cannot but feel that, lo! here is really an extraordinary law, which was made untouchable by the zealous guardians of social reform. Like every other question which has provoked a large controversy, this question has many aspects to be considered. The penal provisions of the Act and the application of them are the most important. They have naturally evoked considerable opposition, and the best efforts of those that wanted to mitigate the severity of punishments by deletion of the clause relating to imprisonment and by reduction of fine in the several cases proved futile.

Sir, this House is now launching on this country a law which radically affects the sentiments and social customs of the land in a manner never heard of before.

It is legislating for a people who are mostly illiterate and who do not know what Government is and what its functions are and who are solely guided by age-long custom, and whose respect for it cannot be got rid of except by means of education. The whole ground has been so ably and lucidly traversed by the Bhisma of the House, I mean the Honourable Pandit Madan Mohan Malaviya, the other day, that it is unnecessary for me to go in detail into the several reasons why it is inadvisable to have legislation of this radical character. The main reason, as I have already pointed out, is that the people of the country are mostly illiterate and it will take some time before they emerge out of the strong grip of custom; and when we are dealing with such people, we must move slowly and steadily but not hurl thunderbolts on them and force on them, all at once, a new state of things to which they have not been accustomed, and a sudden restriction of the liberties they have been enjoying for ages past. They have to be gradually put in the way and a reform aimed at, step by step, by means of a natural process has a better chance of being understood by the people and followed without much offence to their feelings and without much dissatisfaction. Sir, this view, I am sorry to note, has had a very cold reception at the hands of the Government and those over-enthusiastic reformers who would see the whole country rid of child marriages in one day. However much we, some of us here, may be in favour of stamping out the evil of child marriage in this country, the above attitude is one which we cannot understand. We think it rather tends to injure the cause which is so dear to our hearts. Let me refer to the experience of others in this matter. Mysore started with 8 and Baroda has 12. We, in British India, are not.

·better situated than the people there ; when those States have observed caution in the matter of this legislation, why should we here disregard it? To me, Sir, it is a most inexplicable position. If we look at Appendix XII of the Age of Consent Committee's Report, we note that Baroda is having, year after year, a steady course of prosecutions, even with 12 years as the age limit, and the offences have not in any way diminished till now. This one fact ought to counsel us to considerable caution, which, unfortunately, has not been the case with us now.

Sir, the Honourable Mr. Keane, while speaking the other day on this Bill, remarked that the Government knew how to administer the law when the Bill was passed. Whatever might be his meaning thereby, judging from our past experience of this Government, I cannot entertain any high hopes that this law will not be enforced rigorously but will be preserved, on the other hand, safely in the archives of the Government of India as a dead letter. Sir, if the latter be the idea, it would not have been pushed through this House with this energy, not giving any quarter even to the most reasonable exemption clause moved by my friend, Mr. Nilkantha Das, and approved by my Honourable Leader, Pandit Motilal Nehru. It took away our breath to hear Mr. Jayakar opposing that eminently reasonable amendment, which finds a place in every one of the Statutes on this subject in the Indian States, and advancing the astounding argument that provision will be made later on as we gain experience, as if it is not the duty of a legislator to foresee things and legislate in advance. Sir, I expected very much that the Bill, when it came out of the hands of this House, would be

shorn of many of its objectionable features and presented to the country at large as a most practical and acceptable instrument of reform. But I am grievously disappointed. The law, as it has been now shaped, has all the potentialities for developing into a huge instrument of tyranny and oppression and is liable to be abused in several ways. Much as I desire—and I yield to none in that regard—that this blot on our social life, the evil of child marriage, should be relentlessly effaced, I feel that it is my painful duty not to support this Bill in its present form.

**Mr. Gaya Prasad Singh** (Muzaffarpur *cum* Champaran: Non-Muhammadan): I should like to make a few observations before this Bill becomes law, but I shall try to be as brief as I can be.

The first question that is sometimes asked is whether this Legislature is competent to enact a law of this nature, as it is said that legislation of this nature impinges upon the social and domestic life of the people. With regard to that, I will say that legislation like the Bill which we have under consideration exists on the Statute-books of almost all civilized countries in the world, including, I understand, Turkey and Egypt. There are other laws, Sir, like the Prevention of Juvenile Smoking, Temperance and so on. These are also laws which affect the domestic and social life of the people; but they find a place on the Statute-books of some of the provinces in the country, and outside it. On our own Statute-book we have such legislation as the *Suttee* Abolition Act, the Hindu Widows Remarriage Act, the Freedom of Religion Act, the Age of Consent Act, and so forth. From all these considerations it appears to me that there is certainly no objection to legislation like



the Bill which we have under consideration being discussed and passed by a body such as this House. Apart from politics the greatest practical achievement of the League of Nations lies in the social and moral work which it has been able to accomplish. It has passed resolutions raising the age of consent, preventing traffic in girls, suppressing disease, limiting the use of intoxicants to medicinal purposes, regulating child labour, limiting hours of work, preventing dissemination of obscene publications, and on many other details affecting health, hygiene and morals. In this connection, I shall read to the House just one quotation from the American Professor, Scott Nearing, in his book, "Social Adjustment." This is what he says :

"In a large community, maladjustment. (*i.e.*, social maladjustment) can be removed only by concentrating public opinion in the form of legislation. Among large groups, public opinion may relieve maladjustment temporarily; but permanent reform can be effected only through legislative expression."

In some of the Indian States, such as, Mysore, Baroda, Rajkote, Kashmir, Gondal, Indore, Limbdi, Mandi and others, such legislation exists, and it is therefore no valid criticism to say that this House, constituted as it is, is not competent to pass legislation like this.

Coming to the Bill itself, I may say that it can be looked at from three points of view—from the point of view of the girl herself who is the party most vitally interested, from what has been called the religious point of view, and from the medical point of view. With regard to the first point, I am sorry to see that the Government of India, with a singular lack of chivalry and imaginations, have not thought it fit to nominate a

lady Member to this House, who should have been able to give the House an expression of opinion of the sex most vitally concerned in this matter. I asked a question in the Delhi Session and I repeated my question here; but the reply was the usual legal quibble indulged in by my Honourable friend the Law Member, who said that the Government of India have no power to make a nomination like that. The other day, when the Bill known as the Hunger Strike Bill was under discussion, they brought out Mr. Emerson with the express object of assisting the passage of that legislation. When that legislation was out of the way, Mr. Emerson also disappeared. What was the difficulty in nominating a qualified lady Member to assist us?

**Mr. K. Ahmed:** Why do you not vacate?

**Mr. Gaya Prasad Singh:** If a qualified lady Member was available, she ought to have taken her place in this House.

Now, Sir, I must at the outset clear my position by saying that this Bill, if it is passed into law, will not affect my community very greatly, because in my community, the Kshatriya or the Rajput community, early marriages are not common. In times of old, the Kshatriyas had an institution called the *Swayamvar* ceremony. As its name implies, that was a ceremony in which the girl used to choose her own bridegroom. A number of eligible bridegrooms were collected together, and the girl had to choose her own husband. In my community early marriages are not common, and the Report of the Age of Consent Committee, so far as Bihar and Orissa is concerned, will bear me out. I am very pleased to see in the *Hindustan Times* of the 23rd instant

that in this city of Simla the Rajput Sabha passed a resolution strongly supporting the principle of the Child Marriage Bill and favouring the fixation of the minimum age for the marriage of girls at 14 and for boys at 18. It is well known that infantile mortality is greater in India than in other countries. It is double that of the United Kingdom, Denmark and Germany, three times that of Norway and Sweden, about five times that of America, and nine times that of Switzerland. I will here make one remark. Some of our ardent social reformers, in their anxiety to support the Bill, have gone out of the way and depicted the evils as being very deep-rooted and widespread. I deny that accusation. Child marriage exists in India and I am here to lend whatever support I can to the eradication of that evil; but it is not quite correct to say that consummation immediately follows marriage in all parts of the country and to the same extent. I will give you an instance, Sir, of how a girl of tender age was subjected to cruel treatment at the hands of her husband. This case came up before the Allahabad High Court last year, and I will give one quotation from the judgment. The husband was 34 years of age, and the child wife was only 11 years of age. His Lordship in the course of the judgment said:

“ This appeal exposes in a marked degree the evil effect of the pernicious custom of early marriages which unfortunately prevails among the lower classes in this country. A man aged 34 years was married to a child of 11 years about a year ago. Her parents, who cannot under the existing law be touched at all, have exhibited an almost incredible callousness in not only getting the marriage performed, but in sending the girl to her husband's house to live with him. One cannot use too strong a language to condemn such reprehensible conduct. The result has

been what might well have been feared by any man of sense. On a night when the other inmates happened to be away from the house, the child wife was raped by her husband. The medical evidence establishes beyond a shadow of doubt that the injuries caused to her person were due to sexual intercourse."

