REPORT
OF THE
AGE OF CONSENT COMMITTEE
1928-29.

CHAPTER I.

INTRODUCTORY.

1. Appointment and personnel of the Committee.—The Committee on the Age of Consent was appointed by the Government of India on the 25th June 1928 consisting of a Chairman and 5 Members; 4 Members of the Legislative Assembly were subsequently added on the 25th September. The Committee as finally constituted consists of the following members:—

Chairman.


Members.

2. Rai Bahadur Pandit Kanhaiya Lal, M.A., LL.B., late Judge of the Allahabad High Court (Vice-Chairman).

3. Mr. A. Ramaswami Mudaliyar, B.A., B.L., lately a Member of the Madras Legislative Council (Now President, Corporation of Madras).


7. Mr. Satyendra Chandra Mitra, M.A., B.L., M.L.A., Advocate, High Court, Calcutta.


With Mr. M. D. Sagane, M.A., LL.B., of the Central Provinces Civil Service, as Secretary.

2. Terms of reference.—The terms of reference were:

(1) to examine the state of the law relating to the Age of Consent as contained in Sections 375 and 376 of the Indian Penal Code, specially with regard to its suitability to conditions in India;

(2) to enquire into the effect of the amendments made by the Indian Penal Code (Amendment) Act, 1925 (XXIX of 1925), and to report whether any further amendment of the law is necessary and if so, what changes are necessary as regards offences (a) without and (b) within the marital state.

3. The Committee met at Simla on the 30th June 1928, and after settling the questionnaire and the details connected with the tour, adjourned on the 12th July.

4. Procedure adopted for obtaining opinions.—The questionnaire of the Committee (Appendix I) was sent out directly to about 6,000 persons and to 1,930 more through the various local Governments, of whom about 1,200 responded. The response to the questionnaire was wide and general, indicating the great interest evinced in the question and the importance attached to it by the public in every Province. The number of persons who participated in the enquiry was, however, much larger than this figure would indicate, as several of the statements received re-
presented the views, not merely of individuals, but of larger bodies like Organisations, Associations and Corporations.

5. *Itinerary of the Committee.*—About 900 written statements were received by the end of August 1928, and the rest within the extension of time granted later. In the beginning of September, the Committee started the examination of witnesses at Simla and took advantage of the session of both the Chambers of the Central Legislature to examine such of the members as could spare time, amid their other engagements, to attend and give evidence before the Committee. On the 15th September the Committee started on tour, and in the course of its itinerary visited and recorded evidence at Lahore, Peshawar, Karachi, Delhi, Ahmedabad, Bombay, Poona, Ootacamund, Calicut, Madras, Madura, Vizagapatam, Dacca, Shillong, Calcutta, Patna, Benares, Allahabad, Lucknow and Nagpur. The Committee examined about 400 witnesses of different classes and shades of opinions, including medical men and women, social workers, leading representatives of different classes and communities, and exponents of both orthodox and advanced opinions.

6. *Lady witnesses and Purdah parties.*—The Committee examined a large number of lady witnesses in different parts of the country, whose intimate knowledge of the conditions of married life and maternity entitled them to speak with authority of the feelings and views of at least the educated section of women in the country. To ascertain the opinions of orthodox women unable to appear and give evidence before the Committee, Purdah parties were organized at some places which the lady members of the Committee attended; and meetings of ladies of different shades of opinions were addressed by a lady member of the Committee in Peshawar, Karachi, Ahmedabad, Bombay, Poona, Madras, Calicut and Madura and other places, to afford occasion for an exchange of views and to create a general interest in the work of the Committee.

7. *Visits to villages and institutions.*—Feeling the necessity of ascertaining at first hand the opinions of villagers, the Committee took the opportunity of visiting the following villages:

- Aslali and Jaitalpur near Ahmedabad in the Bombay Presidency,
- Appantirupati and Kalandiri near
Madura in the Madras Presidency, Harirampur and Mirpur near Dacca in Bengal, Phulwari and Bushera-Dinapore near Patna in Bihar and Orissa, and Gosainganj near Lucknow in the United Provinces.

In every village visited, enquiries were made from the people there as to the practices prevalent among them in regard to marriage and consummation, the evils, if any, noticed by them and the remedy proposed. Lady members made similar enquiries separately from the women gathered there. The alacrity with which in certain villages the villagers expressed their willingness for legislation to prevent early maternity was a surprise to the Committee. The evidence of lady doctors examined at different places has been of particular value and induced the Committee to visit various Maternity Homes at Karachi, Ahmedabad, Bombay, Poona and Madras, and certain Rescue Homes, Orphanages and Children’s Aid Societies at Ahmedabad, Bombay, Calicut, Benares and elsewhere. The Committee also visited two chawls in Bombay and various girls’ and boys’ schools in different parts of the country, to see the girls and boys, married and unmarried, and their physical condition. The scope of the Committee’s enquiry was, therefore, much larger than the mere volume of oral and written evidence would indicate.

8. The questionnaire of the Committee was sent to important newspapers published in the various languages of the country and its publication in most of them afforded an opportunity for the public in general to express their views. Every opportunity was also afforded during the itinerary to all persons, interested in the question to send their considered opinions on the various points, mentioned in the questionnaire; and in many instances, persons, who had not sent written opinions for want of time or other reasons, were invited to give evidence before the Committee; and among them there were many learned representatives of orthodox opinion and several representatives of what are described as the depressed classes, whose opinions would not have otherwise been available to the Committee. The Committee did not visit Burma, because early consummation of marriage was uncommon in that province, though cases of rape or attempted rape were far more numerous than in any other Province. The Burma Government also
thought that no special enquiry by the Committee in Burma was necessary. The Committee, nevertheless, took the opportunity to issue its questionnaire to various leading men and associations in Burma, and has had the advantage of receiving a few opinions for its consideration.

9. The Committee has also had the benefit of the views of various Social Reform and Religious Associations in the Country and of the resolutions passed at meetings and conferences, including the conferences of ladies held in various places and the conference of the All-India Medical Association held in Calcutta in 1928. It has also received valuable assistance from the Public Health Departments and the Doctors in charge of Maternity Homes in different centres visited by it.

10. About 400 persons came and were examined out of those invited for oral examination. Amongst these there were about 60 Muslim witnesses, including 3 ladies. Some of those examined had not given written opinions; but for various reasons it was considered desirable to take their oral statements.

11. General nature of evidence. Non-Muslim evidence.—The non-Muslim witnesses may be divided into two classes:

1. Progressives—
   (a) in favour of advance mainly by legislation.
   (b) in favour of advance by social propaganda only and not by legislation.

2. Conservatives who are against any advance, by legislation or otherwise.

The progressives, who are for an advance on the present law, may be divided into those, who advocate a law fixing the minimum age of marriage and do not care for a law of Consent, those who advocate both and those who rely merely on the increase in the age of Consent. The last sincerely believe that the increase in age, with a wide amount of publicity, would secure the object in view by voluntary or involuntary compliance with the law. It may, however, be pointed out that among those, who would accept only an increase in the age of Consent, there are some, who obviously feel that such a law has been a dead letter and must continue to be so, and whose acceptance is thus only to avoid what they conceive to be the more positive
evil, namely, a law fixing the minimum age of marriage. From the evidence it appears that there is a large volume of opinion in favour of progress; but this does not make the Committee oblivious to the fact that there is an important section of orthodox opinion, which is opposed to change on the ground of Shastric injunctions, or more properly, of custom modifying such injunctions. The Committee has taken care to have the views of this latter class on record; and the paucity of their numbers has not prevented the Committee from giving due weight to their opinions. The Committee, however, notes that although efforts to get the opinions of orthodox ladies by direct evidence were made, they were not very successful; and the Committee had to content itself with second-hand information from those, who were in touch with their opinions.

12. Muslim evidence.—The Muslim witnesses may be ranged under 3 classes:

(a) Those who hold that early marriage is no evil whatever; that it has no prejudicial effect either on the mother or her progeny; that it is permitted by the Muslim Law and is sanctioned by the practice of the Holy Prophet and other eminent personages; and that any legislation fixing a minimum age of marriage would be an interference with Islam.

(b) Those who hold that though early marriage is to a certain extent an evil, as shown by the medical evidence, it is not such a great evil as to justify an interference on the part of the Government, the more so when it is found that due to economic causes, the spread of education and the progress of social reform, the age of marriage is automatically rising.

(c) The third class of witnesses comprise those who hold early marriage to be a positive evil, ruinous to the health and progress of the community and against the principles and teachings of Islam. They would not rely merely upon social reform and progress of education but think that a bold step by legislation is necessary in the best interests of the community and the nation. They do not agree with the Moulavis
and Ulemas who think that marriage legislation or raising the age of Consent would be an interference with the principles and teachings of Islam.

13. Views of Muslim theologians.—It has been pointed out that very few Muslim witnesses and theologians have appeared before the Committee. The questionnaire was sent to every Muslim gentleman, whose name was suggested by any member of the Committee; and a special request was conveyed to some prominent Muslim theologians to give evidence before the Committee or to send their written statements. At the end of the tour the Committee reassembled at Delhi; and a second opportunity was given to the witnesses whose evidence, some of the members considered, it was highly desirable to obtain. But in spite of this, the response was meagre. This is regrettable; but though the opportunity to give evidence was not largely availed of by orthodox Muslims, we feel that all that could be stated from the theological point of view has been stated by the witnesses of various schools of thought, who have assisted us in our enquiry, and it is extremely doubtful, if any fresh light can be thrown by them on the subjects under consideration.

14. Members of the Committee, who have the advantage of knowing Sanskrit, have also examined the texts cited by witnesses, and opinions expressed in pamphlets written by Pandits and scholars qualified to speak on the interpretation of Shastric texts; and others, who know Arabic, have gone through the Islamic texts referred to by witnesses. Several other documents, statistics and reports bearing on the question, including those on the Age of Consent and Marriage in other countries, have been collected and duly considered.

15. After completing the evidence, the Committee adjourned again on the 29th January and reassembled at Mussoorie on the 20th April to discuss the several points involved and to frame a Report.

16. Two remedies: Law of Consent and fixing a minimum age of marriage.—The terms of reference to this Committee do not directly include the question of prohibiting or penalising child marriages. But, among other things, the Committee had to consider how far the existing law of the Age of Consent within the marital state was
effective in its operation and whether any remedy could be suggested to make it more effective. It was impossible to debar the witnesses from suggesting the latter as a better and more effective remedy to check the evil intended to be dealt with by the law of the Age of Consent, if they thought fit to do so. The object of the Age of Consent within marital relations is to protect tender girls against early cohabitation and early maternity; and if the witnesses considered the mere law of Age of Consent as ineffectual in attaining the desired object, it was open to them to say so and suggest what they considered the better remedy, *viz.*, fixing the minimum age of marriage. The witnesses have freely availed themselves of this opportunity and have declared by a very large majority that they would prefer the latter remedy. Moreover, objections to raising the age of Consent were partly based on the ground of Shastric injunctions; that was a ground common to both—raising the age of Consent and fixing a minimum age of marriage. Texts were quoted to prove both—that pre-puberty marriages were enjoined and consummation soon after puberty was also enjoined by the Shastras. This also necessitated a consideration by the Committee as to the extent to which the texts are looked upon as authoritative in either case.

17. Why Law of Marriage considered.—When the law of the Age of Consent alone was contemplated by its promoters as a remedy for protecting tender girls, it might possibly have been out of place to consider any other remedies; at present, however, Bills suggesting both the remedies are before the Legislature; and it is impossible to avoid the consideration of what might be looked upon as a direct attack by way of fixing a minimum age of Marriage rather than a mere flank attack by raising the age of Consent. The Legislative Assembly has postponed the consideration of Rai Sahib Harbilas Sarda’s Bill pending the Report of this Committee. This has made it not merely relevant but almost incumbent on this Committee to express an opinion as to the relative efficacy of the remedy suggested in the Bill.
CHAPTER II.

HISTORY OF LEGISLATION REGARDING THE AGE OF CONSENT AND MARRIAGE.

18. Ancient Law of Consent.—The offence of rape is one of the most heinous of offences according to all ancient law-givers. The Code of Manu condemns the ravishment of a woman and prescribes punishments which vary from the sentence of death to a fine according to the relative status of the offender and the victim. The Muslim Law equally sternly condemns it, the punishment ranging from stoning to death to the infliction of 100 stripes.

19. At the time of the British occupation, the Muslim Law was being generally administered and courts set up by the East India Company adopted and administered that law. The Presidency towns, however, were guided by the Common Law of England from time to time. In 1828 an Act for improving the administration of criminal justice in the East Indies was passed (9 George IV C. 74) and was made applicable by His Majesty’s Courts of Justice to the towns of Calcutta, Madras and Bombay. This Statute declared rape an offence punishable with death, provided the girl was below 8 years, and with imprisonment in other cases. The mofussil courts however continued to administer the Muslim Law except in the Bombay Presidency, where by Regulation XIV of 1827 the Criminal Law applicable to that Province was defined.

20. Marital rape and age limit.—It may be noted that in all these laws, ancient and modern, there was no provision, prohibiting the intercourse of a man with his wife, on the basis of age. The concept, however, cannot be stated to be novel to the ancient law-givers, as both under Hindu Shastras and Muslim texts, consummation of marriage before the girl attained puberty was forbidden. The Law Commissioners, who drafted the Indian Penal Code in 1846, appear to have first conceived the idea of making intercourse between husband and wife, below a given age, an offence. The Indian Penal Code enacted in 1860 included the offence under rape, and prescribed a punishment which might extend to transportation for life for the husband who consummated the marriage, when his wife was below 10 years of age.
21. Legislation in 1891.—The law stood thus for thirty years, when owing to a number of cases in Bengal, the most notable of which was that of Haree Mohan Mythee, the attention of the public and the Government was drawn to the deficiency of the law; and it was proposed to raise the age from 10 to 12 years. Sir Andrew Scoble, who introduced the bill in 1891, claimed it as “the right and duty of the State to interfere for the protection of any class of its subjects, where a proved necessity existed.” The object of the bill was frankly humanitarian, viz., “to protect female children from immature prostitution and from premature cohabitation.” These practices caused immense suffering and sometimes even death to the girl and generally resulted in injury to her health and that of her progeny. It is unnecessary to enter into the history of the agitation that followed, or describe the firm stand which a section of the educated public and the Government took on the bill. It will be sufficient to state that the arguments, advanced against and in support of the measure at the time, have since been in the main repeated on every occasion, when similar legislation has been attempted.

22. Towards the end of the last decade, public attention began to be increasingly directed towards the improvement of the physique of the nation and the reduction of causes, which contributed to abnormal mortality. The great European war had proved the need for a more healthy and sturdy race. Political ideas and aspirations, which were stirring the country, also led people to consider these questions more seriously. The growing consciousness of the people to the magnitude of the evil led to the realisation that legislation to remove some of the causes, which were sapping the vitality of the people, should be undertaken. The need for extended legislatures and greater political power was pressed on the attention of the illustrious authors of the Montagu-Chelmsford report, by some individuals and associations, with the additional object of securing such legislation. The same point of view was put forward by some Indian witnesses before the Joint Parliamentary Committee which considered the Government of India Bill.

23. Bill of 1922.—The chances of such legislation being successfully carried through the reformed Legislature were
considerably enhanced by the Government of India Act of 1919, and it is small wonder that the very earliest oppor-
tunity was taken to secure such legislation by some of the
members of the Indian Legislative Assembly. On the 18th
February 1922, Rai Bahadur Bakshi Sohanlal, M.L.A.,
moved for leave to introduce a bill in the Assembly to
amend Section 375, Indian Penal Code, by raising the age
of Consent in both marital and extra-marital cases. The
Assembly at a later date carried a motion to circulate the
bill for the purpose of eliciting public opinion thereon.
The circulation of the bill elicited opinions from various
Provincial Governments, which are highly interesting and
instructive. The Government of Bihar and Orissa was
against the bill and referred to the distinct risk of agita-
tion and discontent in forcing social reform in advance of
public opinion. The Government of the Central Provinces
and Berar thought that the law would be evaded and was
of opinion that education and moral teaching would better
serve the purpose. The Bengal Government had great
sympathy with the object of the bill but found that the
majority of the people consulted were against it. The
Government of Madras declined to express any strong
opinion either way. The Bombay Government strongly
favoured the bill, and thought that the preponderance of
public opinion was in agreement with the measure. The
United Provinces Government welcomed the proposal and
was of opinion that it could be safely adopted. The Gov-
ernment of the Punjab was inclined to leave it to Indian
opinion and thought that the Government ought to be neu-
tral. The Government of Assam, while strongly support-
ing the measure, expressed the earnest hope that the Gov-
ernment would not officially dissociate itself from the
measure.

September 1922, the author of the bill moved that it be re-
ferred to a Select Committee. The motion was negatived
by 41 votes to 29, the Government remaining neutral. Sir
William Vincent, the Home Member, had, however,
declared in the course of the discussion that "if the bill
did go to a Select Committee, it could only go on the dis-
tinct condition that the section did not apply to marital
relations, and that in the case of girls over 12 and under 14
the punishment should be materially reduced and placed on
a somewhat similar level to that, which obtained in
England". The first attempt at legislation thus proved abortive. But the question itself was not allowed to rest there; and with the passing of years the agitation for a modification of the law steadily grew. A better knowledge of the evil consequences of early marriage and early consummation began to spread in the country—Maternity and Child Welfare centres were established in various parts of the country and furnished greater opportunities for understanding the extent of the evil. Baby Shows and Child Welfare Exhibitions concentrated the attention of the public on these problems.

25. *Awakening among women.*—Meanwhile, new forces were beginning to assert themselves in the social and political life of the country. Some of the educated women began, almost for the first time in recent years, to take part in the public affairs of the country. In several Provinces they had received the franchise by the votes of the local Legislatures. One of the first questions that they turned their attention to was the condition of their sex and the means by which it should be improved. The number of such ladies was no doubt very small and cannot even now be said to bear any adequate proportion to their population. But they have exercised considerable influence in shaping such legislation.

26. *Dr. Gour's Bill of 1924.*—Early in the life of the second Legislative Assembly, Dr. Hari Singh Gour introduced a bill to amend Section 375, Indian Penal Code, on the same lines as the previous bill, raising the age to 14 years in both marital and extra-marital cases. The bill was referred to a Select Committee, which made a material alteration by reducing the age from 14 to 13 years in the case of an offence by the husband.

27. *Attitude of Government in 1924.*—The bill, as amended, was taken up for consideration by the Assembly on the 19th March 1925; and it was clear from the start that opinion was very keenly divided on the provisions of the measure. The growth of public opinion in the interval between 1922-24 has already been referred to and is reflected in the proceedings of the House. An amendment, raising the age to 16 in extra-marital cases, was carried by an overwhelming majority inspite of the strong opposition of the Government and inspite of their votes being cast against it, the voting being 65 members for and 22 against it. Another amendment of a more
serious character, raising the age in marital cases to 14, and thus restoring the original provision of the bill in this behalf, was also carried by a narrow majority inspite of the serious opposition of the Government, 45 members of the Assembly voting for the amendment and 43 against it, among the latter being 18 official members. But these amendments were so different from what the Government then considered safe that they decided to oppose the final passage of the bill, and the motion that the amended bill be passed was negatived by 54 votes to 36, among the 54 being no less than 24 official members.

28. In view of the various suggestions regarding the Age of Consent law, which are examined later, it will not be unprofitable to briefly refer to some of the amendments considered and rejected by the Assembly in connection with the bill. An amendment that the distinction between girl-wives below 12, and above 12 but below 13, should be removed and that the husband in all cases should be subject to the maximum punishment of imprisonment for two years was negatived by the House without serious discussion. An amendment of exactly the opposite nature, suggesting that the punishment should be the same even where the girl is between 12 and 13 years of age, was also negatived. A proposal that, where the girl was between 12 and 13 years, the punishment for the husband should be confined to fine, was also rejected by the House. The question as to by whom prosecutions ought to be instituted came up for the serious consideration of the House, when Mr. Kamini Kumar Chanda moved that no complaint for rape upon a wife, who is over 12 years of age, should be instituted against a husband except by the person who would be the natural guardian of the girl if she were unmarried. The spokesman on behalf of the Government referred to the discussion on the subject in 1891, and the safeguards already provided, and objected to the amendment in toto. The House rejected the amendment by 56 votes to 32. Finally, however, as stated above, the bill was rejected.

29. Amendment of 1925.—But though the bill was rejected, the Government felt that matters could not end there, and that public opinion was fairly clear on the need for an advance. On the 1st of September 1925, Sir Alexander Muddiman introduced a bill to amend Section 375; Indian Penal Code, by fixing 14 as the age in extra-marital cases and 13 in marital cases. When the detailed
consideration of the bill was taken up, Dr. S. K. Datta
moved that the age be increased to 14 years in marital
cases, and Sir Hari Singh Gour proposed that a new
offence be constituted when the age of the wife was above
13 and below 15 years. Both the amendments were, how­
ever, withdrawn on the assurance of the Home Member
that he would obtain the opinions of the local Governments
and Administrations on these amendments. The bill, as
introduced by the Home Member, was then passed by 84
votes to 11. It is again interesting to note some of the
amendments, which were rejected by the Assembly. The
proposal that the maximum punishment, in cases where
the wife was above 12 years, should be 6 months' imprison­
ment and a further proposal that it should be only fine,
were both rejected by large majorities by the House, the
Home Member remarking that the punishment proposed
under either of these amendments was "ludicrously
inadequate" and that "it was much better to reject the
bill altogether than to make the punishment a farce".

30. Dr. Gour's Bill of 1927.—The question was not
treated as having been finally settled by the Act of 1925
either by the Government or by the members of the Assem­
bly. The former had expressly undertaken to get the opin­
ions of local Governments on the bill of Sir Hari Singh
Gour, and the latter by a majority had accepted it only as a
step in the right direction. When the third Legislative
Assembly met, Sir Hari Singh introduced his bill to amend
Section 375 of the Indian Penal Code, raising the age of
Consent in marital cases to 14 and in extra-marital cases to
16. In the course of the debate, the Government, while
expressing general sympathy with the object of the bill,
stated that detailed reports had been called for on the
operation of the amended law of 1925 from the local
Governments, and that the Government intended to ap­
point a strong Committee to undertake a comprehensive
survey of the whole question with a view to taking further
action, if the reports of the local Governments appeared
to render such a course necessary. On this statement the
motion to consider the bill was not pressed, and an amend­
ment to circulate it for opinion was carried by the House.

31. This led to the appointment of the present Age of
Consent Committee.

32. During the period reviewed above, opinion was
gaining ground that a more effective step than the raising
of the age of Consent should be taken to eradicate the evil of early consummation. The prevention of early marriages came to be regarded as the remedy, par excellence, to achieve the end in view. Proposals to exclude from educational institutions boys below a certain age, who were already married, or at any rate to exclude such boys from sitting for particular examinations, were put forward by some prominent educationists and social workers in the hope, among others, that thereby the marriage age of girls would rise. In the course of time it was, however, realised that such measures were auxiliary and the main reform was to prohibit, under risk of penalty, the celebration of marriages of boys and girls below a prescribed age.

33. History of Marriage Law.—In 1924 Mr. Ranglal Jajodia, M.L.A., wanted to introduce a bill in the Legislative Assembly, penalising the marriage of boys below 16 years of age and had obtained the necessary preliminary sanction of His Excellency the Viceroy. But for some reason, not apparent, the bill was never introduced.

34. Others, however, were ready to undertake the task, and on the 1st February 1927, Rai Sahib Harbilas Sarda introduced a bill to restrain the solemnisation of child marriages among Hindus, by declaring such marriages invalid when either of the parties was below a prescribed age. The bill was circulated for opinion, and it was obvious that a very considerable section of the public was against the proposal to invalidate such marriages, both on legal and religious grounds. The bill was later referred to a Select Committee, which made such radical alterations in it that it was decided to republish the amended bill. The bill penalised husbands over 18, marrying girls below the age of 14. It also penalised the parents, guardians and priests, solemnising marriages of such girls, or of boys below 18 years of age. When the bill came up before the Assembly, it was remitted to the Select Committee. The Committee made some slight changes, not affecting the main provisions of the amended bill. It was made clear that a mere betrothal ceremony would not constitute a marriage within the meaning of the bill; and it exempted a female parent or guardian from the punishment of imprisonment. The bill is now pending before the Assembly, its further consideration having been postponed till the result of the present enquiry is published.
CHAPTER III.

THE LAW OF RAPE AS AMENDED IN 1925.

35. From 1891 to 1925, the age of Consent for girls in marital and extra-marital cases was the same, viz., 12 years. The amendment of the law in 1925 for the first time introduced a distinction between marital and extra-marital cases and fixed the age of Consent in the former at 13 and in the latter at 14 years. In the course of its enquiry the Committee tried to investigate how far this amended law was known to or appreciated by the public and what its effects were. In 1927, the Government of India, in circularising to the local Governments the latest bill of Sir Hari Singh Gour, requested them to furnish information as regards the working of the amended law and its remedial effects.

36. Opinions of local Governments on effects of amendment of 1925 and Dr. Gour's Bill of 1927.—The Government of Bombay stated that no difficulties had been experienced in the working of the Act. But it was clearly of opinion that any attempt by legislation to prohibit the sexual intercourse of a husband with his wife until she attained a particular age can only be partially successful, and that the only effective remedy to attain the object in view was to pass a law, prohibiting the marriage of a girl under a particular age. However, the working of the Act had been fairly satisfactory; and even from the limited experience gained, the Governor-in-Council felt justified in recommending that the age of Consent should be raised from 13 to 14 and from 14 to 16 in marital and extra-marital cases respectively. The Government of the United Provinces thought that the experience gained was inadequate. The amendment had caused no uneasiness and was generally regarded as being salutary and educative. Opinion was generally in favour of advance and in particular of raising the age to 14 in marital cases. The Honourable Judges of the Allahabad High Court were unanimously of opinion that the age of Consent should be raised in both cases. The local Government would, however, allow some more time to elapse before modifying the law. The Government of the Central Provinces and Berar agreed with its
Judicial Commissioner that in the interests of the health and well-being of the community the age should be raised to 14 and 15 in marital and extra-marital cases respectively, that such change would not lead to any wide-spread discontent and that the initial lead must inevitably come from the Government by way of legislation. The other local Governments felt that the experience of the working of the Act was very limited and they therefore were not in a position to offer any opinion thereon.

37. Amended law ineffective.—The replies showed generally that very few cases of a breach of the law within the marital relationship came before the courts. It must, however, be admitted—and has, in fact, been abundantly proved during the course of the enquiry by this Committee—that there are more cases of infringement of the law of Consent in marital cases than those that come before the courts. Most witnesses have stated that the amended law has been of very little effect in preventing either early marriages or premature consummations. Some have spoken of the educative effect of the law, a fact which may be accepted, though its scope and extent must, for obvious reasons, be within the narrowest of limits. A few witnesses have given it as their opinion that the amended law has resulted in postponing marriages and preventing early consummations in certain cases. This class of cases must be very rare indeed, as a knowledge of the law hardly extends outside a few among the educated classes. Even among them, it is difficult to state how far the law has been solely or even directly responsible for such postponement or prevention. The age of marriage has undoubtedly gone up in some communities; but the rise in the age has been due more to economic reasons, to the difficulty of getting suitable bridegrooms and to the need of finding heavy dowries, than to a knowledge of the law and an anxiety to avoid its penalties. To a certain extent this rise has been also brought about by advance in education, movements of women’s emancipation, social reform and the growing desire to impart a reasonably high standard of education to the girls. It must, therefore, be concluded that the law has not been of much effect in bringing about those results which were intended and it is not difficult to realise why the law has largely failed in its main purpose.

38. Why law has largely failed—Ignorance of the law.—Foremost among the reasons for the inefficient working of
the law is the fact that it is practically unknown throughout the country. A knowledge of it is confined to judges, lawyers and a few educated men, who may read newspapers or are in touch with the courts of law. The evidence establishes the indisputable fact that the general mass of the people is quite ignorant of the law. There are many people among various classes and communities, who consummate marriage, some even before puberty and others soon after puberty, which in many cases occurs before the completion of the 13th year, utterly unconscious of the fact that they may be violating a penal law and making themselves liable to serious consequences. They follow the even tenour of their life with age-long custom as their supreme guide in such matters. It is possible that a knowledge of the law and the consequences of a breach thereof might have ensured a greater respect for it in many instances.

39. There is one drastic means of bringing home to the people a knowledge of the law, and that is by the institution of a series of prosecutions where the law is evaded. But, as will appear later, the very nature of the offence precludes such a possibility. The rigour of the law has in fact been so rarely brought to bear on the delinquent husbands, and the instances of their conviction have been so few either before or after 1925, that ignorance of the law continues to prevail to much the same extent.

40. Increase in age not striking.—Nor was the change in law effected in 1925 such that it was bound to be known to the public. It did not strike the imagination of the people. The increase in age by a single year was a reform, over which the social worker could not be enthusiastic, and of which the orthodox need not have been unduly apprehensive. The alteration was so slight that it made no difference in existing practices. Such an imperceptible alteration could not be of any practical value; and even those, who were anxious to bring about a much needed reform in the marriage customs of the people, took no interest in educating the public about the law or in bringing to light violations thereof. This aspect of the law must be remembered, when it is urged as an objection that a revision of the law so soon after 1925 is not called for.

41. Nature of the Offence.—The ineffectiveness of the law is due partly at least to the very nature of the offence.
The consummation of a marriage necessarily involves privacy. It is true that among several castes and in various parts of the country, there is a ceremony called Gaona, Garbhadhan, Ritushanti or Rukhsati, which is performed on the occasion of, or as a preliminary to, the consummation of a marriage. But owing to the changing economic or social conditions, such ceremonies are falling into desuetude, and even where they are performed, they are not attended with that publicity, which once characterised them, and are only known to the nearest relations. Where widowers are concerned, the ceremony is almost invariably ignored. Had this ceremony been generally observed among all classes, it would perhaps have afforded some facility for detecting the offence.

42. Reluctance of wife or her parents to complain.— The other reason that has made the law ineffective is one that is inherent in the very nature of the offence. Ordinarily, in India, there is no chance of a wife making a complaint against her husband for the offence. The Indian girl-wife, apart from her ignorance of the law and her position of dependence, has been impressed since childhood with ideas about her devotion to her husband; so that she cannot be expected to complain against him. She would rather undergo any suffering than testify against him in a court of law, especially as social opinion may not uphold her.

43. The parents of the couple, likewise, cannot be expected to complain, because they do not want to see their children punished and exposed to public disgrace. They are interested in avoiding the scandal attaching to the exposure of a delicate family affair in a law court. They are also deterred from bringing offences to light, as the consequences to the girl may be very serious, if her husband is dragged into court and punished. After conviction, even if the punishment does not amount to imprisonment, it is not unlikely that the relations between the husband and the wife would be unhappy, and it may even happen that the husband may discard her and take another wife. Among Hindus generally there is no custom of divorce; and girls cannot re-marry even if discarded. Moreover, if the husband goes to jail, the girl and her people must always bear the stigma of being instrumental in putting him in prison. There are other difficulties, equally great, in bringing such cases to court. The offence is non-
cognisable and the Police cannot bring a complaint. Even neighbours or members of the same caste as the offender will be equally reluctant to bring cases to court, though they may be aware of them and would be inclined to avoid bringing disgrace on both the families. The public, in general, is indifferent; and public opinion is not so developed or active as to take the initiative in discovering or bringing to trial infringements of the law. Only those cases can come and do come to court, where there has been serious physical injury to the wife or there is some ulterior motive behind the complaint.

44. Difficulty of ascertaining age of girls.—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 the girl; 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, can easily make a mistake of one year, while the range of error in the case of medical opinion can be even greater. Now, since to prove the offence within marital relations it is necessary to establish that the age of the girl is below 13, the difficulty of securing a conviction is obvious. It is true that this difficulty exists in almost all the offences, where a certain age has been prescribed, but it is more so in this particular class of cases, because the parties, most competent to testify to the age, are the most reluctant witnesses and have a strong incentive to suppress the truth.

45. Other reasons.—The offences under the law are not taken to court also because—

(a) the prosecution involves loss of time and money which the poor cannot afford, and
(b) even cases, where injuries have occurred, are privately adjusted since the families, being related by marriage, want to maintain amicable relations.

46. Thus it will be observed that the law is ineffective as regards a class of people, including a few even amongst the educated, who consummate marriage before or soon after puberty. Amongst the socially advanced classes generally and those communities which practise post-puberty marriages, the law has been of no consequence, since consummation of marriage is never performed below the age of 13 and there can, therefore, be no cases of infringement of the law.

47. Dissatisfaction not general, but confined to persons of advanced views.—This accounts for the absence of dissatisfaction with the present law amongst the public generally. The law has simply not touched them. The dissatisfaction that exists amongst the advanced section of the public is partly because the law is futile and partly because it affords no protection to girls over 13, who still need it on account of their tender age. While several local Governments and some witnesses have stated that the time, that has elapsed since the enactment of the law in 1925, is not sufficient to gather facts justifying a necessity for change, one thing emerges clearly from the evidence, that the law even at 13 has been largely ineffective. That by itself may be a very good reason to review the present position and examine if the law cannot be made more effective and comprehensive to afford protection to girls of 13 or even higher ages.

48. The dissatisfaction amongst the more thoughtful section of the public has, within the last three years, gained in volume and intensity; the more so, as women of this country are increasingly becoming conscious of the evil consequences of early consummation and early maternity, and the more advanced among them have in unmistakable language expressed themselves in favour of raising the age of Consent and supporting Sarda’s Bill, penalising marriages below a given age.
CHAPTER IV.

PROVINCIAL CONDITIONS AND NATURE OF EVIDENCE.

49. Why Provincial examination necessary.—The law of rape within the marital state applies to the whole of British India, and any modification of the law would be similarly applicable to the entire country. It will, primâ facie, be relevant to consider the conditions prevalent generally, throughout the country, to find out the state of public opinion and to see how far a change in the law is needed. Details of the practices in regard to marriage or consummation of different castes and communities or even of the people of different Provinces may be considered unnecessary, or even irrelevant. But while the law will undoubtedly be of general application, a correct appreciation of the position will not be possible unless the conditions in different Provinces and even among some particular castes and communities are examined. It is needless to dwell on the diversity of the population of the country or the variety of customs prevalent. Generalisations regarding such customs would be considered exaggerated and very wide of the mark in some Provinces, while in others they will be regarded as gross understatements of the case. Again the practices vary to such an extent in different castes, that averages, based on the state of affairs in a number of castes put together, would give a very inadequate and perhaps a grossly inaccurate idea of the extent of the evil. For all these reasons, it has been considered desirable to consider the conditions of each Province, as disclosed by the evidence which has been available to the Committee.
50. General conditions in the Punjab.—The Punjab presents fewer difficulties than most other Provinces. But, early marriage, both among Hindus and Muslims, is not as rare as one would be led to expect. The Census of 1921 shows that in the age period 5-10, 70 Hindu, 26 Muslim and 25 Sikh girls out of every thousand were in a married* state. In the age period 10-15, 367 Hindu, 187 Muslim and 223 Sikh girls were married. The Punjab is a predominantly Muslim Province, nearly 13 millions out of 25½ belonging to the Islamic faith. The Hindus form 9 millions, and the Sikhs 3 millions of the population. It is to be remembered that in the tracts to the west of the Punjab Muslims predominate, and, as will be shown from an examination of the evidence of the North-West Frontier Province, the custom among them is to perform late marriages. In spite of that, both from the census figures and the evidence before us, it is clear that the tendency has been for Muslims to approximate themselves to the Hindu custom in this regard, rather than for the Hindus to modify their practices, under the influence of Muslim example.

51. Influence on communities.—Next to the Province of Bengal, the Punjab possesses the largest Muslim population, having a little less than one-fifth of the total Muslim population in India. It is generally believed that there is a larger percentage of Muslims of foreign blood, i.e., non-converts, than in any other Province, the proportion being estimated at 15 per cent. of the population. In spite of these facts the number of early marriages prevailing in this community is surprisingly high. In the age period 10-15, 198 girls were found married in 1901, as against 221 in 1911, and 189 in 1921, out of every thousand. The figures show that there has been no tangible improvement during the two decades and that in fact there has been a tendency to back-sliding in 1911. The influence of neighbouring communities on social customs is also seen when the figures of early marriages in different parts of the Province are compared. In the Himalayan area, where there

* The expression 'married' wherever occurring in this chapter means 'married' as well as 'widowed', unless expressly stated otherwise.
are only 30 Muslims as against 642 Hindus per thousand of the population, the Muslim population appears to be inclined to go a step further than even the Hindus. 415 Muslim girls out of every thousand were found married between 10 and 15 as against 390 Hindu girls. In the Indo-Gangetic plain where the Hindu population is only slightly in excess of the Muslim, 228 girls are in a married state among Muslims as against 392 among the Hindu girls. In the sub-Himalayan range where there are about 5 Muslims to every two Hindus, 210 Muslim girls are married as against 345 Hindu girls. The North-West dry area is predominantly Muslim, the Hindu population forming less than twenty per cent. of the population. The influence of the larger community is clearly apparent, in the sudden drop in these figures, only 130 Muslim girls, and 225 Hindu girls out of every thousand being found married between 10 and 15. If two typical districts where each of the communities preponderate is taken into consideration, the mutual influence of the two communities is more clearly seen. In the district of Karnal* according to the census of 1921, there were 573,224 Hindus and 235,618 Muslims, males and females, 49 Hindu and 51 Muslim girls out of every thousand of girls were married before the 10th year. In the same district 249 Hindu and 361 Muslim girls were married before the 15th year. In the district of Shahapur,* there were 596,100 Muslims as against 82,182 Hindus, males and females, and 3.7 Hindu and 1.9 Muslim girls out of every thousand of girls were found married before the 10th year. In the age period 10-15, 66 Hindu and 37 Muslim girls were found married per thousand of girls.

52. Retrogression in Muslims and influence of the Reformer.—If similar figures for the year 1891 are examined, it is found that there has been a considerable retrogression, particularly in the Muslim community in both the districts. Karnal reported in that year 92 Hindu and 82 Muslim girls as married below the 10th year, while Shahapur showed 14 Hindus and 4 Muslim girls out of every thousand, in the same condition.* It is not surprising therefore that the writer of the Census Report for the Punjab in 1911, remarks, "Early marriage has degenerated into child marriage and the consummation of

* Census of India, 1891, General Report, page 66.
marriage when either one or both of the parties are still immature. The wife invariably being younger than the husband, the union naturally tells on her health. The Castes which practise early marriage on an extensive scale have generally a smaller proportion of females at the age period 12-15. Inquiries into a large number of cases show that when the marriage of young people is consummated at an early age, say, when the boy is not more than 16 years or the girl is 12 or 13, a fairly large percentage of wives die of phthisis or some other disease of the respiratory organs or from some ovarian complication within 10 years of the consummation of marriage. Most of the reformed religious societies, particularly amongst the Hindus and the Sikhs, are conducting a regular crusade against this custom. But from the figures, it would appear that the proportion of married females in the age period 10-15, to the total females of that age period has slightly increased instead of showing a contraction although the improvement from 459 in 1891 to 283 in 1901 was considerable. This would lead to the conclusion that matters as regards early marriage are more or less at a standstill and that the influence of the Reformer is confined to the educated section and has not reached the masses". It may be noted that the number of females of the age period 10-15 who were married was 254 per mille in 1921.

