Origin and Enactment of the Age of Consent Bill 1891

* On January 9, 1891, an amendment to Section 375 of the Indian Penal Code, which raised the Age of Consent for girls from 10 to 12, was introduced into India’s Legislative Council.
* Numerous petitions both supporting and rejecting the amendment were submitted.
* Protests against the amendment had equally important political ramifications.
* Revivalist nationalists opposed to colonial intervention in the domestic sphere, regarded as the last remaining abode of Hindu tradition. They were against it as it did not fit into their idealization of private sphere, notion of Indian motherhood, concept of *deshmata.* They also criticized the fact that Hindu conjugal relations should not be understood from a Western knowledge of ‘universal’ reason. Whosoever, thought otherwise were criticized as ‘anti national’ by them.
* Why did the amendment arouse such controversy?
* It raised the legal age of consent to sexual intercourse from 10 to 12 years for girls of all religious communities in India. Sex with an underage girl, whether married or not, was defined as rape and punishable by a maximum of ten years’ imprisonment or transportation for life.
* The Age of Consent debate showed that the control and objectification of women’s bodies was an important, if not central, component in the self-definition of each national community.
* In **1884**, a Bombay Parsi, **Behramji Malabari**, realized the need for legislation controlling the age of marriage of Hindu girls. He published ‘**Notes on Infant Marriage and Widow Remarriage in India**’. He urged the Government to ban early marriages and bar government employment to husbands of very young brides.
* He circulated the document among officials and private persons, British and Indian, for their reactions.
* The document mainly included his views on early marriage and the condition of life of widows. The younger the girl when married, the greater her chances of becoming a widow, thus, early marriage and widowhood were related.
* It received a wide range of replies from medical men, lawyers, princes, government servants, British administrators, scholars, and from public bodies. Thus, beginning in 1884, a voluminous body of official opinions, data, Council debates, and resolutions was printed preceding the culmination of the Act in 1891
* Views were also in conflict on the average age of puberty among Hindu girls, and this disagreement led to differences over the suitable marriage age for girls.
* One of Malabari’s arguments was that early marriage was sapping the vigor of the Hindu ‘race’. Many reformers agreed with him. Others felt that spiritual welfare, adhering to the *sastras*, was more important than biological fitness.
* Two notable reformers: Ramkrishna Gopal Bhandarkar and Mahadev Govind Ranade felt that Malabari exaggerated the extent and ill effects of infant marriage and enforced widowhood.
* Reformers failed to reach a consensus on what steps the Government should take.
* Government officials opposed immediate passage of laws on social reform on grounds that Indian opinion must first develop and that governmental powers should be used only as a capping stone for successful private efforts. Government was willing to consider: (1) amendment of the Widow Remarriage Act of 1856 to allow remarried widow to keep property inherited from her first husband, and (2) provision that a ‘widow, who fails to obtain the consent of her caste fellows to her marriage, may nevertheless marry without renouncing her religion’.
* Majority of Indians favored legislation or other Government action of some sort to restrict infant marriages.
* For the first time **this social reform issue attracted the national attention**
* To carry his proposal ahead, Malabari went to England. There he delivered speeches. In 1890 he published in England ***An Appeal on Behalf of the Daughters of India*.** His work in England created much greater awareness of Indian problems.
* In 1884, K T Telang, reformer and later Bombay High Court Judge, urged that ‘reform is most urgently called for in regard to the time of consummation and not so much in regard to the time of marriage’. He argued that delayed consummation of marriage be a ‘reform from within’ Hindu society and not imposed from without.
* It was Dayaram Gidumal, Malabari’s chief propagandist, who carried the Telang prescription to its logical conclusion with the suggestion that ultimately became the Age of Consent Bill. Gidumal proposed that an amendment in the Penal Code was necessary by raising the age of consent to 12; for married and unmarried girls. Some of the reformers approved of it **as it did not seek any new Government interference but rather working with the existing structure**.
* In 1889 when the Government appeared to be considering legislation to raise the age of consent, fierce opposition rose to a level never before seen in India on a social reform issue.
* Bengali newspapers were the first to protest against the Government’s renewed interest in Hindu marriage customs.
* It was thought that Government interference would cause great spiritual suffering, possible misuse of police investigating powers, and a breakdown in the moral fiber of Hindu women
* The public interest over the Age of Consent Bill expressed in northern India appeared mild in contrast to Bengal. The educated groups increasingly alert to public issues, were split on the question, and no powerful organised bodies were moved to defend or attack the proposed measure.
* In southern India, supporters and attackers of the Bill seemed evenly matched.
* It was in Bombay Presidency that the Consent Bill received its elevation to a major national issue, mainly by Lokmanya Tilak.
* Although progressive in his personal life, he saw in the Age of Consent question a religious issue which though it chiefly concerned Bengal, could be aggravated into a major weapon for use against his personal enemies: social reformers and political moderates in Maharashtra.
* His main concern was to increase the political strength in the direction of extremist opposition to British rule.
* ‘Hinduism in danger’ formed the backbone of most opposition arguments, including Tilak’s. But Lokmanya’s case also brought out a point which was more difficult for the reformers to face.
* Tilak held that a people prepared and anxious to liberate themselves from foreign domination should refrain from seeking help from the alien rulers, particularly while solving their private domestic problems.
* Tilak wanted a new movement, in his terms truly nationalist because it would rest on independence of spirit and deny reliance on Western guidance and example.
* The Age of Consent Bill debate reached furious proportions toward the end of the year 1890. 55 women doctors practicing in India appealed to the Viceroy to enact a law prohibiting consummation of marriages with girls under fourteen. A petition to Queen Victoria along similar lines came from 2000 Indian women.
* Following several debates in favor and of against the Bill amongst the Indian social reformers, the Government finally took a pro-reform stand, under pressure from British societies interested in the welfare of Indians.
* Second, the fact that the Bill was not a major innovation in the law but was an amendment to the existing Code made the official stand easier to defend.
* Third, Indian opinion favoring the legislation had gained strength since 1886, and those Indian leaders supporting the legislation were the moderates, whose backing the Government was glad to have.
* By means of the Age of Consent Bill controversy, the social reform movement achieved national recognition, and henceforth the social reform question was inescapably a part of nationalist ideologies.
* While it unified and ‘nationalized’ the social reform movement, it also publicized the anti-reformers and the revivalist nationalists and aroused great public support for orthodoxy.
* Opponents of the Bill could register an effective protest against any kind of Government interference in social and religious life and had made that protest a great public concern.
* Perhaps the opponents of the Age of Consent Bill could be held responsible for the fact that no major social reform legislation was passed between 1891 and 1929, when minimum ages of marriage were established by the Sarda Act.