Further on the judgment says :

"Partly due to modesty and partly to her being under the control of her husband's relations, the girl does not admit what was done to her, and has been tutored to put forward the defence that she got hurt by falling on a peg on which a goat used to be tied."

Whether instances of this kind are common or not, we as Members of this Legislature have a responsibility cast upon us to see that such things do not occur. My Honourable friend Rai Sahib Harbilas Sarda complimented the Honourable the Home Member on the brilliant speech which he made the other day. While I give my own praise to the Honourable the Home Member for the speech which he delivered on that occasion, I must qualify it by saying that we should like to hear this sort of speech from him on occasions when political questions are also under discussion. I do not want that the speech of the Honourable the Home Member, or for the matter of that the speech of any other Honourable Member who supports the Bill, should go out into the world as a confirmation of the exaggerated accounts depicted by globe-trotters like Miss Mayo in her book. Having said so, I shall now come to what is called the religious aspect of the question. Sir, to my mind, religion leads to the moral, physical and material progress of the community or race, and anything which militates against this object should not be supported on the score of religion. I can hardly believe that this ancient

religion of *Aryavarta*, emanating as it does in the dim distant, pre-historic past, from the pure fountain of the Vedas, could be so callous, so indifferent to the welfare of children that it would have prescribed a rule of law which would be so injurious to them both physically, mentally and in other respects. I shall give a quotation to show that child marriage, which is followed by early consummation, was unknown in Vedic times. In this connection I am going to give a quotation from the "Atharva Veda" which is an authority of the highest standing :

*"Brahmacharyena Kanya  
Yawanam bindyatay patim."*

The meaning is that after preserving Brahmacharya when a girl attains youth, she should desire marriage.

Then, Sir, Shusruta who is a great medical authority in "Yajur Veda", says :

*"Chatasro bastha sharirasya bridhir yaubanam, sampurnta,  
Kinchit parihanish chete, tatra shorashat bridhi, apanch bing shater  
yawanam ; achatwaringshat sampurnata ; tatah kinchit parihanish-  
chate."*

The meaning is there are four stages of the body. Up to 16 years it is the stage of development, up to 25 years is youth, up to 40 is the stage of completion of the organs, and after that the stage of decay. Further on he says :

*"Panch binshet tato barshe, puman nari tu shorashe,  
Smatwa gat virjan tan janiyat kushalobhi shak."*

A boy of 25 years of age and a girl of 16 years have their semen equally developed, and then conception is for the good of both. There is only one quotation which I should like to give because it is said to be a matter of religion and medicine mixed up together.

*" Un shorash barahayam apraptah panch binshteem ; yadya dhate puman garbha Kukshitha sa bipadyate ; yato wa n-chiranjiwe yawet durwalendriyah, tasmāt atyant balayam garbhadhanam n-Karayet."*

It means that if a girl of less than 16 years of age conceives by a man of less than 25 years of age the pregnancy results in abortion. If a child is born, it would not live long. If it lives, it shall be a weakling all its life. Therefore conception should not be allowed in early ages.

Sir, I now come to what has been spoken of as the medical point of view. My Honourable friend Mr. Neogy quoted the opinions of a few doctors in support of early marriage. (*An Honourable Member*: "But he has been disowned by the Ladies' Association at Dacca.") Now, Sir, I refuse to believe that the enlightened medical opinion of Bengal or elsewhere is not convinced that child marriage, followed by early consummation, is pernicious to the health of the girl. I refuse to believe that a proposition like the one advanced by my friend could come from the medical authorities of Bengal. I have got in my hand a book which shows what certain eminent doctors consider fit to be the minimum marriageable age for girls; and in this I find that Dr. Chandra Coomar Dey fixes the minimum marriage age for girls at fourteen years, Dr. Charles at fourteen years, Babu Nobin Krishna Bose, at fifteen years, Dr. A. V. White of Bombay at fifteen or sixteen years. Dr. Mahendra Lal Sircar at sixteen years, Dr. Norman Chevers at sixteen years, Dr. D. B. Smith at sixteen years, Dr. Ewart at sixteen years, Dr. J. Fayer at sixteen years, Dr. S. C. G. Chakravarty, at 16 years.

Dr. Chevers says:

"For the sake of safe child-bearing and healthy offspring marriage ought to be seldom allowed till the 18th year, the 16th being minimum in exceptional cases."

Dr. Nobin Krishna Bose says:

"Our girls should not be married before they have attained at least the eighteenth year of their age. Before this period their system would not bear with impunity the drain which maternity must establish on it."

Dr. Mahendra Lal Sircar, a name which is very well-known in Bengal, if not the whole of India, says:

"It is a grievous mistake to suppose that the female who has just begun to menstruate is capable of giving birth to healthy children."

The late lamented Mr. Kheshab Chunder Sen in his Town Hall speech once said:

"The medical authorities in Calcutta unanimously declare that sixteen is the minimum marriageable age of girls in this country."

So late as July last, the Fourth Imperial Social Hygiene Congress was held in London under the Presidency of Dr. Drummond Shields, Under-Secretary of State for India. Some papers were read on the occasion, and medical opinions were elicited on some of these points under discussion. Now Dr. A. S. Parks, of University College, London said:

"From the physiological point of view the most suitable age for marriage for a female was during early maturity which hospital statistics seemed to show, occurred between the ages of fifteen and twenty."

There are other medical authorities also on this point, but I am not going to tire the House by reading them. Sir, when a girl is married very early in her life, her

education suffers; and it must be recognised that not only on grounds of health and physical development, but also on grounds of mental and moral development of the girl, the marriageable age should be deferred to a somewhat later period. There are just one or two further observations I wish to make. While supporting the Bill to this extent, I am constrained to say that there are one or two points left with regard to the Bill which, I was sorry, were not agreed to by Government. Clause 3 says that :

“Whoever being a male above eighteen years of age, and below 21, contracts a child marriage shall be punishable with fine which may extend to one thousand rupees.”

Now, in our social system the custom generally prevails that the boy who is very often in school or college does not see the girl before marriage; and if the father or mother arranges that marriage for him, and afterwards it turns out that the age of the girl was a little bit below fourteen, the prescribed age, I could quite understand the father being punished, but the punishment extends to the son. This is hardly just and fair. I wanted to insert some reservation in the Bill that the knowledge must be brought home, the knowledge that he married the girl knowing her to be below fourteen years of age must be proved before the boy could be punished. But the Government did not think it proper to accept this amendment. To that extent, Sir, I feel that this Bill is defective. The other point is this, that no exception has been made in cases of real hardship. I will not use the word “hardship” because if I do so I will draw upon myself the wrath of my Honourable and esteemed friend Mr. Jayakar.

**Pandit Nilakantha Das :** Why are you afraid of him ;



**Mr. Gaya Prasad Singh:** But he seemed to agree that a clause must be inserted in the Bill which would give power to marry a girl between the ages of 12 and 14, in exceptional circumstances, under the written authority of the District Judge. I hope Government will give their consideration to this point; and, when the Bill goes to the other House, they might probably think it worth their while to introduce some such clause to meet exceptional cases.

With these words, Sir, I support this Bill (Applause.)

**Several Members:** The question may now be put.

**Mr. M. K. Acharya:** Sir to lament their lot is a privilege that is always cheerfully accorded by the victors in every fight to the vanquished; and this is the only privilege that I to-day, looking ahead as carefully as I can to the woes that are ahead of us, seek at your hands. I admit, Sir, that we have been defeated on the floor of the House not by the superiority of argument but by the numbers (Hear, hear),—not by the logic that has been brought to bear upon the subject but by the very lack of logic, by the very fact that scientific data, on which our conclusions should be based have been ignored. The logic, Sir, that has won to-day is the logic of the Government bloc, the logic that is winning to-day is the logic of the European group. We bow to the logic of numbers; but, Sir, may we not be spared the humiliation, in this land of sages where there have always been noble souls who said:

“ They are slaves who dare not be,  
In the right with two or three, ”

may we not be spared the humiliation of being told by the many that have erred that the error of the many is going to be the law for all time to come ?

**Mr. K. Ahmed :** Follow the majority.

**Mr. M. K. Acharya :** No, Sir. It is humiliating to be told that this is the last word on this subject. We have been told that from Bengal, from the United Provinces, from the whole of Madras, opinions have come which are entirely in favour of this legislation. Sir, it is not self-respectful to any member of this House to indulge in such hyperbole. It might be very well for some newspaper scribblers to say that this or that is the last word on any subject ; but, Sir, responsible people ought to be careful in making such statements. I just got a telegram from some place in the Cuddappah or Kurnool district, I suppose, which was put into my hand just when Rai Sahib Harbilas Sarada was talking. Does that telegram, Sir, congratulate the Home Member, does it congratulate Government "Government morality and honour at stake"—that is what this telegram says, and from every corner (*An Honourable Member*: "Is the telegram from a man or woman?") the same story comes. Sir, what a childish question. I should ask my talented friend, Mr. Jayakar, to study the principle of what is called the law of the bipolarity of sexes carefully. I should ask him to learn that :

"For woman's cause is man's ; they rise or fall  
Together, dwarfed or godlike, bond or free."