53. Higher class Muslims and widow re-marriage.— A fact that has some bearing on the consideration of this question is that widow re-marriage is not encouraged among the higher class of Muslims. A Mohammadan Jat or Rajput, a Sheikh of Arabian descent or a Moghul in the Eastern Punjab, will not think of marrying a widow. The popular persian poet Saadi has said—

"Rah-i-rast biro garche dur ast  
Zan-i-Bewah makun garche hur ast"

"Tread the straight path safe, although it more distant be,  
So take not to wife, a widow, even if she a Houri be."

(Census Report, 1911.)

54. Age of puberty and consummation of marriage.— The age of puberty in this Province varies from 12 to 16. It is slightly lower among the Hindus than among the Sikhs
or Muslims, being nearer 13 than 14. Among the Sikhs and Muslims, as also in the rural population generally, it is between 14 and 16. Consummation soon after puberty seems to be a general custom among Hindus and Muslims. In Haryana, which is mainly composed of the districts of Rohtak and Gurgaon, cohabitation is not uncommon before puberty. The custom of Gaona or Muklawa obtains in the Punjab to a fair extent, particularly among the higher classes and rural areas. But the custom is fast disappearing and in any case the period which elapses between marriage and Gaona is becoming shorter and shorter, the average period at present according to certain witnesses, being between 1 and 2 years.

55. Muslim evidence. — It has been shown in the preceding paragraph, that the practice of early marriage is prevalent among Muslims and shows a tendency to become more widespread. That the danger of the situation is realised is clearly proved from the evidence before the Committee. Muslim witnesses generally have favoured the raising of the age of Consent at least to 15, and also penalising marriages before 14 or 15 by legislation. This view is strongly expressed by the Hon’ble Mr. Justice Agha Haider of the Lahore High Court, the Hon’ble Malik Feroze Khan Noon, Minister for Local Self-Government, Nawab Mohamed Hayat Khan Noon, Deputy Commissioner, Gujranwala, Khan Bahadur Sheik Sirajuddin, Deputy Commissioner, Jhang, Malik Zaman Mehd Khan, Deputy Commissioner, Mianwali, and Mian Abdul Aziz, Deputy Commissioner, Hissar. They are also clearly of opinion that any legislation which will fix a minimum age of marriage and penalise marriages below that age would not be against the tenets of Islam. Mr. Justice Agha Haider would raise the age of Consent to 16, while Mian Abdul Aziz would go further and fix both ages at 18 or 20. The President of the Municipal Committee, Amritsar, Khawaja Ghulam Sadiq, Bar.-at-Law, is also in favour of fixing a minimum age of marriage. The two Muslim ladies, Mrs. Hamid Ali and Miss Khadijah Ferozuddin have expressed themselves in favour of raising the age of Consent to 16. They have further said that marriage below this age should be penalized by legislation. One of the sections of the Qudian community, through its representatives Dr. Mufti Mohammed Sadiq
and Mr. Din Mohamed, desire that the age of Consent may be raised to 14. On the question of a minimum age of Marriage, they have declared themselves against any penal legislation, on the sole ground that in such matters, we should move with the watchwords "Slowly and cautiously". They are however of opinion that such a legislation will not be against any religious injunction of Islam.

56. Of all the Muslim witnesses examined, only two, the Hon'ble Nawab Sir Umar Hayat Khan, and Sheikh Din Mohammed, M.L.C., are of opinion that there should be no minimum age of Marriage by legislation and that the age of Consent should not be raised.

57. *Hindu and Sikh evidence.*—The position of the Sikhs and the Hindus may now be examined in greater detail. It is noticeable that the question of religious sanction has very little bearing on the practice of early marriage amongst the several castes of the Hindus. In fact those which practise it most can be stated to be not controlled by any injunctions. According to the Census of 1921 the Chamars, (Depressed Class) who form 1,140,000 of a total Hindu population of 9 millions, get 175 out of every 1,000 girls married before the age of 12. The Rajputs who are nearly two millions married 98 of their girls below that age. The Kumhars with a population of 574,000 married 135 girls, the Kanets married 138 girls, the Lohars 124 girls and the Julahas 121 girls below 12. The custom of early marriage is thus seen to be more largely prevalent among the menial castes than among the higher ones.

58. *Reform activities.*—The Reformer has been specially at work in the Province of the Punjab to remedy what he considers the evil of early marriage. Various religious organizations such as the Arya, Brahma, Dev and Dharm Samajists have been at work in this direction. Reform Societies have also been formed in most of the important castes of the Hindus. The Rajput Sabha, the Khathri Conference, the Aror Bans Sabha, the Mohyal Conference and the Brahmin Sabha are some of the institutions which have made the abolition of early marriage one of the principal items of their programme. The Mohyal Conference has resolved that boys of less than 20 years and girls below 14 should not be married. The Dev Samajists have resolved on a minimum marriageable
age being 16 for girls and 20 for boys. The Khathri Conference has resolved on the age being 14 and 18 respectively. The Brahmin Sabha, an institution of comparatively recent origin, is working in the same direction. But as the writer of the Census Report remarks “In spite of all the agitation for early marriage, the reform societies do not appear to have had much practical effect so far even within their own circles, much less upon the masses”.

59. The evidence of Hindu and Sikh witnesses of the Province is practically unanimous in favour of an advance. Religious texts are not regarded as a bar to legislation, either advancing the age of Consent or fixing a minimum age of Marriage. On the other hand, they have been interpreted by some witnesses, notably Mr. Bhagwad Datt of the D. A. V. College, as prohibiting early marriages either directly or by necessary implication. The general opinion is in favour of fixing the age of Consent at 16 and to have a minimum age for Marriage fixed by law. Most of the witnesses would have the latter age at 15 while some would go to 18. The Honourable Lala Ram Saran Das, however, would not like to go beyond 13 in deference to orthodox opinion, though he is personally for a higher age of Marriage. Raja Narendra Nath, M.L.C., Rai Bahadur Lala Sevak Ram, M.L.C., Rai Bahadur Lala Mohan Lal, M.L.C., Lala Kesho Ram, M.L.C., Dr. Shave, M.L.C., Rai Sahib Gangaram, M.L.C., Dewan Bahadur Dewan Somnath, District Judge, Lyallpur, Dr. Kedarnath, Dr. Behari Lal Dhingra, C.I.E., Messrs. Ganpat Rai, Dunichand, Janki Das and R. R. Kumaria, are some of the witnesses who have strongly advocated legislation on both points. The Sikh evidence is equally unanimous on the point and suggests a minimum of 15 years in either case. Sardars Lachman Singh, Anand Singh, Mangal Singh and Abhay Singh are exponents of the Sikh point of view.

60. Women’s evidence.—The ladies, both Hindu and Muslim, who have either appeared before or sent statements to the Committee are equally earnest in pressing for legislation. The Muslim evidence has already been referred to. Among the Hindu ladies are Rani Narendra Nath, Dowager Rani Amrit Kaur of Mandi, and Shrimati Leelavati Kohli of Lahore. A perusal of the evidence leads only to one conclusion, that the Punjab is strongly
behind the agitation for an advance in the age of Consent and for fixing a reasonably high minimum age of Marriage.

61. As regards extra-marital offences, they seem to be sufficiently frequent. There is a good deal of seduction and abduction of young girls in the Haryana Division. There is a regular traffic in girls, practically of all ages, in the Punjab in general. Some people procure girls from the neighbouring Provinces also. The evils appear to be due to the paucity of female population in this Province. The prevalent negligence of girls would also to some extent probably account for the paucity of females. The witnesses want strengthening of the law in the extra-marital relation also, as they think girls of even 15 are not in a position to protect themselves. They require that the extra-marital age should be raised. The recommendations about age in this respect range from 16 to 21; 18 may be taken to meet their wishes.
NORTH-WEST FRONTIER PROVINCE.

62. The Frontier Province consists of over 2 million Muslims, 150 thousand Hindus and 28 thousand Sikhs and is predominantly Muslim. The large bulk of the Muslim population is Sunni as everywhere else in India, the Shias numbering only 80,200. In fact the total Shah population of the whole of India is 736,898 out of a Muslim population of 67,982,694.

63. Conditions in the North-West Frontier Province.— The practice of child marriage is least prevalent in this Province. No child under five years of age has been returned as married either among Hindus or Muslims.* The influence of the practices of the large Muslim population and the constant example of tribal customs across the border have both tended to bring about this result. In the quinquennial age period 5-10, only 2 out of every 1,000 Muslim, 11 Hindu and 17 Sikh girls are in a married state. In the age period 10-15, 121 Muslim, 190 Hindu and 306 Sikh girls out of every thousand are found married. These figures compare very favourably with those of the Punjab where 216 Muslim and 392 Hindu girls are in married state at this age period. It is however significant that among the Muslims, the figure for 1921, i.e., 117, is higher than the corresponding figure of 1911, i.e., 112. The practice of early marriage varies in different districts, being most prevalent in Kohat and least in Dera Ismail Khan. A few sects and castes observe this custom more extensively than others. The Rangrez (Dyer sect of Muslims), though a small sect, marry most of their girls at an early age. Among the Hindus, the Brahmins and Bhutias are most addicted to the practice. The age of puberty is naturally higher than elsewhere in India. The average age is stated to be 14 and most girls attain puberty between 13 and 15 years. The practice of consummation before puberty is not prevalent to any extent in the Province, though we were told that among the Hindus of Shankargarh there is early marriage widely prevalent and cases of pre-puberty consummation are not unknown.

64. Muslim evidence.— The evidence of witnesses corresponds to the practice prevalent. Practically all the

witnesses are in favour of marriages at a reasonable age and most of them favour legislation to bring about that result. The Muslim witnesses are strongly in favour of the proposal. There is no question of religious injunction or interference with the tenets of Islam. In fact the evidence is that such legislation will be in consonance with the spirit of Islam. Khan Bahadur Muhammad Akbar Khan, District Judge, Bannu, is strongly of opinion that the defect of early marriage must be cured by legislation. Social reform and education are doubtful, lengthy and inconvenient methods. Legislation is the only sure and direct method. Khan Sahib Kazi Mir Ahmad Khan, Vice-President of the Peshawar Municipality, is of the same opinion. Khan Bahadur Sadullah Khan, Assistant Commissioner, Hazara, Khan Bahadur Kuli Khan, Assistant Commissioner and Mr. Nur Baksh, Pleader, agree with them. All of them advocate 14 as the minimum age of Marriage and the same age for Consent within the marital relation. Khan Bahadur Maulvi Saiduddin, Additional Judicial Commissioner, would not lower either of these ages below 16 and strongly urges legislation. Nawabzada Muhammad Nasir Khan, District Judge, Dera Ismail Khan and Khan Bahadur Nawab Wali Mohammad are equally firm in the view that 16 ought to be the minimum age for Marriage and Consent, the latter trenchantly remarking that "Social reform must assist and not supplant the penal law". Khan Sahib Ghulam Sarwar Khan and Mr. R. Inayatulla of the Education Service are both for an advance by legislation and suggest 15 years.

65. It is unnecessary to further dilate on the evidence when it is so unanimous. The only witness who represented the conservative view was Aga Pir Sayad Munir Shah, Secretary, Anjuman-i-Jafria of Kohat who preferred social reform, and would reduce the age of Consent to 12 so far as marital relations are concerned.

66. Hindu and Sikh evidence.—The Hindu and Sikh evidence is unanimously in favour of advance by legislation. Most of them suggest 16 as the minimum age of Marriage and marital Consent. Dr. Paramanand of Bannu, a medical practitioner of wide experience, Rai Bahadur Lala Karam Chand, Dr. Bhola Nath, the President of the Arya Samaj, Bannu, Rao Sahib Jhinda Ram, Lala Jai
Dyal Gadi, Rai Bahadur Thakur Dutt, and Mr. Tekchand Nangiah are a few of such Hindu witnesses.

67. An examination of the evidence leaves no doubt that public opinion in the Province, as represented by the witnesses, is strongly in favour of a law of Marriage fixing a minimum age and an advance in the age of Consent within the marital relation, and that it would desire at least 15 to be that age.

68. As regards extra-marital relations, there seems to be more trouble here than in the Punjab. There are not so many rapes as seductions except in the Hazara district, where rapes are frequent. It is noticed that the Punjab imports a good many young girls from these parts to fill its brothels. It is owing to these evils, as pointed out above, that the people get their daughters married early. In general, 16 is the age suggested for the age of Consent in non-marital cases. Of course some prefer the age 18.
69. Conditions in Delhi Province.—The Province of Delhi is inhabited by various communities. The age of marriage is not so low here as at some other places. Marriages of girls among Hindus generally take place between the ages of 10 and 18, more generally at 12. The Marwaris 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.

70. Age of puberty and Consummation of marriage.—The age of puberty amongst all sorts of people seems to range between 12 and 13, the margin being a bit higher for the Muslims. Consummation generally takes place after puberty at about 13 or 14. The only community that forms an exception to the general rule is the Marwari community amongst whom consummation takes place even before puberty in several cases. Some instances of this type are also to be found among the lower classes and in the case of elderly husbands. As at other places, pre-puberty marriages and consummations soon after puberty are due to the belief that there are religious injunctions to that effect. In the villages surrounding Delhi, both the age of puberty and the age of consummation are higher by a year or two.

71. Evidence.—The evils of early consummation and early maternity seem to be patent to the public in general. Mrs. Chatterjee, however, attributes the alleged evils to causes other than early consummation and early motherhood, and points out that infant mortality and debility of mothers are found to a larger extent in the case of educated girls though marrying late. She also states that the evils of early motherhood are absent in villages. It appears that in the case of early maternity, usually first childbirth is premature and the child dies.

72. The majority of witnesses is for fixing a minimum age for Marriage as well as for raising the age of Consent. There are, however, objections from a few witnesses to either of the laws. Jains do not want a Marriage law. Mr. Pyarelal holds that a foreign Government, in fact, any
Government or Legislature, has no right to interfere in such domestic and social affairs. The other objection which is based on the ground of religion comes chiefly from the Muslims: Moulana Murbanuddin, Editor, Al-aman, says that it will be an interference with religion though it is admitted by him that no age has been fixed for marriage in their religious scriptures and that Shariyat looks down upon consummation of marriage before puberty. He however has no objection to a Marriage Law at 15 or 16, provided exemptions are allowed. In the opinion of Khawaja Hassan Nizami, there is no Quranic injunction regarding the marriageable age of a girl or a boy. He recommends 14 for the minimum age of Marriage and 15 or 16 for the age of Consent, and holds that without a Marriage Law, the Age of Consent Law cannot be effective. He recognises that some people would no doubt object, but thinks that there should be no agitation on religious grounds because Muslim religion commands men to have the greatest regard for the welfare of their women. In general, witnesses recommend 16 as the age for Marriage and also for Consent within the marital relation, though as a matter of compromise they would have 14 for Marriage.

73. It may be pointed out that while some of the witnesses think that a Marriage Law would be more effective and the Age of Consent Law ineffective as hitherto, there are some who think that the Age of Consent Law would be more workable and effective than the Marriage Law. The chief ground given is that mere punishment of fine in the Marriage Law will not be deterrent while the punishment of imprisonment is not feasible. Whichever law is enacted and whatever age is fixed, there is no apprehension of serious opposition or resentment in this part of the country.

74. Age of Consent outside marriage.—As regards offences of rape, seduction and abduction, they are frequent. It is said that there is a regular traffic in girls between 13 and 20, practically from all classes. They are said to be sent to the Punjab where demand for them is great owing to the paucity of girls in that Province. To meet this evil, witnesses recommend the age 16, 18 or even higher for the age of Consent outside marriage.
75. Conditions in Ajmer-Merwara.—In Ajmer-Merwara marriages of girls take place from 10 to 12 years of age and most of them occur at 12. Early marriage is much prevalent among the Jats.

76. Age of puberty and consummation of marriage.—The age at which girls in this part of the country attain puberty is 13 or 14. The bride and bridegroom are locked up in a room for a night soon after marriage and consequently in several cases consummation takes place before puberty and before the age of 13. It is more so, because there being no widow marriage, widowers marry young girls of immature age. As a result of such early consummation, the health of mothers and progeny suffers and there is a high maternal and infantile mortality.

77. Evidence.—The people have come to perceive the bad effects of this custom and the Conferences and Sabhas that have taken place there have passed resolutions restricting marriages before a certain age. The Maheshwari Conference supported Sarda Bill and the Hindu Sabha, Dr. Gour’s Bill. As far back as 1908, the Bhargava Sabha raised the age of marriage to 15. Thus, there is an awakening among the people and they demand a higher age both for consummation and marriage. Witnesses do not consider puberty to be a sufficient indication of physical maturity and recommend the age of 15 or 16 for marital Consent. They want the Age of Consent Law as well as a Marriage Law. Kunwar Chand Karan Sarda thinks that the minimum age of Marriage will be more effective provided it is fixed at 16 years. There might be some dissatisfaction against and opposition to the age being fixed, by a certain portion of Hindus-Maheshwaries and the orthodox. The dissatisfaction and opposition, it is considered, would however be negligible and not serious.

78. Age of Consent outside marriage.—As regards extra-marital cases the age of 16 to 18 is suggested.
BOMBAY PRESIDENCY.

79. Conditions in general in the Bombay Presidency.—In the Bombay Presidency, the conditions more or less vary with different communities in different parts of the country. In Sindh, early marriage is common, except among Amils and the higher classes of Muslims. In Gujerat and Kathiawar, early marriage prevails largely among all castes, except among Brahma Kshatriyas and Nagar Brahmins living in towns and the upper classes of Muslims. It is very rampant among the lower castes, such as Ghanchis, Kanbis, Kolis, and Dheds.

80. In Bombay proper, early marriage is practised largely among all classes, except the Gaud Saraswat Brahmins, Pathare Prabhus, Kapol Vaishyas, and the upper classes of Muslims. It is very common among Bhatias and Marwaris.

81. In the Deccan districts too, early marriage is common, except among the Chitpavan Brahmins, and the Saraswat Brahmins. It is common among the Mahrattas, Mahars, Holiyas, Lingayats, Shimpees, Vakkals and other lower castes.

82. Broadly speaking, the practice of early marriage prevails in the rural areas and among the uneducated classes, and is gradually disappearing from among the educated classes. It is practically non-existent among Parsis, and Christians.

83. In the Bombay Presidency, girls are married, more largely than elsewhere, at very low ages. In 1921, there were 1666 girls, married or widowed, under one year of age, 1671 girls married or widowed between one and two years of age, 4378 girls married or widowed between two and three years of age, 7219 girls married or widowed between three and four years of age, 12834 girls married or widowed between four and five years of age, 193582 girls married or widowed between five and ten years of age and 498706 girls married or widowed between ten and fifteen years of age.

84. Muslims.—The position of the Muslims is somewhat better. In 1921 they had 145 married or widowed girls under one year of age, 131 married or widowed girls be-
between one and two years of age, 341 married or widowed girls between two and three years of age, 487 married or widowed girls between three and four years of age, 716 married or widowed girls between four and five years of age, 11702 married or widowed girls between five to ten years of age and 41011 married or widowed girls between ten to fifteen years of age.

85. *Selected Castes.*—Taking again the number of married girls under twelve years of age among selected castes, early marriage is shown to figure very largely among Kunbis, Lingayats, Mahars and Marathas, and the percentage is also high among Chamars and Shaikhs of the Deccan Districts, the Dheds of Gujerat and the Baluchis and Kutchis of Sindh.

86. *Age of puberty and consummation of marriage.*—The age of puberty in the Presidency ranges from 12 to 15. The age is slightly lower for Gujerat 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.

**BOMBAY PROPER AND SURROUNDING TRACTS.**

87. Witnesses examined at Bombay were mostly from Bombay proper and therefore they represent, more or less, conditions obtaining in Bombay and tracts surrounding it.

88. *Conditions in Bombay.*—There are all sorts of communities here and the practices among them regarding marriage and consummation vary very much. Early marriage is common enough. The communities given to this practice are the Gujeraties and Bhatyas and to some extent Marwaries also. They generally marry before 12 and 13. The communities advanced in this respect are Saraswat Brahmins, Pathare Prabhus, Parsis and Christians. Among them marriages take place at 16 and above and never before 14.

89. *Age of puberty and consummation of marriage.*—The average age of puberty is 13 and consummation necessarily follows soon after that age. Ordinarily, consum-
mation does not take place till after puberty and before the age of 13. But consummation before puberty is not exceptional. It is prevalent among the Gujeraties in particular to a large extent. Likewise, consummation before the girl attains the age of 13 can be said to be common among the Marathas. The age of consummation is higher among Saraswat Brahmins, Pathare Prabhus, Parsis and Christians owing to a higher age of marriage prevalent among them, and it may be taken generally to be 16. The evidence shows that mothers and children from these communities are better in health than others. It is recognised that early marriage and early consummation subject the girls to various diseases and bring about mental and physical deterioration.

90. The evidence establishes that early marriage as a religious institution obtains only among the orthodox people and others follow it merely as a custom. The orthodox hold however is not strong enough and is losing strength day by day. As education is spreading and social reform is making advance, the age of marriage is rising steadily. The other factors that contribute to the rise in the age are, the economic conditions and the difficulty of obtaining suitable husbands. It seems that there is a movement spreading among the various castes for raising the age of marriage. For instance, the Jains at a recent conference passed a resolution that girls should not be married before ‘13.

91. Maternity and infant mortality among mill hands. —Maternity begins more often at the age of 15. In the mill hands the infant mortality is due to the conditions obtaining in the mills and the consequent strain involved on the females. Better regulations regarding work and sanitation are suggested to reduce the mortality. As between Hindus and Mohammadans, it is found that Hindu girls are stronger and better than their Muslim sisters. This is said to be due to the Purdah system prevalent amongst the latter.

92. Evidence.—Marriage Law.—In Bombay, the evidence is to fix the minimum age of Marriage and the age of Consent at sixteen years. But in view of the opposition of the orthodox classes, persons like Sir Purushottamdas Thakurdas, Sir Lalubhai Samaldas, Mrs. Chunilal Setalvad, Mr. Makanji Mehta of the Mangrolol Jain
Sabha, Mr. D. G. Dalvi of the Social Reform Association and others are content at present to fix the minimum age of Marriage at fourteen years. Mr. M. R. Jayakar, Dr. Mrs. Sukthankar, Professor V. N. Hate of the Daivadnya Association, Mr. M. N. Talpade of the Pathare Prabhu Social Samaj, and others recommend that the minimum age of Marriage should be fixed at fifteen years. But most of the remaining witnesses, including Mr. Jamnadas Mehta, M.L.A., Dr. Miss M. I. Balfour, Mr. Kanji Dwarkadas, Miss Engineer, Dr. Jadavaji Hansraj of the Bharat Mitra Mandal, Rao Bahadur G. V. Pradhan, Dr. Y. V. Bhandarkar of the Prarthana Samaj, Dr. Mangaldas Mehta, Mrs. Faiz Tyabji and others recommend that the age should be fixed at sixteen years.

93. Consent Law.—As regards the age of Consent, some are in favour of parity of age, some in favour of fifteen and others in favour of sixteen years of age. Mr. S. K. Bole, J.P., M.L.C., however, wants that both for Marriage and Consent, the age should be eighteen years. Mr. I. S. Haji wants to fix the age of consent at sixteen years, but he wants no age for marriage. Mr. Abdul Rauf Khan is opposed to both.

94. Medical evidence.—The evil consequences resulting from early consummation or early maternity are not however, seriously questioned by any of the witnesses. Dr. Miss Balfour, who has been doing medical work for the last thirty-eight years, states that she compared the class of young mothers of sixteen and under with those of seventeen and over as regards the incidence of still birth, premature birth and infant birth-weight and found that the results were unfavourable to the mothers of sixteen and under. The incidence of still birth, she says, was at the rate of 186 per thousand as compared with 83 per thousand for the older women, or, in other words the young mothers gave birth only to 656 per thousand full time living children as compared with 774 per thousand full time living children for the older women. She goes on to say:—“These full time children of the young mothers weighed an average of 5.88 lbs. at birth as compared with 596 lbs. for the full time children of the older women. The difference is small, but to put it in another way, it means that 43 per cent. of the full time children of the young mothers were below the average weight of 6 lbs. as
compared with 33 per cent. in the case of the children of the older women". She further says that in her opinion, early cohabitation and early maternity were responsible for some part of the high maternal and infant mortality in India and consequently for some part of the poor physique of many of the people. Her statement is corroborated to some extent by the evidence of Dr. G. J. Campbell, Principal of the Women's Medical College, Delhi, who states:— If the mother is immature, her child is of necessity below par in vigour, in power to resist disease, and in weight. The last of these can be easily compared. The average weight at birth of babies born in Calcutta is 5 lbs. 11 ounces; here it is slightly over 6 lbs.; in England it is 7 lbs. If the family system has broken down, as is now common in cities, the mother is too young and inexperienced to take care of her child satisfactorily. These factors certainly contribute to the excessive infantile mortality in India. Dr. Mrs. Sukthanker, Honorary Physician for children in the Cama and Albless Hospitals, states that in the Welfare Centres, she had recorded eight children of immature mothers out of a total of forty, two of whom were still births and the rest were 4½ to 5 lbs. in weight. The medical opinion is not however, unanimous. Dr. Miss. Balfour herself stated that efforts have not yet been made to see if infantile mortality is due more to early consummation than to other causes. Again Dr. Mehta of Nowrosjee Wadia Maternity Hospital, Bombay, says that the weight of the child has nothing to do with early or late consummation and that even in young and weak mothers progeny may be healthy. The fact that is however fully endorsed is that frequent maternity is responsible for low vitality.

95. *Cases of injuries cited by witnesses.*—Rao Bahadur G. V. Pradhan gives three instances in which girls from 11 to 14 years old, who had not attained puberty were forced to submit to sexual intercourse by their husbands, with the result that two of them received injuries and the third resisted and resented and left the house and went away to her father's place. Mr. Masani gives two instance which came to the notice of the Vigilance Society, in which the consummation was found to have taken place at the age of 10 years. Sir Purshottamdas Thakurdas gives an instance within his personal knowledge of a person who lost his wife at the age of 26 years, and was re-married
when he was 28 years old to a girl who was 12 years of age, very healthy and extremely well built for her age; but within 18 months of the latter marriage, the legs of the lady got paralyzed and she died a premature death at the age of 24 or 25 years. Mr. I. S. Haji refers to a case recently tried by the High Court at Bombay, in which a Madrasi husband had raped his minor wife under the age of 13 years before the girl had attained her puberty; and Dr. Jadavaji Hansraj mentions another in Cutch in which a girl wife died in similar circumstances of profuse haemorrhage. In certain parts of the country among certain communities, girls are at times sent to their husbands before they attain puberty. Mrs. Faiz Tyabji states that among the Daudi Bohras and among the menials, very young girls are married and there is a very great toll of human life. In Khandesh, a girl about 12 years old was sent to her husband who had another wife living, and she was off and on subjected to sexual intercourse and when she became very weak and ill, a telegram was sent by her husband to her father that the girl was suffering from Cholera. That case ended in the conviction of the husband. Dr. Sukthankar refers to a case in the Cama Hospital at Bombay in which, as a result of cohabitation after puberty but before the girl was physically fit, the girl lost her health and she was suffering from severe mental and nervous shock, resulting in hysteria and dread of marital relations. The girl there was over 14 and under 15 years in age, and the husband was about 40 years old. Unless a girl is physically well developed, the consummation of marriage even with a girl, who has just attained puberty is not therefore without danger to her health and constitution.

96. It is seen from the evidence that, excepting a few Mohammadans, the witnesses in general are for raising the age of Consent, and they think it should not be lower than 16. To prevent physical deterioration and to make the law effective, they prefer and advocate fixing a minimum age of Marriage and penalising marriages below that age. In general, 16 is advocated for the age of Marriage but none likes to go below 14, even by way of compromise. The objections to raise the age of Marriage and Consent are based on religious grounds. The Muslim standpoint is that as the Mohammadan law does not pre-
scribe any age for marriage, it would be an interference with their religious law if an age is fixed in that respect. However, some witnesses have deposed that legislation fixing the marriageable age will not at all interfere with the Muslim religion. The general trend of evidence thus is that the law of the Age of Consent, whatever the age, would not by itself be effective unless there is a law fixing the minimum marriageable age also. In fact, some think that there is no necessity whatever of the Age of Consent law, so far as marital relations are concerned, if the minimum age of Marriage be fixed at a sufficiently high figure.

97. **Age of Consent outside marriage.**—As regards the offences of rape, seduction and abduction, it is found that they are common to a very great extent in certain communities. The occurrence of such offences among them is attributed to the fact that there is a great paucity of females among them. The evil obtains in the mill hand population. Brothels are largely responsible for seduction and abduction of young girls and several victims have been rescued from their terrible fate from these dens by the Vigilance and other Societies that are working in Bombay. The age of 18 is therefore suggested by a large number of witnesses for extra-marital offences to give effective protection to young girls.

**THE DECCAN AND KARNATAK.**

98. **Conditions in the Deccan and Karnatak.**—The witnesses examined at Poona were from Poona proper and from the districts of Ratnagiri, Bijapur, Kanara, Belgaum, Khandesh, Dharwar and Satara and are therefore representative of the whole of the Deccan and Karnatak. The Brahmins of Poona are more advanced than those of the surrounding districts. The age of marriage of girls among them is sufficiently high and would be somewhere near 15. Except the orthodox, Brahmins in general do not appear to believe in pre-puberty marriage and it may be said that they, including ladies, prefer post-puberty marriage, more for the sake of education of girls and of securing suitable husbands. In such cases, the age of consummation can be taken to be 15 or 16. Cases of
consummation before 13 or before puberty are therefore very rare amongst them.

99. 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 or 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.

100. The age of puberty in all the above-mentioned classes and castes varies between 12 and 15. In general, it occurs at about 13 or 14. Ordinarily, it may be said that consummation does not take place in any class or caste before puberty or before the age of 13. The practice of consummation before puberty or before 13 however appears to be common in the Kunbis, Sonars, Marwarities and Gujraties. Among others such cases are few and far between. It is said that in towns puberty occurs earlier and in rural areas later. Consequently, as the Garbhadhan ceremony, i.e., consummation of marriage, takes place soon after puberty, the age of consummation is a bit higher in rural areas than in towns.

101. It may be noted that the orthodox base the practice of early marriage on religious injunctions. But it appears from the evidence that the practice of early marriage is due more to ignorance, custom and economic conditions than to any specific religious injunction in its favour. The people are disregarding other religious injunctions, and religion as such has a lesser claim on them.

102. In the Kanara and Bijapur districts, orthodoxy seems to have greater hold on the people. In the former, Halaki, Wakkals and Namdari castes marry their girls from 5 upwards as they believe in pre-puberty marriage. Among them the girls are temporarily sent to the husband's house for ceremonials and are brought back. Consummation however does not take place before puberty, i.e., before 12 or 14. Among the Halakies, the age seems to be rising and it is coming nearer 12 or 13 and Garbhadhan ceremony is performed one year thereafter. In this tract the Havic Brahmins however marry sufficiently late, i.e., at about 14 and the Saraswats marry between 14 and 18.
In the Bijapur district the Brahmins are about 1/10th of the population. The advanced wing of them, who are about 6 or 7 per cent. of the Brahmin population, marry their girls at about 14 and the rest at 12. Among these also consummation takes place after puberty.

103. As regards maternity, though there are cases of girl-mothers of 13, yet the average age for motherhood works out to be above 14 and the first child-birth may be said to take place between 14 and 16. It is found that girls who are mothers before the age of 16 suffer, though not immediately, in health. They contract diseases and become sterile and some of them succumb to death owing to poverty. The evidence however shows that the progeny of these girl-mothers is often healthy and does not suffer in health. It is possible that infant mortality in these tracts may be due to causes other than early consummation or maternity. It is however recognised that early marriage or consummation is an evil and an obstacle to the physical growth of girls and their education.

104. Evidence.—The evidence largely supports the fixation of the minimum age of marriage and the age of Consent at 14 years. Mr. J. R. Gharpure, an eminent lawyer and Sanskrit scholar, says that the Smriti texts relating to marriage were merely recommendatory and that if the age of marriage was fixed at 14 years, though he was personally in favour of a higher age, he did not think that there would be any practical opposition in his part of the country. Mr. P. Bunter, Public Prosecutor, Poona, Mr. K. S. Jatar, C.I.E., Retired Commissioner, C. P. and Berar and Mrs. Jankibai Bhat of the Seva Sadan, Poona recommend 16 for marriage and consummation. Mr. N. J. Shaikh, Assistant Sessions Judge, Dharwar, recommends 15; but almost all the other witnesses, including Rao Bahadur L. V. Parulekar, Pleader, Ratnagiri, Rao Bahadur R. R. Kale, Advocate, Satara, Mr. Dattatreya Ganesh Kale of Asoda, Mr. M. D. Karki, M.L.C. of Honavar, Khan Sahib Muhammad Ibrahim Makan, ex-M.L.C., Mr. R. P. Pandit, Assistant Commissioner, Belgaum, support legislation fixing 14 years for Marriage and Consent.

105. Among the Karnataka witnesses, Mr. Asundi does not want any advance in the present Law of Consent in marital cases nor any Marriage Law but would have the
age of 16 for extra-marital relations. Mr. Shaikh (Mohammadan) is for a Marriage Law at 15 for girls. Mr. Karki thinks Marriage Law would not be acceptable to people, but would have the age of 16 for Consent in marital and 18 for extra-marital relations. Mr. Pandit is reluctant to have a Marriage Law unless medical opinion emphatically declares early maternity to be harmful. He does not want a higher age than 14 for extra-marital relations as that would be a hardship on the Devadasi community. Mr. Havaldar would like to retain the Law of Consent as it is and does not want any Marriage Law.

106. Medical evidence.—Dr. Ranken, who is in charge of the Missionary Hospital, Poona, states that there were 52 women in her Hospital, of whom 13 were about 14 years of age at the time of the first child-birth and eight of them lost half or more than half of their children; one was aged 14 years at the time of her first child-birth and had lost eleven out of twelve children; another of 14 had three full time children and they were all dead; fourteen girls were 15 years old at the time of the first child-birth, and five of them had no living child; and ten girls were 16 years old at the time of the first birth and six of them lost more than half of their children; while the remainder were 17 to 20 years old. She points out that except where the girls were being educated or were otherwise occupied, it was proper that the marriage should not be deferred beyond the age of 14 years. Dr. Mrs. Vakil, who is in charge of the King Edward Memorial Hospital, says that she had come across girls, aged about 15 or under, becoming mothers, and their babies were often weak and below the average weight and did not thrive because their mothers were weak and not able to take care of and nurse the children. Rao Saheb Seth Gulabchand of Dhulia relates an interesting personal experience relating to himself. He was first married when he was 12 or 13 years old to a girl of 8 who gave birth to three children in succession, two of whom died, and she herself died a few years later. He married a second wife who was 11½ years old. She gave birth to her first child at 13 and a second child at 15; and both the children died, and the wife died too. He says that his eyes were then opened, and he next married a girl who was 16 years old, and was still living. He also refers to a recent case in which a boy of 18 of the
Maheshwari Marwari community was married to a girl of 10, and the two were locked up in a room shortly after the marriage and the girl's cries attracted the notice of a pleader, who lived in the neighbourhood and reported the matter to the Police. He recommends the age of 14 years for Marriage and 16 years for Consent and feels confident that once the law is passed and its penal provisions widely published and proclaimed, it would be observed and respected.

107. Thus it will be seen that almost all the witnesses recommend that the age of Marriage should be fixed at 16 and that the age of Consent within marital relations should be on par with it, i.e., 16. They think that the "Age of Marriage" law is necessary and will be more effective. In fact, the law of Age of Consent, so far as marital relations are concerned, can be dispensed with if there is a Law of Marriage. As regards the age in extra-marital cases almost all are agreed that it should be 18.

GUJERAT.

108. Conditions in Gujerat.—In Gujerat the age of marriage varies with different communities and classes. In this respect the more advanced community seems to be Bramha Kshatriyas who marry their girls at 16 and above. Jains marry at about 14 or 15. Nagars and other Brahmins come next. Among them the marriage age does not appear to be below 13. These remarks apply more particularly to the town of Ahmedabad and the educated classes. Agricultural and artisan classes, Audich Brahmins, Ghanchies, Kanbies and Kolies marry early and so also do the lower classes of Muslims. The marriage age for the girls of these classes is anywhere between 4 and 10.

109. There is one peculiar custom among Kadwa Patidars which deserves to be mentioned here. Mass marriages of girls take place, irrespective of their ages, at periodical intervals once in 10 or 12 years, at the dictation of the priests in charge of a certain temple, but the practice is slowly dying out. Even girls of 3 and 4 are married in this Mass marriage, as, if not married then, they would have to wait till the next season, i.e., for 10 or 12 years more. This naturally results in a large number of dispro-
portionate marriages. Another evil in the sphere of marriage age is that the caste Panchayats wield a great influence over the people. If once a partner is offered and rejected, the Panchayats ostracises the person rejecting, and he stands the danger of having no offer at all in future. As a result he has to marry his daughter at an early age.

110. Age of puberty and consummation of marriage.—The age of puberty for the Hindus seems to be between 12 and 14 and for Mohammadans a year later. In the early marrying communities and classes consummation takes place soon after puberty. As a rule, cohabitation before puberty does not take place except among Kanbies and Ghanchies and in cases where a widower marries for the second or third time. The latter evil seems to be much prevalent, as there is said to be a large number of marriages of this kind.

111. Hindu evidence.—The evidence taken in Gujerat is largely divided. Mr. Ambalal Sarabhai, Mr. Dahyabhai Ijatram, Mr. Bhogilal Sutaria, Mr. Dahyabhai Derasari and others recommend the age of 16 years for Marriage and Consent. Dr. Manilal Bhagat recommends 15 and Dr. G. R. Talwalker too considers 15 to be a safe age for maternity, though he is personally opposed to any legislation. Mr. Mangaldas Girdhardas Parekh, Mill-owner, Ahmedabad, states that he would prefer progress by educational and social propaganda, but legislation fixing the minimum age for Marriage and the age of Consent at 14 years would not be opposed, if adequate safeguards were provided against harassment. He further says that personally he would be willing if consummation was postponed for at least two years after puberty. Mr. Dowlatram Shah, President of the Ahmedabad Municipality, states that he would recommend the age of 14 years for marriage and 16 years for consummation, and that he had come across instances where cohabitation before puberty or soon after puberty had shattered fine constitutions or weakened the health of the girl. Mr. Ratilal Jivanlal Lakhia, Public Prosecutor, Ahmedabad, cites a case in the Kaira District where an Indian Christian girl aged 11 years was forced to sexual intercourse by her husband who was 25 or 26 years old, and the girl was injured. He thinks that if the minimum age for Marriage and the
age of Consent were fixed at 14 years, there would be less opposition. Mr. Dhruva, the Secretary of the Gujerat Reform Association, similarly cites instances where girls becoming mothers at 14 have either died or are wrecked in health, and he recommends legislation fixing the minimum age of Marriage and the age of Consent at 16 years.

