

Vidyasagar's Role in the 'Age of Consent' Controversy: A Retreat from the Earlier Reformist Zeal or An Attempt to Emancipate the Child-Wives?

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Abstract: *The Age of Consent Bill generated heated controversy throughout India, particularly in Maharashtra and Bengal. The Nationalist leaders like Tilak considered it to be a direct intervention in the 'private sphere' of the Indians. On the other hand, the Hindu conservatives denied this as they thought it to be an assault on Hindu Shastras by an alien government. In this circumstance, the Government approached Vidyasagar to comment on this issue. Vidyasagar's opposition to the Bill fascinated the Hindu conservatives. Some of his contemporary biographers and some of the later day historians have argued that in his later days, Vidyasagar succumbed to the pressure of his own class and society and abandoned the path of social reform. They also believe that Vidyasagar did not hurt the Hindu sentiment and thus he sacrificed the interests of the girls. Having argued that, they distinguish the 'earlier Vidyasagar' from the 'later one' who at the end of his life drifted away from the path of social reform and agitation against all kinds of superstitions. The present article challenges this notion by arguing that Vidyasagar never compromised as far as social reforms were concerned. The reason behind his opposition of the Bill should be critically analysed at the backdrop of contemporary politico-cultural atmosphere of the subcontinent. He suggested some rectification in the Bill to protect the child-wives from sexual torture. Moreover, his prescription, if adopted by the government, could have also been accepted by the Hindu conservatives as he masterly utilized the Hindu Shastras to support his position.*

Keywords: *Age of Consent Bill, Garbadhan, Hindu Shastras, Women Emancipation.*

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Introduction

An immensely controversial Bill was introduced in the Legislative Council by Sir Andrew Scoble, the Law Minister of India, on 9th January, 1891, which raised the 'age of consent' for ten to twelve years for sexual intercourse of the Indian girls. This 'Age of Consent Bill' projected sexual intercourse with Indian girls below twelve years, whether married or unmarried, as rape and thus made such offence punishable by ten years' imprisonment or transportation for life.¹ Though it never challenged directly the practice of child-marriage in India, it intervened in the matter of "premature consummation of child marriage".² Thus, this issue was fiercely debated in the public sphere as the Hindu revivalists as well as some of the Nationalist leaders considered it to be an act of foreign intervention in their 'private' realm. Considering the utmost gravity of the scenario, the Government requested Ishwar Chandra Vidyasagar to cast his opinion regarding this issue.

Vidyasagar came to Calcutta from Chandernagore and studied rigorously various Hindu Shastras on this issue. On 16th February, 1891, he issued a 'Note' regarding the Bill ('Note on the Bill to Amend the Indian Penal Code and the Code of Criminal Procedure') in which he did not provide "unqualified support to the Bill".³ In spite of Vidyasagar's opposition to the Bill, Viceroy Lord Lansdowne signed the Age of Consent Act on 19th March, 1891.

I

In this present article, we shall critically analyse the stance of Vidyasagar regarding this issue. Contemporary writers, Biographers and Historians are of divergent opinions regarding the reasons behind his opposition to the Bill. The Hindu conservative contemporary scholar tried to project it as their victory and argued that Vidyasagar came to realize his mistakes which he made by raising voice in the support of the Widow Remarriage Act in 1856. Some of the recent day historians, mainly belonging to the Marxist school, point out a contradiction in Vidyasagar's attitude towards social reform and try to locate his dilemma at the backdrop of the class interest of the 'Compradors'.⁴ These narratives clearly distinguish the 'later Vidyasagar' from the 'early Vidyasagar' and show that in the later period, he lost

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his zeal for social reforms and eventually compromised under the pressure of the conservative section of the Hindu society. This notion of retreat has been vehemently criticized by modern scholars like Ramkrishna Bhattacharya.⁵

In this paper, we shall discuss the real intention of Vidyasagar behind his decision regarding the Bill. Did he really compromise with his reformist zeal due to the opposition of the conservative section? Was there a sense of retreat in his stance? In order to find out this, we have to have a clear idea about how the contemporary Indian society perceived this Bill. Thus, in the following section, we are going to focus on the background of the introduction of this Bill, the reaction of the orthodox Hindu society against this Bill, and the activities of those who supported the Bill. It should also be kept in mind that the question of the 'age of consent' was projected as a threat to the autonomy of cultural sphere of the Hindus and thus, the Hindu orthodox reaction against this Bill could successfully mingle with the broader anti-colonial nationalist movement. After discussing this, we shall critically analyse Vidyasagar's note on Age of Consent Bill and the controversy regarding his viewpoint.