It is childish to talk of man's tyranny over woman, or woman's tyranny over man. Such talk is unworthy of any cultured society. My own impression is that very often it is woman who tyrannises over man, and

not man who tyrannises over woman. (Laughter.) Mr. Jayakar probably himself has experienced it at some time. Sir, the Bill is going, I know, to be passed; I know that it will be as easy to bid the Himalayas move away further north as to ask this House not to vote for this Bill: and so I bow to the inevitable. Let Rai Sahib Harbilas Sarda congratulate himself; by all means I shall congratulate him too—not on his sound arguments but on his strong numbers. Let him remember that the Bill that is being passed to-day is very different from the Bill which he originally drafted. His original Bill was a veritable lamb compared to the tiger that is now being sprung upon the country. Let the honour or dishonour be divided between the Honourable Rai Sahib and the Honourable Sir James Crerar; for, but for the solid bloc of the Government's forty or fifty votes, and but for the solid bloc of the European Group comprising ten votes, this Bill would not have so much as progressed to the stage of being taken into consideration. Let us not therefore talk in an unpractical manner. Opinions in favour of the Bill may have come from here and there. Opinions will come when the Government want them. They will come in abundance when a mighty Government on which the sun never sets wants them. Sir, opinions can be got by thousands without any difficulty. But if you are honest, you must admit that Sir Sivaswamy Aiyar and Diwan Bahadur T. Rangachariar, though very great and good citizens of Madras, are not religious heads. They are no more competent to speak on religious matters than I am competent to speak about what is happening in Iceland. Therefore let us not allow our prejudices to override the truth. I am prepared to admit that, among the English educated people of India, 90 per cent, are perhaps in

favour of the Bill; and I put the blame at the door of of the Government which has enslaved our intellects. We, the English educated Indians, merely cram second-hand knowledge which is thrust down our throats; and we repeat parrot-like what others say. We have lost all independent inquiry, original thinking, original philosophy and original thought, which could stir the whole world. Some of my friends have been talking cheaply of education for girls. Are they not satisfied with the education that we men have had and which has made machines and slaves of us? I do not know where my friend the Revd. J. C. Chatterjee has had his education; I do not know if he has any educational ideals. I believe in that education which gives us the nerve to fight, and the heart to aspire to the highest ideals, which gives us that higher culture by means of which even in a minority of one man will dare to fight against overwhelming odds. This Government, by imparting its present education to us, has enslaved our mentality; and you want to give this dirty education to my sisters and daughters. Sir, I will not give this dirty and stupid education. (*Voices*: "Question.") I will not give them this beastly education. Sir, even in England great scientists, great educationists, have raised huge protests against the education that is being given in England. They say that education in England is most mechanical; that it is responsible for a lot of economic and moral evils all over England. The same is the case in America. And these gentlemen here still talk about giving the present machine-making English education to our girls.

**The Revd. J. C. Chatterjee:** What education did you receive?

**Mr. M. K. Acharya:** I also received the same machine-making education of which I am ashamed, honestly ashamed; but, in spite of that education, because I still happen to have one little drop of my ancient sires' blood which says that one should even die for truth, so I am speaking against the Bill.

I am ready, Sir, to admit that we have been defeated. We have been condemned without a fair trial. We wanted calm consideration. But the great Leader of the Congress Party, who is going to be the Premier of the Commonwealth of India after the 31st December, said that this question was the silliest possible question to be talked about, and we should not bother ourselves about it! Another mighty scion of the law declared: "We are the highest tribunal and we should deliver judgment without looking into any evidence." He would not condemn the worst criminal, he would not have the most unreasonable hunger-striker tried in his absence, but he is prepared to convict thousands and thousands of his countrymen who have been following an excellent ancient custom without looking into the evidence against them; and the House agreed to his dictum! (To Mr. M. R. Jayakar.) Yes, you will not allow one single criminal to be tried without his presence in the court, but you are prepared to convict thousands and thousands of people as being guilty of the most damnable tyranny and wickedness against the whole womankind of India without having full evidence before you. Some of us, Sir, were not satisfied with the inquiry and Report of the Age of Consent Committee. The House has agreed to it. But the Honourable the Home Member in the name of his mighty Government, spoke of the Committee as an ideal Committee and of their Report as

an ideal Report, and then the majority in the House, like the Roman citizens of Shakespeare, cried, "We will be satisfied; let us be satisfied"! When the Government, instead of holding the scales impartially, decided to throw their whole strength on one side, what could we do? I had received protests from every part of the country, from all Hindu religious heads of any importance. Government had received them too; but Government chose to ignore them completely. Against such obstinate opposition we felt: "Ours not to reason why! Ours but to do and die"! Yes, Sir, we are ready to die before the tyranny of the majority, but our cause will not die. Truth does not die; conscience does not die, and the spirit of India will never, never be killed.

Sir, I was bombarded by some of Mr. Sarda's heroes and heroines at the doorway, and in my room; and though by Dr. Hyder I was told that I had no eyes to see what he saw, no ears to hear what he heard and no heart to feel what he felt, I too felt the persuasive logic of their lips and eyes. But I knew that they were in the wrong and I was in the right, and that is the reason why I did not agree to their request to support the Bill. Now, I will make bold to say that ours is the highest ideal of marriage on earth, and I wish the whole of Europe and the whole of America would copy it. Our marriage system seeks that a girl of 11 or 12 and a boy of 17 or 18, should be brought together in a healthy environment in which they may be helped to grow together in age and in love till their hearts are twined into one indivisible whole, and remain so till death itself parts them only here on earth, not in heaven above. That is our ideal; I claim it is the highest ideal of marriage. It has been followed in India in spite of all apparent drawbacks. That ideal you are penalising

to-day. That ideal you are killing, trampling under foot, to-day. It does not matter to me whether there are going to be 3,000 widows or 3,00,000 widows when this sacred ideal is going to be trampled under foot. You may perhaps prevent three lakhs of child-widows by this legislation; but you will also, by this legislation, give room within the next ten years, to three million unmarried women wandering about the streets, who will be either the victims of abductions and seductions or aggressive parties thereof. I am glad that the Leader of the Congress Party and the Deputy Leader of the Nationalist Party have both admitted that cases will arise when, in the interests of the girl herself, we shall have to relax this age limit of 14. Cases of sexual misbehaviour of girls and boys are sure to arise: because as love laughs at locksmiths, so does lust laugh at legislators.

Now I will put this question to the European Members of this House. Have you studied the vital statistics of England? What is the present morality of European society, of English society? I will give some facts and figures. The numbers of illegitimate children, of those who are openly labelled as illegitimate, were as follows:

|      |    |    |    |    |        |
|------|----|----|----|----|--------|
| 1922 | .. | .. | .. | .. | 34,138 |
| 1923 | .. | .. | .. | .. | 35,000 |

and so on for every succeeding year, out of a total of some 700,000 to 600,000 births. That is to say, one child out of every 23 or 24 born is openly labelled as illegitimate. That is the morality of England. What steps have you taken to prevent this state of affairs in your own country? Sir, virgin widowhood is no danger to society as compared to what these huge armies of "unmarried" women are perpetrating. The scientists

of England and America deplore the growing degradation. It has come to this in the West that women want sexual intercourse without marriage; at best they want marriage without maternity. Such a calamity has never happened in India: but by passing this legislation you are paving the way for it. What is happening in the "civilised" countries of the West will also happen in India, through these "civilising" legislation of yours. You cannot kill nature, which is the same everywhere. You cannot destroy human nature; you cannot prevent sex instinct. Penalising sex-craving has never worked in any country of the world, and it will never work. Therefore, you are only undermining the old moral foundations of Indian society.

It is not that I do not want reform. I want sane reform. I want strong Indians, and more than physically strong Indians; I want Indians who are morally, and spiritually, not only intellectually even, the greatest in the world. I do not care for physical strength alone. I want it by all means, but only as a complement to high thought and noble culture. I want highly cultured Indians in large numbers. Are they going to be produced by this Bill, when the whole of our society is going to be corrupted by this evil legislation? Do you think you can evolve a highly cultured race out of this Bill? Look at the degradation rampant in America and France. Are we going to get through this Bill anything like the race of which we can well feel proud? Here is a great trust of the noblest human culture handed to us; but we are trampling it under foot. This House is destroying that culture, and I only hope that posterity will not hold us all equally responsible for it. I hope they will excuse us. This House has declared that they would penalise the highest ideal of marriage. They



would put their heel upon that ideal. They would not allow any father to say, "My daughter will be married when she is 12 or 13 to a boy who is 16 or 17; and if need be I take full responsibility for seeing that there is no consummation before she attains 15 years of age."