112. Women’s evidence.—Lady Ramanbhai Nilkanth, the Secretary of the Gujerat Ladies Club, states that she was in favour of fixing the minimum age of Marriage to the age of Consent at 16 years, that she was connected with various bodies at Ahmedabad which had been carrying on propaganda work and that she had got a petition signed by ten thousand women, in favour of the Sarda Bill, fixing the minimum age of Marriage at 14 years. She adds that a large number was even in favour of fixing the age of marital Consent at 16 years. Miss Bhagvat, Principal of a women’s college and Honorary Secretary of the Gujerat Women’s Conference, states that she was in favour of fixing the minimum age of Marriage and the age of Consent at 16 years, and that the children of early mothers were generally physically and mentally weak. She mentions the case of a girl aged 13 years, who had very difficult labour, and though she survived, she had had no second child since. She mentions another case where a girl about thirteen and some months old had to undergo an operation because she could not deliver without it, and that she had become an invalid since. Dr. M. K. Pandit, the Lady in charge of a Maternity Home at Ahmedabad, states that within three years, she attended 2,333 cases, and found that at the age of 14 the children born generally weighed 4 to 5 lbs., under 16 the children born weighed about 4½ to 6 lbs., and at 18 and over the children born weighed about 6 and 6½ lbs. and in some cases 7 lbs. The health and constitution of the parents are of course important factors in the matter more than age.

113. Muslim evidence.—Kazi Syed Nuruddin Husein of Broach, and Syed Badiuddin are opposed to any legislation; but Syed Nawab Ali and Mr. Ismail Chandrigar, Honorary Secretary, Anjuman-i-Islam, Ahmedabad, support marriage legislation fixing the minimum age at 14 years, if exemptions are permitted in suitable cases. He refers to a case in which a Mohammadan girl was deli-
vered of a child at the age of about $12\frac{1}{2}$ with the result that the child died three days after birth, and the mother died twelve or thirteen days after delivery. Syed Nawabali refers to a case of a Muslim girl of a respectable family who was married at 12 and gave birth to a male child, found to be epileptic at the age of 14, and to a second male child who proved to be a cripple some years later and eventually died of consumption.

114. *Age of Consent within and outside marriage.*—The general opinion favours a rise in the age of Consent both in intra- and extra-marital relations and the ages suggested are 16 and 18, respectively. As a matter of compromise with the orthodox opinion, some witnesses suggest 14 or 15 for marital relations. The general opinion can therefore be taken to be in favour of 15. The medical opinion however is that 16 would be the minimum age for safe motherhood. It is recognised that the Consent Law, so far as marital relations are concerned would be as much ineffective as now, whatever the rise in age, if there is no minimum marriage age fixed by law. In fact, some say that the Consent Law can be dispensed with, if there is a Marriage Law. They suggest 14 for the marriage age—one or two only suggest 12 for it.

115. There does not seem to be any religious idea behind the age of marriage or consummation. These ages are governed by custom, the latter particularly by puberty. The Mohammadan witnesses recognised that fixing an age for marriage or consummation is not against religion. There are, however, suggestions made that if the age of marriage is fixed, there should be a system of exemptions in hard cases. The witnesses recommend an increase in the age, particularly on the grounds of health of the mother and progeny and the appalling maternal and infantile mortality. Tuberculosis is rampant in villages and at Ahmedabad among women. No doubt there are causes like congestion in Ahmedabad, the purdah system among the Mohammadans and the general poverty contributing to this calamity, but nevertheless, it is admitted that early consummation and motherhood is also a cause and an important cause of degeneration. It is also found that in the community and classes where girls are married late, mothers and their progeny are better in health.
116. The total population of this Province in round figures is 32 lakhs, of whom 8 lakhs are Hindus and the rest, with the exception of 4 lakhs, are Muslims, so that out of the total population, 25 per cent. are Hindus and 67 per cent. Muslims. The Hindus comprise the highly educated and cultured class of Amils and the mercantile communities of Lohanas, Cutchis, Banias, Khojas, Nagars and Pushkar Brahmins, who were originally natives of Gujerat or the United Provinces and have migrated to Sind in large numbers. Among the Muslims, there are Pathans, Makranis and Sindhis.

117. Conditions in Sind.—Among the Amils, there are no early marriages, the ordinary marriage age for girls being 16 and above. We were even told the case of a girl of 16 who refused to have her marriage consummated because that would interfere with her education. The Gujeraties as a class have kept up the custom of early marriage, the usual age being 10 to 13. Mr. C. A. Buch has collected some very interesting statistics from which it would appear that though early marriages are still prevalent, there is an awakening in the community and there is a decided desire for increase in the age of marriage to 16 and 18.

118. Age of puberty and consummation of marriage.—The age of puberty ranges between 13 and 15, Mohammadan girls attaining it one year later than their Hindu sisters. There is no doubt that there are many pre-puberty marriages and consummations, the general practice being to send the girl to reside with the husband soon after marriage, irrespective of the fact whether she had attained puberty or not. Two reasons are given for early marriage and early consummation, one being the paucity of girls and the other the absence of widow-marriages, with the result that widowers, who at an advanced age marry girls of tender years, are impatient for consummation.

119. Among the Mohammadans living in cities, there are no early marriages, the usual age for marriage being 16 and upwards (vide the evidence of Khan Bahadur Wali Mohammad Hasanali). However in the rural areas, there are early marriages, the ages varying between 12 and 15.
120. In all, 23 witnesses were examined by the Committee of whom 4 were Muslims including one lady Mrs. Tyabji, 7 doctors, among whom there were 3 ladies, one a Marwari, Rai Bahadur Shivratan Mohatta, two Parsis, the President and the Health Officer of the Municipal Corporation, and the rest were Hindus of different classes.

121. Evidence.—The evidence taken in Sindh largely favours legislation to fix the age of Consent and the minimum age of Marriage at 16 years. Dr. G. T. Hingorani, President, Karachi Hindu Sabha, Mr. Jamshed Mehta, President of the Karachi Municipality, Dr. P. T. Kothary, Civil Surgeon, Sukkur, Rao Bahadur Shib Ratan Mohatta, Haji Abdulla Haroon, M.L.A., Mrs. Tyabji and others recommend 16 for marriage; but Mir Ayub Khan, Barrister-at-Law, Dewan Bahadur Lal Chand Nawal Rai, M.L.A., Mr. D. D. Nanavati, I.C.S., Mr. Kalumal Pahlumal, and others are not prepared to go beyond the age of 14 years. Mr. Rup Chand Bilaram, Additional Judicial Commissioner, recommends the age of 12 years to appease the orthodox classes and refers to a case, Crown versus Kalu, tried by him in 1923 where the child-wife was taken by her mother to the Hospital for treatment, and the Medical Officer in charge reported the matter. At the Sessions trial, all the principal witnesses turned round, including the child-wife, who gave, it is said, an absolutely false explanation as to the injuries sustained by her, but the Jury accepted the statement made by her before the Magistrate as true, and the husband was convicted. The girl in that case was 11 years and six months old, and her husband was a sweeper by profession, aged 32 years. In 1928, he tried another case, Crown versus Ismael, in which the age of the girl was between 11 and 12 years, but the injuries received by her were not very serious. In 1924 there was a case at Hyderabad, Crown versus Lakho, in which a husband found to be 28 years old had sexual intercourse with his wife under 12 years of age, thereby causing her death. In 1925 there were two cases, one of which ended in an acquittal. The Muslims, with the exception of Mr. Haji Abaulla Haroon, M.L.A., were in favour of both the legislations and the latter too in the course of his oral evidence came round to the opinion that personally he was in favour
of legislation though he was afraid that the Maulvis and Mullahs would consider it an interference with religion.

122. Mr. D. D. Nanavati also refers to a case, Crown versus Jan Muhammad, tried in Sukkur in 1923 where a girl 11 years old was raped by her husband, who was about 16 or 18 years old. He mentions three other cases reported to him, in two of which the girl-wife was 13 years old, and in the third 14 years old. In two of those cases, the girl-wife died at the first child birth, and in the third, the girl-wife had a deformed and stunted growth, due to premature or early consummation, and ultimately succumbed at the second child-birth. Dr. Miss Bolton refers to a case of ruptured perineum where the girl was 12 years old. Dr. Miss Newnes states that among Katchis the first babies were usually born at the age of 13 or 14 years, and that the babies of early mothers were generally weaker, and got all sorts of diseases easily. She refers to two or three marital cases, in which a girl-wife of 14 years had severe injury and her vagina was lacerated, and in the others the vagina was similarly injured and she asserts that such cases arrested the development of the girl and affected their nervous system.

123. From a consideration of the evidence on record, it is clear that there is a general consciousness in the community about the evil effects of early marriage and a desire to penalize marriages below 14 and to raise the age of Consent to the same extent. There is no doubt, that due to economic causes and the spread of education and social reform, there is a tendency to raise the age, but the progress is neither uniform nor sufficiently quick and it is felt that the help of legislation should be invoked to accelerate the pace.

124. Age of Consent outside marriage.—Out of 23 Mohammedan witnesses only 4 were in favour of fixing the age of Consent in extra-marital cases at 16: the rest were all in favour of raising it to 18.
125. Conditions in Madras.—Madras is one of the Provinces where the custom of early marriage is least prevalent, a fact which may cause considerable surprise to those who have been impressed with the volume of opposition proceeding from that Province. According to the Census of 1921, $24\frac{1}{2}$ per cent. of Hindu girls between the ages of 10 and 15 were married, a proportion which compares very favourably with the 64 per cent. of Bombay, 62.4 per cent. of Bengal, 59.6 per cent. of the Central Provinces and Berar, 53\% per cent. of the United Provinces, 52\% per cent. of Bihar and 35.5 per cent. of the Punjab. Assam shows a slightly higher percentage (27 per cent.) and the North-West Frontier Province is the only Province which shows a lower percentage (19 per cent.). Among the Muslims the same fact arrests the attention, the proportion being 12 per cent., practically the same as that of the North-West Frontier Province, the two Provinces with the lowest percentages in this respect. The non-existence of large classes practising early marriages and the influence of very large communities who practise late marriages, appear to have restored the Muslims of Madras to the normal habit of the community of late marriages which exists in the Frontier Province.

126. Dravidian influence.—The practice of late marriages in Madras has been accounted for by many witnesses to Dravidian influence and the differences which exist between communities in the South and North of the Presidency strongly support this theory. It may be stated as a general proposition that the Telugu population which has been less affected by Dravidian influence is more early married, if the phrase can be used, than the Tamil portion where such influence has been dominant.

127. It is not correct to state, as is so often suggested, that only select castes like Brahmins or Vaisyas observe the practice of early or pre-puberty marriage. In fact the high percentage of 24 is a sufficient proof that where these two communities form less than 4 per cent. of the population many others must have adopted or be following the custom of early marriage.
128. Select Castes.—The Kapus (a non-Brahmin caste) have a population of 2½ millions and have the highest percentage of girls in the whole of India married below the age of 5: 50* girls out of every 1,000 are married at his age. The Telugu Brahmins marry 7 out of 1,000, the Tamil Brahmins 15 and the Komatis 5 below the age of 5. If girls between 5 and 12 are taken into consideration, we find that among the Kapus 338 out of 1,000 are married while 200 among the Telugu Brahmins, 62 among Tamil Brahmins and 177 among the Komatis are in the married state. The population of Tamil Brahmins is 500,000, of Telugu Brahmins 520,000 and of Komatis, about 400,000. The Mala (depressed class Telugu) has 107 of his girls in a married state between the 5th and the 12th years, while his brother in the South, Pariyan (Adi-Dravida), marries only 38 of them. The former have a population 1½ millions and the latter 2½ millions. These figures will enable one to understand the extent of the prevalence of the custom of early marriage and the reasons for its prevalence. It may be stated as a general proposition that except among the Brahmins and the Komatis, there is no argument based on religious injunctions or Shastras which can be advanced to justify pre-puberty marriages in other castes. They are merely in the clutches of inexorable custom which operates as rigorously among them as religious sanctions elsewhere.

129. Age of puberty.—The age of puberty is between 12-14, the large majority attaining it at 13. Cases of puberty at 11 are not uncommon. There is not much difference in the age in different communities, though it is stated on all hands that among Brahmins the average age is a year less than in other communities. This proves the influence of early marriages on the age of puberty.

130. Consummation of marriage.—Pre-puberty consummations are not common in this Province. Such cases do occur among the early marrying communities. The practice of consummation soon after puberty is however extensively prevalent among them. Witnesses have spoken of their being postponed to 6 months or even a year, but from a careful consideration of the evidence it is clear that this healthy practice is confined only to a few families. To refer to only a few of the statements, Mrs. Rajeswaramba states

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that consummation generally takes place within 16 days of puberty. Mr. Mantha Suryanarayana, a Brahmin gentleman and former member of the Madras Legislative Council, states that "Garbhadhan ceremony is performed among Brahmins and Vaisyas on the fourth day after puberty as a rule and marriage is consummated that night". There is no reason to doubt that early consummation generally follows early marriage and that in such cases the law of the Age of Consent in most cases is violated.

131. We may now examine the evidence. The Committee has been naturally anxious to get the viewpoint of orthodoxy in Madras, as both from the debates in the Legislative Assembly and from the agitation in the press it was led to expect that the greatest opposition to legislative advance would come from Madras. The work of the Committee attracted the largest attention in the Province and no fewer than 300 out of about 1,200 written statements received by the Committee were from Madras. The Brahmins who represent the orthodox opposition availed themselves of the opportunity and a large number of the statements were from them. In selecting witnesses for examination before the Committee we have given preference to Brahmin witnesses and nearly 50 out of 80 witnesses examined by the Committee were Brahmins.

132. Attitude of Brahmins towards post-puberty marriage. — The general impression that Brahmins in Madras are opposed to post-puberty marriages and do not realise the evils of early consummation is entirely incorrect. Many of them have shown a desire for reform and some have actively shown their faith in it by having late marriages celebrated. The question of post-puberty marriage has been engaging the attention of the community for over two decades. A conference of Pandits was held at Conjeeveram in April 1912 at which the opinions of Pandits were taken on this question. A detailed reference to their opinions will be found in Chapter VI. In December 1912 the Thiruvadi Parishad also considered the proper age of marriage and the decisions of the Parishad have also been referred to in Chapter VI. In 1914 the Hon’ble Mr. V. S. Srinivasa Shastri introduced a bill in the local Legislative Council validating post-puberty marriages among Brahmins but the agitation against it was so great that the measure was withdrawn.
This agitation should not however be understood to have proceeded from those orthodox Brahmins who considered pre-puberty marriage essential. Among the most vigorous opponents of the measure were those who were already celebrating marriages after puberty and who therefore felt that it was unfair to cast a doubt on the legality of such marriages. The advance in years has brought about some improvement in the age of marriage among a few educated families. There is definite evidence that either on account of economic causes, the difficulty of finding suitable husbands or paying the required dowry or from a consciousness of the risks and dangers of early marriage, such post-puberty marriages do take place; but the force of social opinion in the community is seen from the fact that in the majority of such cases, the attainment of puberty by the girl is not revealed.

133. The extreme orthodox point of view.—The exponents of the extreme orthodox point of view are definitely against fixing any age of marriage and would in no case advance beyond the age of puberty. The religious injunction on the point is according to them inviolable. Pandit U. P. Krishnamachariya, an English educated and learned Pandit, may be taken as representative of the extreme orthodox section. He is of opinion that pre-puberty marriage and consummation before the second menstruation are essential for the preservation of all that is best in Hindu society. Not only does he believe that the religious texts have prescribed such a course, but he is clearly of opinion from an examination of the state of society in other countries, that the Hindu system is the best in this respect. The witnesses of this school deny that there are any evil consequences resulting from early marriage and consummation. On the other hand, the intellectual predominance of the community is a strong argument against such a theory and there are many instances of early married women living to a long and happy age without any detriment to their physique or that of their progeny. Mr. K. G. Natesa Shastri, Editor, Kalpadruma, expresses the same view and would not have any law fixing an age for marriage. Dewan Bahadur T. R. Ramachandra Iyer of the Madras Bar, who has played a leading part in marshalling orthodox opposition to Sarda’s bill, would not have much regard for medical
opinion if it says that a girl is not fit for safe motherhood before 16, and for the most convincing of all reasons that "In the case of Brahmins, from time immemorial, for the past thousand years, marriages have continued to take place before puberty and consummations after puberty and the Brahmin community is physically, morally, intellectually and spiritually as good as, if not better than, any other community". He thinks that "fixing a minimum age of Marriage is altogether unwelcome in this part of the country while postponing consummation may not be so serious a grievance". To the same effect is the evidence of Messrs. T. S. Balakrishna Iyer, T. S. Ramaswami Iyer, K. Ramaswami Iyer, K. Rama Iyengar, Rai Bahadur T. M. Narasimhacharlu and C. V. Venkataramana Iyengar, M.L.C. On the other hand, there are some witnesses who would make an advance in the age of Consent, but would oppose marriage legislation beyond a certain pre-puberty age. Dewan Bahadur T. Rangachariar thinks that public opinion is advanced enough to raise the age of Consent to 14 but would not go beyond 12 with reference to the age of Marriage. Mr. M. K. Acharya, M.L.A., would prohibit consummations of marriage before 14 by giving the offenders only preventive punishment and would prohibit betrothal marriage before the girl is 10 years old. Justice C. V. Anantakrishna Iyer would have the age of Consent raised to 14, but is doubtful whether the age of Marriage should be 11 or 12. Mr. N. Srinivasa Acharya, Vice-President of the All-India Brahmana Maha Sabha and a prominent leader of orthodox views, thinks that if legislation must come, it may be by revision of the Age of Consent law fixing 14 as the minimum. It may be noted that witnesses of the latter group do not believe that there is any mandatory provision in religious texts enjoining consummation within 16 days of the first onset of menses. They speak of consummation being postponed by the most orthodox people to periods ranging from one to four years.

134. But there is a large group of Brahmin witnesses who feel that a Marriage Law is essential and that the age of Consent should be advanced. The Hon'ble Dr. U. Rama Rau, from his wide medical experience, would have a law penalizing marriages of girls below 15 and would fix the age of Consent at 16. Dewan Bahadur Visvanatha Sastri would have both laws and would recommend that
marriages before 14 be declared invalid. Messrs. K. R. Karant, M.L.C., P. K. Seshadri Iyenger, A. Srinivasa Iyenger and R. Ayyakutti Ayyangar, Advocates, would have both laws, fixing 14 as the minimum. Other witnesses would resort to more radical remedies. Mr. S. Ramaswami Iyer, Mr. M. Vedachala Iyer of Chingleput and C. Veeraraghava Iyer would have the age of Consent at 16. The two former would fix the age of Marriage at 14 while the latter would go up to 16. It is unnecessary to refer to more witnesses.

135. Women's evidence.—The ladies are practically unanimous in requiring both laws. Most of them would advocate 16 in both cases, in consonance with the resolution of the Women's Association on the subject. Mrs. N. Subba Rao, Mrs. Madhava Rao, Mrs. Malati Patwardhan, Mrs. Manjeri Rama Iyer, Mrs. Bhagirathi Sri Ram, Lady Sadasiva Iyer, Sister Subalakshmi Ammal, are a few of the ladies who have given striking evidence on the subject. Srimathi Srirangamma and a group of five other Brahmin ladies in giving a pathetic account of the condition of girl-wives advocate 18 as the minimum age in both cases. An attempt has been made by some witnesses at discrediting the evidence by describing the witnesses as Theosophists and reformers but apart from the fact that the description is incorrect, we are unable to understand how that fact vitiates the evidence.

136. Evidence in Andhra Desa.—The evidence of witnesses in the Andhra Desa is less free from the varieties which have characterised that of the Tamil Nadu. The religious point of view is much less in prominence. But it has to be noted that the practice of early marriage and early consummation is more widely prevalent among certain castes. The influence of Aryan civilisation is said to be greater here. The activities of social reformers have been more felt here than in the South. In fact the Telugu country claims to be the pioneer in such matters and the name of the late Mr. Veeresalingam Pantulu, a Telugu Brahmin and pioneer of social reform activities, is well known in Madras. In spite of this it is significant, and may be noted by those who rely on mere reform to remedy such evils, that the prevalence of the custom of early marriage is greater in this tract. It has however to be admitted that most of the witnesses have favoured reform,
a fact which shows that whatever the practice may be, the thought of the community has progressed in the direction of late marriages. Dewan Bahadur C. Venkatachalam Pantulu and Mr. P. Lakshmi Narasimham are among the few who oppose legislation on either point. On the other hand a number of other witnesses, Messrs. Mantha Suryanarayana, D. V. S. Prakasarao, G. V. Ramamurthi, Narasimham Pantulu, A. Parasurama Rao, M.L.C., Drs. A. L. Narayan and T. S. Thirumurthi, strongly support marriage legislation and raising the age of Consent.

137. It may be stated that though there is considerable opposition from the orthodox Brahmins, there is also a very fair section of them who are for an advance by law and that the volume of support is greater in Andhra Desa than in the Tamil Nadu. The custom of early marriage amongst Vaisyas has been already referred to. The practices of this community are in close conformity with those of Brahmins. But a new awakening is coming amongst them. Caste conferences have been held in Salem and Guntur where the Vaisyas have resolved that the minimum age of Marriage should be 14. The witnesses before the Committee, notably Mr. Sami Venkatachalam Chetty, M.L.C., a leading member of the community, have advocated a marriage law at 14.

138. Non-Brahmin evidence.—The Non-Brahmins are, almost without exception, in favour of such legislation. The desire in some communities to follow the example of the Brahmins is undeniable, however much it may be deplored. The cases of Kapus and Kamsalas have been referred to. In fact, the evil is spreading and some Brahmin witnesses have suggested that special legislation affecting these classes may be passed as in their case there are no religious injunctions. It is unnecessary to refer to the names of Non-Brahmin witnesses, where the evidence is so unanimous.

139. Muslim evidence.—The Muslims form a very small percentage of the population and the practice of early marriage is very limited among them. The Moplahs of Malabar form nearly one half of the entire Muslim population and witnesses have stated that the Moplahs have the custom of early marriage. In a few sects such as the Dudekulas elsewhere, it is equally prevalent. Some of the Muslim witnesses have opposed legislation because the com-
munity is not affected by it. But the more discerning among them who have noted the prevalence of the custom like Khan Bahadur Mohd. Bazlullah Sahib, C.I.E., Director of Industries, and Mr. Zynuddin, District Judge, have advocated both laws.

140. It remains only to be added that the Madras Legislative Council unanimously passed a resolution in 1928 recommending 16 as the minimum age of Marriage.

141. As regards cases of seduction and abduction, it appears that Oriya girls below 18 are seduced in large numbers and taken to other Provinces. Likewise, there is some trouble regarding prostitutes and Devdasies also, and it is believed that the law of Age of Consent would not be effective with regard to them, even if the age is raised to 16. Witnesses therefore recommend 18 as the age for extra-marital offences. It may however be noted that there are a few witnesses who do not want the present extra-marital age to be raised at all. Their ground is that a rise will lead the girls to assert themselves and to go astray and cause hardship to them.
ASSAM.

142. Conditions in Assam in General.—The total population of Assam is nearly eight millions of whom Hindus are 4,360,000 and Muslims 2,220,000.

This Province does not feature prominently when the statistics of early marriages are examined. In fact the North Eastern Frontier Province of Assam and the North West Frontier Province are the only two Provinces in India where there are practically no child-marriages below the age of 5. An equally satisfactory state of affairs is not however revealed when the later age periods of 5 to 10 and 10 to 15 are taken into consideration. Taking all religions, the percentage of married girls between 10 and 15 in 1921 was 25.9. The number of married girls between 10 and 15 among Hindus in 1921 was 54,449, being 27 per cent. of the total number and among Muslims 38,828, being 34 per cent. of the total. But conditions vary so much in different parts of the Province that an inaccurate idea will be conveyed by these averages.

143. Conditions in Brahmaputra and Surma Valleys.—Customs differ widely among the Hindus in the Brahmaputra Valley and in the Surma Valley. In the former, if the district of Goalpara is excluded, the practice of early marriage below the age of 15 is not considerable. The Brahmans and Ganaks are the two castes who celebrate pre-puberty marriages. Excluding Goalpara, only 142* girls between 10 and 15 are married out of every 1,000. In Goalpara District, however, 426 girls of that age are married. It is interesting to note that Muslims in this valley are very much addicted to the practice of early marriage, their numbers approximating those of Hindus in Goalpara; 42 girls between 5 and 10 and 473 between 10 and 15 are married. The total number of Muslims in this valley is about 600,000. In the Surma Valley 448 girls are found married between 10 and 15 among Hindus and 295 among Muslims.

144. Early marriage a custom.—The Brahmans of the whole Province form a population of 156,000 and the same fact is noticeable here as in other Provinces, that early marriage is prevalent in many castes and communi-

* Vide Assam Census 1921, Part I, page 98.
ties, which are not influenced by religious texts prescribing such a course. In fact even among the Brahmins of Assam, if the evidence of Mr. N. C. Bardoloi, M. L. C., himself a Brahmin, is to be accepted, it is not so much a case of following the Shastras as of following the custom which is prevalent. Some of the castes, lowest in the social scale, follow the practice to a larger extent than even the Brahmins. The Namasudras, the Patnis, the Barius, the Telis and Bhuimalis have been given as some of such castes and no question of Shastric injunctions can arise in their case.

145. Age of puberty and Consummation of Marriage. —Age of puberty varies from 12 to 14. Some witnesses declare that it even goes up to 16. Garbhadhan is still mostly practised. It takes place soon after puberty and precedes consummation. Amongst some educated people it is falling into disuse. The age of maternity among the early marrying communities appears to be 14.

146. Hindu Evidence.—The Hindu evidence is divided on the question of fixing a minimum age of marriage. Almost all witnesses however agree to raising the age of Consent, the majority favouring 15 years. Mr. Bardoloi M. L. C., thinks that the Brahmins would object to such a law and that the people are generally under the influence of Gurus or Goswamis who are the religious heads of the people. Pandit Surjya Kumar Tarkasaraswati would modify the present law making puberty the sole test and age of Consent. Mr. T. R. Phookan, M. L. A., would have legislation on both subjects and would advocate 16 as the minimum age. Mr. Promode Chander Datt thinks that fixing a minimum age of Marriage is more welcome and would have the age of Consent at 16. The Secretary, Bar Association, Silchar, in suggesting 14 states that fixing the minimum age of Marriage would be more effective and in consonance with public opinion. His Holiness Sri Sri Garamuriya Goswami, one of the four religious heads of Hindus, who is carrying on a propaganda for late marriages, thinks that three years should elapse after puberty before consummation but would rely on education and exhorts Government to mobilise all its strength and energies towards imparting education.

147. His Holiness Sri Sri Adhikari Goswami of Dakhinpat, Satra, is in favour of raising the age of
cohabitation and cannot support the Age of Marriage against Shastric injunctions for Brahmans. Messrs. H. K. Haldar and Bipin Chandra Deb Sarkar would not have either of the laws under any circumstances, though the former and Mr. Debi Charan Ray state that cohabitation before puberty is common among the lower classes such as Patnis and Nathis. Rai Bahadur Nagendra Nath Chowdhury, a former member of the Indian Legislative Assembly and of the Assam Legislative Council, a Bengali Brahmin, considers both laws essential and supports the proposed legislation.

148. Muslim Evidence.—The Muslim evidence on the point is generally against fixing an age for Marriage. The personal opinion of several witnesses is in favour of such a law but they consider that the fatwas of Mullahs would influence the people to protest against such a measure. Some of them however agree to an Age of Consent. The witnesses state that there is no injunction in Islamic law favouring or encouraging early marriage or consumption. But a Law of Marriage would curtail the liberty now extended to them and that is the main ground of objection. Mr. Abdul Matin Chowdhury, M. L. A., Mr. Arzan Ali Muzumdar, M. L. C., and Mr. Muhammad Abdullah, give evidence to this effect. But they are for raising the age of Consent. Mr. Chowdhury suggests 14, while the others would have 15. Sir Syed Muhammad Sadulla recommends the preaching of contraceptive methods and thinks frequency of births is the real evil. He is against both the proposed laws.

149. Opposition to Advance.—The Brahmans and the Muslims object to legislation on religious grounds and on the ground of the Government having no right to interfere in social matters. This opinion amongst Muslims was expressed by Mr. Abdul Matin Chowdhury and amongst Brahmans by Pandit Surjya Kumar Tarkaraswati.

150. Women’s Evidence.—The ladies who appeared before the Committee, Mrs. Sharda Manjuri Dutt, Mrs. M. K. Gupta, Mrs. Chandarprabha Sakigane, Mrs. H. Bhagur and others strongly advocated 16 as the age of Marriage and Consent.

151. The evidence shows that while the evil of early marriage and early consummation is not widely prevalent in the Province, the opinion of several of the witnesses is
against a Law of Marriage and that of the large majority is in favour of an advance in the age of Consent.

152. Age of Consent Outside Marriage.—Abduction and seduction are not very common in this Province. In fact, it is less than anywhere else. The witnesses recommend 18 for the age of Consent.

153. Custom of union before Marriage.—One peculiar feature with reference to some of the classes brought out in the evidence requires special mention. Messrs. M. K. Gupta, N. C. Bardoloi and Sir Saiyad Muhammad Sasdulla refer to a tribal custom among some classes according to which in April on the Bengali New Year's day there is a dance at which unmarried girls and young men join. At that time some of the couples elope and live for three or four days in the jungle presumably as husband and wife. A complaint of seduction is filed by the father of the girl but after the couple's return the case is compromised and marriage is performed.
BENGAL.

154. Conditions in Bengal.—In regard to this enquiry, the Province of Bengal presents many striking peculiarities and its conditions are in some respects unique. It may be remembered that legislation raising the age of Consent in 1891 was due, almost entirely to the serious state of affairs which was revealed in that Province. The debates during the passage of the bill deal mainly with the evil of early marriage in Bengal, though there may have been more than a suspicion that in other parts of India also, the practice was to a certain extent prevalent. The enquiry of the Committee shows that there are other Provinces where, among certain communities, a similar state of affairs exists. But nowhere except perhaps in the Central Provinces and Berar and in Bihar and Orissa, which once formed part of the Province of Bengal, have we come across a Province where practice of early marriage is so widely prevalent. Nor does the state of evidence in Bengal show that there has been any appreciable improvement, except amongst the few educated classes, since 1891, when the law was first amended.

155. Hindu and Muslim girls between 10 and 15.—Taking the age-period 10-15,* we find that in 1901, 60 out of every 100 girls were in a married state, while in 1911, the number of girls found married was 60 and in 1921, it was 59½. It is also significant that there is very slight difference in this respect between Hindus and Muslims. In fact, one of the peculiarities of the Province is the existence of the practice of early marriage among the latter, in almost as intense a form as among the Hindus. Taking the same age period of 10-15, we find that in 1901, 65 out of every 100 girls were in a married state among Hindus as against 59 among Muslims. In 1911 the figures were 71 and 60 respectively and in 1921, they were 62½ and 52½. These figures tell their own tale of early marriages, as will be seen later from an examination of the evidence of early consummation, among both the major communities of the Province. When it is further remembered that the Muslims of Bengal are 25 millions while the total population of the community throughout India is 68 millions and that it forms 42.41 per cent. of the Muslim

* Vide Appendix V—D.
population in British India, we have a better idea of the extent to which the Muslim community is subject to the practice of early marriage.

156. *Girls below 10.*—Nor does an examination of the figures of married girls at ages below 10, both among Hindus and Muslims, disclose a more satisfactory state of affairs. In 1911, 6 out of every 1,000 girls among Hindus were in a married state below the age 5 as against 8 in 1921. Among Muslims 4 out of every 1,000 were in a married state in 1911 as against 9 in 1921. Taking the age-period 5 to 10, it is found that among Hindus, 126 per 1,000 were in a married state in 1911 as against 91 in 1921, and among Muslims 11 were found married in the former year as against 64 in the latter. These figures taken from the Census Reports give a fairly rough indication of the extent to which the age of Marriage of girls has risen, by voluntary effort or by force of circumstances.

157. *Select Castes and Sects examined*—(a) *Hindu.*—But a more interesting, if perhaps pathetic, state of affairs is revealed when select castes are examined. It is found that the general averages given above are due to castes which practice late marriages, and that the custom of early marriage is even more extensively practised in some castes than the averages would indicate. Among the Brahmins, 4 in every 1,000 girls were married before the age of 5, both according to the Census of 1911 and that of 1921. In the age-period 5 to 12, 160 girls were found married in 1911 and 108 in 1921 out of every 1,000. The rise in the marriage age is thus seen to be very slow during the decade. It may be contended that these are classes among whom pre-puberty marriage is ordained by religion, and in fact during our enquiry we have constantly been told by witnesses that such marriages are the result largely of religious injunctions. The census reports do not however confirm this theory. In Bengal the Chasi Kaibarta class is the largest caste among the Hindus, its population being over 2 millions. The members belong to the Depressed Classes and cannot be affected so much by texts of Manu, Parasara or Raghunandan. and yet the custom of early marriage is prevalent among them to a greater extent than even among Brahmins. In 1911, 12 out of every 1,000 girls were found married before the age of 5 as against 11 in 1921. Again 259 girls between 5 and 12 out of 1,000
were in a married state in 1911 and 216 in 1921. The custom is prevalent to nearly the same extent among the Namasudras, who form the next largest class in the Province. They are also not guided by religious texts in these matters, but a more inflexible guide and disciplinary force for them is custom.

158. (b) Muslim Sects.—Nor are the Muslims of Bengal in a position of vantage at any of these age-periods. The Saiyads, who are the most educated and enlightened section of the community, observe practices in this regard which approximate very closely to those of Brahmins. In 1911, 7 out of 1,000 girls below 5 years were married and in 1921, the figure went up to 12. Between the ages of 5 and 12, 123 girls were found married in 1911 as compared with 105 in 1921 while at the age-period 12—15, 707 were in a married state in 1911 and 553 in 1921. The practice is more extensively prevalent among other sects. According to the census of 1911, 20 girls below the age of 5 and 314 between 5 and 12, out of every 1,000 were in a married state among the Ajlafs (Muslims). Among the Jolahas, the respective figures were 11 and 277. Among the Kulus, 5 girls were married before 5 years and 194 between 5 and 12. Even the Moghuls and Pathans are not far beyond the reach of the custom as 136 and 161 girls are married between 5 and 12 years of age in each of these sects. The Sheikhs who form the predominant population numbering nearly 23 millions are nearer the Jolahas than the Moghuls or Pathans in observing this custom.

159. Early Consummation.—The evidence before the Committee confirms the inference which may be drawn from the census figures. It is admitted on all hands that the practice of early marriage is widely prevalent throughout Bengal. Witnesses may praise or condemn the system and may refer to the advantages or disadvantages accruing from it, but the fundamental fact is undeniable, nor is it questioned, that early consummation almost inevitably follows early marriage amongst both Hindus and Muslims. Nor are the deleterious consequences of such early consummation seriously challenged except by a few witnesses, among whom are, surprisingly enough, some medical men. It is also established from the evidence that pre-puberty consummations are common and that violations of the Law of Consent occur in many cases. The practice of Gaona,
according to which the girl-wife is not sent to the husband's family till some time after marriage and generally after puberty, does not prevail in Bengal, with the result that soon after marriage, at any age, the girl lives with her husband and consummation invariably follows on attainment of puberty irrespective of the age of the girl.

160. Muslim Evidence.—It is in the light of these facts that the evidence of witnesses has to be examined. The Muslim evidence may first be considered as it presents fewer difficulties. A few witnesses regard the raising of the age of Consent or the fixing of an age of Marriage by law as opposed to religion. Mr. Hajee Ismail Chowdhury, M. L. A., states that among Muslims, puberty is the only test and consummation takes place irrespective of the age of the girl. The witness is personally in favour of checking the evil having a Law of Marriage, but would not support it, even if medical opinion regards 16 as the proper age of consummation, as the opinion of the community is against it. Quazi Zahirul Haq of Dacca admits that girls are married at all ages, even at 2 and 3, among the lower class of Muslims, that immediately after puberty, which happens at 11 or 12, the girl is sent to the husband's house and that he is aware of girls who became mothers at 13 or 14, but he will oppose all Consent and Marriage legislation as it interferes with the liberty granted by God's law. To the same effect is the evidence of Khan Bahadur K. A. Siddiqui, who strongly urges the reduction of the present age of Consent to 11. The witness states that cohabitation is not uncommon in lower classes before puberty and is considered essential by all, including the advanced section, soon after puberty. He is personally aware of 4 or 5 girls who had cohabitation at 10 and 11 and became mothers. He is however deadly against fixing by law an age of Marriage. Khan Bahadur Maulvi Ekramul Huq, M. L. C., is also against any legislation, though he admits that girls below 13 do not escape the consequences of marriage. He recites the case of a girl who was married at 11 years of age and gave birth to a child in about a year, with the result that the child expired and the girl lost her health for good. These witnesses represent the orthodox section of the community.

161. All other witnesses are strongly in favour of an advance. Mr. Nur Ahmed, Chairman of the Chittagong
Municipality, suggests 15 or 16 as the age of Consent, would favour Marriage at 14 and feels that the fixation of a minimum age of Marriage will more suit public opinion. Khan Bahadur Mohammad Ismail, M. L. C., is strongly of opinion that consummation of marriage would be safe only after the completion of the 16th year and urges the need for propaganda explaining the evils of early consummation. Witness was in a position to cite any number of cases that had come to his notice where the girls had broken their health by cohabitation before or immediately after the attainment of puberty. Mr. Azizul Haq, M. L. C., is personally in favour of a bill like that of R. S. Harbilas Sarda and feels that every well-wisher of the country will welcome it. He thinks that fixing a higher age of Consent for marital cases will be in consonance with public opinion. He is of opinion that nothing in the Muslim Scriptures is against a Law of Marriage and that Muslims will not be affected at all, because public opinion amongst them is confined to the opinion of the few who can be persuaded. Mr. M. Kazimuddin Ahmad would have the age of Consent raised to 16. Maulvi Mohammad Quassim would have the age of Consent beyond 16, would like to strengthen the penal law and thinks that marriage ought not to be performed before the girl has reached the 14th year. According to the witness, cohabitation before and soon after puberty occurs in many instances. He is clearly of opinion that a Law of Marriage would not be against Muslim Scriptures. Mr. Jalaluddin Hasimi, M. L. C., states that cohabitation before puberty does exist though only among muslims of lower social order, would have girls married after 16 and thinks Marriage legislation would be more effective. The minimum age of Consent according to him should be 15 years. When asked if the Maulvis and Mullas will consider the enactment of such a law as an interference with their religion, witness stated that he did not think so and that in all the papers conducted by Muslims, except one, they have raised no objection. The arguments of the paper which objected were met with. Khan Bahadur Maulvi Wasimuddin Ahmed, Chairman, District Board, Pabna, states that cohabitation before puberty is to be found amongst the low classes and that cohabitation before 13 is not infrequent. During his experience, professional and otherwise, he came across many cases of cohabitation before puberty.
with the consequence of permanent injury to the health of the girl. In many cases girls suffered severe injuries and the witness knew of 3 or 4 cases in which girls of 10 or 11 years had to undergo forcible cohabitation resulting in profuse bleeding, and injuries to private parts which took time to heal. The witness was of opinion that there should be legislation fixing the minimum age of Marriage at 13 with exemptions in hard cases. Maulvi Abdus Sabhan Muhammad, Deputy Magistrate, states that cohabitation often takes place below 13 as girls often attain puberty below that age. The Law of Consent would be more in consonance with public opinion though he thinks a Law of Marriage would be more effective. Mr. A. F. M. Rahman, I.C.S., proposes prohibition of marriages of girls below 13. The witness thinks that fixing a minimum age for girls would be more acceptable. Public opinion would revolt against this also in the beginning but it will subside soon, and the law would help to educate public opinion in the long run. All things considered, the witness preferred to rely on strengthening the penal law, particularly by fixing the minimum age of Marriage. Mr. Mahmood Ali, Police Magistrate, thinks that penal legislation fixing a higher age of Consent would be more in consonance with public opinion than a Law of Marriage. Mr. Khondkar Ali Taib, Deputy Magistrate, Mymensingh, states that in his experience child-marriage is more prevalent in Bengal than in any other Province. There may be opposition to legislation but no importance need be attached to it as the people will gradually appreciate the improvement. Cultivating and labouring classes marry their girls during childhood to persons who are fit to be their fathers, with the result that abnormal consummation invariably takes place without any consideration of the disastrous consequences the witness, however, thinks that the Law of Consent will be sufficient for the present, and the Law of Marriage may not be advisable in the present political atmosphere. Mr. Nasiruddin Ahmed, M. L. A., thinks that the better policy would be to fix the minimum age of Marriage at 14 and raising the age of Consent to the same age. Cohabitation is common within the marital state soon after puberty which may happen in some cases before the girl completes 13 years. Fixing the minimum age of Marriage appears to be more in consonance with intelligent public opinion. Khan Sahib Maulvi
Safar Ali, Chairman, Noakhali Municipality, forwarding the opinion of the Municipality, says that, except in cases of husbands who are highly educated and are of advanced ideas generally, a husband would have cohabitation with his married wife since the time of marriage, irrespective of the consideration whether the girl had attained puberty or not. They (the Municipal Committee) are for legislation fixing a minimum age for Marriage as a more effective remedy than raising the age of Consent, and consider that fixing a minimum age for Marriage would be in consonance with public opinion.