Thomas Metcalf has defined the decades following the great revolt of 1857 as 'an era of conservatism' as far as the colonial policy was concerned.⁶ The British administrators rejected the Utilitarian social reforms as they thought such reforms would result in another revolt. Radical reforms thus came to be regarded as dangerous. It is true that in 1860, according to section 375 of the Indian Penal Code, it was decided that the minimum age for sexual intercourse was ten for the girls. But in the following decades, the colonial government turned a blind eye to the 'immoral native customs.'⁷

On the other hand, in the late 19th century, the articulation of anti-colonial nationalism was based on a separation between two distinct spheres- spiritual and material. Partha Chatterjee argues that while in the material world, the superiority of the Western world was well established, the spiritual realm, on the contrary, represented true sovereignty of the colonized. Thus, the nationalist leaders felt the urge to preserve the spiritual domain, i.e., the cultural sphere of the Indian society from all kinds of colonial encroachments.⁸ The latter half of the 19th century saw a vocal resistance against any action of the colonial state to intervene in the 'cultural tradition' of the native people. Nationalist leaders wanted that not only the colonial state was sought to be kept out of their spiritual or inner domain, but also that any kinds of reforms or interventions in the cultural domain would be completely in the

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hands of the colonized people.⁹ Thus, when the Age of Consent Bill was introduced in the Legislative Council, nationwide agitations took place.

II

Behramji Malabari and Dayaram Gidumal demanded that the minimum age for cohabitation should be raised from ten to twelve. The cases of Kali Kahar (1862) and Phulmani (1889) proved the necessity of such laws.¹⁰ However, as has been argued earlier, the nationalists, mainly in Maharashtra and Bengal, fiercely opposed this Bill as they were not ready to let the colonial legislation intervene in their private sphere. The orthodox Hindu society felt that this law would hamper the celebration of 'garbhadhana' ceremony, i.e., the impregnation of the womb.¹¹ It should be kept in mind that nationalist leaders like Tilak were not against of social reform activities, but their ideology of social reform was based on 'self-help and self-improvement.'¹² They only rejected social reforms through legislation. Newspapers like 'Bharat Bandhu' of Aligarh, 'Bharat Jiwan' of Benaras were also utterly critical of this Bill.¹³

In Bengal, the reaction against this Bill was intense as they thought that this Bill would interfere in the religious sphere of the Hindus. Conservative Hindu leaders like Krishna Prasanna Sen, Shashadhar Tarkachuramani, Panchkari Bandyopadhyaya, Nabagopal Mitra and many others mobilized Hindu sentiments against this Bill. Most of the contemporary Bengali newspapers like Bangabasi, Dainik Samachar Chandrika raised their voice against such alien intervention to preserve their culture. Defending 'Mother India' against such foreign attack in their spiritual domains was perceived to the editors of these newspapers as a 'first step toward rehabilitation of the nation'.¹⁴ Moreover, they thought that by passing the Bill, the colonial state would be 'plunging Hindu girls into sin'.¹⁵ Moreover such law, it was feared, would result in great spiritual suffering, and the Hindu gentlemen would be harassed by police investigations. Krishna Prasanna Sen argued that if the consent age was decided to be twelve years but the girl experienced her first menstruation before that, then the 'garbhadhana' ceremony could not be performed as her 'garbha' (womb) would become impure, and her sons would not be able to offer 'pinda' (pure oblations) to their ancestors. Moreover, the father and the husband of that girl would be guilty of the murder of a foetus and they would be punished.¹⁶ Thus, in order to prevent such foreign intervention on Hindu religion, conservative Hindus from different parts of Bengal like Khulna, Barishal,

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Kalna, Birbhum, Mymensingh, Nabadwip etc. appealed to the Government to dismiss this Bill.¹⁷ Calcutta became the epicentre of several protest meetings organized in different corners of the city against this Bill. Many Bengali graduates assembled in a meeting at Star Theatre to condemn this Bill.¹⁸ On the other hand, newspapers like 'Indian Mirror' and personalities like Jogesh Chandra Dutt, Abdur Rahman, Mahendralal Sircar, Narendranath Sen and many others lent their support to the Bill.