Well, Sir, this ideal the House would not allow to be followed. The ideal that the House has before it is only one of carnal pleasure. The House knows only the carnal side of marriage, not its higher, spiritual side. The House would allow a girl only after a particular age to be married to a boy after a particular age? But can any legislation say that a woman shall become a mother at any particular age. This is the insane legislation which is sought to be imposed upon the country. My friends talk cheaply of female education. But what is their ideal? Here is a book written by Dr. Mayrick Booth, one of the latest writers upon sex problems and there are suggestions in it as to the kind of education which should be given to girls so as to qualify them for their great sex duty, for their great biological duty, for their duty to society. What is that duty? A girl's most sacred duty is to become wife and mother. The proper work of a woman is maternity. That is the great duty of a woman. The best scientific opinions of both Europe and America agree in the view that the education of a girl should be such as to qualify her for motherhood, for the great duty of motherhood. That is the true ideal of female education. The learned author of that book bemoans that the present education in England is not conducive to it; he bemoans that there are hundreds and thousands of unmarried girls who go into offices and sell their labour cheap in competition with the boys, and force the boys to be thrown out of work, and to remain bachelors. He bemoans the unmarried state of

these girls. The result, as he says, is the vicious circle of young men without work and young women without marriage. This is going on from day to day. The result is that the whole Anglo-Saxon society is in a chaos. He tells us what is happening there. He gives innumerable statistics to show that maternity is going down in England. Maternity is going down in America among the sport-loving adolescent women. Everywhere in Europe it is going down. Even 10 per cent. of adolescent women in the West are not fit for maternity; they do not bear children; all this on account of the pernicious ideals that are now prevalent all over Europe. He comes to the conclusion that, unless great endeavour is made to inculcate saner, more scientifically sound ideals of sex-relations, the Anglo-Saxon race will soon come to an end. I will commend the following pitiful remark to the notice particularly of Mr. Price and Sir Darcy Lindsay :

"What is happening to the domestic life of the Anglo-Saxon race? It is the same tale wherever the English tongue is spoken: more hotels, fewer homes, more divorces, fewer children."

That is what is going to happen to the English educated people of India also. Among us also will be more hotels, fewer homes, more divorces and more loose sexual connections, more unholy sexual alliances and unions, and lesser and fewer children. That is what we are paving the way for by enacting this measure. We are the guilty persons who are parties to such a crime. The false, unwholesome ideal of my friends seems to be that a girl should be old enough and free enough to say whether she will marry, and if so, when and whom she will

marry. This is utterly unscientific, unbiological. In Europe, this false ideal, which was based on the superficial utilitarianism of the Victorian period is resulting in the gradual extinction of femininism. And in Europe and America thoughtful writers of both sexes have begun to declare that a girl has no right to say that she will marry only when she likes and whom she likes, and as she likes. That is not in conformity with the higher organic view of society, with the real basic principle of society, which says that a girl should become a mother of the race. The race demands that every girl should become a mother. That is the highest principle of sociology, that is the highest principle of inter-sex moral law, that is the highest principle on which is based the foundation of all civilised human society. Every woman, every man, is an organic limb of the race. No man, no woman has a right to live for himself or for herself. This is the organic theory of society, based on what is called the philosophy of the unity of all life. This is the teleological view of human society that all are parts of one organic whole, each having a function of his or her own, all functions tending towards the growth and consummation of the whole. According to this view of life and society, every boy and girl, as far as possible, should become married, for the perpetuation of the race. This is what the latest Western scientists say. But in India, in modern India, we hear the diabolical philosophy that a girl must be old and mature enough to make her decision after examination and trials as to who would best suit her as a husband; that she must be free to say when, how and whom she will take as her husband. This same wicked creed has produced most baneful results in America. The same pernicious results are happening in Europe, and unfortunately both these

Continents are getting into a state of terrible degradation. The thoughtful writers of England, of Austria of Germany, all have begun to deplore the present conditions of society there. Yet we "educated" people in India have become the intellectual dustbins of Europe and America, and want to pick up the crumbs and the refuse that are thrown out by the West.

**Mr. K. Ahmed:** Then, why do you ask for Home Rule?

**Mr. M. K. Acharya:** Life is more serious than can be wasted upon the Honourable Member—Sir, I am sorry to have to speak about this measure. I do certainly want legislation, but legislation on sane lines. I want reform on sane lines; that is why I say that we must not allow consummation before 15 years of age. But we must allow, if possible we must help and give facilities for a girl of 11 or 12 or 13 to enter into the sacrament of matrimony with a boy of 17 or 18. That is the high ideal of Hindu culture, but we are penalising that today. I am not going to waste the time of the House now at this late stage by reading out the innumerable telegrams that I have received against the Bill. How many telegrams have I got? How many telegrams has the honourable the Home Member got? He must know it. He has got innumerable telegrams from respectable leaders of religion all over India. He has got telegrams from every man who has at least half a dozen as his following. The Honourable Member himself admitted on the floor of this House, how many telegrams, how many representations, and how many memorials were received for and against this measure. Let us not therefore, in a fit of frenzy, magnify either the one side or the other. I have come to this conclusion after great deliberation, that the

bulk of the English educated people are not independent thinkers; unfortunately they are only second-rate parrot-like repetitioners of what is being loosely said in other countries. They want legislation, not on rational lines, nor on lines suited to the genius of the Indian nation. But the bulk of the country is going to decide the fate of every Member who is voting in favour of this measure. The bulk of the country will decide as to who should be returned to the next Assembly. The bulk of the country will follow their long-recognised leaders, whether Hindu or Muhammadan. A large proportion of them will not admit the false ideal that every girl has the right to say that she will marry when she likes, whom she likes. The large bulk of the people in this country would not like their girls to defy parental authority and home discipline. The bulk of the people in this land are still fortunately wedded to the old ideal that their girls shall not fall into degradation, that a girl when she is 16 or 17, when sex passions are dominant in her, is not the fittest and best person to choose her partner in life, and qualify herself for motherhood. She is not the fittest to say whether she will marry, whom she will marry and when she will marry. Our ideal has been of discipline of control, of subordinating youthful whims to the experience of elderly people. Every girl must take the advice of her parents. Every boy and girl must obey the wishes of his or her parents. It is because such discipline has been prevailing in India that we have been spared the degrading spectacle found in the West. America is now on the stepping stone of ruin and peril. In England great thinkers are despairing as to what is going to happen to Anglo-saxon society if the present conditions were to continue any longer. In India we have

come to the same stage. We with our high ideals and noble culture have withstood the onslaughts of countless invading creeds, and God willing we shall stand the present inroad into our ideals by the enactment of this measure. I have no doubt that sooner, much sooner than most of us think of, this legislation will be amended so as to be made more sane and more fitting with the highest national ideals and the culture of India. For :

"The One remains, the many change and pass,  
Heaven's light for ever shines, earth's shadows fly."

Amidst all the numerous changes that are being wrought in our midst, the one eternal culture of India, the one eternal supremely universal religion of India which has linked the Siva and Sakti together—the Apollonian and the Dionysian as western scientists would call the two aspects to-day—that supreme religion which has linked Sri and Narayana into the One Holiest Existence—the religion that has welded indivisibly the father and the mother, the wife and the husband for all time, through all earthly births and deaths—the Culture of that indissoluble Unity which is the stepping stone to the higher Unity that pervades all this Universe—that will remain, and this legislation is bound to pass away.

**Pandit Nilakantha Das :** Sir, I had no mind to take part in this debate, but I must make it clear at the outset that I was very vehemently in support of the principle of this Bill and so I am now. My constituency is also generally in favour of the principle of the Bill and one of the reasons is that my constituency particularly is not much affected by this Bill. Except Brahmins and two or three small castes, no other caste marries early, and even

when there is early marriage, there is no consummation before the girl attains her 14th or 15th year. But when I found that the Bill was proceeded with from stage to stage I was considering whether I should subscribe to the scope of the Bill without thinking twice. It was said by the author of the Bill, when he first introduced it in this House, that his main object was to eradicate the evils of child widowhood and early or pre-puberty marriage or consummation. These two things are really social evils. Anything else that is aimed at in this Bill is not exactly against any particular social evil but with a view to enforcing something which we may call social reform among the people, a substantial section of which I now find is unwilling to accept it.