162. This completes the examination of the evidence of all the Muslim witnesses of Bengal who have either appeared before the Committee or have submitted written statements. It has been considered necessary to consider this evidence in detail as the Province contains the largest percentage of Muslim population in India, and as there was some misapprehension as regards the extent of the evil and the state of opinion on the subject. From this evidence it is clear that Muslim opinion in Bengal is generally in favour of a Law of Marriage and an increase in the age of Consent, and according to that opinion neither of the laws is against the Muslim scriptures.

163. Hindu Evidence.—The Hindus of Bengal observe the practice of early marriages to a greater extent than the Muslims. The age of puberty among girls is between 11 and 13 and generally in the 12th year. It does not differ in different communities. The average age of Marriage among all communities in Bengal is stated to be 12½ years according to the latest census report and it may therefore be presumed that 12 is about the average age of marriage among Hindus. 622 girls out of 1,000 are found in a married state between the ages 10—15. Taking the figures of all religions we find that the age of marriage has gone up very slightly. In 1891 there were 827 unmarried girls between 5 and 10 out of every 1,000 while in 1921 there were 891 showing an increase of 6.4 per cent. for the thirty years. In the age-period 10—15 there were 372 unmarried girls in 1891 as against 494 in 1921 showing an advance of 12.2 per cent. for the three decades. But even this increase does not give a correct indication of the number of girls who are unmarried at the critical ages of 15 and 16. The writer of the Census
Report, 1921 observes “In Bengal 9 out of 10 girls have been married before the age of 16 when none at all have yet been married in England”. A realisation of this significant fact may help a more correct appreciation of the situation by those who feel that an Age of Consent law in marital relations is a singular innovation in this country.

164. Agitation in 1891.—Before dealing with the evidence of Hindu witnesses, it will be useful to refer very briefly to the agitation in Bengal which preceded the bill of 1891. Many of the prominent leaders of public opinion, gentlemen who held high positions in the Government services and landed magnates ranged themselves against the measure for a variety of reasons. Some felt that though they were personally in favour of it the public were decidedly against it; some had objection to the Government, as then constituted, passing such a measure, while a few reflected the opinions of those who were opposed on religious grounds. But even then, there were many who advocated a reform far in advance of what was proposed. Sir B. L. Gupta and Mr. Mano Mohan Ghose, to mention only two names, were emphatically for a law declaring marriages below a certain age invalid, the former suggesting 14 and the latter 12 as the minimum age.

165. Growth of Public Opinion.—The growth of public opinion on the subject since those days bears no comparison to the extent of the evil which still prevails and only indicates how difficult it is to eradicate it by purely social propaganda. The Reformer has been at work in Bengal at least as actively as elsewhere. The Brahmo Samaj is the most marked revolt against some of these customs. Other organisations also have been working within the Hindu fold to bring about the much needed reform. The Namasudras, among whom early marriage is so widely prevalent, resolved in their conference, so early as 1908, that the minimum age of Marriage should be ten years. Other caste and communal conferences have tried by voluntary efforts to eradicate the evil but the advance is so small and so slow, that most of the witnesses who appeared before us have despaired of any appreciable change merely through social reform.

166. Religious point of view.—The religious point of view is put forward by a few witnesses. Mahamaho-
Asutosh Shashtri, *ex-principal*, Sanskrit College, Calcutta, admits that cohabitation is common soon after puberty, which may be at any time between 12 and 14. The witness admits that it will be better for a girl to attain maternity after sixteen as it is an evil at an earlier date, that the higher the age the better it would be according to Ayurvedic doctors, and that 13 or 14 is the proper age for marriage. The witness is not for early marriage and personally does not encourage it; but it is sanctioned by religion and if any body performs it, he should not be interfered with by legislation. The injunction regarding pre-puberty marriages is in his opinion recommendatory.

Mahamahopadhyaya Krishna Charan Tarkalankar states that consummation takes place soon after puberty, irrespective of age, and would regard the attainment of puberty as the only guide for consummation. Mahamahopadhyaya Durga Charan is for the modification of the present law so that consummation may not be criminal even if the girl is below 13. Cohabitation takes place soon after puberty, whether before or after 13. Mahamahopadhyaya Pandit Panchanan Tarkaratna, who had strongly opposed the proposed legislation in 1891, is of the same opinion still and advocates consummation within 16 days of the first menstruation. The witness admits that cohabitation takes place before the girl attains the 13th year, as the Garbhadhan ceremony, immediately leading to consummation, is invariably performed in his part of the country within that period (16 days).

Mahamahopadhyaya Dr. Bhagavat Kumar Goswami states that among the lower classes the crime is very much prevalent. He is in favour of a minimum age of Marriage being fixed but thinks conscientious objectors should be excluded. Finally, there is the Bangiya Brahmin Sabha who think that the raising of the age of Consent would seriously affect the religious susceptibilities of the people and cause widespread discontent. The religious sentiment of the people requires the marriage of girls before puberty and consummation on the appearance of first menses. Cohabitation, the Sabha admits, takes place before 13 if the girls attain puberty before that age. Mahamahopadhyaya Sitikanto Bachaspati, Professor of Smriti, Sanskrit College, states that the practice of permitting consummation of marriage after puberty though the girl has not completed 13 years has taken such a deep root in society that even those, who
prefer the more liberal and progressive views, do rarely take any active steps to prevent such consummation even in their own family. All of these witnesses and Pandits are of opinion that pre-puberty marriage is enjoined by Shastras. Mahamahopadhyaya Pandit Pramothonath Tarkabhusan, Principal, Oriental College, Hindu University, who was examined at Benares, however, clearly states that in the Vedic period marriages were celebrated after puberty but the custom of early marriage came into vogue in India from the time of Alexander the Great. In Ayurved there are many injunctions to the effect that the girl should be consummated on completion of the 16th year. He maintains on the authority of Dharma Shastras, that according to change of times, social conditions and other causes Dharma and Achar were changed and if circumstances so demand, they should be changed now. This completes the examination of the statements of all the Pandits who have given evidence.

167. There are a few other witnesses who oppose all legislation on grounds other than religious. Mr. Jogendra Chakravarthi, M. L. C., Chairman, Dinajpur Municipality, admits that if puberty is reached before 13 cohabitation is not postponed. He is against an alien Government interfering by legislation in religious and social questions and would leave the question to be solved by social reform. Mr. Charu Chandra Mitra has placed before the Committee several pamphlets on the subject of child-Marriage. The main contention of the witness, both in his pamphlets and in his statement, is that there is not a scrap of evidence to show that the present practice of consummation immediately after puberty injures the health of either the mother or the child. He states that the age of puberty is between 11 and 13 and mostly at 12. The objections raised by this witness have been referred to in Chapter VI.

168. Medical Evidence.—Among the very few Allopathic medical men, who have questioned the statement that early consummation and maternity is attended with evil consequences, are a group of doctors of Bengal led by Dr. S. K. Sen Gupta, Professor of Ophthalmology, National Medical College. Dr. J. N. Maitra, M.B., Dr. Ekendra Nath Ghosh, M.D., Professor, Medical College, Dr. Nanilal Bhan and Dr. J. C. Chatterjee, Teacher of Midwifery, Calcutta Medical School, are the other members of this
group. Their opinion is that a girl is physically fit for sexual intercourse when she has reached puberty and that girls in this country attain puberty generally in their 12th or 13th year. It is further their considered opinion that early maternity is not responsible for high maternal or infantile mortality. They desire to have the same age for intra-marital and extra-marital cases and suggest 14 for the same. It is hardly necessary to point out that one of the largest medical conferences in the east held in Calcutta has repudiated these conclusions.

169. Practically all other witnesses are for an advance by legislation. The statements of a few of them may be examined. Sir P. C. Ray would not reduce the Marriage age to anything below 15 and thinks that the Marriage Law is more desirable. Mr. Mrinal Kanti Bose favours the age of 15 for Marriage legislation and 16 for Consent. Mr. Rebati Mohan Sirkar, M. L. C., feels that legislation is absolutely necessary to secure the object in view and that fixing the age of Marriage is the more effective remedy. He states that cohabitation before and soon after puberty and also before 13 is very common in that part of the country. The witness is a Namasudra and in his community 80 per cent. of the girls marry below 11 or 12. Mr. Mohini Mohan Das, M.L.C., suggests Marriage legislation at 15 or 16 and would have the same age for consummation. Mr. M. C. Ghosh, I.C.S., Judicial Secretary to the Government of Bengal, is of the belief that a great many consummations take place before the age of 13 and that among lower classes pre-puberty consummation is very common. He advocates a Marriage Law fixing the age at 14 and would not desire a higher age of Consent. The Bengal Social Reform League was represented by its president, Acharya Muralidar Bannerjee, formerly Principal, Sanskrit College. The League suggests that the Marriage age should be fixed by law at 16 to make the Law of Consent effective.

170. Women’s Evidence.—The Ladies that were examined by the Committee all favoured an advance in legislation. The general opinion among them was to have the age of Consent and Marriage at 16. Mrs. Rajkumari Das, M.A., Principal, Bethune College, Lady Pratima Mitra, Miss Jyotir Moyee Ganguli, M.A., Miss Lila Nag, M.A., and Mrs. Latika Bose, B.A. (Oxon) and Sm.
Mohini Devi were all strongly in favour of Marriage law at 16 and preferred 18 as the minimum.

171. The evidence leaves no doubt that the evil of early consummation is very widely prevalent in the Province and among large classes who are following it according to custom and tradition and that the predominance of public opinion, both Hindu and Muslim, is distinctly in favour of an advance by a Law of Marriage and an increase in the age of Consent. It has only to be added that the birth rate in Bengal is the lowest of all Provinces in India being 27·4 per mille, that infantile death rate is 21·4 of the total deaths and that 52·1 per cent. of these infants die within one month of their birth.

172. Age of Consent Outside Marriage.—As regards the offences of rape, seduction and abduction, they appear to be sufficiently frequent in this part of the country, in certain communities. It is also found that in the Gowalas, Potters, Barbers, Dhobies, Podus and Shudras, marriages take place at 9 years of age and the female population being less the girls are practically purchased. Consequently there is a large number of widows among them and as there appears to be no custom of re-marriage in some castes, there is much danger of seduction and abduction. Again, it is stated that in Bengal prostitution begins at an early age and that girls of 11, 10 or even 9 are sometimes found to be carrying on this pernicious trade. Witnesses therefore recommend that the extra-marital age may be raised to 18 or even above, excepting a few who think that an age higher than 16 would cause much hardship to the prostitute class.
BIHAR AND ORISSA.

173. Conditions in Bihar and Orissa.—In Bihar and Orissa early Marriage is very common among all classes except the Rajputs, Kayasthas, Karans, Khandaitis and the higher classes of Muslims; and its prevalence among Hindus has affected the aboriginal and semi-Hinduized races. The Maithil Brahmins marry their girls generally between 5 and 12 years of age. The Bhumihar and other Brahmins marry their girls between 11 and 13 years of age. The Khattris and Vaishyas generally observe the same practice. The lower classes of Hindus and Muslims marry their girls between 4 and 10 years of age.

174. The age of Puberty and Consummation of Marriage.—The age of puberty varies from 12 to 14 years. Some of the witnesses state that among the labouring classes this age is higher and that it varies slightly in different communities. On the whole the ages 12 and 15 may be regarded as the lower and the upper limits. Consummation usually takes place after puberty. The practice of Gaona prevails, both among the higher and the lower classes of Hindus, but often the Gaona takes place in the first or third or fifth year after marriage without reference to age. Till the Gaona ceremony, it is usual for the girl to live with her parents; but cases of consummation before puberty are not uncommon among the Maithil Brahmins and some of the lower classes.

175. The proportion of married persons per mille of each sex under ten years of age is as follows:—

<table>
<thead>
<tr>
<th>Religion</th>
<th>Proportion of married</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hindu</td>
<td>59</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Muslim</td>
<td>34</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>Animist</td>
<td>9</td>
<td>13</td>
<td></td>
</tr>
<tr>
<td>Christian</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

176. Infant marriage is most common in the Bhagalpur, Muzaffarpur and Munghyr Districts, less in the Chhota Nagpur plateau, and least in Orissa. The Census of 1921 shows 19 per thousand married girls of all classes under 5 and 154 per thousand married girls between 5—10,
and 465 per thousand married girls between 10 and 15 years of age, inclusive of widows under those ages. The position of the Muslims is in no way better. Among them 17 per thousand girls are found married under 5; 122 per thousand between 5—10; and 469 per thousand between 10 and 15 years of age. The figures include widows under those ages. Among the Bhumihar or Babhan Brahmins 8 per thousand girls get married under 5 and 127 per thousand are in a married state between 5 and 12 years of age. Among the Maithil and other Brahmins, 9 per thousand girls get married under 5 and 155 per thousand are found married between 5 and 12 years of age. Among the Rajputs (Hindu) 12 per thousand girls get married under 5 and 105 per thousand are found married between 5 and 12 years of age. Among the Kayasthas 11 per thousand girls get married under 5 and 56 per thousand are in a married state between 5 and 12 years of age. Among the Chamars, Ahirs, Julahas, Koiris, Kurmis, Musahars, Tantis and Telis, the proportion is immensely higher during those age-periods, and the danger of early consummation and early maternity is therefore much greater.

177. Evidence.—The witnesses examined largely support legislation, fixing a minimum age of Marriage and Consent at 14 years; but the ladies examined and some other witnesses go up to 16 years. Some of the orthodox Pandits of Muzaffarpore, however, oppose any legislation regulating Marriage or Consent within the marital relation, and Kumar Ganga Nand Singh thinks that any legislation, fixing a higher age than 12 years, is likely to be resented. The Orissa Muslim Association, Cuttack, and Mr. Sachidanand Sinha, Bar.-at-Law, oppose Marriage legislation as likely to be unacceptable to the people, but agree to the age of Consent being raised. Mr. Sinha would raise it to 14 years, but the Orissa Muslim Association is ready to go up to 15 years. Syed Muhammad Yunus, however, thinks that the age of 15 years for marriage and consummation is likely to be more acceptable to Muslim opinion.

178. Deputation from the All-India Women’s Educational Reform Conference.—A deputation of six ladies from the All-India Women’s Educational Reform Conference held at Patna waited upon the Committee and pressed for legislation fixing the age of 16 years for marriage and consummation. They thought that the Marriage Law
was absolutely necessary and that too at 16, because once a girl was married, it was difficult to keep her apart from her husband.

179. Effects of early Consummation.—It is generally admitted by the witnesses that in all cases, where pre-puberty consummation or consummation soon after puberty takes place, the health of the girl-wife suffers, and the progeny is generally lean, weak, and often shortlived. The Census Report, 1921, states that though the crude birth rate in Bihar and Orissa is high owing to the universality of marriage, the proportion of births to the number of married women at the reproductive ages (15—45) was lower, and the lives that are brought into existence pass out of it more quickly.

180. Age of Consent Outside Marriage.—As regards the extra-marital age, some witnesses recommended 16 and others recommended 18 for Consent. The cases of seduction and rape are said to be not very frequent in this Province, but the existing age of extra-marital protection is regarded as insufficient.
UNITED PROVINCES.

181. Conditions in the United Provinces—Hindus.—In the United Provinces, so far as Hindus are concerned, early marriage is generally prevalent among the lower classes, who marry their girls usually between 5 and 12 years of age but ré-marriage of widows is allowed among them. Usually, consummation is allowed after Gaona, which, as a rule, takes place after puberty in the first, third, fifth, or seventh year after marriage, whichever may be convenient or agreeable to the parties concerned. Among the higher classes, the marriage of girls generally takes place between the 10th and the 15th year. Early marriage is not very common among the Kanya-Kubja Brahmins, Kshatriyas, and Kayasthas, due largely to the demand of dowries or other economic causes. It is almost non-existent among the Kashmiri Brahmins. It exists largely among the Chowbe Brahmins of Mathura, and the adjoining Districts; and it also prevails among the Gaud and Saryupari Brahmins and among the Khattris, Vaishyas, and Jains. But in none of these communities is consummation allowed until after Gaona, which takes place after puberty.

182. Muslims.—As regards Muslims, early marriage is not practised among the higher classes. It prevails among the lower classes both in rural areas and towns, but not to the extent to which it prevails among the lower classes of Hindus. Where early marriage takes place among them, it is fostered either by the existence of relationship or some exigency or convenience or the idea of securing some advantage which may be otherwise lost. Where early marriage does take place among the higher classes, it takes place between the ages of 10 and 15 years, and the instances of marriage below 10 years are much fewer. In all these cases, Rukhsati or consummation is generally postponed among all classes, till puberty is attained.

183. Among Hindus, the date or the year of the marriage is very often regulated by astrological considerations, and one of the reasons accelerating a marriage often is that the boy or girl may have no Jupiter in his or her "lagna" for a year or two, or that the Venus may have set or other astrological conjunctions, unfavourable to marriage, may arise. These considerations are deep rooted in
the minds of the people, and whenever they arise, the option is invariably exercised in favour of delaying it for that period.

184. Extent of early marriage.—The census figures for 1921 show that out of 2,773,311 girls of all classes under 5 years of age in the United Provinces, 18,663 were married and 1,202 were widows. These figures include 2,176 Muslim girls married and 150 Muslim girls widowed under 5 years of age. Similarly out of 3,039,974 girls of all classes between 5 to 10 years of age 306,618 girls were married and 12,223 were widows, these figures including 32,484 Muslim girls married and 1,200 Muslim girls widowed between those ages. Again taking girls between 10 to 15 years of age in the United Provinces numbering altogether 2,196,089, the number of girls married was 1,087,379, and of girls widowed 34,785, out of which 124,782 were Muslim girls married, and 3,163 Muslim girls widowed between those ages.

185. The proportion of Hindu and Muslim boys and girls married per thousand is as follows:—

<table>
<thead>
<tr>
<th>Age period</th>
<th>Hindu Male</th>
<th>Muslim Male</th>
<th>Hindu Female</th>
<th>Muslim Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-5</td>
<td>5</td>
<td>4</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>5-10</td>
<td>58</td>
<td>30</td>
<td>111</td>
<td>75</td>
</tr>
<tr>
<td>10-15</td>
<td>236</td>
<td>162</td>
<td>537</td>
<td>489</td>
</tr>
</tbody>
</table>

186. The following table shows the rise in the United Provinces in the age of marriage of girls under 15 years of age per thousand during the last 40 years:—

<table>
<thead>
<tr>
<th>Year</th>
<th>Unmarried</th>
<th>Married</th>
<th>Widowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10</td>
<td>10-15</td>
<td>0-10</td>
<td>10-15</td>
</tr>
<tr>
<td>1921</td>
<td>943</td>
<td>488</td>
<td>54</td>
</tr>
<tr>
<td>1911</td>
<td>941</td>
<td>465</td>
<td>55</td>
</tr>
<tr>
<td>1901</td>
<td>938</td>
<td>448</td>
<td>59</td>
</tr>
<tr>
<td>1891</td>
<td>945</td>
<td>415</td>
<td>52</td>
</tr>
<tr>
<td>1881</td>
<td>948</td>
<td>439</td>
<td>51</td>
</tr>
</tbody>
</table>

187. The Census Report for 1921 suggests that this general tendency in the United Provinces, towards the postponement of marriage throughout the population, is due probably to motives of economy. Generally speaking, the higher the caste, the later the age of marriage. Mr. Edye thinks that the prevalence of bachelordom among the higher castes is often due not so much to any shortage of
women as to the interest of school going. The proportion of children, both boys and girls, under 12, who are married, is highest among the Kurmis, Pasis, Kumhars, Ahirs and Chamars, and low for both sexes among the Syeds, Kayasthas, and Sheikhs, and in the case of the girls, the Agarwals and Jats. (Census Report for India, 1921, Vol. I, Part I, page 160.)

188. Selected castes.—Taking selected castes, the Brahmins show 12 per thousand married girls below 5 and 115 per thousand married girls between 5 and 12; the Rajputs show 10 per thousand married girls under 5 and 111 per thousand married girls between 5 and 12; the Kayasthas show 10 per thousand married girls under 5 and 65 per thousand married girls between 5 and 12; the Saiyad show 10 per thousand married girls under 5 and 56 per thousand married girls between 5 and 12; the Sheikhs show 7 per thousand married girls under 5 and 91 per thousand married girls between 5 and 12; and the Pathans show 27 per thousand married girls under 5 and 103 per thousand married girls between 5 and 12 years of age inclusive of widows. Among the lower castes, both Hindus and Muslims, the percentage of married girls is of course much larger.

189. Age of puberty.—The age of puberty in these Provinces ranges from 12 to 15. Hindu girls attain puberty at the age of 13 or 14. Kunbi girls however attain it earlier between 11 and 12. In the tracts near Lucknow the age of puberty for Muslim girls is slightly lower than for Hindu girls. In other parts it is slightly higher for them than for Hindu girls.

190. Hindu evidence.—Medical evidence.—The witnesses examined largely support an advance in the age of Consent and the fixing of a minimum age for Marriage. Sir Tej Bahadur Sapru recommends 18 for marriage, but in the present state of the country that ideal would perhaps require considerable time before it would be acceptable to the people. Some of the leading men, like the Hon’ble Mr. Narayan Pershad Asthana, Munshi Ishwar Saran, Dr. Kailash Nath Katju recommend 16 for marriage and consummation. Raja Suraj Baksh Singh, the President of the British Indian Association, is personally prepared to go up to 15, but some of the leading men, like the Hon’ble Raja Sir Rampal
Singh, the Hon'ble Raja Moti Chand, and Nawab Sajjad Ali Khan, recommend legislation fixing 14 as the minimum age for Marriage. The Hon'ble Pandit Gokaran Nath Misra, Mr. V. N. Mehta, I.C.S., and many others take the same view. Dr. Ganganath Jha and some others do not want Marriage Law but would prefer consummation to be deferred to 15 or 16. Some medical men and women, like Major Ranjit Singh, Rai Bahadur Dr. Sarju Kumar Mukerji, Dr. Commissariat, Dr. Rabindra Nath Banerji, Dr. Douglas, Dr. Murphy and Dr. Adderley recommend 16 as the lowest safe age for marriage and consummation.

191. Women's evidence.—The lady witnesses speak unequivocally in favour of 16 as the minimum age for Marriage and Consent.

192. Muslim evidence.—Khan Bahadur Hafiz Hidayat Hussain recommends 14 for marriage. Mr. Abbasi, the Editor of the "Daily Haqiqat", recommends 15 for marriage and consummation; and Maulvi Inayat Ullah agrees to 14 being fixed for marriage, if the leaders of the community concerned consider that for the advancement of the country and community that measure is necessary. There are certain witnesses on the other hand like the Hon'ble Syed Wazir Hasan, Hakim Ahmed Hussain, Syed Afzal Hussain and others who do not want that an age for marriage should be fixed by legislation, but even among them there are many who recommend legislation fixing an age of 15 for the consummation of marriage.

193. Evidence regarding evils of early consummation and early maternity.—Most of these witnesses have referred to instances of injury suffered by young girls or young mothers by reason of early consummation or early maternity. Babu Gouri Shankar Prasad of Benares states that in one instance which happened in the family of one of his relations, a girl 14 years old gave birth to a child and died in the Hospital as a result of labour. Mr. V. N. Mehta mentions that a Julaha girl 11 years old had occasion to go to the house of her husband on the occasion of a festival and was induced by the wife of the elder brother of her husband to go to her husband at night and suffered injuries from cohabitation by her husband, who was 22 years old, and had to go to the Hospital for treatment. Dr. Douglas refers to two cases of injuries, one of a girl of 14 with a badly torn hymen, and another of a girl of 12
with a badly lacerated vagina; and she states that labour was a terrible strain on girl-mothers of 12 to 14, that their progeny was weak, and that the first or second baby often died or did not survive at all. Miss Adderley states that she has had professional experience at Hazaribagh, Cawnpore and Lucknow, and refers to girl-mothers of 13; she says that in one case the baby was premature and in another case the baby was very small and died; that in a case at Cawnpore, the baby was delivered after very great difficulty, because of the girl’s immaturity, and that in a case at Hazaribagh, the girl had to undergo a cesarean operation because she was too small to have a baby born normally. Mr. Abbasi mentions two instances where young girls aged about 12 or 13 years were sent to their husbands and were suffering from hysteria and other diseases and one of them had recently died. He also says that among Muslims of the lower classes, consummations before the age of 13 were common, but among the middle classes, such breaches of the law were rare. Dr. Ernst of Jhansi states that she had seen numerous cases where the health of very young women was ruined through pelvic inflammations, specific and otherwise, and had come across traumatic cases requiring prolonged treatment. Hafiz Hidayet Hussain of Cawnpore refers to one Hindu and two Muslim cases where girls were married at 12 or thereabout, and cohabitation was started between 12 and 13, and when a child was born next year, there was such rapid deterioration that the girls died either immediately or not long after child-birth. Hakim Ahmed Hussain states that about six months ago, a case came to him in which a Muslim girl was married at 12, and there was consummation immediately thereafter, leading to the rupture of the vagina, inflammation of the womb and fever which caused her death. He also refers to two other cases where girls similarly suffered from early consummation resulting in inflammation or displacement of the womb and *osteomalacia*; and in one of those cases he says the girl became a mother at 13 or 14 years of age and had no milk and both the mother and the baby were very weak.

194. These instances can be multiplied from the evidence. Despite such consequences to the mother and her progeny, it is significant that there is still considerable apathy among the people to the voluntary deferment of marriage and consummation till the girl is fully mature.
enough to bear the physical strain of early consummation or early maternity. Some of the Kshatriya witnesses examined at Benares candidly stated that they had been trying for reform for the last 30 or 40 years, that the Kshatriya Conference had recommended 14 as the minimum marriageable age for girls, and that the Rajput Sabha had been crying for reform to raise the age of marriage, but it has not succeeded in its attempt. Some of the Kunbis who were examined at Benares stated that in their caste, girls were at times sent to their husbands before puberty, that many girls had become very weak and their children were very weak and unfit to do any sort of agricultural work, that they had tried their best that no marriage should take place before 10 years of age for boys and 7 for girls but no body would agree to it, and that without penal legislation fixing a minimum age of marriage no reform would be achieved. These witnesses were not, however, agreed as to what age should be fixed, two of them being in favour of 10 or 11 and three in favour of 13 years. One of them in fact said that he had a daughter who was "now" 5 years old, and that he was unable to get a husband for her, because she was considered by his caste people to be too much grown up.

195. Mr. Mata Pershad, the Secretary of the Koeri Sabha, Benares, suggests legislation fixing a minimum age for Marriage at 14 years and states that his Sabha has been carrying on propaganda work and had fixed 12 as the minimum age for Marriage; but generally girls were still being married between 9 and 12 years of age. At times, though very rarely, consummations were taking place even before puberty, those who married early in villages were weak, and those who married late not so. Mr. Chetram, a member of the Municipal Board, Allahabad, representing the Depressed Classes, is equally frank in acknowledging the evils of early consummation and maternity and supports legislation in favour of a minimum age of Marriage at 14 years.

196. The support of these classes can best be obtained by means of publicity and intensive propaganda through caste Panchayats in urban and rural areas; and the recognition by the men of these classes of the evils of early marriage and early consummation is a hopeful sign that benevolent legislation of the kind suggested would not in these Provinces fall on barren soil.
197. At Benares, several witnesses versed in the ancient shastras and Ayurveda were examined. Some of them state that post-puberty marriages are against the Hindu shastras and they would not recommend the fixation of the minimum age of marriage, in any case beyond 12. But they admit that according to the 'Dharma', a king can legislate in such a matter and fix the minimum age of marriage at 14. According to some, marriages after puberty are permitted by the Vedas and the introduction of early marriage was post-Greek. Even those who think that marriage before puberty was mandatory according to the shastras, say that the marriage age may be fixed by law between 12 and 15, provided marriage before the prescribed age is not invalidated. They agree that the sin attaching to post-puberty marriages can be expiated by the performance of some 'prayaschitta' or other purificatory ceremony. As regards the consummation of marriage, they say that it has been specifically laid down in Ayurveda that marriages should not be consummated below 16 and that the girls ought to observe celibacy till that age. And, since this specific direction has been disregarded by the people to their detriment, it is Dharma that the king should compel them to observe the rule, i.e., by raising the age of Consent to 16. Mahamahopadhyaya Pandit Promoth Nath Tarka Bhusan states that according to the shastras, 'Dharma' and 'Achara' can be changed and have been so changed from time to time. Indeed there are cases, even among the orthodox people, of post-puberty marriages and they are tolerated by the community.

198. The Muslim witnesses examined at Lucknow have admitted that the law fixing the minimum age of Marriage or the raising of the age of Consent within marital relations would not interfere with the Islamic law. They however think that if any age be fixed for marriage, it will be resented by the people who would take it to be an interference with their religion. The Muslims are likely to take the Consent Law in a better spirit than the Marriage Law.

199. Age of Consent outside marriage.—It is said that there is a good deal of traffic in girls in some parts of the United Provinces. Girls are abducted, kidnapped and sent to the Punjab where they are sold. Girls are taken from Garhwal too for immoral purposes. The witnesses therefore recommend that the extra-marital age should be raised to 18.
CENTRAL PROVINCES AND BERAR.

200. The Central Provinces and Berar are inhabited by two distinct classes of people. The population of one part is Hindi speaking and bears affinity more or less to that of the United Provinces; and the population of the other, the southern part, is Marhatti speaking and bears similar affinity to that of the Deccan in the Bombay Presidency.

201. Conditions in Central Provinces and Berar.—The practice of early marriage prevails to a very large extent in the Central Provinces and Berar. The total population of the Province is 13,912,760, of whom 11,621,398 are Hindus and 563,574 Muslims. Taking the figures for all religions, we find that 149 girls between the ages of 5 and 10 are married out of every 1,000, and 512 between the ages of 10 and 15. Among the Hindus the proportion is higher, being 173 and 572 respectively, while among the Muslims it is 51 and 304.

202. The Marhatta Brahmans, in general, follow the pre-puberty marriage custom, and marry their daughters at about 11 to 13 years of age. In the more advanced section, however, the marriage age is 14 and above, i.e., after puberty. Among the Kunbis the age varies between 9 and 12. Malis marry at 6 and Telis between 8 and 9. Vaishyas, Kostis, Mahars, Mangs, Dhors and Bhangies have the same custom. The Kayasthas and Prabhus are advanced in this respect and follow the custom of post-puberty marriage. They marry at about 15 and above.

203. It is significant that the high rate of Infant marriages is due to the prevalence of the custom among the lower castes and Depressed Classes. Only 115 of every 1,000 Brahman girls between the ages of 5 and 12 are in a married state. The Malis, on the other hand, have 518 married girls out of every 1,000 girls of this age. The Kunbis come next with 505 married girls. The Chamars have 414 girls married; the Mehras 399; the Telis 329; the Baniyas 259; the Rajputs 258 and the Kurmis 251. These figures again illustrate the fact that custom and family tradition are the most powerful factors responsible for early marriage, and that religion or religious texts are a guide in this respect to comparatively few people or castes.
204. Age of puberty and consummation of marriage.—
The average age of puberty is 12 or 13; and the practice is
that marriages are consummated soon after puberty, irres­
pective of age. Pre-puberty connections and consumma­
tions before the age of 13 are very common among the
Gonds, Mahars, and the Depressed Classes in general.

205. Hindu evidence.—The orthodox classes largely
oppose any legislation for raising the age of Con­
sent or fixing a minimum age for Marriage. Rai
Bahadur Ganeshdas Kundanmal of Amraoti does not
want any law at all in these matters, and goes so
far as to say that the present law should be re­
pealed as no evil consequences followed from early consum­
mation and that the law would be troublesome to the people
and endanger morality. Mr. B. G. Khaparde, M.L.C.,
objects to fixing a minimum age of Marriage by law be­
cause it is a matter pertaining to social reform and must be
left to the good sense of the society. Likewise, he is
against an increase in the age of Consent because the
higher the age, the greater would be the chances of the
offence being committed and therefore greater the chances
of intervention by the law. Raja Kuwar Laxmanrao
Bhonsle, Nagpur, holds that the Legislative Assembly is
not competent to deal with such religious matters. Seth
Mathuradas Mohota, M.L.C., of Hinganghat thinks that
the socio-religious conditions do not justify an advance on
the present law of Consent and that any question of a socio­
religious nature should not be touched by legislation but
should be left to be dealt with by social propaganda. Rao
Bahadur Sadashiva Jairam, M.A., Mahamahopadhyaya,
Nagpur, says that so far as consummation of marriage is
concerned there is an imperative religious injunction to
perform it within the first 16 days of puberty and that the
appearance of puberty, is according to the Shastras a fit
condition for cohabitation. As regards marriage he is of
opinion that post-puberty marriages were not condemned
by the Shastras, but were considered as second best only.
Though he is against legislation on religious grounds, his
personal view is that 14 should be fixed both for the age of
Consent within the marital relation and as the mini­
mum age for Marriage. There are a few other witnesses
who do not want legislation because the public opinion is
not said to be ripe for it.
The number of those who want an advance in age by legislation is, however, very large. Mr. R. M. Deshmukh, M.L.C., Ex-Minister, C. P. and Berar, who represents the Maratha community, thinks that the people follow early marriage as a result of the custom in existence and not as an injunction from any law-giver, and he recommends a cautious advance in the age of Consent within the marital relation. He is, however, of opinion that no better protection will be afforded to girls by merely raising the age of Consent. Fixing a minimum age of Marriage appears to him to be a more effective remedy and he recommends 14 for the purpose. In the opinion of Rao Bahadur K. S. Naidu, Public Prosecutor, Wardha, a Marriage Law will be a more effective remedy: Mr. Laxmi Narayan, B.A., B.L., retired District and Sessions Judge, Raipur, considers that penal legislation, fixing a higher age of Consent for marital cases, is not likely to be at all effective, that fixing a minimum age of Marriage would be more effective, and that if such legislation is passed, the inevitable result in course of time would be to raise the age of Consent within and outside the marital relation. Though personally he would like that the minimum age of Marriage should be fixed at 14 or 15, looking to the different views of different classes and also to the present conditions, he recommends 12 for Marriage Law and 16 for Consent. If the Marriage age be fixed at 14, he would like to have exemptions for hard cases. In the opinion of Mr. G. P. Jayaswal, B.Sc., LL.B., M.L.C., Sohagpur, an advance on the existing law would not be undesirable, as it would in the long run produce a beneficial effect on the health of the nation. He prefers a law fixing a minimum age for Marriage. Mr. M. P. Kolhe, M.L.C., Yeotmal, thinks that legislation fixing a minimum age of Marriage would be in consonance with public opinion. Mr. N. S. Patil, M.L.C., of Akola also favours an advance in the age of Consent and thinks that an increase in the marriageable age is more advisable than increase in the age of Consent. Mr. K. B. L. Seth, M.A., LL.B., I.C.S., District and Sessions Judge, Wardha, considers that the desired result would not be achieved without legislation, fixing both a higher age of Consent for intra-marital cases and a minimum age for Marriage. Mr. R. N. Banerjee, I.C.S., Deputy Commissioner, Akola, Mr. G. V. Deshmukh, Bar.-at-Law, Nagpur and Rai Bahadur P.
C. Bose, President, Municipal Committee, Jubbulpore, suggest 16 as the minimum age of Marriage.

207. View of the Depressed Classes.—Mr. G. T. Meshram, Vice-President, Civil Station sub-committee, Nagpur and Mr. L. K. Ogle, M.L.C., of Amraoti representing the Depressed Classes were also examined. They testify to the evil effects of early marriage and consummation, favour an advance by legislation and prefer a Marriage Law to the Age of Consent Law. They recommend 14 as the proper age for both these purposes.

208. Muslim evidence.—As regards Muslim evidence it is generally favourable to an advance of the age of intra-marital Consent, but not to a Marriage Law to the same extent. Mr. Abdul Kadir, pleader, Amraoti, and Mr. Faizul Hasan, B.A., LL.B., Honorary Secretary, District Council, Balaghat, recommend 14 for Consent within the marital relation. The former is not much in favour of Marriage Law as the people would not like it, but thinks that a Marriage Law with the age at 14 would work better, if exemptions are given. Mr. Ishhtiak Ali, E.A.C., Seoni, wants the age of Consent at 16, as at that age the girl will be in a better position to give consent to cohabitation and he thinks that it would be more effective than a Marriage Law. Khan Bahadur M. E. R. Malak of Nagpur says that there is nothing in Muslim religion which enjoins early consummation and personally thinks that the age of intra-marital Consent should be raised, but advises that the measure may wait till public opinion is ripe for it. Mr. Karamalli, President, Municipal Committee, Chanda, though preferring to rely on social reform considers that in the interest of all it would be better if a higher age of Consent is fixed for marital cases.

209. Women’s evidence.—The ladies examined generally support an advance by legislation, and recommend 16 as a suitable minimum age for Marriage. Mrs. Mukadam, the lady Superintendent in charge of the Dufferin Hospital, recommends the age of 16 to 18 for the age of Consent. Mrs. Anasuyabai Kale considers the Age of Consent Law by itself to be of no use and prefers a Marriage Law, fixing 16 as a minimum age for Marriage. The same age is recommended by Mrs. E. G. Dick, Vice-President of the Ladies Club, Nagpur. Lady Yashodabai Joshi, Am-
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raoti, thinks that marriages of girls below 18 should be penalised.

210. *Awakening among the people.*—It is worth while to note here that the Mahars have passed a resolution condemning early marriage, while a conference of Maheshwari Marwaris has passed a resolution fixing the age of 13 for the marriage of girls. The Legislative Council of this Province has also passed a resolution on the 25th January 1929, giving support to the Sarda Bill. It is obvious from this and the evidence that the public feeling is growing against the practice of early marriage and early consummation.