III

In this atmosphere of conflict, the Colonial Government approached Vidyasagar to share his opinion regarding the Bill. Vidyasagar sent a note where he disagreed with the Bill. He wanted the Bill to be framed in a way which would not hamper the religious ceremony of garbhadhana and at the same time would give 'an adequate protection to child-wives.'¹⁹ He quoted from 'Parashara Samhita' to prove that to have physical relationship with child-wife before she experienced her first menstruation was forbidden in the Hindu religious customs. He, furthermore, suggested that it would be a criminal offence for the husband who would consummate the marriage before the first menstruation of his wife. However, Vidyasagar did not mention any particular age. He argued that as women might attain puberty at different ages, sometimes it did not happen before the age of thirteen, fourteen or even fifteen, limiting the age of consent would be an assault on the religious customs of the Hindus.²⁰ He asserted that his suggestion, if followed, would ensure a more extensive protection to the child-wife without hampering the Hindu religious beliefs.

Vidyasagar opposed the Bill as it merely focused on the age of the girl. He emphasized that the Bill should not focus on the age of the girl but her first menses. Otherwise, as the law tended to fix the limit for the marriage consummation, if the girl attained puberty after the age of twelve, she would not be permitted to perform the 'garbadhan' ceremony.²¹ Dharmashastras like 'Parashara Samhita', 'Smriti Sarasangraha', 'Manu Smriti' point out that the 'garbadhan' ceremony had to be simultaneous with the first menstruation and marriage. Parashara warned the parents that they should give their daughter in marriage before her first menses, otherwise they would go to hell.²² Parashara also condemned the guardians who did not marry their daughter before the age of twelve as he

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thought that a girl attained her puberty at this age. France Bhattacharya rightly points out that importance should be given not to the age, but to the insistence on attaining puberty which Parashar thought to happen before the age of twelve. This is clearly indicated when Parashara distinguished ten years old girl 'Kanya' from an older one whom he defined "as a woman who menstruates each month".²³

The Government did not pay heed to the opposition and ignored altogether the suggestions of Vidyasagar. The Bill was passed unchanged. Though his view was not entirely conflicting with that of the Government, and could have saved both sides, it was rejected.²⁴ Thus, we may argue that the real intention of the Government was something other than merely initiating a social reform. As Metcalf argues, the British Utilitarian reformist zeal had been vanished after the outbreak of the 'Sepoy Mutiny' of 1857. The decades following 1860s witnessed an attitude of reluctance as far as social reform was concerned.²⁵ Ishwarchandra's petition to ban polygamy in 1869, and other issues like banning the dowry system, prohibiting foeticide etc. could not attract the attention of the government.²⁶ But suddenly in the early 1890s, the colonial rulers performed a somersault and passed this Bill ignoring the condemnation of the orthodox Hindu society. The real motive was to hurt the sentiment of the Hindu majority, who were becoming active in the anti-colonial movement and at the same time, challenging the legitimacy of the colonial rule by criticizing the economic exploitation of the government. It may be pointed out here that although the Bill was progressive in nature as far as the emancipation of women was concerned, nationalist leaders considered it to be a direct assault on their 'spiritual domain' where they enjoyed autonomy. Thus, though they were not against eradicating social evils like child marriage, they tried to bring that qualitative transformation of the society through self-help, not by legislations made by an alien government.