But I must say that I am not like many of my friends on this side of the House against social legislation. Shastras have been quoted on both sides, but as I have stated, my humble study of the Shastras tells me that they appear contending to the uninitiated. When we speak of Hindu religion, I say it is a misnomer. I never believe that there is anything like Hindu religion. By religion we understand a preached religion, which has got a book which is revealed, and practically it is the word of one man who preached that religion. Hindu religion therefore is a misnomer. I believe in Hindu culture. It is a culture where all stages of the development of the human soul are comprehended. Even the pantheistic teachings of the Vedanta are as much Hinduism as the worship of stocks and stones by the savage. So this culture you may find in our Shastras and you cannot find any hard and fast rules for all time to come and for all climes and all people. It is an interpretation according to *adhikara* as it is called, the capacity of the man interpreting that will give you the

true interpretation of the Shastras; and in fact I find that there has been legislation from time to time and marriage has been regulated. It was I believe about the 12th century that, for some reasons, our *Smritikaras* forbade post-puberty marriage. I do not know whether those conditions have so vanished to-day that we can go even two or three years after puberty in marrying our girls.

I did not understand my friends congratulating the Honourable the Home Member for his support and some of them characterising that support as the advent of a national government. I do not know that on any national measure, on any measure which we consider national, Government was ever so very enthusiastic, and I cannot understand, even on the present occasion, what can be at the back of all this enthusiasm. In this Bill we actually go forward to a measure of social reform and we look forward to a time, as some of my friends have said, when girls will choose their own husbands and boys will choose their own wives. But so long as that stage does not come by education of our villagers or by any other means planned by our national Government, I do not understand how we can raise the age two or three years beyond the age of puberty and still make the parents and the families responsible for the marriage of young men and young girls. I do not know what is the actual age of puberty in Northern India, in the Punjab or in up-country. But I know that in the torrid heat of the south as well as in temperate and delicate Bengal, twelve is the age of puberty.

(At this stage Mr. President vacated the Chair, which was taken by Mr. Deputy President.)



I can understand that in towns and cities from where most of my Honourable friends come to this House and where there are educational institutions and other things, a father can give his daughter in marriage after 14, but I do not understand how in the villages where there is no education, the father or the family can be responsible for the girl after she attains the age of puberty. Of course the time may come when measures of social reform may advance to that extent and we may look upon that age, or even after that, as the marriageable age, but at present I do not understand how we can make the parents responsible, and not only responsible, but make it a criminal offence and send them to jail for marrying their children before 14.

Do you not understand the life in the villages? Do you not realise how there will be many cases where rightly or wrongly the father will be compelled to give his daughter in marriage at once? I do not know—the main idea of the 12th century as I understand it was that the marriageable age should be so fixed and the marriage so performed before the girl had any sex impulse. Now, you are making it two or three years after she gets the sex impulse; and I am sure human nature, is human nature, and you know the conditions in the villages; there is no education, nothing of the kind; and sex impulse always goes hand in hand with sex experience in some cases at least in this land as it is so common in the West, and this will result in many cases in marriage after sex experience. Do you not feel that, in such cases, the fathers will be compelled to marry their daughters? In cities conditions of society may be different, but in villages, generally people will not risk this, whereby families and not girls alone may be ruined.

The result will be that there will be the strictest of purdah in your villages after this Bill is passed into law and after it is promulgated. I know in my society, Karans who are just below the Brahmins, marry their girls after puberty, and I know, at the same time, that their purdah system in Orissa is the strictest of all. You must either have purdah under the present conditions in villages, or you must marry just when a girl is on the verge of attaining puberty. Which do you choose ?

I do not understand how, in the scope of the Bill, nothing was provided as a safeguard : everything—every bit of reasonable amendment—was thrown out in a measure like this by which we except social reform. If you are to pass legislation, legislative measures like this must go hand in hand with the stage to which the people have attained, perhaps a little in advance if possible. You cannot introduce a measure like this, a penal measure : in your frenzy of what you call social reform. This is not a social conference. This is a Legislative Assembly. Make real crimes like forced widowhood of the child or pre-puberty consummation of marriage penal by all means. I cannot subscribe to introducing measures of what you call reform at the point of the bayonet like this.

My friends have quoted measures of social legislation. But as I understand them, none but the measure regarding *suttee* was a penal measure ; they were civil measures, and you could have made this a civil measure like the others. But by the present provision, the father will have to go to jail and the mother will have to go to jail (*An Honourable Member* : "Certainly not.") or be subjected to fine, I beg your pardon. As regards *suttee* if you were to compare this with that measure, it would

be like saying that milk is beef. If milk be beef, then this measure can be compared with the measure against *suttee*.

So, Sir, I say that, when we were going to fight against social evils such as widow marriage and pre-puberty consummation, we have perhaps unwarily come to something which I am sure will not only be unpalatable in our villages among the vast population there, but will also create something which, if realised in effect, perhaps none of my friends on this side of the House will like. It is a cultural setback as I may call it, measures of reform in this subject land are yet of doubtful genuineness, so long as our mentality is one of slavish and unassimilated imitation. Moreover forcing measures like this with the help of an alien bureaucracy is nothing less than a crime—a heinous offence, I may say, against our hoary and liberal culture. For it is evident even in this House itself, not to speak of penalties of courts later on, that with forty or fifty votes on those Benches, this measure is being forced down our unwilling throats. (*Cries of "No."*) I repeat it and I say that we could not get even a comma or a semi-colon altered. It is a very dangerous thing. I cannot conceive of it. I could understand the Government approving of the principles of the Bill for fear of public opinion. If they did that, it was perhaps a part of their duty and I do not deny that much; but when they force this measure on us and compel us to swallow it, root, trunk, branch, leaf, twig and stem—nothing left out—nothing changed—I cannot follow the attitude of Government. When we were considering the measure, we did not give them an undertaking that, whatever emerged from the Select Committee, we would swallow the whole thing as it was. But we are now

forced to swallow it. If we analyse the votes, we find that, besides those fifty votes, perhaps on very small occasions you have got a majority of non-official elected Members—representatives of those that are concerned, those that are affected.

**An Honourable Member:** You never exceeded twenty!

**Pandit Nilakantha Das:** 20 or 24 I do not mind; but from 61 if 50 is deducted it means 11. Whatever that may be, it should have been considered thoroughly and the scope of the Bill should have been modified so that the people could swallow it even if it still would have been like a bitter pill in some instances. I would not mind that much of bitterness, but I am sorry this Bill is going to be passed into law as it is; and I should have been very glad to support the Bill as I am in favour of the principles of the Bill, but under the circumstances I am sorry to have to say that I shall not be able to give my support to it, which would mean not supporting the principle now, but supporting the entire Bill as it is.

**Mr. Deputy President:** I think the Honourable Member will realise that this is a time when we should give every Member a chance to say a few words. I do not want that any Member should think that he had not got a chance and I hope that the Honourable Member will finish soon.

**Pandit Nilakantha Das:** I have finished, Sir.

**Pandit Madan Mohan Malaviya:** Sir, I am not amongst those who suspect the motives of any Member of this House. I recognise that every Member who has supported the Bill has done so with the best of motives,

with the most honest of convictions. I do not blame the Members on the Government Benches for voting for the Bill merely under the command of the Honourable the Home Member. I believe that, if not all, most of them have got convictions that way. Nor do I blame Members on this side of the House who have supported the Bill, or accuse them of anything but the best and the most disinterested of motives in adopting the attitude that they have adopted. But I do deplore that, in dealing with a measure of this delicacy, in dealing with a measure which very seriously affects the tenderest interests of a large section of the people—that in dealing with such a measure the House should not have shown greater considerateness towards those who are to be affected by the Bill. I do not agree with my Honourable friend Sir Purshotamdas Thakurdas in the description he has given of the supporters of this Bill. Those who have received the benefit of Western education, or modern education, those who have understood the benefits of social reform, are already marrying their daughters and grand-daughters at late ages, not merely at 14, but beyond 14, at 15, 16, 17, 18, 20 and sometimes even beyond that. Not a single one of them will be led by the passing of this measure to change his attitude and to marry his or her daughters and grand-daughters early. There is therefore no reason to say that the passing of this measure with a lower age will be a disaster to the cause of social reform. What you have to think of, and what I submit is the most important thing to be thought of in this connection, is how the proposed measure will be received by those who have hitherto married of the masses of men, particularly the most backward classes of our countrymen who have hitherto married their daughters at very tender ages, at ages

much below 12, and by those who believe that they should marry their daughters and grand-daughters about the period that they attain puberty. It is these people whose cases have to be considered, and I submit with great regret that, in considering how the measure will affect these people, Members who have supported the Bill have, in my humble judgment—I say it with regret, I say it with respect, but I do feel it my duty to say it—that my Honourable friends who have supported this measure as it is, have not shown that considerateness towards those humble individuals who have for ages lived under the customs that obtain among them. They will be told tomorrow or the day after, or a week hence by publication in the Gazette of India, which will not reach them, which they will not hear about, that the marriages which they have performed for ages, for all the time that they can think of,—that those marriages are banned now, that if they marry their daughters and grand-daughters as they have been marrying them till now, they shall be handed over to the policeman and they will be prosecuted—those who marry and those who help to marry under the present law. I submit that is an aspect of the question which deserved more consideration.