*Age of Consent outside marriage.*—As regards the offence of rape, and the allied offences of kidnapping and abduction, it appears that in the Chattisgarh Division, girls of the working and rural classes, between the ages of 15 and 20, are often seduced and abducted. The witnesses examined advise that the age of Consent in extra-marital cases should be raised to 18 to protect girls from improper seduction.
CHAPTER V.

THE PRACTICE OF EARLY MARRIAGE AND CONSUMMATION.

212. We may now examine the origin of the system of early marriage and consummation, the extent to which the system prevails in the country, and the reasons for such prevalence. By the term 'early marriage' here may be understood, marriage where the bride is below the age of 15.

213. Nature of a Hindu Marriage.—There should be, by now, no misconception about the real significance of the ceremony of marriage among Hindus. Marriage is not a contract but a religious sacrament and one of the Samskaras (rites) which is prescribed to every Hindu. It is not a mere betrothal or engagement, from which the parties can break off, but an irrevocable tie which makes the couple husband and wife in the eye of the law and of the public, and after which, the death of the boy leaves the girl a widow. In several castes, marriage is performed at any age before the girl attains puberty but it is not necessarily, nor even usually, followed by consummation. At the same time, in some parts, cohabitation often takes place before the child-wife has reached the age of puberty, and almost always very soon after. In many other castes, post-puberty marriages are common.

214. Origin of the custom of early marriage.—It is difficult to determine how the custom of early marriage originated. Various theories have been advanced by students of history but no definite conclusions can be arrived at from them. It is contended that when the Aryans first came to India they were strangers to infant marriage. "In the society depicted in the Rig and Atharva Vedas, courtship of a modern type was fully recognised; and the consent of the girl's father or brother was sought only when the young people had themselves come to an understanding. Neither in the dramatic, nor in the epic literature, does child marriage play any noteworthy part, nor is it known in the legendary literature of the Buddhists".* It is argued therefore that the custom was the result of the adoption of the practices of the people whom the Aryans conquered or of the impact between the two civilizations.

* Census Report, India, 1911, Volume I, page 270.
215. *Vedic period.*—There is evidence to show that marriages in the Vedic period were effected when the couple had reached a mature age and were capable of understanding the nature and significance of the marriage ceremony. The Mantras that are uttered at the marriage and the expressions that are exchanged between the husband and wife during the ceremony, particularly in the Saptapadi (going seven times round the sacred fire), which make the marriage tie irrevocable, furnish strong evidence negating the possibility of mere children being married. The function, known as the "Chaturthi Karma" on the 4th day of the marriage ceremony, appears to have been intended for an actual consummation of marriage, presumably of adults, and a semblance of it survives to-day in some places, where the child-wife and the boy-husband are brought together in a room.

216. *Smriti period and later.*—The time when the custom of early marriage originated is also difficult of determination. The Smritis advocate the marriage of girls of 8 and 10 years of age but it is not possible to state whether they record an existing practice or put forward an ideal. Some witnesses have alleged that the custom began after the Muslim invasion and was due to the fact that married girls were immune from capture by the invaders. Some witnesses have even traced it back to the Scythian or Greek invasion. We have not however been furnished with any historic basis for any of these allegations and the origin of the custom must continue to remain obscure.

217. It may be that economic causes contributed to establish or perpetuate the custom. In some cases the marriage of a girl shifts the burden of her maintenance from her parents to her husband or his parents. Among the working classes, however, the girl is an earning member of the family and may not be a burden to her father. Many of the lower castes appear to regard the custom as a badge of respectability and encourage it on that account. To a certain extent, the prevalence of the custom may be accounted for by the high value which is set on chastity among women, by the Hindus and Muslims, and the desire not to run any risk by late marriage and late consummation. The precocity of town-bred girls and the out-door life of their rural sisters may, it is said, expose them to dangers and the consequent desire to safeguard the morality of the girl may result in securing for her a husband at
the earliest possible moment. That the risk is very slight or that apprehensions on this score are groundless, is proved, not merely by the fact that the standard of female chastity is just as high among the communities which practise late marriage, but also by the fact that a large majority of Hindu girl widows lead a virtuous life. All the same, girls who have attained puberty are objects of anxiety and care to mothers in Hindu and Muslim homes, just as they probably are in well-conducted homes elsewhere.

218. Whatever may be the origin of the system of early marriage and whether Smriti texts adumbrated the custom or merely recorded it, its binding force and wide prevalence to-day are undoubtedly due very largely to custom, so compelling, that a departure from it involves social obloquy and perhaps fear of social degradation or even ostracism in a few cases.

219. **Extent of prevalence of the custom.**—The Census reports give the number of girls in a married state at various age periods. Taking the All-India figures of the 1921 census, the following table gives the number of girls married, unmarried and widowed at the three age-periods of 0-5, 5-10, and 10-15.

<table>
<thead>
<tr>
<th>Under the age 5</th>
<th>Between the ages 5 and 10</th>
<th>Between the ages 10 and 15</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married</td>
<td>218,463</td>
<td>2,016,687</td>
<td>6,330,207</td>
</tr>
<tr>
<td>Unmarried</td>
<td>19,938,007</td>
<td>20,782,275</td>
<td>9,961,195</td>
</tr>
<tr>
<td>Widowed</td>
<td>15,139</td>
<td>102,293</td>
<td>279,124</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20,171,609</strong></td>
<td><strong>22,901,255</strong></td>
<td><strong>16,570,526</strong></td>
</tr>
</tbody>
</table>

220. It is noticeable that the number of married girls shows a very large increase in the age period 10-15. The census returns do not show what percentage of girls get married before they complete the 15th year. But a rough estimate can be arrived at by calculating how many of the unmarried girls below the age of 10 are likely to get married before they reach the 16th year. The proportion of girls found married or widowed between 10 and 15 (6,609,331) to the total number of girls of that age period (16,570,526) is 39.8 per cent. It would, therefore, be safe to assume that the girls who are unmarried below the age of 10 would be found in the married state to the same extent, *i.e.*, that 39.8 per cent. of these girls would be married, before they reach the age of 16.

221. **Females affected or likely to be affected by early marriage.**—In order, therefore, to find out the total num-
ber of girls who will be married before they complete their 15th year, we have to add together the number of—

(a) All married girls under 5, i.e. . . . . 218,463
(b) All married girls between 5 and 10, i.e. . 2,016,687
(c) All married girls between 10 and 15, i.e. . 6,330,207
(d) Widows between 0-15, i.e. . . . . 396,556
(e) 39'8 per cent. of girls unmarried below ten, 18,206,672

**Total** . 25,168,585

The total number of girls likely to be married before the completion of the 15th year is thus 25,168,585. The total number of girls below 15 is 59,643,390 and the proportion of girls likely to be married below that age is therefore 42'2 per cent. It is to be noted that among girls who are unmarried between the ages of 10 to 15, a large number will get married before they complete the 15th year. This number is, however, so indefinite that it has not been taken note of in the above calculation. For the same reason, there must be a similar increase in the percentage of girls who are now below 10 and who will get married before they complete the 15th year. It is therefore clear that if these factors are also taken into consideration, the percentage of girls who are married before the completion of the 15th year will probably be nearer 50 per cent. than otherwise.

222. If we adopt a calculation similar to what has been suggested above, for the different Provinces and for the two principal communities therein, we shall obtain a rough estimate of the extent to which the system of early marriage is prevalent. The subjoined table gives the proportions for each Province and for Hindus and Muslims in each Province.

<table>
<thead>
<tr>
<th>Province</th>
<th>Percentage of girls under 15 likely to be affected by early marriage</th>
<th>Percentage of Hindus</th>
<th>Percentage of Musalmans</th>
</tr>
</thead>
<tbody>
<tr>
<td>All India</td>
<td>42-2</td>
<td>48-4</td>
<td>37-01</td>
</tr>
<tr>
<td>Assam</td>
<td>26-3</td>
<td>27-6</td>
<td>34-1</td>
</tr>
<tr>
<td>B. &amp; O.</td>
<td>52-4</td>
<td>62-4</td>
<td>49-9</td>
</tr>
<tr>
<td>Burma</td>
<td>0-4</td>
<td>0-95</td>
<td>3-8</td>
</tr>
<tr>
<td>Bengal</td>
<td>55-5</td>
<td>63-8</td>
<td>51-7</td>
</tr>
<tr>
<td>C. P. &amp; Berar</td>
<td>56-9</td>
<td>62-8</td>
<td>31-8</td>
</tr>
<tr>
<td>Bombay</td>
<td>54-4</td>
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Early marriage only gradually abandoned. — There is no doubt that the practice of early marriage is being gradually abandoned by several castes and communities. But the pace of improvement is exceedingly slow. Moreover, progress in one community is counterbalanced by retrogression elsewhere, and while castes and classes which are considered advanced may be getting over the practice, others are adopting the older customs to an increasing extent, with a view, possibly, to ascend in the scale of the caste hierarchy.

Pace of progress slow. — Taking the age period 10-15 where the density of marriages is the greatest and comparing the figures of 1921 with those of 1891 for persons of all religions, we find that there were 601 unmarried girls out of every thousand in that year, as compared with 491 girls in the latter year. The increase in the number of unmarried girls of 110 shows a rise in the percentage of unmarried girls of 11 per cent. for 30 years. When it is further seen that this percentage does not represent the actual increase of girls who pass the 15th year unmarried, it will be realised that there is no reason to feel satisfied with the pace of progress. Nor has the progress been so steady and continuous as to engender the hope that a time will come when, by voluntary effort, early marriages will be a thing of the past. Taking the years 1901 and 1911 into consideration, it is found that there were 559 and 555 unmarried girls respectively per thousand, showing a rise of 0.4 per cent. for the decade. When the statistics of Hindus and Muslims are separately considered for the same period, an even more surprising state of affairs is revealed. In 1901 there were 511 unmarried girls among the Hindus while in 1911 there were only 495 per thousand, which shows that there was a set back during the decade of 1.6 per cent. Among the Muslims there were 597 unmarried girls in 1901 and 596 in 1911 showing the negligible improvement of 0.1 per cent. (Vide Appendix V-F). On the other hand, the fall in the number of married boys between the ages of 10 to 15 is steady and all the three decades show an improvement in this respect, the decrease being from 164 in 1891 to 116 in 1921. (Vide Appendix V-G).

Age of consummation. — Pre-puberty consummation. — The age of consummation varies in different communities but is to a large extent dependent on the age of marriage. Where early marriage prevails, there are in-
stances of pre-puberty consummation. From the evidence before us, we are led to the conclusion that this practice, though neither general nor characteristic of any class or community, exists to a far greater extent than may be ordinarily supposed and requires a drastic remedy. Even among Muslims, although marriages are considered as contracts and are generally entered into at or after puberty, such pre-puberty consummations are not infrequent, notably in Bengal and Malabar. The evil thus exists both among Hindus and Muslims, though to a lesser degree among the latter.

226. *Consummation soon after puberty.*—Consummation soon after puberty is almost universal among classes which practise early marriage. The maximum period that elapses after puberty rarely exceeds one year. There is a considerable number of cases, however, where it occurs within a much shorter period and some, where it follows within a few days of puberty. The fitness of a girl for consummation and possible motherhood from the physiological point of view is hardly taken into consideration. That puberty is a sufficient indication to justify consummation, appears to be so self-evident a doctrine that some witnesses are prepared to disregard and brush aside all medical evidence to the contrary effect. This is specially true of witnesses of conservative views, some of whom have suggested that puberty should be fixed as the test instead of any age of Consent.

227. *Customs deferring consummation.*—In different Provinces, there is a practice under which the girl’s residence with her parents or original guardians, till she is considered fit to go to the husband’s house, is permissible; after that period, however, a time arrives when a ceremony variously called ‘Muklawa’ ‘Gaona’ ‘Bolwan’ ‘Dwir-agaman’ ‘Anu’ ‘Doli’ or ‘Rukhsati’ takes place. The first five may or may not be proximate to actual consummation. There is a growing tendency everywhere to drop this practice, more so in cases where the girl is married at a late age. At the time of the ‘Doli’ or ‘Rukhsati’ ceremony, the girl generally goes for consummation. The ‘Garbhadhan’ ceremony is a Samskara precedent to actual consummation. It is a rite that is performed amongst the Brahmins generally and amongst some other castes, but is falling into disuse more and more. Even in post-puberty marriages, the girl’s age is, more often than not, below 16.
and as the age of puberty differs in girls, it is almost a certainty that consummation takes place in many cases at any time between 13 to 15 and none of the ceremonies are any protection to unions before 16.

228. Reasons for early consummation.—Amongst Brahmins and some other classes, Smriti texts are invoked to prove the need of consummation soon after puberty—preferably within 16 days of the first menses. Apart from differences between Pandits as to the texts quoted being recommendatory or mandatory, the time of actual performance of Garbhadhan or consummation ceremony varies in different places. Amongst certain classes, and in Provinces where there is pre-puberty marriage, early union takes place, owing to gross ignorance of the physiological aspect of sex relations or a desire to imitate the higher classes. In the case of elderly widowers, the practice of cohabitation soon after marriage prevails; this is largely due to the impatience on their part. The disparity in the age of the husband and wife in such cases is due to the custom which precludes the possibility of girls beyond a certain age being available for marriage in certain castes. In some cases, where a young husband is going wrong, the girl is sent to the husband, though she had not attained puberty, as a steadying influence on the young man. There are cases where the parents of the girl are too poor or are unable to look after the girl and would like to see the responsibility of the girl’s maintenance and good conduct shifted to the husband’s side. Sometimes a demand for money from the husband’s side, not readily assented to by the girl’s side, prolongs the interval between puberty and consummation. But there is no conscious realisation of the fact that full physiological development of the girl is necessary or desirable for ensuring a healthy mother and a healthy child. The restraints, that once operated on a member of a Joint Family regarding pre-puberty or early consummation, are disappearing with the gradual disintegration of Joint Families and thus a check which was formerly operative has disappeared. It will be thus apparent that the present practice of early consummation is more a matter of custom than religion, the transgression whereof involves no serious penalty.
CHAPTER VI.

OBJECTIONS TO THE LAW OF CONSENT AND TO A LAW OF MARRIAGE.

229. Grounds of objections.—The opposition to any Law of Consent or an increase in the age of Consent and to a Law of Marriage has proceeded mainly on the following grounds:—

(1) That no law should encroach upon matters of domestic and social nature and that the proposed reform should be left to the community concerned, to be dealt with by means of social propaganda or otherwise. Resort to legislation would only be justifiable on a demand by the community affected.

(2) That the Government, being foreign, is neither competent nor entitled to force such a law on persons of a different race and religion, and that such an interference would mean a violation of the pledge about neutrality in matters of religion referred to in the Queen's Proclamation.

(3) That the existing Legislature is not representative of the people of India.

(4) That the Legislature being composed of different communities, no legislation affecting the social rights or religious customs of any particular community ought to be undertaken by a body of that description.

(5) That the proposed increase in the age of Consent within marital relations, as also a law fixing a minimum age of Marriage, would interfere with the religious laws, rights and customs both of Hindus and Muslims; that among Brahmins and some other castes, post-puberty marriage is a sin and that the non-consummation of marriage within 16 days of the wife's first menses is also a sin; that Government would not be justified in putting people of these castes in a position where they may have to transgress either the religious custom or the Laws of Consent and Marriage.
That puberty is a natural indication of a girl's fitness for cohabitation and maternity; that maternity soon after puberty has so far not been productive of any evil to mothers or their progeny and that maternal and infantile mortality is due to economic and other causes.

That consummation soon after puberty is necessary to satisfy the sexual craving in girls; if the same is not satisfied, girls may be led to abnormal methods of satisfaction. The morality of boys and girls may thus suffer, as is shown by examples from foreign countries described by Judge Lindsay of Denver and others.

That interference by Government with religious customs would create dissatisfaction amongst the people.

That early marriage secures the girl's unadulterated love towards the husband and the other members of his family and preserves the Joint Family.

That legislation fixing the age of Consent derogates from the rights conferred upon the husband by marriage.

That no law is necessary, as the age of marriage and consummation is gradually rising as a result of conscious effort or by force of economic circumstances.

The law has been amended in 1925 and no circumstances exist to justify an advance so soon thereafter.

That the law is liable to be abused.

That the Law of Consent has so far been a dead letter in marital cases and would continue to be so, even if the age be raised, and that such a futile law should not encumber the statute book.

Is legislation the proper remedy?—Ordinarily, it may be correct to say that in evils of domestic and social concern, especially those involving socio-religious customs of large communities, the remedy for the evils should be
left to propaganda, appealing to the good sense of the communities concerned. It is impossible however to lay down that legislation in such matters may never be resorted to for eradicating such evils. The laws of Sati, and widow remarriage, the removal of the ban on inheritance by converts and the law of civil marriage, are some of the instances in which there has been legislation and in all these cases the new legislation has trenched on custom, and religious injunctions. The first was undertaken on grounds of humanity and others in furtherance of social justice. It is true that some of these laws were only permissive; it must be recognized, however, that there are many others which positively override provisions sanctioned by the Hindu or Muslim law. The Committee accept the argument that the fact of the law having trenched on such practices on so many other occasions is, by itself, no justification for further inroads on Law and Custom; but we note the fact that the Legislature has, in fact, in cases considered suitable, interfered by legislation and that several changes have been made in the personal law of the Hindus and Muslims by the Legislature from time to time—the last of these being the Hindu Inheritance Amendment Act of 1929. Although it is true that the proposed legislation touches a very delicate chord regarding the most personal and intimate relations between human beings, that fact does not exempt it from interference by the Legislature on a proper case being made out, either to prevent a shocking evil or to further social justice. It may be remarked that in every civilised country, legislation has been used as a remedy to remove social injustice and other evils of that character. In matters affecting Marriage and Consent in particular, legislation has been resorted to in several countries, notably in Egypt and Turkey (vide Appendix X-B). In several Indian States also, such as Baroda and Indore, such laws have been enacted and have already been in force for some years (vide Appendix XI.)

231. Legislation justified only for proved evils.—It may further be conceded that the evil of early marriage resulting in early maternity must be shown to be an evil of such magnitude as to justify interference by legislation. In all cases of legislative interference, there must be circumstances to justify a change and this is specially so, when
the change affects a class of orthodox people and the delicate relations between husband and wife.

232. It has been shown in paragraphs 358 to 368 of our Report that early maternity is an evil and an evil of great magnitude. It contributes very largely to maternal and infantile mortality, in many cases wrecks the physical system of the girl and generally leads to degeneracy in the physique of the race. Let us compare the case of Sati which was prevented by legislation with the case of early maternity. Satis were few and far between. They compelled attention by the enormity of the evil in individual cases, by the intense agony of the burning widow and the terrible shock they gave to humane feelings. But after all, they were cases only of individual suffering; the agony ended with the martyr and the incident had some compensation in the martyr being almost deified as an ideal Hindu "Pativrata", a devoted wife, the subject of adoration after death. In the case of early maternity, however, the evil is wide-spread and affects such a large number of women, both amongst Hindus and Muslims, as to necessitate redress. It is so extensive as to affect the whole framework of society. After going through the ordeal, if a woman survives to the age of 30, she is in many cases an old woman, almost a shadow of her former self. Her life is a long lingering misery and she is a sacrifice at the altar of custom. The evil is so insidious in all the manifold aspects of social life that people have ceased to think of its shocking effects on the entire social fabric. In the case of Sati, the utter hideousness of the incident shocked the conscience; in this case the familiarity of the evil blinds us to its ghastly results. If legislation was justified for preventing Sati, there is ample justification for legislation to prevent early maternity, both on the grounds of humanity and in furtherance of social justice.

233. Is Government forcing legislation?—Admitting that the Government is a foreign Government, the Central Legislature, and not the Government, will be responsible for the new enactment. Government has always been hesitant and cautious and has acted more as a brake than as a power for advance in this matter. Both the bills are brought, not by the Government, but by elected members. Orthodoxy has its advocates not only outside but inside the Legislative Assembly and they have been amply heard; and
a large interval of time has been allowed for deliberation and expression of opinion by the general public. There is thus no warrant for the charge that the Government is forcing the new legislation down the throats of unwilling Indians.

234. **Is contemplated legislation against Queen’s Proclamation and religious usage?**—The question of the violation of the Queen’s pledge and of the policy of the Government of non-interference in religious matters was discussed in 1891. At that time it was clearly pointed out that the Age of Consent legislation did not involve a violation of the Queen’s pledge. The proclamation says “In framing and administering laws, due regard be paid to ancient rites, usages and customs of India.” It does not undertake absolute non-interference. Lord Lansdowne, the then Viceroy, said—

“I will venture to say that, in the eyes of every reasonable man or woman, the pledges contained in the Queen’s Proclamation must be read with a twofold reservation, upon which the Government has always acted, and which was not specified in the letter of the contract simply because it has always been acted upon and was perfectly obvious and well understood. The first of these reservations is this, that in all cases where demands preferred in the name of religion would lead to practices inconsistent with individual safety and the public peace, and condemned by every system of law and morality in the world, it is religion, and not morality, which must give way.”

“Now the Act, far from absolutely precluding the Government of India from dealing with matters affecting religion, expressly contemplates the possibility of such legislation becoming necessary, although it safeguards it from irresponsible initiation. The words of the 19th section show as clearly as possible that, subject to proper precautions, legislation such as that which is now taking place was contemplated by Her Majesty’s advisers, who were responsible both for the Proclamation and for the Act from which I have just quoted.”

“What I have said seems to lead inevitably to the second of the two reservations of which I spoke a moment ago. It is this, that in all cases where there is a conflict between the interests of morality and those of religion,
the Legislature is bound to distinguish, if it can, between essentials and non-essentials, between the great fundamental principles of the religion concerned and the subsidiary beliefs and accretionary dogmas which have accidentally grown up around them. In the case of the Hindu religion, such a discrimination is especially needful, and one of the first questions which we have to ask ourselves is, assuming that the practice with which our proposed legislation will interfere is a practice supported by religious sanctions, whether those sanctions are of first-rate importance and absolutely obligatory, or whether they are of minor importance and binding only in a slight degree." That argument is equally applicable to-day. Section 19 of the Indian Councils Act 1861 laid down that with the previous sanction of the Governor-General, measures affecting religion or religious rites and usages of any class of Her Majesty's subjects in India may be introduced, not only in the Imperial Council but in the Provincial Councils also. The same provision has been repeated in the enactment now in force, viz., Government of India Act of 1919, Section 67, Clause 2.

235. In exercising this power, the Government has to pay attention to the religious opinions and customs of the people. A discriminating regard for those opinions, however, is not and should not be incompatible with the suppression of practices detrimental to national interests. The practice of pre-puberty marriage and consummation soon after puberty, so far as it is sought to be justified on religious grounds, varies with different texts or with different interpretations of the same texts. In view of these facts, it cannot reasonably be argued that there is a violation of the pledge given in the Queen's Proclamation.

236. Is the Legislative Assembly representative of the people and can a mixed Legislative Assembly deal with social customs of particular communities?—Admitting that the franchise on which representatives are sent to the Legislative Assembly is not wide enough to make them representative of the entire population, they are still sufficiently representative to be trusted to know the best interests of their countrymen. If they are representative enough to demand self-Government for India, a fact which is not contested, they are representative enough to introduce social legislation also.
237. It has been strenuously contended by some witnesses that the Legislature, being composed of members of various communities, is incompetent to enact measures concerning social rights or religious customs, which, though applicable to all, would affect some more than others, and that the particular community concerned is the only body fit to judge if any changes are required. In particular, it is advanced that if Brahmins are affected by such a measure, only the members of that community ought to have option to change existing practices and that similarly if Hindus or Muslims are affected, each of these communities separately should have the right to decide on the need for the change.

238. It has been the practice of the Indian Legislature to confine its attention to secular matters and not to concern itself with religious affairs. Even where a custom is stated to be based on religion, the Legislature deals with it, not with a view to change a religious practice but merely because civil rights are involved in such practices and the competence of the Legislature to deal with such matters cannot be questioned on the ground of its heterogenous character. There is only one agency at present to enact laws and that is the Legislature established by the Government of India Act. If there were alternative bodies for the purpose, the argument as to which is the preferential forum may have some weight. As it is, this line of reasoning is only destructive, and is advanced to prevent all legislation on the subject and not to secure such legislation through a more desirable agency. It may also be pointed out that the extreme position taken up in the objection has not been supported by any section of politicians in the country and that none of the draft constitutions relating to the future Government of the country provide for such caste or communal legislative bodies. The proposition therefore is one that cannot be supported by precedent and is impossible to sustain.

239. Texts on Hindu and Muslim Laws and interference with religious usage—Hindu Law Texts.—The authorities for pre-puberty or post-puberty marriages and for consummation soon after puberty may be classified as follows:

1. Vedic incidents known as Vaidic Lingas from which inferences can be drawn regarding late or early marriages.
2. Ritual at marriage and the recitation of Mantras from which inferences can be drawn and

3. Smriti texts.

It may be stated at the outset that texts are cited only to uphold present customs. Whatever may have been the origin of the practice of early marriage, it is certain that what counts most with orthodox Hindu society at present is the existence of certain customs. It is an accepted maxim in Hindu Law that in a conflict between custom and a Smriti text, custom will prevail. Accordingly, although some Brahmins, like Nambudris in Malabar and Kulin Brahmins in Bengal, observe post-puberty marriages and many other classes of Brahmins practice pre-puberty marriages, both accept the authority of the Smriti texts. The Nambudris rely on the special text of Shankar Smriti for post-puberty marriages; but this is not accepted elsewhere in India and its authenticity has been questioned. The Kulins rely on the same Smriti texts as others but do not look upon post-puberty marriages as sinful. The Kshatriyas and Vaishyas on whom also the texts are binding have varying customs, as varying as amongst the Brahmins. The texts are held to be mandatory or permissive to suit existing practices. The attempt amongst the Hindu theologians has always been not to recognise contradictions or variations in Smriti texts, but to try to reconcile them on the assumption that they are of equal authority. There is such diversity of opinion amongst theologians themselves as regards the texts that no interpretation can be said to be decisive. Parashara Smriti is said to be binding in Kaliyuga; its authority is paramount; but even on this point theologians differ. Conferences of Pandits were held at Conjeevaram between the 5th and 10th April 1912 and at Tiruwadi between 21st and 31st December 1912, where these texts were discussed and the results are briefly quoted here to show the diversity of opinion.

240. Conjeevaram Parishad, April 1912.—" III. Third question.—Do any of the Shastras prescribe post-puberty marriage for Brahmin girls or at least permit such marriages as an inferior alternative?

Answers.

(a) The Shastras prescribe post-puberty marriage for Brahmin girls. (Eight Pandits.)
(b) Some Shastras prescribe post-puberty marriage, others merely permit such marriage. (Two Pandits.)

(c) The Shastras permit post-puberty marriage under certain circumstances for a period of three or four years after puberty. (Twenty-one Pandits.)

(d) The Shastras permit such marriage only under unavoidable circumstances (Apad). (Nine Pandits.)

(e) Though permitted by the Shastras under certain circumstances, such marriages would be against the practice of the pious and the learned, and should not be adopted. (Three Pandits.)

(f) The Shastras prohibit post-puberty marriage. (Seven Pandits.)

241. *Tiruvadi Parishad, December 1912.*—" III (a) Third question.—In this Kaliyuga is Parasara Smriti to be regarded, in all respects and under all circumstances, as of superior authority to all other Smritis?

(b) Is the postponement of the marriage of Brahmin girls in Kaliyuga till after puberty, owing to the difficulty of securing suitable bridegrooms, opposed to the teaching of Parasara Smriti?

Answers.

(a) (1) Parasara Smriti must be regarded as of superior authority in all respects and under all circumstances. (Forty-five Pandits.)

(2) Not always of superior authority. (Eighteen Pandits.)

(3) Parasara Smriti is of superior authority only on certain points. (Twenty-six Pandits.)

(b) (1) The marriage of Brahmin girls after puberty in the circumstances indicated is not opposed to Parasara Smriti. (Thirty-seven Pandits.)

(2) Such marriages are opposed to the teachings of Parasara Smriti. (Fifty-one Pandits.)

IV. Fourth Question.—Do any of the Shastras ordain that Brahmin girls should be married only after puberty, or allow such post-puberty marriages as an inferior alternative, *i.e.*, as a Gaunakalpa or as an Apatkalpa? If the last, what kinds of ' Apad ' (difficulties) justify the postponement of marriage till after puberty?
Answers.

(1) The post-puberty marriage of Brahmin girls is recognised by the Shastras. (One Pandit.)

(2) According to the Shastras, Brahmin girls should be married only after puberty, i.e., post-puberty marriages are prescribed as a Mukhyakalpa. (Nine Pandits.)

(N.B.—Of these three are of opinion that, having regard to custom, such marriages, though ordained by the Shastras, should be adopted only as an inferior alternative, i.e., as a Gaunakalpa.)

(3) Post-puberty marriages are permitted by the Shastras as a Gaunakalpa. (Twenty-five Pandits.)

(4) Post-puberty marriages are allowed as an Apatkalpa, the Apad contemplated arising from such circumstances as follows:—Difficulty of securing suitable bridegrooms, the poverty of girls’ parents or guardians, domestic inconveniences. (Thirty-three Pandits.)

(N.B.—Though these Pandits use the word ‘Apad’ in their replies it is clear from their explanation of the word ‘Apad’ that they recognise post-puberty marriages as a Gaunakalpa, i.e., inferior alternative.)

(5) Post-puberty marriages are recognised by the Shastras only as an Apatkalpa, the Apad contemplated arising from circumstances altogether beyond the control of the girls’ parents or guardians, such as prolonged famine, foreign invasion, and similar acts of *vis major*, or from the prolonged illness, personal deformity, etc., etc., of the girl. (Fifteen Pandits.)

(6) Post-puberty marriages of Brahmin girls are not prescribed by the Shastras either as a Mukhya, Gauna or Apatkalpa. (Thirteen Pandits.)

242. *All-India Brahmin Conference at Benares, November 1928.*—We do not deem it necessary or profitable to discuss the various texts as these have been amply discussed and contrary conclusions arrived at by individual theologians. The latest pronouncement is by the All-India Brahmin Conference at Benares on Kartik Vadya 11, Thursday, Samvat 1895 (4th November 1928) an extract from the proceedings of which is given below:—

Questions.

(1) From what age to what age, according to the Shastras, is the proper time for marriages of men and women?
(2) According to the present circumstances and in keeping with the Shastras, to what extent is regulation thereof proper?

(3) Is marriage after puberty a primary obligation or secondary or a matter of necessity in difficulty?

(4) After puberty, what is the significance of the texts declaring a woman a Vrishali?

(6) Who are the knowers of the Law; and what sort of changes in the Law can they make?

N.B.—Questions 5 and from 7 onwards are not relevant to this inquiry.

Answers.

(1) The permissibility of marriage (of a girl) even before 8, in case an eligible match is available, is not disproved. But if any community, looking to the welfare of that community, makes a rule that a marriage before 8 should not be performed in that community, it deserves approval, as such a rule is not against the Shastras. This preliminary proposition is accepted unanimously by us all in this Conference.

(2) The marriage of a girl of 8 is most commendable. According to the authorities, the fruit of gifts lasts up to one birth; the fruit of the gift of gold, house or a Gouri (a girl of eight being a Gouri), lasts up to seven births. As a marriage stands in the place of Upanayana (Sacred Thread ceremony) in the case of women, and as the 8th year is the primary time of Upanayana for a Brahmin, and the gift of a girl of eight carries special merit, any rule restricting that a Brahmin girl should not be married before 10 is not acceptable to us. This is so by reason of the text “after that, i.e., 10, she is in menses (unclean)”. The marriage of girls of all castes after 10 would infringe the primary time. As the time for the Sacred Thread ceremony of Kshatriya and other castes is not fixed before 10, if those communities make any rules to regulate their marriages for their communal welfare, it would not be contrary to Shastras, in our opinion. This opinion would hold good with reference to Shudras too.

(3) In the case of marriages outside that limit, though there are certain Smritis which say that a girl becomes a Vrishali after 12, yet, as a girl really becomes Vrishali only after puberty, she can be married after 10 and before
puberty, in times of difficulty, with a Prayaschitta for transgressing the primary time of marriage.

(4) (a) Pandit Rajeshwar Shastri and others are of opinion that Brahmin girls remaining unmarried after puberty are unfit for association even after a penance.

(b) Pandit Malladi Rama Krishna Shastri and others are of opinion that such girls are unfit for association even after Prayaschitta is done within three years after puberty; while Pandit Rajeshwar Shastri and others say that she is unfit for association even after Prayaschitta, if, though asked by her father within three years, she refuses to marry. If she remains unmarried for the fault of her father, she only incurs a sin but does not become a Vrishali. If for three years (after puberty) she remains unmarried then her degradation as Vrishali cannot be removed in our opinion even by Prayaschitta.

(c) The opinion of the Bengal Pandits is that a girl remaining unmarried through her father's fault incurs an ordinary sin. If she wilfully remains unmarried she becomes a Vrishali but becomes fit for association after Prayaschitta. Excommunication holds good only if she absolutely refuses to marry.

(d) The same opinion is held by Mahamahopadhyayaya Tatal Subraya Shastri and Vindhyeshwari Prasad Shastri. Subraya Shastri accepts higher and lower Prayaschittas.

(e) All agree that in the case of girls of Kshatriyas, since they are allowed to choose their own husbands, their becoming Vrishali consequent to puberty is removed by Prayaschitta and thus they become fit for association.

Our decision, reviewing all these contentions, is as follows:—

The Dharma Shastras whole-heartedly condemn the marriage of a girl after puberty. Sometimes such a marriage, in an exceptional difficulty, is allowed after Prayaschitta: but those who can perform the marriage at the primary time should not resort to this course, making it as an excuse, because this course is applicable in an extreme difficulty. The decision whether a difficulty is great or small rests with the respective community. As regards fitness for association, the custom of each family is the guiding authority. Excommunication is to be made.
only where a girl wilfully refuses to marry after attaining puberty.

4th November 1928.

Virupakhsa Shastri.
D. Shrinivasa Charu.
Shri Shashinath Jha.
Shri Chandidas Tarkateertha of Nuddea.
Devashikhamani Ramanujacharya.

Out of the 5 questions submitted to me, I agree with the above except as regards the first and fourth. On the 1st question, I hold that the marriage of a girl is proper from the 8th year upto, but before the possibility of, puberty. As to the 4th question, a Vrishali certainly becomes fit for association after a Prayashchitta.

Pandit Nand Kishore.

243. The decision of the Dharmacharyas or Religious Heads was as follows:—

"Questions 1 and 3.—The best time for the marriage of girls is the 8th year from conception; 9th and 10th years the next best; after that upto puberty ranks low; while after puberty it is absolutely reprehensible.

2.—The prohibition of marriage from the 8th year to the 10th, even according to circumstances, is quite improper.

4.—The texts declaring a girl Vrishali are to be interpreted to mean that she becomes so only for religious ceremonies.

6.—Manu and others are knowers of the Law, but even they have no authority to make any change in it independently by themselves."

244. In many instances Smriti texts probably crystallized the then existing practices, but Hindu theologians look upon all Smritis as of equal authority and only of lesser value than any Sruti or Vedic texts if the latter are not consistent with Smriti texts. In the changed circumstances of the country, the practical enforcement of some of the Smriti texts is impossible. We have indicated
in the list of witnesses those who have cited texts in their evidence.

245. We have accepted the latest pronouncement of the Benares Pandits quoted above as a statement of the effect of Shastric texts from the extreme orthodox point of view. The other view is of those who hold that a girl's marriage at 12 or within 3 years after puberty is the most meritorious. A third view is that of Pandit Shrinivas Shastry to the effect that marriage before puberty is first best, within 3 years after puberty second best, and after that the power of the father to give the girl in marriage ceases (vidé Appendix XIV). Mr. C. V. Vaidya, M.A., LL.B., a Marathi writer of considerable importance, holds that child marriages are not warranted by the Smriti texts (vidé Appendix XIV.)

246. Islamic Law.—We shall next deal with the Muslim point of view as regards the proposed legislation being against the teachings of Islam. Islamic Law is based on four sources—The Quran, Hadis, Ijma and Qayas. It is conceded by the theologians examined before this Committee, that there is no express provision in the Quran, enjoining the celebration of marriage or the bringing about of consummation at any particular age. In short, the Quran is silent on these points, and legislative enactment on the subject would not be at variance with the injunctions of the Quran.

247. The next source is the Hadises. We do not propose to enter into a controversy as to the authenticity or otherwise of certain Hadises but it is clear that all Hadises that have come to our knowledge favour post-puberty consummation. For instance, certain Hadises are quoted to show that the Prophet preferred marriages soon after puberty; but there are some other Hadises from which it may safely be concluded that marriages after the age of discretion were preferred by the Prophet. It cannot therefore be argued that legislation on this point is strictly at variance with the sayings of the Prophet.

248. The third source of Islamic Law is Ijma, i.e., the concensus of opinion of learned men. The Muslim theologians of India are not agreed on the point as to Marriage and Consent legislation being an interference with Muslim religion; and thus there is no Ijma. We endorse the remarks made by the witness Syed Nawab Ali, Principal,
Bahauddin College, Junagadh, in his evidence, "Unfortunately under the present circumstances, Ijma is very difficult here in India. How many are there in India who can be considered as qualified to give opinion? How many are there who have spent their life in the study of religion and religious laws"?

249. The fourth source, viz., Qayas, would certainly favour such legislation when once it is proved that it is in the interests of the community at large.

250. It may also be noted that according to Muslim Law, marriage is not merely a civil contract, but is an act enjoined by religion, the object of which is the procreation of "Aulade Saleh", meaning by that expression, progeny fit to serve God and His creatures; and if it be conceded, as it ought to be, that the offspring of early marriages are weaklings and unfit to serve God or humanity, it follows that such marriages are against the spirit of Islam.

251. So far as the Muslim countries of Turkey and Egypt are concerned, there is marriage legislation even to the extent of declaring marriages void before a given age, and such legislation is nowhere objected to on religious grounds.

252. All this goes to prove that it is not so much a violation of any religious injunction as in the case of Hindus, but a restriction on the liberty to marry at any age, and to consummate at puberty. This freedom has been already curtailed by a Law of Consent at 13, and raising the Age of Consent further or enacting a Marriage Law will not militate against their actual practice, except in cases, where there are consummations before puberty or before the prescribed age.

253. Is maternity soon after puberty detrimental to mother or child?—The occurrence of puberty indicates a capacity to conceive. This is admitted by all medical witnesses. A very large majority however asserts that it does not mean that the girl is fit for conception which may be the result of cohabitation. Havelock Ellis is quoted as being of opinion that a girl at puberty is biologically fit to be a wife and mother. This view is not accepted by other medical authorities. In fact, several medical witnesses examined before this Committee assert that their experience warrants them in saying that 16 is the minimum...
age when conception for an Indian girl is safe both for mother and child.

254. We do not agree with the view that maternity soon after puberty, at whatever age it may occur, does not affect the health of the mother and child. We accept the contrary view given by medical witnesses in Chapter VIII of our Report. It is possible that the older generation may have been strong though born of mothers under 16. Modern conditions are however so vastly changed and life has become so strenuous, that every single cause of deterioration of men and women should, as far as possible, be eliminated. Early maternity is one such cause, though it may or may not be the sole cause, of deterioration. If her frame were more developed, a girl at first childbirth would certainly offer more resistance to disease and surmount to a greater extent other adverse conditions which cause deterioration.