I need not remind the House that I have from the beginning recognised the necessity of legislation on this matter. I have from the very beginning urged that the age should be fixed at 12. I am not going to argue the point over again; I have already submitted to the House all that occurred to me for consideration. I had not the good fortune of having been able to persuade Members of this House either on that side or <sup>Ms.</sup> this that there was abundant reason for fixing the marriage-able age at 12. But I do feel, in view of all the speeches

that have been made today, and in view of the fact that the Bill is going shortly to be passed, I do feel it my duty not only to my countrymen outside who have no voice here, but also to my friends on either side of the House, to tell them to think yet, to pause yet for a moment, to think what the measure means to the bulk of those who will be affected by it. I am not advocating that the matter should be left where it is. I have only urged from the beginning that in a matter of this delicacy, which touches the most vital interests of the community, which touches the humblest of our people, we should proceed cautiously, we should hasten slowly. We should recognise the need of carrying the people with us. We are living in an age of democracy. We are anxious to have democratic institutions. This is a democratic institution. At this moment when a big change is going to be effected, when we are looking forward to a very big change in the constitution of the Government of the country, where the franchise will be exercised by millions more of people, as some of us hope, than it is exercised today, what is the principle upon which legislation should proceed? Should it be a disregard of the wishes of the people, an utter contempt for the wishes and the opinions of those who may be affected by a measure, or should it be a reasonable regard for them? Some of us may hold very advanced views. We are perfectly justified in advocating those views before our humbler countrymen in whom we are interested. But I ask any Member of this House to say whether he is justified in forcing by law his own ideas of social reform, of the age at which marriages should take place, down the throats of a large section of the people who do not yet believe in it as some of us do? To them it will not be a matter for arguing whether the

Government and the Legislature was competent to force the change upon them. They know and believe that their marriage law is a personal law which has come down from ages, from generation to generation. They have lived under these laws and have both prospered and suffered under them. I grant that there has been much evil under the system of child marriages. I am as anxious as my friends on either side of the House that these evils should be done away with, but I am anxious that, in removing one evil, I should not be perpetuating another evil, and I feel that the Legislature, in exercising its authority in the matter of social reform, should carry the general consent of the community with it. The way in which this Bill has been pushed through, the way in which the various amendments intended to soften the rigour of the proposed law have been dealt with, the way in which the amendment to fix the marriageable age at 12 instead of at 14 was dealt with, the way in which even the amendment for prolonging by eight months the period at the end of which the Bill should come into force was rejected,—all this has filled me with sadness and I regret to say that in passing the Bill in the form in which it stands, this House is abusing the power of legislation which it possesses at this moment. I do not wish to say more. Though I am in favour of raising the marriageable age and am anxious to eradicate the evils of early marriages as much as any other man, it will be my duty to oppose the Bill as it stands.

**Mr. M. S. Sesha Ayyangar:** Sir, rising as I do at this late hour, I shall be very brief. The time has come for congratulations. I congratulate the Hon<sup>ble</sup> mover of this Bill in having got his Bill passed <sup>at last</sup>. He will excuse me—because I do not mean any disrespect



to him—when I say that he, being a dissenter from the traditional religion has really wreaked his vengeance upon the traditional religion by getting this Bill passed. I congratulate the Treasury Benches and the Honourable the Home Member and the European Section of this House for this reason that they have, by supporting this Bill, successfully deflected our activities towards the attainment of Swaraj by creating a civil war amongst all the communities and amongst several political parties of this country. I congratulate my politically-minded friends also in that they have, by their support of this Bill, really forced the Government to incur the odium of the masses, for I am sure they will certainly, in working out this Bill, necessarily incur the odium of the Indian masses. To that extent, I congratulate the politically-minded section of this House. Sir, the House may remember that the Honourable Mover wanted to make this a Civil Bill and also to make the marriage invalid under certain circumstances. The Select Committee thrust upon him this unenviable position that this Bill must be a penalising Bill and that it must not only apply to Hindus and other sections for whom he demanded that the Bill ought to come into force, but also to my Muslim friends. And, Sir, it was the turn of the Government to add to the stringent nature of this Bill by voting down, as they did, every one of the amendments that we on this side of the House thought fit to move on this Bill either as necessary or reasonable. So, Sir, I am in the circumstances forced to remind the House of what occurred exactly 230 years ago in England. I am reminded, Sir, of that obnoxious Statute of 1699 which disfigured the English Statute-book. Edmund Burke in his Bristol address makes an excellent reference to this. Burke says that this legislation was enacted in 1699 by which

the saying mass was forged into a crime (exactly the same thing that is happening here to-day), punishable with perpetual imprisonment. Burke goes on and describing the manner in which that Bill was passed says :

“The party resolved to make the King either violate his principles of toleration, or incur the odium of protecting Papists. They therefore brought in this Bill and made it purposely wicked and absurd that it might be rejected. The then court party discovering their game, turned the tables on them and returned their bill to them stuffed with still greater absurdities, that its loss might lie upon its original authors. They, finding their own ball thrown back to them, kicked it back again to their adversaries. And thus this act, loaded with the double injustice of two parties, neither of whom intended to pass, what they hoped the other would be persuaded to reject, went through the legislature, contrary to the real wish of all parts of it, and of all parties that composed it. In this manner these insolent and profligate factions, as if they were playing with balls and counters, made a sport of the fortunes and the liberties of their fellow creatures.”

Sir, that exactly is the situation that is happening in this House now. Sir, I might also say that this Bill, as Burke said, really places a premium upon blackmailers, upon the real pests of human society who would voluntarily and willingly disturb house-hold peace. There in England also, in the working out of that Act for sometime, all these ugly features were found to exist, and I rely on the extent of similarity for this reason because just as that ugly wicked Act of 1699 was repealed very soon after, I hope that this Bill also, when it becomes law will be repealed very soon.

Sir, in this connection my Honourable friend Mr. Gaya Prasad Singh said that, by raising the marriage ages of our children, our posterity would grow intellectually greater, morally greater and physically

greater. I would reply to his remarks by reading a few sentences from the pamphlet which I hold in my hand:

“Early marriage, as we have it to-day, was in the recent centuries prevalent throughout the West, even England. It was prevalent in the ancient world. It has been in vogue in this country from time immemorial. If they talk of it as the cause of physical degeneracy and intellectual downfall, the following queries arise naturally: Are the modern peoples of Europe physically stronger than their ancestors of the 16th century? Draw to your aid the findings of the ‘The Royal Commission on Physical deterioration’ Are they morally better? Take help from the Report of ‘The Royal Commission on Venereal diseases’. Are they intellectually better—we mean, the average man of to-day, in spite of all advancement in science and art which is due to the endeavours of a few, not of the people at large? Arthur Russel Wallace’s ‘social environment’ will give a fair answer to this.”

Sir, I might also say in this connection that it pains me very much to see that the Government, with all their might and weight, have supported this Bill. It really comes to this, that the Government are voluntarily wounding the religious susceptibilities of a vast section of people of this vast country. Can the Government afford, Sir, to trample under their feet the religious susceptibilities of a vast section of people of this vast country? Let *ex-King Amanulla* of Afghanistan answer that question. (Laughter.) Sir, I might also be permitted to bring to the notice of this House that soon after the speech made by the Honourable the Home Member, saying that there is a corroding evil and that the Government have set their faces against it by supporting this measure, already I see evidence, at least in my part of the country, of huge mass meetings held—because I speak from the telegrams and other communications that I have received—from the pundits,

from the high priests of religion and from the Swamiji of the Ahobilam Mutt to which I have the privilege to belong. From His Holiness downwards, there have been mass meetings held at least in my constituency and elsewhere; and they have already made known their determination to repel this lawless law and face the consequences of this pernicious religion-killing law. Sir, I oppose this motion.

**Mr. K. V. Rangaawami Ayyangar (Madras: Landholders):** Sir, you will perhaps remember the day when Lord Chelmsford held our Council meeting till one o'clock at midnight when the Rowlett Bills were passed. You and I were there together. Now you are presiding and if I solicit you to adjourn the House to another day in order to have a leisurely discussion on this subject, I do not know if you will listen to me. At that time, Sir, you and I took Lord Chelmsford to task for sitting late till one o'clock at midnight. If I should seek a favour at your hands now to adjourn the meeting for another day in order to have a fuller discussion on the subject and allow more speakers to have their say, I do not know whether you will concede this request. If you cannot do so I shall have my brief say on the subject now. Perhaps it is not your wish too to adjourn the sitting.