255. Will the morals of girls suffer by late marriage?—A large number of witnesses, including school teachers who have to deal with girls of this age, have declared that there is no fear to the morals of the girls, if kept unmarried till 14 or 16; there are others who have expressed their apprehensions the other way, more so about girls in rural areas and those working in factories. Judge Lindsay’s book referred to by some witnesses states facts about early cohabitation of American girls and boys, but the conditions of women’s outlook on life and the freedom and opportunities for thrills they have in America, have no existence here. There are many communities in India which have post-puberty marriages and consummations after 16 and yet there is no danger to their morals. In fact, more than 50 per cent. of the Indian girls are married after they have completed the 15th year. Moreover, the fact that a large majority of child widows, with no prospects of marriage, are free from scandal is a good argument to prove that it is very unlikely that girls of 14 and 16 with marriage prospects will go wrong. The traditions of Indian homes and the care taken of unmarried girls are enough to dispel any reasonable apprehensions of girls of such ages going wrong. The Committee feels that this argument is put forward without a genuine belief in its cogency and without realizing that the argument, if based on facts, may be a serious reflection on Indian homes.
The remarks of Western authors quoted by some witnesses cannot possibly apply to conditions in India. These authors are referring to inordinately late marriages in Western countries and recommend early marriages—i.e., earlier than the present practice in Western countries. They have no idea of marriages of 1 to 14 and their remarks do not refer to the marriage age below 15 in India. To support marriages at ages earlier than their present practice in the West, they quote instances of young girls having become mothers even before 16 and show that at that age parturition is not difficult. The context in which the remarks occur show that they could not be thinking of recommending marriages at ages below 15, such as take place now in India. We have therefore no hesitation in saying that marriage deferred till 14 or even 16 will not adversely affect the morals of Indian girls.

Will the new law cause dissatisfaction?—There is no doubt that a certain amount of dissatisfaction will be caused amongst the orthodox Hindu and Muslim classes, but it can only be temporary. We realize that the proposed Law of Marriage would affect the practices of these classes as they were never affected before, either by the law of 1891 or of 1925. On the other hand, the dissatisfaction, if such a law is not passed, will be equally great, if not greater. Reformers, having to a certain extent done what they could, feel that the time has come when legislation should supplement their efforts, and will not fail to accuse the Government if this much needed reform is hindered or delayed any longer. The advanced women of the country are determined to have the law and are not likely to take the rejection of a Bill like Sarda’s with equanimity. There is no innovation in established usage which may not bring about a certain amount of dissatisfaction. Even among the orthodox, a large number is indifferent and will acquiesce in the change; there is yet another considerable section of the orthodox, which is waiting to have the cover of a preventive law to postpone marriage and consummation beyond the prevailing practice; and it is only the rest that will seriously feel the new law a grievance. We have been advised by witnesses that this risk of discontent may be taken, and we think that beyond a ripple on the placid waters of orthodoxy—Hindu or Muslim—there will be little to apprehend.
258. Early marriage secures unadulterated love towards husband and members of his family and preserves the Joint Family system.—Some witnesses have advanced a novel ground for not merely defending but positively advocating the practice of early marriage and early consummation. Early marriage, by introducing a girl of tender age into her husband's family enables her to absorb the traditions of that family and secures her unadulterated love to her husband and the other members of the Joint Family. The introduction of girls of advanced ages creates discord and disunion and disrupts the family, instead of promoting its welfare and unity. It seems to us that though there may be an element of truth in this statement, it is yet an over-exaggerated picture of the actual facts. The severance of natural ties of kinship and the promotion of artificial bonds of love depend on personalities and on a variety of reasons, the least of which appears to be the age at which the girl is introduced into a family. The Joint Family system endures as well in communities where girls beyond the age we have now recommended are brought into the family by marriage after puberty.

259. But even granting all that is claimed in favour of the system, it has to be remembered that there is a growing tendency towards the celebration of marriages of girls between 10 and 12 years. The age that we have recommended is not so far in advance of the ages now in practice that it can make any vital difference in this connection.

260. The law derogates from the natural rights of a husband.—The objection, that a law fixing an age of Consent in marital cases derogates from the rights of the husband conferred by marriage, involves the assumption that the husband has the absolute right to cohabit with his wife, irrespective of her age or physical condition, or that at any rate he is the best and only judge of her fitness and maturity for such cohabitation. Such a wide and unfettered right has never been recognised in favour of the husband by any law. The Hindu Law prohibits consummation before puberty and the spirit of the Islamic Law is also against it. Moreover, the Hindu Law prescribes in great detail the limitations which a husband should observe in cohabiting with his wife. There has also been a widely prevalent practice, in some instances accompanied
by a religious ceremonial, both among Muslims and Hindus, whereby irrespective of the age when a girl is married and irrespective of puberty, a wife is not permitted to join her husband before a certain period. These are all restrictions and limitations which derogate from the absolute right which is now claimed on behalf of the husband and which have been long acquiesced in by the community. That these restrictions are falling into desuetude may be a reason for replacing them by others and not for establishing a right which never existed. Nor has the law of the land at any time recognised such a right. It is perfectly true that the cohabitation by a husband with his wife was not considered a crime, whatever the age of the girl, before the Indian Penal Code of 1861. But if through such consumption an injury of a serious nature resulted to the girl, the husband was liable to be punished for such injury and the marital rights of a husband could not be advanced as a bar to such prosecution. Justice Wilson, in the case of R. vs. Hari Mohan Mythee, I. L. R., 18 Cal. 62, observed "It by no means follows that because the law of rape does not apply as between husband and wife, if the wife has attained the statutory age, that the law regards a wife over that age as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law. Under no system of law with which courts have to do in this country, whether Hindu or Muslim, or under any law framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her, as for instance, if the circumstances be such, that it is certain death to her, or that it is probably dangerous to her life. The law, it is true, is exceedingly jealous of any interference in matters marital, and very unwilling to trespass inside the chamber where husband and wife live together, and never does so except in cases of absolute necessity. But the criminal law is applicable between husband and wife wherever the facts are such as to bring the case within the terms of the Penal Code." Such a case of "absolute necessity" has been made out for an advance in the age of Consent as will be clear from Chapter VIII.

261. It need only be pointed out that the present law fixing the age of Consent already derogates from the
rights of a husband as advocated in its extremest form, and that any proposal to increase the age of Consent will be a mere extension of the principle and not a novel departure.

262. *Age of marriage already going up; why legislate?*—An objection is raised that as the age of marriage and maternity is going up, in fact, there is no need to legislate to achieve the same end. The figures in Appendix V-G show that the pace of progress in the increase of the marriage age has been so slow since 1891 that the objective is not likely to be reached even within half a century. While, therefore, it may be argued that legislation is unnecessary when natural causes are already working towards the achievement of the desired result, it may with greater propriety be contended that legislation is a very effective means of accelerating progress towards the objective and should therefore be resorted to. As a matter of fact, though the marriage age has advanced beyond 8 and 10 to 12 and 13, the age of consummation and maternity is practically where it was. With an increase in the age of marriage, there is perhaps a smaller number of widows below that age, but the increase in the age of marriage is not general, nor is consummation postponed to an age when maternity is safe.

263. *Interval after enactment of 1925 too small to effect change.*—It is true that the law has been changed only in 1925 and the interval between 1925 and now is short. It should however, be remembered that even in 1925, the legislature was prepared to raise the age to 14 and 15 inside and outside marriage. Our investigation has elicited many new facts to justify a review of the whole position and an advance being made.

264. *Abuse of Law by false accusations or Police oppression.*—The fear of false accusations by enemies and oppression by the Police has been expressed by some witnesses and has been put forward as a strong argument against such legislation. It may be noted that this very objection was raised in connection with the legislation of 1891. Nearly forty years' working of that law has failed to establish that the fear is well grounded and not a single case of false accusation by enemies has been brought to our notice. So far as harassment by the Police is concerned, it has to be noted that the offence is now non-cognisable
and the recommendation of the Committee is that it should continue to be so. Moreover, the preliminary jurisdiction in such cases is limited to the District Magistrate or the Chief Presidency Magistrate and Police investigation, if ordered under section 155 of the Criminal Procedure Code, is confined to investigation by a Police officer of a rank not below that of an Inspector of Police. The general safeguards against false and frivolous or vexatious complaints which are provided in the code are sufficient to remove all reasonable apprehensions on the subject.

265. It may also be pointed out that where the girl is above the age of 12 years, the Committee recommends that the offence may be compoundable with the leave of the court, the father or the guardian of the girl being the consenting party. The chances of false accusation or harassment by the Police will therefore be made even rarer, if they are not altogether eliminated.

266. The law of an Age of Consent a dead letter in marital cases, now and hereafter.—It has been urged that the Law of Consent in marital cases has been, and is bound to be, ineffective on account of the very nature of the offence which it seeks to prohibit. The privacy and secrecy necessarily involved, the anxiety of all those who may be cognisant of the offence to suppress the facts and not to give information and the utter unwillingness of the very victim to lay a complaint against the husband are powerful factors in making the law nugatory and of little effect. It is also pointed out that if a law prohibiting marriage below a certain age were to be passed, the need for fixing an age of Consent automatically disappears. Superfluous legislation of the kind should be avoided.

267. It must be candidly admitted that the Law of Age of Consent has not been effective. The evidence has distinctly proved that violations, both of the older law and of the amended law, are not infrequent. In some Provinces like Bengal and Gujrat, it may be even stated to be common and yet cases which have come to light through courts of law are extremely rare. But it would be incorrect to presume that such cases can never come to light. On the other hand, the statistics of crimes in the different Provinces (vide Appendix IV) show that cases of rape by the husband occasionally come before the courts and the delinquents are punished. Taking the three years, 1925,
1926, and 1927, we find that in Bombay there were 4 cases resulting in 1 conviction; in Madras there were 11 cases ending in 2 convictions; in the Punjab, 18 cases with 6 convictions; in Behar and Orissa, 16 cases with 5 convictions; in the Central Provinces and Berar, 30 cases with 5 convictions; and in the United Provinces, 35 cases with 11 convictions. Bengal reports 17 cases instituted, with however, no convictions. It is perfectly true that these figures bear no comparison to the number of cases of violation of the law; neither do they indicate that the law is a dead letter and incapable of application in such cases.

268. But the effect of the law—particularly a criminal law—cannot accurately be gauged by the number of prosecutions instituted or the convictions which have resulted therefrom. Such legislation has always a wider effect, as it prevents crimes more often than it punishes them. Even with reference to a law so elusive in its operation as the law of the Age of Consent, we have no reason to doubt, as stated in paragraph 37 in Chapter III, that it has had a certain educative effect and that it has in some instances prevented the commission of such crimes.

269. It has, moreover, to be remembered that the law is to a large extent unknown—that wide publicity which is essential to ensure a due respect of the law has not attended it. Among the recommendations of the Committee is one which suggests that the State, directly and through quasi-public and private institutions, should take all steps to give wide publicity to the law so that a knowledge of it may be brought home to all the citizens of the land. Such publicity will probably increase the chances of the offences coming to light in large numbers. But whether more offenders are brought to justice or not, it is undeniable that the educative effect of the law will be much greater than at present and what we have stated as the preventive effect of the law will also be greater. No man in this country lightly risks the penalties of the law and with regard to an offence where not the habitual criminal but the normally law-abiding citizen is concerned, the chances of running such risks will, we believe, be not very great.

270 With a Law of Marriage, Age of Consent Law superfluous.—It has been further suggested that the enactment of a Law regarding Marriage will make the Law of Consent superfluous. But the argument is untenable for a
variety of reasons. Even when the age of marriage permitted by law coincides with the Age of Consent, it will still be necessary to have the latter legislation. It must be remembered that there is no proposal to make the marriage void in case it is performed before a certain age. In dealing with the recommendations we have given reasons why we reject the proposal to declare such marriages void. We may therefore expect that, even with a Marriage Law, there will be cases of violation of that law by some who perform the marriage in the hope that the real age may not be found out and by a very few who marry, particularly at the initial stages, and deliberately break the law. It seems necessary that at least to cover such cases, there ought to be an Age of Consent Law. Moreover, the number of marriages of girls of varying ages which have already taken place, is indeed very large. The latest census shows that there were on that date (1921) over 6½ millions of girls out of a total of 16½ millions between the ages of 10 and 15 who were in a married state (vide Appendix V. D.). The number of girls below 10 who were married was 26,16,473. The figures may vary slightly but will not be very different at the present time. The need for protecting these girls, as also those that may be married between the date of the Marriage Law and its coming into operation, is obvious, as most of them will be below the statutory age. The law fixing an Age of Consent is therefore imperatively necessary.
CHAPTER VII.

SUGGESTIONS AND RECOMMENDATIONS.

271. The statement of facts contained in the preceding chapters clearly establishes that the practice of early consummation is widely prevalent and that the consequences are sufficiently serious to need remedial measures. The conclusion has been forced upon us that the age of Consent in marital cases should be raised and that the Law of Consent can be of use only if it is supplemented by a law fixing a minimum age of Marriage. The specific recommendations on these points and an examination of the reasons for and objections against such proposals will be found in Chapter IX of the Report. We are also of opinion that the age of Consent in extra-marital cases should be raised very considerably and our proposal in regard to it, with the reasons therefor, will be found in Chapter X.

272. But our enquiry has made it clear that these recommendations by themselves will not be sufficient to achieve the object in view. Various suggestions have been pressed on our attention either to lessen the rigour of the application of the law, or to make the law more effective or to provide safeguards against an abuse of the processes of the law. Alternative proposals to achieve the desired object, have also been suggested. We are of opinion that our main recommendations require the adoption of measures, both legal and administrative, of an auxiliary nature, if they are to be effective and acceptable to the general public.

We shall therefore examine here the various suggestions placed before us and give our recommendations thereon.
AGE OF CONSENT LAW.

273. Nomenclature of the offence in marital cases.—It has been suggested by many witnesses that it is anomalous to call the offence of cohabitation by a husband with his wife below a certain age, rape. That word is generally associated with ideas of violence, non-consent and intrinsic immorality which are absent where the conduct of a husband is in question. To denote both those acts under the common terminology of rape offends sentiment as well as juridical notions. Sir Hari Singh Gour recognised the force of this criticism when in his bill he proposed to call the offence “illicit married intercourse”. Several witnesses have suggested that a different nomenclature may be given to the offence and some of the Bar Associations, notably the Madras Vakils’ Association, have emphasized the same view. It may be added in fairness to them that the suggestion is not put forward with a view to mitigate the gravity of the offence. We feel bound to take note of this sentiment and to consider if the suggestion of Dr. Gour may be accepted. The word ‘illicit’ is however open to an obvious objection, and we have come to the conclusion that the offence may more appropriately be called “Marital Misbehaviour”. This phrase has not been before the public and has not been considered by them, but we have no doubt that it will prove more acceptable. The new offence may conveniently fall under Chapter XX of the Indian Penal Code which deals with offences relating to marriage. We recommend that sexual intercourse by a husband with his wife below 15 years of age (vide paragraph 397, Chapter IX) be made an offence, and that the said offence be called “Marital Misbehaviour” and be included in Chapter XX of the Indian Penal Code dealing with offences relating to marriage.

Consequent on this recommendation we further make the following two recommendations.

That in clause 1 (a), Section 561, Criminal Procedure Code, the words ‘Marital Misbehaviour’ be substituted for the words beginning with ‘rape’ and ending with ‘wife’; and that Sections 375 and 376 of the Indian Penal Code be confined to rape outside the marital relation.

274. Punishment for Marital Misbehaviour—Where the girl is below 12.—The question of punishment for the vio-
lation of the Law of Consent in marital cases raises many difficulties. The possible effects of a conviction in such cases have been referred to in an earlier chapter. The need for a distinction in punishment according to the age of the girl and the extent of such distinction have now to be considered. The extreme divergence of views on the subject only adds to the complexity of the problem. At the one extreme are those who advocate a bare fine or at the most a nominal sentence; and at the other are those who feel that inconsiderate conduct on the part of a husband, pledged to safeguard the health and person of the wife, ought to be more severely dealt with than similar conduct of a stranger. As is so often the case, the line of practicality is perhaps somewhere between the two extremes. Where a girl is below 12 years of age the punishment is, under the present law, transportation for life or imprisonment which may extend to 10 years. The law has been in existence for thirty-eight years and no complaint has been made on the score that the maximum punishment is disproportionately high. It is no doubt true that the actual sentence inflicted by the courts has fallen far short of this maximum. Even so we can find no reason to recommend a reduction in this maximum. The suggestion has however been made that the alternative of transportation for life may be eliminated so as to make it possible to bring such cases under section 562 of the Criminal Procedure Code. The suggestion commends itself to us and we recommend that the offence of Marital Misbehaviour be made punishable with imprisonment of either description for 10 years and fine when the wife is under 12 years of age.

275. Where the girl is above 12.—Where the girl is above 12 years but below 15 the age we have recommended, the punishment has necessarily to be less severe. Under the present law, where the girl is between 12 and 13 years, the punishment is imprisonment which may extend to 2 years. We have been presented with three alternatives in considering the punishment after 12 years; firstly, to maintain the same punishment as at present up to the increased age, secondly to maintain the present state of the law and to suggest a punishment of one year’s imprisonment between 13 and 15, and lastly, to suggest a reduced punishment where the girl is between 12 and 15. We have rejected the first two proposals as the one is in our opinion
too severe for the advanced age, and the other involves such nice distinctions in age as to make it impracticable. We recommend that the punishment may be imprisonment of either description which may extend to one year or fine or both when the wife is between 12 and 15 years of age.

276. Alternative suggestions regarding punishment.— Two specific suggestions have been put forward to regulate punishment in cases of Marital Misbehaviour. Both of them involve the abandonment of the distinction based on the age of the girl-wife. The first suggestion is that where death results from the commission of the offence, the accused may be sentenced to imprisonment of either description for a period which may extend to 7 years and fine; where death does not result, the punishment may be imprisonment for 2 years or fine or both. The basis of punishment will then be more logical. Though the maximum punishment at present is transportation for life where the girl is below 12 years, the courts have generally treated cases where death has occurred as cases under Section 304-A., Indian Penal Code, and have awarded a sentence of imprisonment for 2 years. The law should therefore prescribe a more deterrent sentence in such cases. Further it is argued that Rape and Marital Misbehaviour ought not to be treated as offences of a like nature, and that a substantial difference in the maximum punishments ought to mark the distinction in the gravity of the two offences. The severity of the present punishment in marital cases is against the interests of the girl and a lowering of it may induce persons to bring to light more offences.

277. We recognise the force of the argument but are unable to adopt it because the principle underlying it is different from the principle which we have followed in suggesting punishment. We are clearly of opinion that the age of the girl in most instances has a real bearing on the extent of her injuries. The later the age, the less serious are the consequences likely to be. The proposal would separate cases where death has resulted, and group all other cases under one category whatever the age of the girl may be and whatever the injuries she may have sustained. Where the girl is below 12, though death may not result, the shock to the nervous system may be great and where maternity supervenes, the consequences may sometimes be as disastrous as if death had immediately followed.
the act. The proposal does not take note of these conditions or at any rate considers that a maximum punishment of 2 years is sufficient in all such cases—a position which we cannot endorse.

278. Moreover in the course of our enquiries we have been impressed by the fact that pre-puberty consummations are not uncommon in some parts of the country. As only a small percentage of girls attain puberty before they reach the age of 12, it is probable that these pre-puberty consummations generally take place when the girl is below 12. The evidence before us also supports this conclusion. The practice is so abhorrent, and opposed to all considerations of health and religion that it ought to be severely dealt with. A modification of the sentence where the girl is below 12 years, which would be the result of accepting the proposal would lend colour to the view that the offence is not sufficiently grave. We are therefore not prepared to accept the suggestion.

279. The second suggestion that has been strongly pressed on our attention is that the offence should be punishable according to the nature and extent of the injury to the girl. The suggestion involves a classification of injuries which may result from the consummation of a marriage. The definitions of 'hurt' and 'grievous hurt' as contained in the Indian Penal Code do not seem to be appropriate in this connection, as any 'bodily pain' amounts to 'hurt' and the specific requirements of 'grievous hurt' will rarely be found in cases of Marital Misbehaviour. Nor are the materials at disposal sufficient to prepare a catalogue of graded injuries which may result in such cases and we are extremely doubtful if with the help of the best medical opinion it can be done.

280. Further, there will be serious difficulties in the application of the law. The nature of the injury being an essential for the assessing of punishment, a medical examination of the wife would in all cases be necessary, a proposal which we feel sure would be unacceptable to the public. Moreover, all traces of injury may have disappeared by the time such an examination takes place and the accused may therefore escape the punishment which ought to be his award.

281. Finally, there is an overwhelming ground for rejecting the proposal. There is no doubt that serious con-
sequences accrue to the girl even where no apparent and manifest injuries are traceable. The shock to the nervous system often leads to various diseases. Phthisis is more prevalent among those who practice early consummation. The consequences of maternity, leading sometimes to a paralysis, complete or partial, of the lower extremities, have been adverted to. The weaklings that are born of such mothers and the large infantile mortality resulting therefrom, have been put forward by us as some of the reasons for penalising the act and for fixing an age of marriage. These are results often far more disastrous than any external injury can be. It seems to us that it can only be by ignoring these considerations, which form the main and fundamental justification for an advance in the age of Consent, that we can accept the suggestion that the extent of injury of a demonstrable nature at the time of the act, can alone regulate the nature of the punishment ranging from bare fine to imprisonment extending to 10 years. We are therefore unable to accept the suggestion.

282. First offenders.—It may be noticed that in our recommendation regarding the punishment of a husband for Marital Misbehaviour we have suggested that if the girl is below 12 years of age, the maximum should be imprisonment of either description for 10 years and fine, and if the girl is above 12 years and below 15 years it should be imprisonment which may extend to one year or fine or both. The reason why in the former case we have impliedly suggested the deletion of the punishment of transportation for life, is to enable the accused under 21 years of age to have the benefit of Section 562 of the Criminal Procedure Code, and to be treated as a first offender if the court so chooses. Where the girl is above 12 years, the punishment suggested is such that whatever may be the age of the accused the benefit of the section can at the discretion of the court be extended to him. We recognise that instances where this section is made applicable must be very rare.

283. It may be objected that where the girl is below the age of 12, the offence is so serious that the accused ought not to escape all punishment. We have in mind, however, cases where the boy is between 14 and 18 and where he has little responsibility in the matter and is the creature of circumstances brought about by the parents or
guardians of the parties. There are undoubtedly instances where the consummation of boys and girls of tender ages is arranged by the elderly members of the family; and in such cases, if no injury has resulted to the girl, it seems hard that a boy below 18 should be submitted to the indignity and penalty of imprisonment for what he is virtually not responsible. Similar cases may occur where the girl is above 12 years. It will be in the fitness of things that judges should have the discretion in suitable cases to give the accused the benefit of section 562 of the Criminal Procedure Code.

284. Modifications in Section 562, Criminal Procedure Code—Bonds for separate living, custody, etc.—The section cannot however be made applicable, in terms, to the offence of Marital Misbehaviour, and considerable modifications are required to adequately deal with persons accused of that offence. While the offender may be released on probation of good conduct and the court may require him to enter into a bond to appear and receive sentence when called upon, during such period as the court may direct, the consequential provisions in the bond to keep the peace and be of good behaviour may not be appropriate or sufficient. In the first place, the period of probation cannot be limited to a maximum of three years as provided in the section but should be co-terminous with the period which must elapse before the girl-wife reaches the statutory age. Secondly, the bond must also provide that the custody of the girl may be entrusted to such persons as to ensure the separate living of the girl and the husband during the probationary period of the latter, that an allowance for the maintenance of the girl by the husband or the parent or guardian of the husband may be made in suitable cases, and that such other conditions as the judge may deem necessary be imposed so as to ensure that the offence is not repeated. We therefore recommend that by the addition of a suitable Sub-section to Section 562, Criminal Procedure Code, it be provided that in the case of Marital Misbehaviour the bond may, in addition to the present provisions, also provide for the custody, separate living, and maintenance of the girls and for such other conditions as the court may deem necessary to ensure the prevention of a repetition of the offence, the bond being executed either by the offender, or by his parent or guardian if the husband is a minor.
285. Power to receive reports and to vary custody and its conditions.—The object of providing for marital cases under a sub-section of section 562, Criminal Procedure Code, is to enable the court to apply the provisions of sections 122, 126 A, and 406 A of that Code so far as may be, which under the present section are applicable to cases dealt with under section 562, Criminal Procedure Code. It may be desirable to vary the order, to change the securities and to demand fresh securities and the judge must therefore be invested with such powers as would enable him to do so. But in addition to these powers, the judge should have the power to vary the custody of the girl or to grant increased maintenance, if necessary. The custody to which the girl would be entrusted would ordinarily be the custody of the parents, guardians or where these do not exist or are undesirable, the nearest relatives willing to undertake the responsibility. In rare cases where the girl has no parents or guardians and no relatives willing to take charge of her, or where such exist but the court considers it extremely undesirable that the girl should be in their custody, it ought to be open to the court to entrust the custody of the girl to any organised Association such as a Rescue Home, Society for the Protection of children or similar bodies for the period which must elapse before the girl reaches the statutory age. Where a girl is entrusted to the custody of her parents, guardians or relatives or to organised Associations, it is desirable that the court should receive periodical reports regarding the welfare of the girl. In cases where either on such report or other information the court is satisfied that the custody to which the girl has been entrusted is not satisfactory, it may vary the custody and pass such further orders as may be desirable. It is also obvious that the amount of maintenance may require alteration from time to time according to the age of the girl. We include under maintenance grant not merely the bare sustenance amount but the usual auxiliary expenditure for clothes, education, etc. We therefore recommend that, where girls under the prescribed age are made over to the custody of any individual or institution, under the foregoing recommendation, and similar recommendations made elsewhere, the court be empowered to receive and examine periodical reports from the party concerned as to the progress, good behaviour and other particulars essential to enforce a compliance of the law and the conditions of
the bond, and to pass orders from time to time rescinding or varying the order or the terms thereof.

286. Bonds where accused is sentenced in Marital Misbehaviour.—It is obvious that similar bonds for custody, separate living and maintenance may be necessary where the accused is sentenced to pay a fine or to a period of imprisonment on a conviction for "Marital Misbehaviour". In all cases of fine and in cases of imprisonment where the term is less than the period which must elapse before the girl reaches the prescribed age, the proper custody of the girl and her living separate from the husband must be ensured. In fact this is considered so essential that some witnesses have suggested that the term of imprisonment to which a husband should be sentenced should extend till the girl reaches the prescribed age. We recommend that where the accused is sentenced to fine or imprisonment in cases of Marital Misbehaviour, a new provision be made for bonds, with or without sureties, being taken from the husband or if he is minor from the parents or guardian for separate living custody and maintenance of the girl-wife till she completes the statutory age of Consent, and the court be empowered to rescind or vary the order or the terms thereof as may be necessary from time to time, by extending the provisions of sections 122, 126A and 406A of the Criminal Procedure Code to such cases.

287. The initiation of prosecutions for Marital Misbehaviour—Cognisable offence.—It is admitted on all hands that the incidence of the crime bears no proportion to the number of prosecutions in the case of rape by the husband. The question naturally arises as to who should initiate the prosecution. It is obvious that the right to complain ought not to be confined to the girl or her parents. Some witnesses have no doubt suggested that they are the only proper parties to launch a prosecution; but the suggestion appears to proceed more from a desire to avoid such cases coming to light than from an anxiety to bring the delinquent to book. As has already been observed, except in the rare cases of very serious and perhaps irreparable injury to the girl or her death, considerations alike of family happiness and social prestige will act as strong deterrents against their moving in the matter. On the other hand, it has been strongly urged by some that the only practical method of making the law effective is to
make the offence cognisable. We are not convinced that with reference to this particular offence its cognisability by the Police will make any great difference. The initial difficulty of getting a complaint made, whether to a Policeman or to a magistrate will still remain to a very large extent. But even if the efficacy of the suggestion is accepted, the volume of public opinion against such a course is so great—and we believe rightly—that we must reject the suggestion. A variant of this suggestion is that the offence be made cognisable if the girl is below 12 years, and that it should not be cognisable if the girl is above that age. The difficulty of making the distinction is obvious. When or how is the Policeman to know if the girl is below or above a certain age? Is he to rely on his informant or on his own judgment and in the latter case, what material could he have to form an opinion before he begins the investigation? It seems to us that though the distinction appears logical it has to be rejected as impractical. We recommend that the offence of Marital Misbehaviour do remain non-cognisable as in the case of Rape by the husband at present, and likewise we recommend that the offence do remain bailable.

288. Liability of public under Section 44, Criminal Procedure Code.—The present law gives the public at large the right to make a complaint. That this right has not been utilized by the public to any appreciable extent is as clear as the fact that a large number of people, both relations of the persons concerned and friends of the family, either know or have reason to believe that several cases of breaches of the law have occurred. Even with the widest publicity given to the law and the most intensive educative propaganda, it is apprehended that there may not be any enthusiasm on the part of the average individual to concern himself with the domestic affairs of his neighbour, to such an extent as to expose him to the penalties of a criminal law. The suggestion has therefore been advanced by some witnesses that the law should not content itself with conferring the right of complaint on the public, but that an obligation should be laid on them to complain in such cases. Section 44 of the Criminal Procedure Code has been invoked for the purpose, and the desire has been expressed that the offence of Marital Misbehaviour may be included among the offences contemplated by the section, so that
every person aware of the commission of the offence shall forthwith give information to the nearest magistrate of such commission. Apart from the technical reason that all the offences included in the section are cognisable offences, the suggestion is so extreme that it does not commend itself to us. It will place in intolerable burden on the public and will be violently opposed to the sentiments and wishes of the people. We have therefore no hesitation in rejecting this suggestion.

289. Obligation on Doctors, Nurses and Dais.—A more moderate and reasonable proposal is that doctors, nurses and dais who attend labour cases or treat girls for injuries should, where they have reason to believe that an offence of this nature has been committed, report the matter to the nearest magistrate. We have examined a number of lady doctors on the suggestion and they have invariably shown great reluctance in undertaking this obligation. They point out that the result will only be to drive the girl away from the regular practitioner to an unqualified and quack doctor for her treatment—a course which will only aggravate the troubles of the girl. It is true that doctors do not enjoy the professional privilege in law corresponding to that conferred on lawyers, and many doctor witnesses have therefore rightly agreed to fulfil their duty should the law prescribe such a course. But we feel that in such cases either the girl will go without any treatment or will be taken to the village doctor and that must be a sufficient reason for our not accepting the recommendation.

290. Social Reform Organisations and Women’s Associations.—It has been suggested that the right of initiating prosecutions should be given to Social Reform Organisations, Women’s Associations and to Vigilence Committees appointed by local bodies. The right being vested at present in the public, it accrues equally to organised bodies. But since a definite individual has necessarily to be the complainant in criminal cases, the President, Secretary or some authorised individual of the association can figure as the complainant. We fail to see what special privileges can be conferred on these associations. Their office-bearers must for obvious reasons be subject to the same penalties as other individuals in cases of false, vexatious or frivolous complaints.
291. Curtailment of present right.—But the proposal that the right of complaint should be restricted to the parent, guardian or near relative of the girl and to such Social Reform Organisations and Women's Associations as may be recognised by a prescribed authority requires more careful examination. We have already shown the futility of limiting the right to parents and guardians. Nor is the extension of it to near relatives calculated to achieve the object in view. The exclusive conferment of the right of complaint on the associations above mentioned will be both an undesirable and an ineffectual step. It introduces a novel distinction in criminal procedure. Few associations of the kind suggested are so stable and function so regularly as the conferment of the right would naturally suggest. The number of these institutions is so small and the places where they exist so few, that it will be a travesty of facts to suggest that these associations would serve the purpose of reporting even grave cases of breaches of the law. The rural areas may be altogether wiped out of the map if all hope is concentrated on the manner in which these associations will function. It has no doubt been suggested that associations of the kind will come into existence in very large numbers directly the right is conferred. While we thankfully recognise the growing public spirit in the country, we do not share the high hopes which some entertain of every village and town in India being honeycombed in the near future with Social Reform Associations or Women's Organisations. Nor do we feel that a wide publicity of the law will enable the malevolent section of the society to pursue through motives of ill-will or hatred the peaceful citizen and harass him with false prosecutions. Above all, the right to compromise, albeit it be by leave of the court, the conferment of which we suggest, is a valuable right—must deter the black-mailer and the bitter enemy from launching what probably will prove an infructuous prosecution. On all these grounds, we are unable to accept the suggestion that only recognised associations should have the right to initiate prosecutions or that the present right of the public should in any other manner be curtailed.

292. Should the offence be made compoundable?—The suggestion has been made by some witnesses that the offence of Marital Misbehaviour be made compoundable. At
present the law does not permit of such compounding. It has been pointed out that the imprisonment of the defaulting husband would disgrace the family and bring ruin on the girl, and that till the last an opportunity should be available to reconcile the interests of the girl with the demands of the law. The permission to compound, where the two parties are willing to adopt such as a course, will save the girl and the very fact that the accused was placed in the dock and his act given publicity will, it is argued, prove a sufficient deterrent. We are clearly against an unqualified right to compound such cases. It has to be remembered that the parties are not necessarily opposite and contending sides, as is generally the case in criminal complaints, but that both sides have the same interests and are animated by the same motives to avoid punishment to the husband. The difficulty of such cases coming to light has been expatiated upon and where a public spirited citizen or association takes upon himself or itself the odium of initiating such a prosecution, the trouble will be utterly wasted if there is an absolute right to compound.

293. A more helpful suggestion has been that the case should be permitted to be compounded by leave of the court. The other side to the composition would be the father or guardian of the girl. Where the girl’s age is on the border line, where the boy is a minor and the guardians have been really responsible for arranging the consummation and in either case if the girl has suffered no injury, it is presumed that the judge would in the exercise of his discretion permit the offence to be compounded. In view of the increase in the age which we have suggested, viz., 15, we feel that this suggestion may be accepted. We recommend that the offence of Marital Misbehaviour be non-compoundable, if the girl is under 12 years of age, and compoundable, with the permission of the court if she is between 12 and 15.

294. Forum for and nature of trials of Marital Misbehaviour—Matrimonial Courts.—The question what is the proper forum to deal with cases of Marital Misbehaviour would not ordinarily have arisen in view of the safeguard provided by Section 561 of the Criminal Procedure Code. But since various suggestions have been put forward, some of them with great insistence, we feel bound to examine them. It has been urged that the offence of
Marital Misbehaviour cannot be treated as an ordinary penal offence but, being an offence of a domestic nature, it ought to be judged by persons who are better acquainted with the sentiments of the people concerned and more likely to understand the intricate details of family life and customs, a consideration of which is so essential to evaluate the nature or extent of the guilt of the accused. The proposal has therefore been put forward that special courts, called Matrimonial Courts, should be constituted which may be empowered to try cases of Marital Misbehaviour. Special courts have been constituted under the Parsi Matrimonial Act for the trial of cases of divorce, etc., among the Parsis. The suggestion is that the court trying marital cases should consist of the Sessions Judge or an Assistant Sessions Judge and two non-official Justices of the Peace appointed for the particular area by the local Government under section 22 of the Code of Criminal Procedure. We must confess that though the proposal looks attractive, we do not feel that it will be expedient to accept it. Under the present law the offence is triable by a Sessions Judge with the aid of jurors or assessors or by a District Magistrate. The Sessions Judge and the District Magistrate are usually men of experience and the former has the additional advantage of being helped by jurors or assessors. It does not therefore appear that there is any serious danger of miscarriage of justice if the present system continues. The society has often been found to be apathetic in punishing an erring husband, however much it may disapprove of the act. The natural prejudice against punishing a husband may result in such Matrimonial Courts not adequately dealing with the offence—a position which may ultimately lead to a disregard of the law. In any case we feel that the time is not ripe, just at the moment when we are proposing changes in the law, to resort to these experiments and we must give opinion in favour of postponing the consideration of the proposal to a later date.

295. Village Panchayats or Civil Courts.—It has been also suggested that Village Panchayats or Civil Courts be empowered to deal with cases of Marital Misbehaviour. The former are in an initial stage of development and cannot be charged with such a serious responsibility, and there is no special advantage in transferring these criminal cases
to the Civil Courts. We are thus unable to accept the suggestion.

296. Women Magistrates.—It has been urged that cases of Marital Misbehaviour ought to be tried by women magistrates as they are peculiarly qualified to handle such cases with understanding and sympathy. Several local Governments have appointed women as honorary magistrates but as already pointed out, we are not in favour of a trial by a court lower in rank than that of a District or Presidency Magistrate and women have so far not been appointed to these posts. We realise the importance of associating women in the trial and have recommended the selection of women jurors and assessors in such cases. We do not think we can go further in our recommendations at the present stage.

297. Women Jurors.—Closely connected with this is the question of having women jurors or assessors to assist the judge in cases of Rape or Marital Misbehaviour. At present though section 276 of the Criminal Procedure Code does not preclude the enrolment of women as jurors or assessors, the rules framed by some of the High Courts confine the selection of jurors to males only. Under Section 319 of the Code the liability to serve as jurors or assessors is confined to males. The difficulty of extending this obligation to women is obvious, particularly in view of the purdah. But there appears to be no valid reason why women willing to serve in these capacities should not be chosen to serve as jurors or assessors. The need for them is great in cases of the kind that we are considering. The girl complainant in either case, when she is in the witness box, is faced by men all around, from the judge and jury down to the reporting staff and it often proves a cruel ordeal for her to tell her story. The presence of a woman in court, particularly among jurors or assessors, will give her the necessary moral support and help her in the discharge of an unpleasant task. The right of the accused to challenge, either with or without reason, those proposed to be empanelled on the jury may no doubt eliminate the few women who may be summoned. But this may not always happen, and in course of time we hope there will be sufficient women summoned to attend so as to preclude the possibility of such elimination. We recommend that women willing to serve as jurors and assessors be
empanelled in the trial of cases of Rape or Marital Misbehaviour.

298. In Camera trials.—The desire has been very widely expressed that in prosecutions for Marital Misbehaviour, the trial should be conducted in camera and that the public and the press should be excluded from the court house during the hearing. While publicity in judicial proceedings has always been considered a potent factor in securing justice, we recognise that in this peculiar class of cases, a want of publicity may result in prosecutions being more freely undertaken. Under Section 352 of the Criminal Procedure Code the presiding judge has the power to order at any stage of any inquiry into or trial of, any particular case, that the public generally or any particular person, shall not have access to or remain in the court. We recommend that instructions be issued to trying judges and magistrates that in cases of Marital Misbehaviour the discretion under section 352, Criminal Procedure Code be invariably used.

299. Summary trials.—It has been suggested that cases of Marital Misbehaviour may be tried as summary cases, obviously to facilitate their early disposal. We agree with the view that this particular class of cases require speedy determination and the 'laws delays', if they occur, are specially harassing in such cases and may often lead to justice being baulked by the unwillingness of parties to submit to a trial lengthened out by repeated adjournments. But it seems to us that the remedy suggested is worse than the evil it is intended to cure. The nature and gravity of the offence, the complex question of age which has often to be determined and the consequences of a conviction are reasons sufficient, each by itself, to reject the proposal. We however trust that the need for expedition in these cases will be remembered and that the Government will draw the attention of the trying judges to this aspect of the case.

300. Prevention of vexatious and frivolous complaints—The fear of vexatious or frivolous prosecutions in cases of Marital Misbehaviour, particularly when the right of a member of the public or an association to make a complaint is recognised, has been entertained by some witnesses and various expedients have been suggested to diminish the chances of such prosecutions. It is true that
abuses of the law have not come to light but with a wider publicity of the law, the same state of affairs may not continue. Though we do not share the fear thus expressed, we have to examine the suggestions put forward and see if any of them can be recommended for adoption.