Sir, I was pained to read from the proceedings of the Assembly the other day that the Leader of the Opposition made a remark that he was so impatient with the opposition to the Bill that he would not even condescend to look into the papers and petitions of the people and the proceedings of public meetings that had been sent to him. Sir, I am very sorry that leaders should be so impatient as not even to care to look into the petitions:

and prayers submitted by the people who naturally thought that, if they appealed to the Honourable the Leader of the Opposition their grievances would be redressed. I am really pained, Sir, to see the impatience displayed by the Leader of the Opposition in this important matter, a matter which affects large classes of people, when he is at least expected to look into all the papers, prayers and petitions submitted to him by the people. Here are people who are impatient of those who have strong belief in their Shastraic texts and in their commandments. I have heard the other side also very patiently, and if at all I rise at this late hour, it is because of the deep sense of duty which has impelled me to say a few words on this matter of momentous importance, both in the interests of Government as well as of the people. Sir, I can understand the Arya Samajists and others of their way of thinking who say that there is no such commandment in our *Shastras* and that the interpretation of the text is different, but I cannot have patience with those who hold that the texts and commandments in our *Shastras* are to be trifled with and that this Bill should be supported against the injunctions of the *Shastras*. Sir, I may tell the House what the law at present is. When the Right Honourable Mr. Srinivasa Sastri, about fifteen years ago, introduced an enabling measure in the Madras Legislative Council, it was understood that, if a South Indian Brahman performed a postpuberty marriage that marriage would become invalid and that his progeny would not inherit the patrimony. It was in order to validate such post-puberty marriages that the Right Honourable Mr. Srinivasa Sastri sought to enact an enabling measure in the Madras Legislative Council. As the law stands at present, you will not admit a post-puberty mar-

riage in a South Indian family, and the heirs of the parties contracting such a marriage will be denied patrimony. But now, what is the present measure before the House, Sir? It is not an enabling measure at all. Now, instead of having an enabling measure, our friend Rai Sahib Harbilas Sarada is imposing on us a penal measure. This is reform with a vengeance!

Sir, as the House is aware, England offers a place to every school of thought. Even a revolutionary, even Mazzini sought asylum in England, but according to this Bill, one who sincerely believes that post-puberty marriage is against his religion has no place under the British Government; he is to be sent up to prison for obeying the commands of his religion, which he sincerely believes is the only right thing to do and disobeying it is sinful—Sir, apart from the merits or demerits of the Bill, is this the kind of law that you propose to enact? Should not such a man, who conscientiously believes that post-puberty marriage is against his religion, get protection at the hands of the British Government? Is he to be penalised by being sent to prison for obeying the commands of his religion, for believing in his religion? Sir, I do not propose to speak on the merits or demerits of post-puberty marriages. We Tamilians in the South have got a custom of betrothal in the first instance; it is not a nuptial ceremony. Betrothal does not mean the living together of the husband and the wife; it is only a sort of contract between the parent or guardian of the bride and that of the bridegroom. After the betrothal is over, when the girl attains puberty, she is sent to her husband to live as his wife. Sir, I cannot see any logic so far in the present measure before the House. The other day our friend Mr. Shah

Nawaz said that the contract becomes illegal if it is contracted between minors. It is not contracted between minors, because it is the father or guardian of the boy or girl that contracts a settlement. As between the ripe experience of my friend Rai Sahib Harbilas Sarda (with his 70 years experience) and of his grand-daughter of 14 years, I think I should place greater reliance and confidence in the ripe experience of Mr. Harbilas Sarda in the selection of a husband for his grand-daughter than on that of a child of 14 years.

Then, again, Sir, Mr. Shah Nawaz spoke the other day of the illegality of the contract. Where is the illegality? . . . .

**Mian Mohammad Shah Nawaz:** I never said that.

**Mr. K. V. Rangaswami Ayyangar:** It is the parent that enters into the contract. If a 14 years girl enters into a contract, can that become legal? A parent can give a boy in adoption legally. Do you suggest that a parent of ripe experience knowing men and things, knowing worldly affairs, is likety to make an undesirable contract, a contract which is likely to mar the welfare of his son or daughter? He certainly cannot be expected to do anything of the kind. But if he makes a contract for the welfare of his son or daughter, is that to be penalised? Is a contract to be made penal? What is there wrong in such a contract made by a father or guardian for the welfare and benefit of his own son or daughter, I cannot understand. Even Mr. Hilton Brown of Salem the other day declared that there could not be any criminality in a contract made by a parent or guardian for the marriage of his son or daughter. Such a contract cannot be made penal.

A boy or girl of a tender age cannot be expected to know what is proper for him or her. That a parent should be penalised because he makes a contract for the welfare of his daughter or grand-daughter, because he has got better judgment than a girl of 14 years is a law of which this House cannot feel proud. I certainly cannot congratulate the House if it becomes a party to an absurd law of this character.

Sir, I do not propose to dwell on the advantages of early marriages, I think my friend, Mr Sessa Ayyangar, has already dilated at length on the subject. I need not tell our friend Revd. Chatterjee that even Lord Christ was born of a virgin mother, and in Madras the best of men like Sriman Srinivasa Iyengar, the late Seshadiri Iyer and others who belong or belonged to the front rank of politicians and of the legal profession were and are all the products of early marriages. I shall not go into that question here, because the Bill is not concerned with the question of consummation. All I say is that, if a father or guardian enters into a contract with a view to place his daughter or grand-daughter in a good position in life, then his action should not be made penal at all. Make the present Bill an enabling measure if you like, but do not make it a penal measure. When such experienced people as Pandit Motilal Nehru among the Kashmiris, Mr. Jinnah among the Mussalmans, Mr. Mody among the Parsis and Colonel Gidney among the Anglo-Indians were persuading us in a high strain about the great benefit that post-puberty marriages confer upon our girls and painted before us beautiful pictures of how the girls will lead a happy life and how courtship, the best period of a girl's life, I spoke to several experienced men among the orthodox Hindus who had been here in



connection with the deputation that waited on His Excellency the Viceroy, and they told me that they wished to be left alone and they did not want to emulate the precious custom of the West of long trials, courtships, etc. They did not want to have those beautiful customs prevailing among the Kashmiri girls, among the Anglo-Indian girls, among the Mussalman girls and among the Parsi girls incorporated among the Hindus. They are content to have their own customs, and they are content to entrust the destinies of their daughters into the hands of the parents. They don't want to entrust it into the hands of immature or infatuated girls of 14. The sentiment of the Hindu Bhahmins should be respected. They avoid a marriage of a widow or a discarded or divorced wife. Once she has borne children, she is not married again. Other communities have no objection to marry girls or women after they become mothers. The House must respect the feelings of others and also remember that the opponents of the Bill are as sincere as anybody else about the welfare of their girls and boys.

Sir, the Home Government have not been rightly apprised of the popular feeling here. The reformers went to England and told the English people that the Indian Government were not amenable to the wishes of the Indians here, and I believe that the Home Government have come down upon the Indian Government as to why, when the Indian people clamoured for social reform, the Indian Government should stand in the way. But, Sir, I submit that the Home Government should have been properly apprised of the warmth of feeling in the country to the contrary. The long standing custom in India cannot be done away with easily and the country will be plunged into civil war. The Indian

Government should have reported to the Home Government that small incidents like the greased cartridges bring about revolutions and that history will repeat itself if such a measure as this is enacted.

The problem of education of the girl will solve itself if the husband is enlightened enough to send his wife to college; and for the sake of education, are you going to have a penal measure like this? Widowhood or lifelong suffering with inefficient husbands cannot be solved by my Honourable friend's Bill, for how is a 14 years' girl to find out the fitness of her husband? The fitness of the husband can be tried only by a trial marriage; and is my Honourable friend going to sanction companionate marriages in order to enable the girl to find out a fit and suitable husband for herself? I do not think he intends doing that. Now, there is an obligatory bar of puberty for compelling marriages, but when the bar is taken away there will be no law or convention to compel a girl to marry. The result will be that you will have a large number of unmarried women, and I don't know what the difference is between a large number of unmarried spinsters and a large number of widows? I do not think there is any.

We have to depend upon some chance for the compatibility of temper in the married pair in the same manner as when you beget a son or a daughter with certain characteristics there is the chance there. It is the same case with Indian or any man's betrothal. The parent is supposed to know the temperamental deficiencies of his daughter's future husband and he is the best custodian of the girl's welfare. I know that difficulties are experienced in those castes which have got post-puberty marriages. You speak of the dowry system, the

obnoxious dowry system. This dowry system will be worsened in the case of post-puberty marriages. I know in certain castes, if a girl is kept for a few years after she attains puberty, the parent has had to sell the whole of his ancestral house and other property in order to give the daughter away in marriage because some anonymous and mischievous rumour is set afloat by interested people that the girl was not leading a pure life. Factions in towns and villages can invent any such rumours. Please spare the few castes that do not have that custom of post-puberty betrothals from all these evil results. For heaven's sake do not inflict those few castes which are celebrating their marriages pre-puberty with such bad laws. Government have not penalised such monstrous customs as polygamy, or having one wife for the whole family of brothers, uncles, etc., prevailing in certain tribes. Go and abolish polygamy rather than come here and interfere with our customs, where it is held as a religious commandment to betroth our girls before they attain puberty—I mean by betrothal not consummation before puberty.