301. Deposit by complainant.—It has been proposed that the magistrate who receives the complaint should require the complainant to deposit a certain sum as security which amount may be given to the accused if the complaint turns out to be false. The difficulty of bringing cases to light will be all the greater if the complainant is to be hampered by a deposit. If the complaint is proved to be false or vexatious, the magistrate is already empowered under section 250 of the Criminal Procedure Code to order the payment of compensation and in default of such payment to sentence the complainant to a month’s imprisonment. There is also the provision of law under Sections 182 and 211, Indian Penal Code, and we consider these safe-guards are enough checks against false complaints.

302. Preliminary Enquiry.—It has also been suggested that there should be a preliminary enquiry by a magistrate before process is issued to the accused. The object apparently is to make it certain that the magistrate is satisfied that a prima facie case exists, before the accused is asked to appear before him. Section 202 of the Criminal Procedure Code gives ample powers to a magistrate to hold such an enquiry or to depute a subordinate magistrate or even a non-official to make such an investigation and to report to him the result. If the object of the suggestion is to make a preliminary investigation obligatory, we fail to see the need of such a course in all cases.

303. Previous sanction.—The suggestion has also been made that the complainant should obtain the previous sanction of some authority before his complaint is entertained. It has been proposed that the District Magistrate should sanction the institution of the complaint. Some witnesses have proposed that a Director of Public Prosecutions may be empowered in each Province to examine the allegations and sanction the institution of a prosecution in cases of alleged Marital Misbehaviour. We are not convinced of the need of either of these safeguards, involving as they do delays and putting the already unwilling complainant to difficulties and to the incurring of costs, which
are neither justified nor likely to help the advancement of justice.

304. Suggestions to make the law more rigorous—Abetment by facilitating offence.—The abetment of the offence of Marital Misbehaviour is clearly punishable under the Penal Code and whoever intentionally aids by any act the commission of the offence is guilty of abetment. The parent who fixes an auspicious day for the consummation of the marriage of his daughter and makes arrangements for the performance of the ceremony preceding the consummation may be guilty of abetment if the girl is below the prescribed age. But it is suggested that the present law of abetment is not sufficient for the purpose. The parent or guardian, though he may not intentionally aid by any act the commission of the offence, may often so act as to facilitate the commission of the act. A father who sends the married couple to a distant place or even to a picture palace without a proper chaperon for the girl, may know that his act is likely to facilitate the commission of such an offence. The law is defective in not bringing such delinquents to book. A provision analogous to that in sections 118-120 of the Indian Penal Code penalising a father, guardian or other person having the custody of a girl who does any act, intending thereby to facilitate or knowing it likely thereby to facilitate the commission of the offence of Marital Misbehaviour, is therefore necessary and desirable. We are unable to recommend the proposal. We do not think that this class of cases would often occur. In any case we cannot take such a spartan view of the duties and responsibilities of parents or guardians as the enactment of such a law would indicate.

305. Presumption of commission of offence from common residence.—It has been further suggested that the only method of preventing the commission of the offence is to draw a presumption that the offence has been committed where the married couple reside in the same house, after the girl has attained puberty. It is argued that the offence is naturally covered with such secrecy that there is no effective method of bringing it to light and the presumption required to be drawn is the only deterrent by which offences may be prevented. It seems to us that such a drastic remedy is not called for and in practice will work great hardship. Among Hindus there
are various ceremonial and festive occasions when the husband and wife have to meet under a common roof. A presumption of the kind suggested will mean that these customs must be abandoned—a course not only unnecessary but calculated to evoke deep resentment. In the second place among Hindus in some parts of the country and among Muslims the system of endogamous marriages is prevalent. Children closely related, either as first cousins or by other equally near kinship and already living in the same house, are often married. In every well-regulated household, though the marriage may have taken place, the parties do not come together and find no opportunity to do so till long afterwards. It would be hard and most unfair that owing to the lapses of a few, the husband in every case should be asked to leave the house for having married a girl under the same roof. We are therefore unable to accept the suggestion.

306. Registration of consummation.—It has been seriously suggested by some witnesses in Madras that the law may require the registration of consummation. It is argued that the evil to be prohibited is not early marriage but early consummation and the direct way of removing it is to prohibit such consummation before the prescribed age, and to make it obligatory on the husband at the same time to make a previous report as to when the marriage will be consummated. The proposal is so offensive to good taste that it must be turned down. It may be taken as illustrative of the extreme length to which some witnesses are prepared to go, to avoid legislation prohibiting early marriage.

307. Guardianship of girls.—The question of the guardianship of the person of the girl receives an additional importance in view of our recommendations regarding the age of Marriage and the age of Consent. Under the personal law of Hindus and Muslims, marriage changes the guardianship of the girl, and the husband becomes from the date of marriage the legal guardian. Several witnesses have suggested that the right of the natural guardians of the girl should continue unaffected notwithstanding marriage till the girl attains the prescribed age of Consent. It has been pointed out that if the girl is under the protection of and resides with the husband, it is difficult to prevent the consummation of marriage before the statutory age and almost impossible to detect a breach of the
law. Moreover, parents who desire to keep the girl with them till that age, are forced to yield to the pressure of husbands or their parents or guardians, accompanied as it sometimes is by threats of legal proceedings, and send the girl to the husband's home.

308. These facts may be accepted; but the real pressure to send the girl to the husband's house comes from the fear that the consequences of a refusal to yield to the request may be disastrous to the future of the girl. Cases are not unknown where a second marriage of the boy has taken place owing to such a refusal. The change in the law of guardianship may afford legal protection to the parents or guardians but will not really safeguard them or the girl in the absence of a law of monogamy. Moreover the change involves so many incidental alterations that we cannot recommend it. Even where the custody of the person of the girl, and not the property, is sought to be retained in the natural guardians after marriage, the husband's rights have to be safeguarded in certain eventualities, such as the kidnapping from lawful guardianship or the seduction of the girl.

309. Restitution of conjugal rights.—There are however two classes of cases in which the law may be more certain than it is. A suit for restitution of conjugal rights or the custody of a wife may now lie though the girl is below the age of Consent. We feel certain that, normally, no court of law would grant a decree in favour of the husband in such a case. But it is by no means impossible that the husband may succeed and in any case such a fear sometimes leads to a compromise of such cases. The parent or guardian who is willing to face the threats of an unreasonable husband ought to have his hands strengthened and should not be faced with a proceeding in a court of law. We therefore recommend that the law be amended so that a suit by a husband for the custody of a wife or for the restitution of conjugal rights shall not lie where the girl is below 15 years.

310. Auxiliary recommendations.—Women Police.—The proposal has been made to enrol women Police to aid in the investigation of offences of Rape. Marital Misbehaviour. Indecent Assault and the like. It is urged that it is an ordeal for the girl-complainant in such cases to make her statement to a male Policeman. The duty of taking
down statements from female witnesses and protecting them whenever necessary can be generally better performed by women Police. It is not proposed that women Police should perform the same functions as men Police and such is not the case where women Police are employed. They are detailed to perform special duties such as those mentioned above.

311. Moreover, girl-complainants and women witnesses who attend a court or are taken to a medical officer can at present be entrusted to the care of men Police. It is desirable that they should be looked after by women Police whenever possible. It is obvious that women Police will not be available in sufficient numbers or at all places. In some Provinces it may be more easy to enrol them than in others and in big towns the problem may not present serious difficulties. A beginning has however to be made and they may be enlisted wherever available.

312. Where they are not available, it has been suggested that the presence of respectable and disinterested women of the locality may be secured when the statements of the girl or of women witnesses are taken by the Police. We accordingly recommend that women Police be employed, where available, to aid in the investigation of sexual offences, in taking statements of girls or women witnesses in cases of Marital Misbehaviour, Rape and the like, and in protecting or accompanying the girls or women witnesses where necessary when going to or from the court house or for medical examination; and that where women Police are not available, any respectable and disinterested women of the locality or neighbourhood be invited to be present, while the statement of the girl concerned or of any female witness is being taken by the Police.

313. Medical examination.—Several witnesses have stated that the existing practice of allowing medical examination of girls in marital and extra-marital cases by male doctors is unsatisfactory and has contributed not a little to the paucity of prosecutions in each of these classes of cases. It is no doubt true that the girl or her guardian may refuse such examination by a male doctor. But this right is little known to the ordinary villager and his ignorance has been adduced by witnesses as the reason for suffering male doctors to examine the girl. It has therefore been strongly urged that it should be an invariable rule that
only lady doctors should conduct such examination. We do not feel that there will be any serious difficulty in carrying out the suggestion. We recommend that where a medical examination of a girl is necessary it should be carried out only by a woman doctor.

314. Separate accommodation in Court Houses.—It has been brought to our notice that in most court houses there is no separate provision for waiting rooms for women complainants or witnesses. The question of the accommodation of witnesses generally is beyond the scope of our enquiry and we are aware that the matter has been engaging the attention of several local Governments. But we feel that so far as women are concerned the grievance is legitimate and needs immediate attention. We recommend that separate waiting rooms wherever available be provided for girls and women witnesses in all court houses.

315. Time limit for prosecutions.—It has been suggested by some witnesses that there ought to be a time-limit prescribed for the institution of prosecutions for Marital Misbehaviour. There is generally speaking no limitation at present provided for criminal prosecutions. But the case of Marital Misbehaviour is so peculiar and the consequences are so serious to family harmony that it is considered inadvisable to disturb that harmony after a long interval. The possibility of a criminal prosecution hanging over the head of an erring husband indefinitely for an offence committed many years back, will, it is argued, seriously interfere with domestic happiness. It has therefore been suggested that a period of one year from the date of the commission of the offence may be prescribed as the maximum period within which a complaint for Marital Misbehaviour may be filed. As every repetition of the act below the prescribed age will be a fresh offence it means that such a prosecution cannot be instituted after the girl has completed her sixteenth year. We recommend that no complaint in regard to an offence of Marital Misbehaviour be entertained after the expiry of one year from the date of the alleged offence.

316. Transitory provision.—The amendment of the Law of Consent in marital cases, raising the age to 15, necessitates the enactment of a transitory provision exempting cases where the girl being above the age of 13 but below the age of 15 the marriage has been already consummated.
similar provision was enacted at the time of the last amendment of the law. We note that the exemption was extended to all those who were married before the date on which the Act came into operation, provided the girl had attained the age of 12 by that time. The logical course is to extend the exemption only to cases where consummation had already taken place legally. The difficulty of proving that such consummation had not taken place and the certainty that in almost all cases it would be alleged by the accused that it had already taken place, must have influenced the legislature in framing the exemption in the manner it has done. We recommend that a provision corresponding to section 4 of Act XXIX of 1925 be made exempting from the operation of the proposed amendment, sexual intercourse with a wife between 13 and 15 years of age if the girl-wife was married and had completed 13 before the new Act comes into force.

317. Time when the Law should come into force.—It has been suggested that there should be an interval between the passing of the Act fixing the age of Consent and its coming into force. We have recommended a transitory provision exempting from the operation of the Act persons who are married before the Act is passed, if the girl-wife had attained the age of 13 before that date. We note that in none of the previous legislations was such an interval fixed. We see therefore no reason to suggest a further interval between the passing of the Act and its coming into operation.

Law of Marriage.

318. The foregoing suggestions and recommendations concern the Law of the Age of Consent. We have had various suggestions made regarding the Law of Marriage. The question of the Law of Marriage is not directly before us and though we have recommended the enactment of a law penalising marriages below a certain age, as we consider such legislation essential to the satisfactory working of the Law of Consent, we do not propose to consider detailed suggestions with reference to that law. A few suggestions however regarding the validity of marriages before the prescribed age, the punishment for a violation of the law and the need to take bonds from the husband, parents or guardians to keep the couple apart in such a case, have been dealt with in Chapter IX.
Suggestions to help the Administration of both Laws.

319. Registration of births and deaths.—The Law of Marriage and the amendment of the Law of Consent, which we have recommended, depend for their successful working to a large extent on the facilities which may exist for the accurate determination of the age of the party concerned. During our enquiry we have given great prominence to the consideration of the question, whether there is an accurate method of recording births and deaths and what defects there exist at present in connection with such records. We have been impressed by the fact that those records are neither accurate nor as complete as may be desired. In rural areas in practically all the Provinces the record of births is admittedly deficient. Even in urban areas though the improvement is noticeable it is still far short of what is requisite.

320. Officers of the department of Public Health in all the Provinces have deplored this fact and have suggested various means to remedy the defect. Census operators and witnesses before us have repeatedly drawn attention to this fact. We are aware that within the last decade an advance has been made particularly in some Provinces where a fairly adequate health staff has been paying special attention to this problem.

321. We feel however that the time has come when steps may be taken to ensure a more accurate registration of births and deaths. In the different Provinces under local Acts various authorities have been entrusted with this duty. The Imperial Act which governs the subject is Act VI of 1886. It seems to us that a greater uniformity of laws in the Provinces together with more rigidity in their endorsement is called for. It has been suggested that in addition to other persons who may be under an obligation to report the birth or death of a child, parents and guardians of the infant should invariably be under an obligation to report such cases within 7 days from the date of the birth of the child. It has been further suggested that every Municipal Council, Taluq Board, District Board, Union Board, Village Panchayat or Notified Area should be under a statutory obligation to maintain an accurate register of births and deaths and required to take stringent steps to enforce registration and to prosecute those who fail to do so.
power is now conferred on these bodies in some Provinces only.

322. One great defect in the registration of births is the fact that the name of the child is not given. The identification of the child from the birth register becomes very difficult where there are several children born at comparatively short intervals and the date of birth of one child can, either wilfully or through mistake, be confused with that of the next proceeding of succeeding child. The suggestion has been made therefore that the order of birth of the child may be given. Even this, though helpful generally, will often fail in its purpose especially where some of the issues die.

323. A further suggestion of a more helpful character is that the name of the child should be entered. The fact that the name of the child is not given till some weeks or even months after the birth of the child makes this impossible at present. A supplementary report within a specified period will therefore be necessary when the name of the child, if surviving, will be entered in the register. We find that in some municipalities, such as Karachi, the name of the child is given at the time of vaccination and with the help of the vaccination register the birth register is later amplified by the entry of the child’s name. We recommend that in all urban and rural areas the father or other guardian of every child born shall, where not already required by law, report the birth of the child in such form as may be prescribed, within a stated time to a prescribed local authority and make a further report mentioning the name given to the child, if surviving, within a year of the birth, to the same authority. We further recommend that the prescribed authority be required to maintain a register of births within a given area under its control, and to take stringent steps to enforce registration and to prosecute persons who omit to send a report within the prescribed period.

324. It is essential that these birth and marriage registers should be permanently preserved and that they should not be destroyed after a short period. The proof of age being mainly dependent on these registers, their retention is essential. It is also desirable that certificates of birth should be issued to the parent or guardian when the name of the child is reported and that the members of
the public should be in a position to secure copies of such certificates on payment of a prescribed fee. We recommend that the registers of births be permanently preserved and that birth certificates giving the date of birth, sex, parentage and name of the child and such other particulars as may be prescribed, be issued free by the prescribed authority to the person making the report, when the name of the child, if alive, is reported to the said authority.

325. Registration of Marriages.—It has been urged by several witnesses that registration of marriages is essential to make the Laws of Marriage and Consent effective. At present there is no provision for the registration of marriages generally. However, among Brahmos, marriages are registered under Act III of 1872. So is the case among Parsis by Act XV of 1865, and Indian Christians by Act XV of 1872. Among Muslims marriages are in some places optionally registered by Kazis and in Behar and Bengal by persons appointed by the Government for the purpose, and the Kazi's register is generally used to corroborate the factum of marriage and to establish the terms of dower; but the registration of marriages is not declared obligatory by law.

326. It has been suggested that registration of marriages be made compulsory in all cases in the same manner as under several local enactments, births and deaths are required to be reported to the prescribed authorities. The registration will only be a record of the fact of marriage and will in no way affect the validity of the marriage. It will be extremely difficult to enforce the Law of Marriage unless the reporting of a marriage to a specified authority is made obligatory. The law must require that every marriage should be duly reported by some person or persons made responsible by law to report, the report to be verified in such manner as may be prescribed, within a specified time to an authority specified by the local Government. In the case of Purdanashin women the report may be sent through an authorized agent. The report should contain the name, parentage, description, address, age, date and place of birth of the parties to a marriage. Such report can be sent by post and need not be personally presented to the authority concerned.

327. In addition to this it has also been suggested that the village Munsiff, Patel, Lambardar or Chowkidar of
every village where a marriage is celebrated shall be under a similar obligation to submit a report, to the authority concerned, of such marriage giving such particulars as may be ascertainable within a prescribed time. The object of these reports is to enable the officer concerned to register the marriages and to find if the law has in any case been violated. Where either on information received or on a comparison of the reports the registrar has reason to believe that an offence has been committed, he may hold a preliminary enquiry and if satisfied, report the case to the nearest magistrate competent to try the case. The suggestion has further been made that the obligation to report such cases may be laid on the registering officer by law where he is satisfied that an offence has been committed.

328. The question what agency should undertake the work of registering marriages has been discussed by several witnesses. We have not however the material before us to make specific recommendations on the subject. It is possible that it may vary in different Provinces and that some existing department of a local Government may be empowered to discharge this duty. The number of marriages celebrated annually is so large and the work involved so heavy, that we do not think it will be useful to suggest any cut and dried scheme for the purpose. There will be the Provincial head, perhaps the Registrar of births, deaths and marriages appointed by each local Government under Act VI of 1886. Under him there will be District and Taluq officers who will be authorised to register such marriages. In some Provinces at least the registration department suggests itself as the most suitable for the purpose. But as already stated, the question of agency and such questions as the person who should be authorised to initiate prosecutions, whether a Sub-registrar or a District Registrar, must be left to a more detailed examination by the Government and the Committee must content itself with putting forward the various suggestions made in this connection.

329. It may be pointed out that the Baroda Marriage Act makes the registration of marriages compulsory and that the extent to which prosecutions of breaches of the law have been successful in that State is due almost entirely to such registration. It is also obvious that the registration of marriages will be of substantial assistance both in pre-
venting and detecting the violation of the Law of Consent. Where the age of marriage is publicly declared, the parties will naturally be careful not to consummate the marriage before the statutory age. Moreover an inspection of the marriage register will considerably strengthen the hands of those individuals or associations which suspect that an offence has been committed and which would welcome an indisputable proof of age before initiating a prosecution. We recommend that an accurate marriage register in a prescribed form be kept, through an administrative department of Government containing details of marriages including the ages of the couple, and that it be made obligatory by law on parties and guardians of parties to the marriage, either personally or through authorised agents, to report the same to a prescribed local authority.

That the officer keeping the register of marriages be empowered and also be charged with the duty to complain of any breach of the marriage law, or any omission to report a marriage or of a false entry in the details required in the registration of marriages, to the nearest magistrate having jurisdiction to try such cases, after such preliminary enquiry as he thinks fit to make.

We also recommend that the registers of marriage be permanently retained, and that certificates of marriage be issued to the parties concerned free of cost, when the marriage is reported.

330. Publicity of Laws of Marital Misbehaviour and of Marriage.—In the course of our enquiry we have been struck by the fact that the law relating to the age of Consent in marital cases is unknown to the vast majority of the people. A knowledge of it is confined to urban areas and even there mainly to the members of the legal profession. Nor is this surprising, when the social ideas, habits and customs of the people are considered. In prohibiting marital intercourse where the girl is below a certain age the legislature has penalised the exercise of what is generally considered a legitimate right, and therefore there is an overwhelming need for the administration to bring home to the people a knowledge of the new law that it has promulgated. It is an undoubted legal maxim that ignorance of the law is no excuse. But it is nowhere suggested that there is not a correlative duty on the part of the State to give wide publicity to the law, especially in a case where
normally public opinion and sentiment alike have not yet come to realise the illegality of the Act. That after nearly forty years of its existence on the statute book, the law is still unknown to most people only emphasises the need for a very wide publicity. The law of the minimum age of Marriage, which we have recommended for enactment, requires equally wide publicity. In fact without a preliminary broadcasting of the law it would be inexpedient to bring it into operation.

331. Nor can the State rest content with a mere publication of these laws. The public have to be educated on the evils that these laws are intended to remove and on the need, in their own interests, for co-operating with the State in eradicating such evils. It is neither proper nor desirable that the State should undertake the task of social reform, but where the health and safety of the public are concerned it has become increasingly common for the State to educate them by health lectures and similar propaganda. We therefore recommend that measures be adopted to give wide publicity to the Marriage and Consent Laws and to carry on an educative propaganda.

332. Educational propaganda.—Various suggestions have been made as to how the State can make the law widely known and how the educative propaganda can be carried on by it. The distribution of pamphlets and leaflets on the subject, in the different languages of the country in all rural and urban areas, is a ready means to achieve the object. The publicity campaign carried on by the Government during the war in the various Provinces affords a valuable precedent and the example could be copied with ease and profit. These pamphlets and leaflets could be sent to all village officers and to local bodies for distribution in their respective areas and to various public institutions. They could be exhibited at the public offices and arrangements may be made to broadcast them on the occasions of fairs and festivals and wherever a large gathering of people is anticipated. The services of such newspapers as may undertake the task may also be utilised by the Government for the same purpose.

333. A suggestion may also be made by the local Government to the Municipal Councils, Taluq or District Boards, Union Boards and Village Panchayats, that Vigilance Committees may be appointed by each of the bodies to
carry on a publicity and educative campaign, and the in-
curring of expenditure up to a prescribed limit by these
bodies may be sanctioned by the local Government concern-
ed. The Government may also consider the desirability of
subsidizing local bodies and approved non-official organisa-
tions which are willing to carry on such work and may help
them with such advice or information as may be found
necessary from time to time.

334. We desire to draw special attention to the fact
that Women's Associations may be utilised for this purpose.
The system of Purdah, which exists in some Provinces in
an intensive form and in all to a certain extent, precludes
the possibility of the ordinary propaganda reaching the
women. It is only women that can for a long time to come
carry the message of a healthier life to women in Purdah.
During the past few years, Women's Organisations have
multiplied with great rapidity and if the signs of the times
are read aright, it is obvious that the growth will be more
rapid in future. Money grants to such societies for speci-
fic purposes such as those referred to above, will be one of
the best investments to secure healthier homes and a race
of citizens endowed with better physique.

335. Lastly the Government may utilise the staff of the
Health Department where it is directly under their control
and suggest a similar course where the Health staff is under
the control of a local body, to carry on an intensive health
propaganda and to include in such propaganda an exposi-
tion of the evils of early marriage and early consumma-
tion. Exhibitions through magic lanterns and cinema films
are being undertaken by the Health Officers of some of the
Provinces. Travelling rural health propagandists are a
feature in the Punjab and Madras and these expedients
would be of great use in connection with the subject in
question.

336. These are suggestions which have been urged by
several witnesses and with most of which the Committee is
cordially in agreement. We have not considered it neces-
sary to go into details with reference to them but we should
like to emphasise that WE ATTACH GREAT IMPORTANCE TO A
PUBLICITY CAMPAIGN AND THAT WE FEEL THAT STATE OUGHT
TO UNDERTAKE THE LARGER PART OF SUCH A CAMPAIGN.

337. General spread of education.—This leads us
naturally to the conclusion that the removal of illiteracy
and ignorance is one of the paramount needs of the country. We do not propose to examine the feasibility of the introduction of a system of free and compulsory education in the country. In every phase of national activity, the enquirer comes repeatedly against the Chinese Wall of illiteracy and ignorance which hampers all progress. Commissions and Committees have repeatedly drawn attention to this fact and it should not be taken as a hackneyed recommendation when we emphasise the need of general education. At every stage of the present enquiry we have been confronted with the difficulty of making real progress owing to the state of ignorance which prevails. We have been struck with the need not merely of free and compulsory elementary education amongst boys and girls but also adults. No lasting and permanent solution can be found for the problem before the Committee except through the removal of illiteracy and ignorance from the land. We therefore recommend that effective steps be taken to spread general education amongst men and women.

338. Alternative suggestions to achieve the object of the proposed laws.—Contraception.—It remains for us now to examine suggestions which have been put forward as alternative remedies to the Laws of Consent or Marriage for the cure of the evils of early consummation. The primary object of promoting legislation fixing an age for Marriage or raising the age of Consent in marital cases is to minimise the risks of maternal and infantile mortality and to increase the chances of a longer and healthier life to the citizens. Some witnesses have suggested an alternative remedy which in their opinion is better calculated to bring about the same result. The evil, according to them, is not so much early marriage or early consummation as the frequency of births which destroys the vitality of the mother and results in weaklings being born; early consummation in fact is no evil at all and child-birth at an early age is less attended by difficulties and dangers than at more advanced ages. The remedy is to make the married couple realise that the spacing of births should be at longer intervals; and the State or the enlightened section of the public ought to take steps to teach contraceptive methods and the benefits of birth control to young married couples. This view has been urged with great earnestness, and many authorities have been quoted in support, by Mr. Justice Ramesam of the Madras High Court. To a less extent, though with
equal belief in its efficacy, the remedy has been advocated by Sir Mohammad Saadullah of Assam.

339. It may be conceded at the very outset that there is a large element of truth in the theory that frequency of birth has a very direct bearing on maternal and infantile mortality. It is also true that there are several cases where the birth of children has followed at short intervals giving the mothers hardly any chance to recoup their health. But the question remains whether the remedy suggested is practicable in the present state of the country. The idea of contraception or birth control would not be readily accepted by a people whose belief is so very deep-rooted in the dispensations of an inscrutable Providence. The idea that the birth of children can or ought to be artificially controlled would be entirely novel and revolting to Indians, who regard marriage as a means of perpetuating the family and of obtaining that most desirable of God's gifts—a son who according to Hindu beliefs will ensure the spiritual salvation of the father. We find that even in countries said to be most advanced, the new ideas of birth control and contraception are received with great hesitation and are unequivocally condemned by the priestly classes. It will be a long time before they meet with general approval in a country like India.

340. Moreover, birth control is not a subject which can easily be understood or practised by the average citizen. If the technique of the theory of birth control can be imparted, and successfully, to the rural population, we may as well make them realise the evils of early consummation and get them to practise the system of late marriages. It is because witnesses have realised that the advance by education and social reform will be so slow and will take such unreasonably long time that they have advised the Committee to recommend a more expeditious and effective method of achieving the end, namely, legislation. The same objection therefore holds good with reference to reform through the advocacy of birth-control which obviously cannot form the subject of legislation.

341. It may further be pointed out that according to the medical evidence, the effect of frequency of births at short intervals is far more disastrous when maternity starts at an early age than when it starts at a fairly reasonable and safe age. This opinion also confirms us in the view that
whatever other remedies may be needed or applied, early consummation leading to early maternity ought in any event to be prohibited.

342. Marriage age for boys alone.—It has been suggested that legislation fixing a minimum age for boys would be sufficient to prevent early marriages and that the age of marriage of girls would in that case automatically rise. This result may no doubt accrue among a few of the educated classes, but not among those who believe that pre-puberty marriages are enjoined by religious injunctions, nor amongst the vast majority of the rural population who practice the system of early marriage. On the other hand, in their case it may produce the evil of greater disparity in the ages of the married couple, an evil complained of in the case of widowers of advanced ages marrying girls of tender ages. In fact the evil of such disproportionate marriages is so great among some communities that we have been earnestly asked to recommend their prohibition by legislation. Such legislation exists in some of the Indian States. But as we are not dealing with the details of marriage legislation we make no recommendations on the subject. On all these grounds the suggestion cannot be accepted.

343. Miscellaneous suggestions.—Exclusion of married boys from University Examinations.—The exclusion of boys married below a certain age from University Examinations has been suggested. Some educational authorities are acting on the suggestion and others are likely to follow suit. As we have however recommended a minimum age of Marriage, we do not think it necessary to make any recommendation on this subject.

344. Prizes to the poor for late marriages.—Various minor suggestions have been made to prevent the evils of early marriage and early consummation. It has been stated that prizes may be given to those who celebrate marriages after the girl has attained the prescribed age as an incentive to reform and that such encouragement would achieve the purpose without raising any opposition. The suggestion is impracticable in view of the very larger number of early marriages and it is extremely doubtful if, even to the poor, the monetary prize can be of such value as to prove attractive enough to bring about the postponement of marriage.
345. *Rewards to complainants.*—Another suggestion is to reward the complainants in cases of successful prosecutions for offences of Marital Misbehaviour. The adoption of the suggestion may result in such spying into the privacy of domestic life that it cannot be conceived with equanimity.

346. There are certain minor suggestions such as empowering certain officials to prevent marriages below a certain age and the exclusion of offenders from Government service which do not deserve specific notice and we have therefore considered it unnecessary to deal with them.
CHAPTER VIII.

Reasons for Advance.

347. Age of Consent in other countries—how far a precedent for India.—The object of a law of Age of Consent is to afford protection to girls of tender age against the strain of early cohabitation and consequent possible early motherhood. The fixing of the age of Consent successively at 10, 12 and 13 marks the stages of advance which the State considered necessary in the interest of the girls of India. Whatever the age of Consent and the minimum age of Marriage may be in other countries, marriages below 16 are very rare in practice, and the majority of marriages take place beyond 16. Three cases of marriage of girls at 13, 28 at 14, and 318 at 15 are reported to have taken place during the last 12 years, in England and Wales. By recent legislation, 16 is now the minimum age of Marriage for both sexes in England and marriages below that age are void. Appendix X-B shows the ages in various countries, and the differences are not explicable on grounds of pure reason or by any necessary connection between physiological considerations and current practice. Neither the ages fixed nor the practice prevalent in other countries as regards the age of Consent or Marriage are necessarily precedents to be followed in this country. Nevertheless, they afford some guidance in considering what the minimum age of Marriage and Consent ought in reason to be. The exigencies of the Indian situation, however, should really form the determining factor in the adoption of remedies to secure such further protection to girls as may be necessary. Whether a law of Age of Consent or a law fixing a minimum age of Marriage is the better remedy, will depend on which of the two will be most effective and suitable to bring about the desired results.

348. We have therefore to find out if there are any circumstances that justify an advance in the age of Consent. The law of the Age of Consent was no doubt originally based on humanitarian considerations regarding the physiological fitness of girls for enduring the strain of early consummation. Circumstances have since changed greatly and various other arguments are now advanced to
justify an increase, though the humanitarian ground still predominates.

349. *Arguments for advance in the age of Consent.*—
The arguments in favour of an advance fall under five categories—

(1) Physiological,
(2) Eugenic,
(3) Social,
(4) Educational, and
(5) Economic.

They are all correlated and must be considered together. The argument about the safe age for the commencement of motherhood, so that the mother may continue to enjoy married life without detriment to her own health and the health of her progeny, falls under the first two categories. Considerations of conjugal happiness and the various duties to be performed by the wife for the benefit of society fall under the third category. The question of the time and opportunities required to equip a girl for her role in life can be dealt with under the fourth category; and under the last, come prudential reasons for boys and girls qualifying themselves as earning members of society. These arguments have peculiar weight on account of the change in the Indian Woman's outlook on life.

350. *New outlook of Indian Women—a plea for advance.*—During the last few years, a new consciousness has dawned on the women of this country as regards their status and the role they have to perform in life. This is embodied in the central idea of service to their sex and society in the various phases of national activity. So long as women in India were content to confine themselves to home and household duties and so long as they looked upon the husband as the supreme authority, their ambitions were confined to domestic affairs and they were indifferent to acquiring qualifications which would fit them for the service they now desire to render. Women are now members of local Corporations, and Provincial Councils and as education is advancing amongst them, they are gradually entering the learned professions. They are seeking equal opportunities with men, and men on their side are generally responsive to the efforts women are making to raise their status. Women are no longer content to remain
stationary and the change of outlook on their lives is a fact of very great significance in considering, among others, the question of advance in the age of marriage. The movement for the emancipation of women largely depends upon this one question, and no wonder the women in this country who came as witnesses before our Committee have with one voice insisted on an advance.

351. Conflict between views old and new.—This explains the attitude taken up in their evidence before this Committee by progressive men and women on the one hand and by the conservative group, which is wedded to views about women that have been current so far, on the other. The progressives want to give more opportunities and more latitude to women to enlarge the scope of their activities and would grant them facilities to realize their aspirations. The older group, accustomed to older views and methods, deny the capacity or right of women to advance beyond the routine so far permissible. In this latter group is included a large number of orthodox ladies whose environment has habituated them to the present limitations of their sex. That women should try to set up new ideals is something which passes their comprehension. A parallel is to be found in women's opposition to the Woman's Suffrage movement in England. In Progressive England their ideal was reached after tremendous opposition; here in Conservative India, the chances of women winning their way through, easily and speedily, appear almost certain with the progress of education.

352. General reasons affecting women's health.—Large masses of people in India are agriculturists. With the growth of population, agriculture, however, as conducted in India at present, is not sufficiently profitable to give the cultivator and his family enough even for their sustenance, much less for keeping them in comfort or opulence. India is in a state of transition. From a mainly agricultural, India is slowly developing into an industrial and manufacturing country. This involves the migration of a large number of men and women to urban areas, with the inevitable concomitants of overcrowding and unhealthy surroundings. This influx into urban areas, though resulting in an increase in wages, leads to serious competition for a living, not only amongst men, but even amongst women. City life is a life of perhaps more amenities, but of certain deterioration in the health of the immigrants. The women
of the higher classes of society have far less physical work than women 50 years ago. The standard of life has gone up during the interval and they have less domestic work involving physical exertion and hardly any substitute such as out-door exercise. The women living in villages have more exercise and free air, but their economic condition is not very favourable to physical development and their nourishment is poor. The women in villages and cities possess much less vitality than their female ancestors. Every succeeding generation of men and women in India realises that it is weaker than the preceding generation. The need to conserve the physique of women is thus much greater to-day, than ever it was before. Woman is always the weaker vessel compared with man and she has suffered more than man in the stress of competition, a circumstance which has led to a gradual deterioration of health in both sexes.

353. Physiological and Eugenic considerations.—The following three questions are closely connected with the physiological and eugenic considerations and we propose to deal with them here together:

1. Is the onset of puberty, as indicated by the beginning of menstruation, sufficient to justify cohabitation?
2. Is cohabitation by itself, without pregnancy, detrimental to health or fertility?
3. Are there any evil effects resulting merely from early maternity, i.e., before 16 years (a) on the mother’s health, and (b) on the infant’s health?

354. Age of puberty.—One of the inquiries in our questionnaire was, ‘What is the usual age of puberty in your part of the country?’ Out of 867 replies to this question, 53.4 per cent. state that the age of puberty is 12-13 or 14 years. In Lyon’s Medical Jurisprudence the age is said to be between 12-14 years in 65.7 per cent. of Indian girls. The figures given in Appendix VIII confirm the same view. It may therefore be reasonably concluded that the difference in the usual age of onset of menstruation between Indian and European girls is approximately one year; Blair Bell writing of English girls says “The usual age of puberty is about the end of the 14th year but the appearance of it between the 10th and 16th years cannot strictly be considered abnormal;” and Fairbairn says “The age at which puberty is reached is from 13 to 16 years, but may be as early
as 10 or delayed to 19-20." He continues "Conditions producing early sexual stimulation tend to produce precocious puberty." Blair Bell says "Hereditiy, health, feeding and environment all play an important part. In view of the fact that the eminent English gynaecologists quoted above hold that early sexual excitement tends to produce precocious puberty, it is significant that witnesses from Bengal and Madras state that in classes amongst whom early marriage prevails, puberty may even begin at 8, 10 or 11 years.

355. Some of the orthodox witnesses tell us that there is definite risk to the morality of a girl when puberty is attained if she is not married immediately. As has already been pointed out, the apprehension regarding morality is not well founded. Further, they apparently do not realise that their advocacy of early marriage proceeds round a vicious circle—early marriage being in fact responsible for precocious puberty. One of the psychological effects of early marriage is worthy of note. Owing to the frequent talk of marriage of girls at an early age, their mentality is stimulated on the subject, with the result that onset of puberty is hastened. The evidence tendered to the Committee by many women witnesses shows that women have realised the evil of early sexual stimulation and the necessity for postponing marriages and providing occupation for the mind of the adolescent girl.

356. Is onset of puberty sufficient to justify cohabitation?—Menstruation is not a sign of bodily maturity. It is in most cases merely a sign of puberty and ovulation, with possible pregnability or capacity to conceive. It is not an indication of fitness for conception; and that the old Ayurvedic physicians realised this, is shown by the fact that Sushrut and Vagbhat categorically state that impregnation should not take place before a girl has attained 16 years, if healthy offspring is desired. What man would expect a boy of 14 to do a full day's hard labour simply because his voice has cracked? And yet, cracking of the voice is one of the indications in boys of the onset of puberty. Why should women, the weaker sex, be exposed at a tender age to the strain, not of one day's hard labour from which one might rest the next day, but to the nine months' strain of the growth of a foreign body inside them followed by the intense exertion of labour, which even in the easiest case throws a great strain on the heart and kidneys?
357. *Is cohabitation by itself detrimental?*—We have now to consider the question whether, cohabitation by itself without pregnancy is or is not detrimental to health. Some witnesses have stated that the actual sexual act does no harm to the young girl and support their contention by pointing out how rarely local injuries are brought to light, and it is the opinion of the majority of medical women that serious injury is very seldom met with in marital cases. It has to be remembered, however, that when injuries do occur, unless they are extremely serious, they are not likely to be taken to a doctor. On the other hand there has been abundant evidence that local injuries do occur in marital cases. Apart from cases of local injury, the evidence shows further that in many cases there is a shock to the nervous system, the effects of which are felt throughout life, often leading to pronounced general debility. At the same time, consummation by itself often has a detrimental effect on the health, for if she does not conceive within a couple of years of marriage, she sometimes tends to become hysterical and low spirited.

358. *Are there any evil results from maternity before 16?*—The medical evidence as to the age for safe motherhood is almost unanimous. An overwhelming majority of medical practitioners, both Western and Ayurvedic, considers that 16 years complete is an age safe for maternity without detriment to the health of mother or child, though many think that 18 years complete would be preferable. The recent All-India Conference of medical men, held at Calcutta in December 1928, resolved that in the interests of the child and the health of the mother, union between men under 20 years of age and women under 16 years of age is undesirable on scientific grounds. Complete statistics from all over India are not available, but wherever it was possible to get reliable figures they were obtained, and in most cases these figures prove, very strikingly, that early maternity, i.e., below 16 years complete, has a markedly deleterious effect on mother and child. Figures have been obtained from 4 sources.

I. *From King Edward Memorial Hospital, Poona.*—In this hospital, out of a total of 1,650 cases of pregnancy below 30 years of age in 3 years, 6.26 per cent. were below

* Statistics of this hospital and sources Nos. 2 and 4 are not given in the report as they would be too bulky for an Appendix. They are however available with the Government.
16 years complete. Of those who became pregnant at this early age, 31 per cent. had abortions or premature labour; 17·8 per cent. showed some abnormality such as death of foetus, prolonged illness of mother after confinement, perineal tear, etc., making a total of 48·8 per cent. of abnormality.

II. From the Lucknow Branch of the Lady Chelmsford Maternity and Red Cross Society Child Welfare League.—In this branch the total number of cases of pregnancy below 30 years was 3,160 in 3 years. Out of these 2·3 per cent. were below 16 years complete, of whom 35·75 per cent. show some abnormality as above described; whereas for the age period 16-19 the abnormality rate was 17·52 per cent. and for the age period 20-30 it was 10·50 per cent. These patients were, for the most part, confined in their own homes and therefore more closely represent the average population than do hospital patients. However, these cases were favourably circumstanced as they had the benefit of ante-natal care, and yet 35·75 per cent. of pregnancies in young mothers show abnormality.

Still births and neo-natal deaths.—An analysis of these figures to discover whether any difference can be detected among the infants of mothers under 16 and over 16, brings to light the interesting fact that in mothers under 16, the percentage of still births and neo-natal deaths, i.e., deaths within the first 8 days after birth, is 14·8. In mothers between 16-20, the percentage is 9, and in mothers between 20-30 the percentage is only 4·3. This means that there are nearly 3½ times as many still births and neo-natal deaths in the case of girls below 16 as there are in the case of women between 20-30.

III. Maternal mortality.—An elaborate field study of the maternal mortality rate and the various factors associated therewith was carried on by Dr. Adiseshan, the Assistant Director of Public Health, Madras, and the histories of over 7,000 confinement cases registered in Madras, Madura, Trichinopoly and Coimbatore during the period October 1927 to September 1928, were examined by him (Appendix VI-A). These confinements corresponded approximately, according to him, to a population of 183,000 and comprised very largely Hindus belonging preponderantly to the urban areas. The more important and rele-
vant conclusions formulated after a careful analysis of those histories were as follows:—

(1) The maternal death rate in confinements investigated is 17.89 per 1,000 births, which compares very unfavourably with corresponding figures in most other countries (In Europe it varies from 2.35 to 6.64 per 1,000).

(2) The maternal mortality is at its maximum in the earliest ages. In relation to the order of confinement, the maternal mortality rate is highest in the 1st confinement. Also in the 1st birth order, the earlier the age of the mother, the greater is the risk of maternal death. As regards the later birth orders, age does not appear to have any appreciable influence on mortality.

(3) Economic conditions do not seem to have any relation to maternal mortality, but seem to have an inverse relationship to neo-natal mortality (i.e., of infants within first 8 or 10 days).

(4) The incidence of neo-natal mortality is greatest in the 1st birth order when the mother is under 20 years age.

Dr. Adiseshan rightly observes in his written statement "It should be remembered that proportionate to this high maternal and child mortality, there is a vast number of invalids or physical wrecks among the survivals, the significance of which should not be lost sight of on account of their being a burden to the individual families and to the community in general".

The conclusions arrived at from the present analysis seem to warrant the inference that the consummation of girls under 15 years of age is unfavourable both to themselves and to their progeny.

IV. Weak progeny.—From the Child Welfare League, Nagpur.—Out of 1,100 consecutive labour cases in three years, 134 cases were below 16 years complete, and of these it is noted in 19.4 per cent. that the child is still born, or weak, or died within the first week. Where the child is noted as "Weak" it usually means, according to Mrs. Tarr, Secretary of the Child Welfare League at Nagpur, that it is very unlikely to survive. These figures are not
so useful as the others, as we were unable to obtain figures of other age periods for comparison. If over 19 per cent. are thus "Weak" in a place where proper care is taken of the expectant mother, it can readily be understood that where such care is not taken, the percentage of dead or weakly children must be much greater.

359. Infantile mortality.—The Health Officer, Delhi Municipality, states that the death rate of children is abnormally high. In 1926 infant mortality per 1,000 births in England was 70 per mille and in India 189·04 per mille (vide Appendix VII-A). The actual infant mortality rate in Delhi itself from 1919-1927 inclusive shows that among Hindus there were 272·46 deaths per mille, and among Muslims there were 180·17 deaths per mille. The Health Officer states that the causes of this very high infant mortality are:

1. Early marriages.
2. Early child bearing age.

A death rate of 189·04 per mille may not appear to be very great but when we work out the actual figures for one Province on the basis of 189·04 per mille, we begin to realise the appalling sacrifice of infant life. For instance, in the United Provinces in 1925 there were 1,485,275 births; this means that there were 280,776 deaths under one year in one Province alone. This is exclusive of still births which would add some thousands to the above figure, making an enormous total loss of infant life under one year. Wherever there is a very high infant death rate, a great number of children, male and female, who do survive are likely to be weaklings and if such girls are to be further handicapped by early marriage before their own weak bodies have properly developed, what must be the inevitable effect on succeeding generations?

360. Some witnesses state that various causes conspire to bring about the evil results of high maternal and infantile mortality. No one will deny that poverty, ignorance, tuberculosis, bad midwifery conditions and insanitation all contribute to the appalling maternal and infantile mortality of India. But these factors are operative at all ages. If the abnormality rate is twice as much at the early age periods as it is between 20-30 years (infantile and maternal mortality and health suffering) it is surely legitimate to infer that maternity at such early age is in itself especially harmful.
361. High maternal mortality under 15.—Some witnesses tell us that infantile mortality is not highest in places where early marriage is most largely practised. 
Mr. Charu Chandra Mitra of Calcutta who emphasises this point has taken figures of girls married before 10 only; this is misleading, as girls married up to 15 must be taken into account. In this connection it is to be remembered that marriage as such, not immediately followed by consummation, cannot be correlated to deaths of mothers and infants. In many cases there is a considerable interval between marriage and consummation, perhaps a longer one between marriage and impregnation. The evil effects are largely due to early cohabitation and impregnation before 16 complete and in a small degree to marriage alone. The relevant factor in this connection, therefore, is not the marriage ceremony but the age of cohabitation or impregnation. From tables 7 and 8 of Dr. Adiseshan's paper (Appendix VI-A), it will appear that the maternal mortality is highest below 15 years and is in fact double the rate of deaths between the ages 15 to 19. Table 8 is particularly interesting as it shows that in the United States of America also, maternal death rate under 15 is three times as much as the death rate of women between 15 and 19.

362. Relation between early marriage and maternal and infantile mortality.—From the figures of 1921 Census quoted in Appendices VI-C and VII-C, in some Provinces of India it appears that where more girls under 15 are married, greater infant and mother mortality exists though not in the same proportion as the number of girls married. In other Provinces, this sequence of cause and effect however does not hold good while in Burma where hardly a girl is married below 15, above 200 infants die per 1,000 births. From these figures by themselves no conclusion can be drawn as to whether there is any necessary connection between child marriages and infant or maternal mortality as cause and effect. If figures for mother's deaths at the ages 15-16-17 were available it would have been possible to arrive at some definite conclusion on this point.

363. Excess of female deaths over male deaths during child bearing age.—A point which was brought out very strongly by the Municipal Officers of Health in several towns visited during the tour is the marked increase of
female deaths over male deaths at age periods 10-15, 15-20 and 20-30, the general child bearing age of women. After 30 years, the male deaths begin to predominate. Dr. Adiseshan’s figures in table 2 of Appendix VI-A confirm the same view. Explanations offered by the Medical Officers for this marked increase in the number of female deaths were the evils of early marriage, the Purdah system which render women more susceptible to tuberculosis, and bad hygiene, during maternity. The first reason is supported by observations of Census Officers of Bengal, Madras and the United Provinces.

364. While speaking of sex proportions in death for the decade 1911-20 the Census Officer, Bengal, says (page 255, Part I, Vol. V, Census of India, 1921), “We may take it that on the average through the decade the proportion of females to males in the population was 943 per mille. The proportion of female to male deaths appears to be very well below this figure throughout life except at two points. It touches it in early childhood between the ages 1 and 5, and it passes very far above it between the ages of 15 and 30. The contrast between the high proportions of deaths of females per 1,000 deaths of males between 15 and 30 and the low proportions both in childhood and later maturity is very remarkable indeed. The proportion is, it will be notified, higher although not much higher, between 15 and 20 than between 20 and 30 and the same was the case before 1910. It would appear then that there is a phenomenal excess of female mortality in Bengal during the first part of a woman’s reproductive age-period. In England the proportion of female to male deaths is higher at the beginning of the same period than it is later, but it is still strongly in favour of females. Whereas in Bengal, the females’ chance of living from 10 and 15 was better than the males in the proportion of 4 to 3, the proportion is reversed in respect of the chance of living from 15 to 20. This result is brought about mainly by the difficulties of child-birth under the conditions which are in use in this country, and to the after effects of child-birth upon the woman’s health. Deaths in child-birth are perhaps not remarkably numerous, but the number of women who suffer from disorders which are traceable to the time of the birth of their children is enormous. Much has been said and written of the evils of infant marriage, resulting in the survival of child-widows condemned to a life of
austerity and very often of drudgery and so on, but to the critic of these statistics the evil which does far more harm to the women of this country is the custom that ordains, that a woman must not only be married but live the life of a married woman immediately she attains puberty. It is not suggested that the women themselves are not partly responsible for the existing popular feelings in the matter. That scandalous tongues are at work at once on any instance in which the common practice is not followed is indeed proof of that is so. It may be said that the custom of deferred marriages which prevails in Europe is the artificial, and the Indian custom the natural one, but there seems no doubt which is the less harmful to the health of the female population”.

365. The remarks of the Census Officer, United Provinces in this connection appear (page 192, Part I, Vol. XV, Census of India, 1911) as under:—“As regards Hindus, it has already been said that though there cannot be much, there is probably some, understatement of the age of unmarried girls of 10 to 15. The figures seem also to point to a certain amount of overstatement resulting in an increase at 30. But the chief reason for the more unfavourable figures of Hindus lies in their earlier marriage age. Puberty is a time that always has its risks even in Europe; but when to the functional derangements which it causes are added the risks attendant on parturition at a very early age and the less immediately fatal, but just as serious, dangers of premature sexual relations, it is not surprising that the age-periods 10 to 15 and 15 to 20 should have high death-rates. It is observable in the vital statistics chiefly at 15 to 20, simply because the chauridar is no more accurate in his age returns that the enumerator is, possibly even less so, and consequently the girl mothers of 13 and 14 who die will be returned as 15. The ratio of deaths of females to 1,000 male deaths for the decade at 15 to 20 was 1,081. During the decennium 1891 to 1900 they varied between 1,008 and 1,176 per 1,000 males. This loss falls far more on Hindus than Muslims simply because the Muslim marriage age is considerably later.”

366. The Madras Census Officer has followed up the age periods of 0-5 and 10-15 in successive censuses and makes the following observation (page 69, Part 1, Vol. XIII, Census of India, 1921).
From the following statement it is possible to follow through succeeding censuses the fortunes of persons placed in various age groups in 1891. The figures relate only to persons enumerated in British territory.

<table>
<thead>
<tr>
<th>Year</th>
<th>Males 0-5</th>
<th>Females 0-5</th>
<th>Males 10-15</th>
<th>Females 10-15</th>
</tr>
</thead>
<tbody>
<tr>
<td>1921</td>
<td>2,547,664</td>
<td>2,659,423</td>
<td>2,605,202</td>
<td>2,438,224</td>
</tr>
<tr>
<td>1911</td>
<td>2,716,605</td>
<td>2,820,372</td>
<td>2,488,739</td>
<td>2,295,029</td>
</tr>
<tr>
<td>1901</td>
<td>2,521,995</td>
<td>2,651,248</td>
<td>2,449,697</td>
<td>2,209,587</td>
</tr>
<tr>
<td>1891</td>
<td>2,591,549</td>
<td>2,726,418</td>
<td>1,895,566</td>
<td>1,651,286</td>
</tr>
</tbody>
</table>

Persons aged 0-5 in 1891 had by 1901, when they appeared in group 10-15, lost about 141,000 males and 517,000 females; this greater loss of females at this age-period occurs at each successive census though not in such a marked degree: between 1901 and 1911 the loss was 33,256 males and 356,219 females, and between 1911 and 1921 it was 111,403 males and 382,148 females. The reason for the greater mortality of females at these ages is no doubt premature marriage and maternity.

367. Illness, sterility and general debility of mothers.—So far we have not considered individual evidence, but reference to the printed oral evidence in the several volumes of the evidence will show how in every town several witnesses, both lay and medical, bore eloquent testimony to the sufferings of young girls in confinement. The witnesses speak of many deaths, abnormal deliveries, prolonged illness of mothers after confinement, sterility in some cases and prolonged debility or chronic invalidism in many others. We would here especially refer to the evidence, amongst many others, of Dr. Campbell, Principal of the Lady Hardinge Medical College, Delhi, who has found that these young mothers are usually unable to nurse their infants; either they have not sufficient milk, or they suckle at the expense of their own health and growth.

368. Early cohabitation and early maternity harmful.—In the foregoing paragraphs we have clearly demonstrated that cohabitation and maternity at early ages are definitely harmful. There can be no doubt that, now that India is soon to take her rightful place in the comity of nations, it is all the more necessary that she should put her domestic affairs in order; the offsprings of weaklings are generally physically degenerate and incapable of sustained physical or mental exertion.
369. Social and Educational reasons—Knowledge of married life and its responsibilities absent in early marriage.—There are other considerations besides those of health why an advance in age is necessary. In the first place, a girl should be of an age before marriage to understand the nature of married life and its responsibilities. That most parents of girls in India in settling the marriages of their children generally look to the best interests of the children may be safely asserted. It does not follow, however, that the best interests of the children concerned are necessarily subserved. With persons in different stages of civilization, with varying mentalities and different communal customs, it is not difficult to find cases which are an exception to the above rule. Examples are not wanting in which the preponderating reason which tilts the balance in favour of a husband is his wealth. Purely eugenic considerations do not regulate marriages even in other countries and the day is far distant when India will be one of the nations in the world accepting the eugenic as the preponderant consideration in match-making. There is no question of mutual love before marriage as an element in settling marriages in India. Love develops later when the couple live in a family and eventually meet each other. As examples of exceptional cases noted above, the evidence before us has proved cases in which parents of all castes and communities give girls in marriage for money payments irrespective of the girl’s age or any other considerations of aptitude of the husband. There are others who give daughters of tender age to widowers of advanced age in utter disregard of the physical consequences to the girl. While a price is often paid to secure girls, there are cases where dowries are exacted by the husband’s people, and the transactions are swayed by considerations other than the genuine well being of the couple to be united in marriage. Girls are sometimes exchanged between two families to avoid cost and in that case even the disparity in the ages of the girls and boys is not considered. Such cases justify the deferring of marriage till girls come to such an age as to have some ideas about marriage.

370. Early marriage and early consummation curtail freedom and joy of girlhood.—When a girl is married as early as at present, she hardly enjoys the freedom and joy of girlhood and before she knows where she is, she is compelled to be a mother. Whether women follow the profes-
sions which men follow at present or not, it is necessary that every girl that looks forward to lead a married life must have a minimum knowledge for the proper fulfilment of even the limited functions of wife, mother and keeper of her home. She must have enough knowledge to conduct a home and to bring forth and rear up children and even educate them to some extent. She may have preferably more knowledge about her duties to society, but in any case she must have this minimum. A certain period is necessary for the purpose and 16 years of the life of an ordinary girl would be fully taken up to acquire this minimum knowledge.

371. Disintegration of Joint Family system necessitating higher age.—The Joint Family system amongst Hindus is gradually disintegrating and even among Muslims the way of living is becoming more and more individualistic on account of circumstances; restrictions once observed in sex relations between husband and wife are therefore disappearing. However much some people may bemoan its loss, the Joint Family is not going to be a feature of Indian society much longer. In house management and in the rearing of children, the girl-wife, under the new conditions, will have no help from elderly ladies as she once had in Joint Families. She will have to do all her domestic work, tend children and otherwise conduct herhome all by herself. This necessitates previous preparation and an amount of knowledge adequate to deal with the situation. Moreover the modern educated young man prefers a wife who can give him adequate companionship. Ideas, ideals and sentiments always want and find satisfaction and pleasure in response. Harmony and companionship are possible only among those who can respond to each other. An educated wife is likely to be more responsive to the ideas or sentiments of her educated husband. In order that girls may lead a life of domestic felicity, it is necessary now that they should be educated. All this means that it is essential that a certain period of time must elapse before she can prepare herself for the duties of a home. For girls who aspire to anything beyond the ordinary routine of family life, a much longer period is necessary.

372. Evil of early widowhood.—There is also the question of avoiding widowhood under a given age. Amongst the higher classes, widow remarriage, though now validated
by Statute, is looked upon with disfavour by society and whatever glowing description may be given of a Hindu widow's life by some witnesses, it is certain that no male would or could endure a corresponding ascetic position. If marriage is deferred to a given age, so many girls below that age will be automatically saved the terrible ordeal of early widowhood. Even where widow marriage is permissible, widowhood is a calamity. The doctrine of widowhood being a result of sins in past life brings no solace to the child-widow, and the calamity had rather be avoided by deferring marriage than be mitigated by a fresh marriage.

373. Economic reasons—Unwillingness of young men to marry without economic independence.—There is a tendency amongst the educated classes for the marriage age of boys to rise, as young men are unwilling to marry before they feel they can be economically independent. The age of girls does not rise to a corresponding extent in many cases where pre-puberty ideas prevail; in such cases an increase in the age of girls by law would be desirable. This may also help to mitigate the evil of large money payments to bridegrooms, where these must be paid because of the dread of the girl attaining puberty before marriage. This evil is not general but is confined to certain classes in certain Provinces.

374. Necessity of girl's capacity to earn before marriage.—From the woman's point of view also, the present position of an Indian woman is one of dependence on the man for the upkeep of the home. A capacity for earning must exist in a woman to ensure to her a more vivid recognition by the husband of the value of woman's share in conducting a home. This view also makes it necessary that a girl must have acquired before marriage a capacity to earn and indicates a higher age for marriage before she undertakes the responsibility of keeping a home.
CHAPTER IX.

CHOICE OF REMEDIES.

375. Favourable circumstances for advance by legislation.—Social legislation may be undertaken when demanded by public opinion or, in exceptional circumstances, it may be even ahead of public opinion. From whichever point of view the question of legislation as regards Marriage and Consent be looked at, the present enquiry shows that there are circumstances which would justify such legislation. The law against Sati may be said to have been ahead of public opinion and the demand for other social legislative enactments was confined only to a few. A large proportion of the people already follow the system of post-puberty marriages. (Vide paragraphs 219-222.)

Even amongst the communities practising early marriage, there is a clear demand for legislation by a large majority of the advanced section, some of whom have proved their faith in the reform contemplated by actually resorting to post-puberty marriages and late consummations, after considerable propaganda in favour of an advance in age. The educated women have almost unanimously declared for an advance in the age of Consent to and for a Law of Marriage at 16 at least, and the more conservative ladies are deterred by environments from an expression of opinion or are content to keep the status quo. Even orthodoxy, so strong in its old moorings, is wondering if after all some sort of change would not be in its interests. Opposition to an advance was incomparably greater in 1891 than it is now. A consciousness of the magnitude of the evil has impressed itself on a considerable number of men and women who yet find it difficult to break away from old established usages. Even in Madras and Bengal, where orthodox opinion is comparatively strong, many orthodox witnesses, though opposed to a change, are prepared to go up to the age of 10, 12 or even 13 for a Law of Marriage, and a higher age for Consent. Economic and other reasons already at work are tending in many cases to increase the age limit. Education by itself may not be an effective weapon in eliminating the evil of early maternity. The Brahmins in Madras, who are one of the most intelligent
communities in this country, are highly educated and yet a large number of them is opposed to a change; education has not altered their angle of vision in this direction to the extent desired. Most people get into a groove in social matters, and constant familiarity with established customs, however harmful they may be, blunts the edge of feeling. Some outside pressure like legislation is needed for removing the evil and for making the Indian communities, proverbially so slow to change in such matters, accept later marriage and maternity. A new law, if enacted, will not only consolidate the gains in the rise of age made by voluntary and conscious effort, but will prevent the tendency of the lower classes to backslide by imitating the higher castes. There is evidence in some Provinces that castes and communities, which were accustomed to post-puberty marriages, are now resorting to early marriages in imitation of the customs of superior castes. It will fortify a great many orthodox men and women who are afraid of social obloquy and fear of social degradation, consequent on late marriage and late consummation. There is thus ample justification for legislation as a potent and speedy remedial measure, to ensure reasonably late maternity.

376. Age of Consent or Law of Marriage.—The law of the Age of Consent has been mostly ineffective. That the law at 13 is broken is positively asserted by a larger number of witnesses who are equally positive that these cases seldom come to court. The small number of cases that reach the courts have come only when there is some shocking injury to the girl. There is also a possibility of such cases coming to light, if there is a motive behind the complaint. We accept that the main reason given for such cases not coming to court is correct. The families of the girl and the husband do not want a delicate matter of family life to come to court and create a scandal. Generally the husband and wife and their near relations alone have the knowledge of the facts necessary to prove a breach of the law, and yet they are the persons most interested in withholding that knowledge from the court and thus saving the offenders from punishment. The other reasons given are that consummation is a secret act, and the offence being non-cognizable, the Police cannot interfere, and nobody else has the interest or knowledge to make a complaint or to prove the offence. Social opinion does not look
upon the act as an offence, and sympathetic neighbours might help in shielding the offender. No amount of palliatives that have been suggested, such as making sentences easy and taking bonds for separation and other measures of that kind, will make the parents and guardians more willing to bring such cases to court or render help in proving them. Indeed, they have every incentive to hush up the case even in the last resort. These objections are such that a mere increase in the age of Consent will not improve matters. The motives operating against disclosure now will continue to operate even with an increase of age.

377. There is yet another reason which makes Law of Consent unacceptable to the public. If cases were discovered and taken to court, the fact of punishment to the boy is a family disaster. The husband may not take kindly to a wife who has proved to be his ruin and may discard her with no escape for her, in many cases, even by divorce or re-marriage.

378. If without unnecessary harassment to the community there were some method of successfully tracking a majority of these cases and proving them in court, it would have been possible for us to recommend merely a Law of Consent with increase up to the age at which motherhood would be safe. But in the absence of any such method we have to consider some other remedy that has much greater chance of being effective and acceptable. We have discussed the several remedies proposed to make the Law of Consent effective, and we have given our reasons why those remedies will not make the law as effective as any other penal law.

379. Why Law of Marriage recommended.—Marriage is an act publicly known and many persons have a chance to notice the ages of the couple. An almost certain chance of detection, if marriages of children of prohibited ages were openly performed, will itself act as a deterrent, and it may be expected that very few persons will deliberately break the law and risk conviction. Again, it is easier to postpone the marriage of a boy or girl than to prevent consummation for any considerable time after marriage has once taken place. Prevention is certainly better than cure in this case. If the Law of Consent above 14. or even at 13 or 14, were rigorously to be brought into operation and in actual practice made effective in detecting and punish-
ing cases of breach, the interference with married life will cause far more irritation and rouse far more resentment than a law prohibiting marriages below a certain age. The Law of Marriage may antagonize the orthodox at the beginning but they will prefer it to the far more serious risk of perpetual annoyance caused by a rigorous enforcement of the Law of Consent. To obviate the annoyance, some witnesses have gone the length of suggesting that marriages below a certain age may be declared void but we consider that such a proposal would be far more unacceptable to the people. We have therefore definitely come to the conclusion that the best method of preventing early consummation or of deferring it to an age considered safe for motherhood is to penalise marriages below a certain age.

380. Why the orthodox object more to Law of Marriage and less to Law of Consent.—As stated in Chapter III of our Report, the Law of the Age of Consent even at 13 has not been effective. In 1891 there was much stronger opposition when the age of Consent was raised in marital cases to 12 than in 1925 when it was raised to 13, but by neither of the enactments were the practices of the people seriously affected. The cases below 12 or 13 within marriage, being non-cognisable, have been least liable to detection. The even tenor of family life, which permitted the practice of union soon after puberty irrespectively of the girls’ age, was never in fact disturbed, and the law of 12 and 13 was therefore endured. If unmarried girls attained puberty before 13, the fact could well be concealed. If however the age were to be raised to 14, 15 or 16, there would be a much larger proportion of girls attaining puberty before those ages and it would be difficult to conceal puberty so long or to postpone consummation for that period. The higher the age, the greater is this difficulty and the greater are the chances of detection of the offence, as maternity might possibly result from the union in a larger number of cases than at present and evidence of the offence might thus be demonstrably available. Notwithstanding these “risks,” the pre-puberty classes are more in dread of a law fixing the minimum age of Marriage than of a mere rise in age of Consent. In the latter alternative with a rise to 14, the chances of visible proof afforded by maternity are not materially increased and
orthodoxy would be only too glad, in the last resort, to have a rise only up to 14. The chances of detection are not increased and all the reasons for the law not being effective at present will continue to exist. But the same security is of course not felt in a rise to 15 or 16. As regards the Law of Marriage, apart from the fact that puberty could be ill concealed even till 14 complete—and that is the minimum marriage age suggested—the orthodox feel that they must disregard Shastric injunctions and go against established custom. There is thus a very strong incentive to oppose the Law of Marriage and endure, if the worst comes, a rise merely in the age of Consent as the lesser of the two evils. The intensity of feeling of the classes concerned may be conceded, but in estimating the value of their preference for an Age of Consent Law we must consider the comparative efficacy of the two kinds of legislation to secure the object in view.

381. Lower Marriage age with higher age of Consent. —We were anxious to find out a via media by which we could least wound the susceptibilities of the orthodox Hindus who consider pre-puberty marriage essential. We were willing to adopt a method, if possible, whereby pre-puberty marriages would still be permissible and yet consummation and maternity would be effectively deferred till 15 or 16. Suggestions have been made by witnesses that if a law was to be enacted at all, a law penalizing marriages below 12 along with a higher age of Consent, such as 14 or even 15, would be tolerated even in Madras. We do not doubt the sincerity of those who believe in the efficacy of the Law of Age of Consent at 14 or 15 to prevent consummation before that age. There is however overwhelming evidence to show that the Law of Consent by itself is not likely to be much more effective with any age limit, and that consummations would go on almost as before without detection. **Without a Marriage Law, fixing an age closely related to the age of Consent, the Law of Consent would not be of much avail.** We are therefore not prepared to accept the suggestion.

382. Puberty the age of Consent.—Another suggestion has been made that puberty may be declared to be the age of Consent. This seems to be based on the assumption that as soon as puberty occurs, cohabitation is permissible. The detection of pre-puberty consummation is, as we have
found, well nigh impossible and as such cases are by no means inconsiderable, the evil is bound to continue if the age of Consent is put at puberty. Moreover, we are not prepared to accept the statement that the first onset of menstruation is a certain index of fitness for consummation or safe motherhood. The age of puberty varies in different communities and where it occur at 10, 11 or 12 we think that girls will be too immature for cohabitation at that age. We have no hesitation therefore in rejecting the suggestion.

383. Penalising Gaona or consummation before a certain age.—The suggestion has also been made that there should be liberty to go through the ceremonial of marriage at any age of the girl but that “Gaona” or the consummation ceremony before an age prescribed by legislation should alone be penalised. If a law prohibiting “Gaona” before a certain age were in force, a breach of that law can be punished only once and the law will not prevent marital intercourse and thus the object in view may be defeated. Then again the practice of “Gaona”, “Garbhadhana” or similar consummation ceremonies does not obtain throughout India and wherever it existed once it is fast dying out. The enforcement by means of penal law of the performance of such a ceremony is unthinkable and the ceremonial, if and where voluntarily done, is liable to be omitted altogether at the discretion of the couple or their guardians. Moreover, even where the consummation ceremony takes place, most of the guests invited have no means of ascertaining the ages of the couple, and detection of a breach of the law penalizing Gaona before a prescribed age would be well nigh impossible. The publicity at marriage ceremonials and the opportunities to ascertain the age of the girl would hardly exist at the time of Gaona. We therefore reject this suggestion.

384. Minimum age for Marriage.—In order to be able to recommend the statutory age, below which marriage should be penalized or to which the age of Consent should be raised, we have to weigh the several opinions on the age limits. The views of persons like Sir Tej Bahadur Sapru of the United Provinces on the one hand, and of Mr. T. R. Ramchandra Iyer of Madras on the other merely represent the high water mark of extreme opinion on either side. One would have us go to the logical limit of 18 at once and
the other would not have us move at all. The women and witnesses of advanced views have uniformly suggested 16, if not more, and the more conservative witnesses have suggested 10 to 12 for Marriage and 14 or 15 for the age of Consent. It was also suggested that we should straightway go to 16 as the minimum for Marriage as the dissatisfaction amongst the more conservative people will be just the same at 14 or 16, both being post-puberty ages. We, however, fully realise the difficulties and the intensity of feeling of the latter class and think that the least age we can recommend as a definite step towards the ideal of 16 cannot be less than full 14 years. We expect that some time will be taken in arranging matches after 14 and some further period may elapse before actual consummation takes place. Maternity will thus be nearer 16, viz., the safe age according to medical opinion. Like all compromises the age limit of 14 may not satisfy either of the parties. We feel however that once 14, the age of puberty, is passed, the Rubicon will be crossed and the limit of 16 automatically reached, so as to render legislation for further advance unnecessary. The modern girl has less vitality than the girl of the Ayurvedic period and the age should therefore have gone above rather than below 16 if the principle enunciated by Sushruta and Vagbhat were to be followed. If a law at 14 for Marriage is enacted, those who are compelled by custom to perform pre-puberty marriages will be helped to break through that custom and the oppressive weight of the custom demanding the sacrifice of pre-puberty girls at the altar of Hindu marriage will be lifted off their heads. It is in this hope that we recommend 14 complete as the age before which marriages should be penalized. A period of 4 years beyond the wife’s age would indicate a suitable minimum age for the marriage of boys. Accordingly, we recommend that in order to deal most effectively with the evil of early marriage and early consummation a law be enacted fixing the minimum age of marriage of girls at 14 years.

385. Muslim opinion.—The spirit of Islamic law is to let women have a voice in the choice of a husband. Minor girls given in marriage by guardians, other than the father or grandfather, have the option of repudiating the marriage on attaining puberty; and even in the case of a marriage effected by the father or grandfather, a Muslim
girl on attaining discretion can repudiate it for certain
definite reasons by which her interests are adversely affected.
The new Marriage Law, fixing the marriage age at no less
than 14 and thus giving her a better opportunity to make a
choice, would be in consonance with the spirit of Islamic
Law. The enactment of Marriage Law will thus only be a
case of fettering the liberty to marry at any age which now
exists and not a breach of any religious injunction. We
cannot recommend the exemption of the Muslims or any
other community from the operation of the new enactment
and the law should be one of general application to all com-
munities in India.

386. Should the law apply to Muslims only after agree-
ment by local Legislatures.—It has been suggested that the
Law of Marriage should not be made applicable to Muslims
unless in any Province, the Muslim members of the local
Legislative Council by a three-fourths majority agree by a
resolution that the Act should be extended to the Muslims
of that Province. We are unable to agree to this sug-
gestion as it will create innumerable difficulties in the
working of the Act. We fail to see how the members
of the Assembly representing the various Provinces are less
fitted to decide a question affecting the whole of India.
Nor are there any special grounds based on religion which
are applicable to particular Provinces. The Muslim reli-
gious point of view is the same throughout India and the
Assembly is the proper place where the question ought to
be settled.

387. The law would moreover become unworkable, if
some Provinces adopt it and others either reject it or defer
the question of its application. The Muslim community
is a fairly homogeneous community not divided into castes
and sub-castes. A Muslim of Malabar can marry another
from Peshawar or Shillong. The barrier of caste or Pro-
vince does not therefore exist in their case. How is the
law to work, if the husband belongs to a Province which
has adopted the law and the wife to another which has re-
jected it? Moreover, those anxious to marry their children
at an early age may go to a Province where the law is not
applicable and celebrate the marriage and the law may
not be able to touch them. As a matter of fact there is
a complaint that in Indian States like Baroda the law is
broken by the people crossing over to British territory and
getting the marriage performed there. The difficulty will be greater where in British India itself conditions in the different Provinces differ. On the other hand, when once the law has been passed, our hope is that the silent pressure of the example of British India will force Indian States to come into a line on the subject and enact similar laws. We are unable therefore to agree to the suggestion.

388. Exemptions in Marriage Law.—Some of the members of the Committee consider it essential that the Marriage Law, when enacted, should provide for exemptions permitting marriages of girls below the prescribed age only in cases where the interests of the girl herself require such a marriage to be effected. In such cases, the District Judge should have the power to grant the exemption, conditional on securities being taken for separate living, custody and maintenance of the girl till the statutory age of Consent is reached. As the Committee is equally divided on the question of exemption or no exemption, and as there is also a diversity of opinion as to whether exemption should be granted only in case of girls beyond a prescribed age, the Committee makes no recommendation on the point.

389. Conscientious objectors.—In a case like the present, the new law will be nullified if we exempted the conscientious objector. Every member of the community most affected may declare himself a conscientious objector and avoid the penalties of the new law. We are unanimously of opinion that exemptions should in no case be granted on grounds of religion or conscientious objection. We should be very much surprised however to find, after the enactment of a law penalizing marriages, that there will be many cases of transgression.

390. Marriages not to be declared void.—We would like to make a few other recommendations in connection with the Marriage Law. The suggestion that marriages below the prescribed age may be declared invalid has been strongly opposed by most of the witnesses. Among the Hindus, marriage is held to be a sacrament, sacred and irrevocable. Any challenge to the sacred character of that tie would be a direct attack on religion which is sure to be resented. Among Muslims also a marriage contract is a highly meritorious act according to their religion and a general law declaring marriages below a certain age to be
invalid would be equally resented. *We recommend, that subject to any provision of the personal law for the time begin in force, the validity of a marriage held in contravention of the Marriage Law should be left unaffected.*

391. *Punishment for violation of Marriage Law.*—The question, what punishment should be prescribed for a violation of the Marriage Law, is not directly before us. We do not wish to go into details regarding this law, details regarding the persons to be punished or the maximum punishment that should be prescribed. We should however like to point out that most witnesses, who have advocated a Law of Marriage, are clearly of opinion that mere fine would not be a sufficient deterrent to prevent violations of the law. Statistics of early marriages in the Baroda State (Appendix XII) would show that the punishment of fine, which is the only form of penalty under the Marriage Law in that State, has not been successful in checking the evil of early marriage to any material extent. *We therefore recommend that the punishment prescribed for a breach of the Law of Marriage be imprisonment or fine or both and not a bare fine.*

392. *Bonds under Marriage Law.*—We may now consider the cases of breach of the Law of Marriage. We have already emphasized on the paramount need for such a law and we have suggested that a bare fine should not be the maximum punishment for the violation of the law. In spite of this, we cannot ignore the possibility of evasions of the law and in such cases it is necessary to consider how the girl can be protected. No doubt, the Age of Consent Law is there, but it may not be invoked by any one and cannot come into operation till the marriage has been consummated. It has therefore been suggested that preventive measures may be adopted in such cases so as to ensure the safety and well-being of the girl.

393. Where the Marriage Law has been broken, the judge may require the offender to enter into a bond, with or without sureties, for the separate living of the married couple, for the custody and maintenance of the girl and generally for the prevention of the consummation of marriage. These bonds will be executed by the parents or guardians of the girl and boy and where the husband is a major, by the husband also. The provisions which we have suggested with reference to similar bonds executed in cases
of breach of the Consent Law may be applied to these cases also. The power to vary the terms of the bond or to alter the custody may be conferred on the judge, and provisions analogous to those contained in Sections 122, 126, 126A and 406A of the Criminal Procedure Code may be enacted with reference to the violation of the Law of Marriage, in cases where bonds are required to be executed by the trying court. *We recommend that the court trying a case of contravention of the Marriage Law be empowered to require the offender on conviction to execute a bond, with or without sureties, for separate living, custody and maintenance of the girl and for preventing the husband from consummating the marriage before she completes the statutory age of Consent, and that the provisions of sections 122, 126, 126A and 406A of the Code of Criminal Procedure be extended so as to make them applicable as far as may be, to sureties in cases of breach of the Marriage Law. Consequently upon the above recommendation in respect of separate living, custody and maintenance of girls and similar recommendations made elsewhere, we recommend that suitable aid and encouragement be afforded to the establishment of institutions giving protection to girls dealt with under such recommendations.*

394. *Act XV of 1872 to be amended.*—The law fixing 13 as the age at which Indian Christians can marry will have to be altered to raise the age to 14 when the new Law of Marriage is passed. *We recommend that Section 60 of the Indian Christian’s Marriage Act (XV of 1872) be amended by substituting 14 for 13.*

395. *The age of Consent in marital cases.*—The primary question that has been referred to the Committee is whether any advance should be made in the present law relating to the Age of Consent in marital and extra-marital cases. In the preceding chapters we have clearly indicated the need for an advance in both classes of cases. It has not been equally easy to come to a conclusion as to what age may be recommended in intra-marital cases.

396. The difficulty consists in deciding whether the age should be on a par with the minimum age of Marriage or whether it may be slightly in advance of it. The arguments relating to the difficulty of applying the law, the undesirability of interference in family life and the possibility of wrecking the girl’s life in the case of a success-
ful prosecution, have already been considered. The suggestion has therefore been put forward that the age of Consent should not be beyond the age of 14 and ought to coincide with the suitable age of Marriage. We have stated that that age has been recommended with a view not to disturb the practices of the conservative section beyond the necessary minimum. But we fail to realise the existence of a similar need with regard to the age of Consent. Several witnesses, some of them the most orthodox, have expressed their willingness to raise the age of Consent to 14 or even 15. Considerations of religious obligation are not so vital in this case as in the case of marriage. Though a few have relied on a Sloka (text) which recommends consummation immediately on puberty, the bulk of evidence distinctly proves that this injunction is honoured more in the breach than in the observance. While the reason for a compromise on the subject is not apparent, the reason for fixing the age of Consent at 15 is obvious on the other hand. We should like to refer to Chapter VIII where for a variety of reasons, medical, educational and social, the age of 16 has been suggested as the safe and proper age for motherhood. It will be detracting very considerably from the weight and value of these considerations if merely for the sake of parity the age were to be fixed at 14. Some have argued that the inevitable result of fixing the age of Marriage at 14 would be to advance the age of Consent to very nearly 15. We are unable to take such a hopeful view of the subject, especially so far as the immediate future is concerned. Nor do we feel that the law at 15 would be unworkable. A law of Age of Consent, unrelated to any law regulating the age of Marriage, may not prove effective. But a law fixing an age of Consent at 15 which closely approximates the minimum age of Marriage fixed by law at 14 is more likely to prove workable and to be reasonably effective. We expect people will, after marriage at 14, rather put off consummation for a year than risk a possible prosecution by a breach of the law.

397. There is also another weighty consideration which deters us from lowering the age below 15. The legislation by fixing so low an age as 14 would be setting up a wrong standard of what is considered a reasonably safe age for consummation. It is not an unreasonable apprehension that the progress now being made in raising the age of consummation by voluntary efforts may be arrested, and that
the age fixed by the Legislature after an elaborate investigation may be accepted by the public as the proper age of consummation. While we do not suggest that the Legislature should fix the age of 18 which is claimed by medical testimony as the ideal age, we feel that it can neither fix 14, an age which is declared unsafe. It has been suggested by some witnesses that the age of 14 may be fixed as a first step and that later the age may be advanced to 15 and even 16. We are unable to accept this suggestion. We deplore the revision of a criminal law from time to time, particularly in a case where by such revision the customs and habits of the people will be constantly unsettled. In the best and highest interests of society, it is advisable to fix an age which will go as near the safe age as possible and help the communities concerned to settle down under the new conditions. Such an age we believe is 15. We therefore recommend that the age of Consent within the marital relation be raised to 15 years.