Twelve years is the minimum age of marriage in England, and I cannot see how you can impose an age of more than 12 in India. India is a tropical country, and girls attain puberty two years at least before they attain puberty in England, and yet 12 is the minimum age fixed in England. That is not penalised in England and yet you are going to penalise the age of 12 in India. I beg of you not to do so in this country. As I have said, England could not give asylum to one who feels it his duty to marry his daughter before puberty! They are already building pavilions in the free French and Dutch territories where they can give effect to their honest convictions much better than in the British

territories. If British India cannot harbour such conscientious and honest people, then it is far better that they colonise in foreign States and marry their girls there as their *Shastras* dictate. We have no Defenders of Faith. Pray don't be destroyers of it. It is said that *Suttee* was abolished and nobody raised a voice of protest against it. I do not pretend to defend *Suttee*. Now suicide is only another name for *Suttee*. I do not pretend to defend it, but what I say is this, that in one form or another human misery asserts itself and the ways of *Dharma* only lead to happiness ultimately. Please allow us to keep our customs in our hands. *Dharma* was not dictated by a malicious or vicious saint bereft of humane feelings. The test of a custom lies in the product. We have seen the products of post-puberty marriages and they are in no way better than a Srinivasa Iyengar of Madras or Seshiah Sastri of Pudukotta who were born of the girls wed as per the prevailing marriage customs. Apply the test to a custom and find out the result of the product thereof. I am yet to find any caste, following post-puberty marriages, more intelligent, more courageous or with better moral instincts than people belonging to castes of pre-puberty customs.

I must conclude my speech by reading some portions of an appeal addressed to the Government:

"You are incurring a great responsibility by lending your sympathy and support to this Bill, which is part of a movement for assimilating all Indian institutions, customs and manners to those of your own—which is all that reform amounts to in India today, be it social or political—but all under the force of blind imitation and without any calm consideration of how your institutions work among your own

people. In doing so, you are also violating your solemn pledge of religious neutrality.

May I respectfully call upon you to accept my humble challenge that the system of late marriages is not all a desirable system and that the one you now propose to penalise is not only scientific sociology, but is alone helpful to the Highest Purpose of Religion? Because, it first stabilises the family compact at an age when alone the seeds of sweet stability could be sown, and thereby enables the social, inter-social and universal compacts to be reared in logical and harmonious succession.

No doubt every custom requires suitable working conditions. The custom of prepuberty marital settlement can be no exception. But the duty and responsibility of maintaining these conditions is with Government and if that Government should, in the first instance, let these conditions go into disrepair, and then set about to abolish the custom itself and even to penalise it, instead of repenting and making amends for its neglect—is it not a ridiculous phenomenon of which every decent Government should be ashamed? And if an unmothered woman is only half a woman and if that is the curse of the West today, is not the discouragement of that “husbanding” by the penalisation of a custom which alone ensures the universality of wife-ship for women, the inviting of that curse among the few communities in India, where that curse does not yet exist.

Further, have you no responsibility in the matter? Is not the Government the physician to the body-politic? And does the doctor exist merely to make up and administer whatever medicine the majority, rather the most clamorous, of his patients prescribe? Or, has he the duty to diagnose the disease himself and prescribe the remedy on his own undivided and sacred responsibility? And to repeat, will you condescend to bow before an unprepossessed tribunal, acting according to judicial procedure:

- (a) that the system you are being urged so heartlessly and even heedlessly to penalise, is wrong and,
- (b) that the policy you have already announced with reference to it is either wise or courageous?"

With reference to the Members of the Assembly the appeal says :

" We granted you that suffrage, and we did so without even getting a pledge from you, as we might have done, namely, that you will not initiate or support any important measure without consulting those who put you in power and convincing the meanest among them of their need. Some of us now stand before you as candidates for a patient hearing, and you deny even that. Do not treat us lightly or reject us summarily. Whatever be our strength or status, give our representation your calm, leisurely and unbiased consideration.

Do you want the Indian woman to be a copy of the Western woman today? Are you not particular that the marriage state should be normal, and, if possible, the universal, institution for girls? The various forces at work, economic intellectual, educational and political, are tending in that direction. Do you want to hasten that tendency and bring it to a culmination? And are you prepared, as you must be when marriage becomes an optional institution, to give girls the same rights of inheritance to ancestral property as the boys? This would mean encouraging girls to seek marriages less, which again would mean the greater need for treating girls in the same way as boys in respect of all matters, personal and public—thus constituting a vicious circle. Are you prepared for all that? Else, take note that the abolition of the puberty barrier for marriage, that is, the final marital settlement, not the consummation, will have that effect, whether you intend it or not.

Are you not aware that among people in the West, who do not insist upon marital settlement long before puberty or upon consummation immediately after it, and who, by dint

economic and political power, are the veritable lords of the creation today, the experiences of sex life have been such that a whole literature has grown up, which is most shocking to contemplate—but a literature based, unfortunately, on hard facts and stern logic—no fancy, no emotion.

To make a small extract out of many choice and apposite ones—Judge Ben Lindsey estimates that at least 45 per cent. of high school girls have had intercourse with men before they leave school.

If that is so among people who are now the master nations of the world, what should it be among us whose bodies are at their mercy and whose intellects are under their monitorship, if their system are introduced into our midst?

And if the author of the aforesaid literature and the deeper thinkers among those nations recommend the very systems of early marriage and early consummation, now in force among us, at least among some communities, and that on grounds of actual or *a posteriori* experience as well as of *a priori* sociological and scientific reasoning, is it up to us to ignore their hard earned lessons, to legalise the infraction of such a system having the force of law in the country, which we once attempted to do, and now to penalise its practice?"

As for the pre-puberty marrying communities already in India, there are the Hindus and non-Hindus whose physical and material condition in no way differs from that of the communities who contract postpuberty marriages—thus proving that the marriage system has nothing to do with whatever unsatisfactory conditions may exist in India today. I would ask you to note, Sir, that though the practice of the former is to make the marriage settlement only along with the marriage consummation, *i.e.*, after puberty, their *ideal* is not of optional but of *universal* marriage for their girls, for

which the parents and guardians are to bear the initial and the final responsibility. Further, the anxiety of the parents and guardians in those communities to get their girls married as early as they can, and the eternal fear they groan under that no danger to purity or reputation may occur to their unmarried grown-up girls is known to them, and is too obvious to need any special stressing. In concluding I have to repeat what I said before if you only permit me to do so.

**An Honourable Member :** Go on.

**Mr. K.V. Rangaswami Ayyangar :** If you are impatient, Sir.....

**Mr. President :** Order, order. Why did the Honourable Member use that expression? Has the Chair given any occasion for it?

**Some Honourable Members :** No.

**Mr. President :** Why did the Honourable Member use that expression?

**Mr. K. V. Rangaswami Ayyangar :** I have got only one sentence. (Laughter.)

**Mr. President :** The Honourable Member must withdraw that expression.

**Mr. K. V. Rangaswami Ayyangar :** I withdraw that word, Sir. Now I have only to add by way of conclusion that in a matter such as early marriage and early consummation regarding which well-informed and scientific opinion, even in the West, is tending towards a more and more favourable verdict, a Government that stands for the expression of the enlightened conscience of the day



should hesitate to bring to bear the physical force of penal legislation. If, Sir, the familiar Shakespearean couplet may be quoted more by way of a reverent remainder than anything else :

“Oh, it is excellent

To have a giant's strength ; but tyrannous

To use it like a giant.”

**Several Honourable Members:** The question may now be put.

**Mr. President:** I take it no other Honourable Member wants to speak now ?

**Mr. D. K. Lahiri Chaudhury:** I move, Sir, that the question be now, put. (Laughter.)

**Mr. President:** Mr. Sardá.

**Rai Sahib Harbilas Sardá:** Sir, I rise to say only a few words before the debate closes. I wish to tender my heartfelt thanks to all the Honourable Members of this House who have supported the Bill as well as to those who have opposed it—to the supporters because they have given me great help in seeing this measure pass into law, and to the opponents for the great courtesy they have shown to me. I fully believe, Sir, that those who have opposed the Bill are actuated by the same honesty of purpose and high sense of duty as those who have supported the Bill. I give them the credit for good intentions in the same way as I do to those who have supported the Bill. I must also, Sir, take this opportunity to thank the Honourable Mr. Shervani and Mian Shah Nawaz for the great support that they accorded to

this measure on behalf of the community which they, along with other Members, represent in this House. Sir, I thank Honourable Members once more. With these few words I commend this measure to the favourable decision of the House.

**Mr. President:** The question is :

"That the Bill, as amended, be passed."

The Assembly divided :

AYES—67.

NOES—14

*The motion was adopted.*

[THE END].