IV

Vidyasagar's role in this controversy has been viewed diversely by different scholars. His biographers like Biharilal Sarkar, Subal Chandra Mitra have stated that the conservative section of the Hindu society cheered up as Vidyasagar did not support this Bill. They felt that Vidyasagar at last realized his mistakes which he committed by supporting the cause of widow remarriage.²⁷ However, both Sarkar and Mitra are of the opinion that Vidyasagar was

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no hypocrite and thus, if he really realized his errors, he would have confessed it publicly. Mitra points out that at the end of his life, he planned to marry one of his grandsons to a widow.²⁸ Moreover, he was pleased to know that Durgamohan Das, one of his friends, married an adult widow with many children.²⁹

However, these biographers only put emphasis on the conservative group. As they themselves belonged to this section of the society, they do not mention that several educated Bengalis supported this Bill. One committee was set up in Calcutta to mobilize popular support behind this Bill. This committee freely distributed Jogendranath Bhattacharya's book named 'On the Legislation of the Rishis and the Age of Consent'. A signature campaign was organized in the favour of this Bill, in which 8000 people signed and appealed to the Government to continue with the Bill. Personalities like Krishna Kamal Bhattacharya, Jogendranath Bhattacharya, Durga Charan Laha, Gopal Lal Mitra and many others raised their voice in support of this Bill.³⁰

Chandi Charan Bandyopadhyaya, another biographer, argues that Vidyasagar had always been supportive to the cause of social reforms. He proposed some changes in the Bill not because he no longer wanted any reforms, but he thought these changes would improve the position of the child-wives on the one hand, and at the same time, Hindu religious customs would not be hampered. However, Chandi Charan Bandyopadhyaya laments that the contemporary British officials, including the Lieutenant Governor Charles Alfred Elliot, did not know him and thus, they ignored his suggestion.³¹

Marxist historians like Asok Sen, Benoy Ghosh have argued that Vidyasagar had succumbed to the pressure of 'his own class and society' and abandoned the path of social reform in the later days of his life. He advised the Government not to involve with any measure which threatened the religious beliefs of the Hindus. Sen maintains that compared to his previous stance on 'Balyabibaher Dosh', he 'narrowed down his grounds of opposition to child-marriage.'³² Benoy Ghosh finds a contradiction in Vidyasagar's attitude towards social reform activities in the later period of his life. Ghosh has raised the question why Vidyasagar was so much concerned about intervention in the sphere of Shastra-based religious beliefs.³³ According to these historians, Vidyasagar's career as a social reformer may be categorized into two parts- while in his early life, he undertook several reformist activities, in the later phase of his life, he came to a compromise and retreated from his reformist zeal. Swapan Basu opines that though his contemporary personalities like Swami Vivekananda, Ramesh

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Chandra Dutt, Pratap Chandra Majumdar, Shambhu Chandra Mukhopadhyaya and others vehemently criticized the 'garbhadhan' ceremony, Vidyasagar adopted a linear stance. He clearly affirmed his anathema to create a hindrance in the Hindu religious practices like 'garbhadhana' by passing Bills. However, if the reform programme did not affect the Hindu sentiment directly, then he was keen to support any kinds of reforms in favour of women emancipation.³⁴

The above-mentioned views have been refuted by Ramkrishna Bhattacharya. To begin with, the Bill was not passed for Hindus alone, rather the Penal Code had universal application. There were no particular references to the Hindus in this Faujdari Bill. It was adopted for each and every Indians irrespective of their religion. Thus, the argument that Vidyasagar opposed the Bill only to protect the interests of the Hindu conservative society, does not hold ground.³⁵

Asok Sen and Benoy Ghosh ask why Vidyasagar did not attempt to wipe out the customs of child-marriage by appealing to the Government for passing legislations. Bhattacharya argues that this question is irrelevant as the Bill was concerned only with the issue of rape, not that of child-marriage. Even, Vidyasagar in his note did not utter a word regarding child marriage. His only concern here was to provide protection to the child-wives.³⁶ Moreover, Vidyasagar suggested that it must be punishable offence to have sexual intercourse with a girl before attaining her puberty. This stance did not support the cause of child-marriage, rather indirectly rejected it. From his 'Note on the Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1882', it is known that Vidyasagar found the protection that the Bill was to provide to the child-wives to be 'very small'. He thought that in the majority of cases, girls experienced their first menses in between twelve to fifteen years of age. Thus, fixing the age of consent at twelve would leave the girls above that age 'unprotected'. It also gave the husbands a legal right to consummate marriage as soon as the wives were twelve. Vidyasagar thus denied approving such measure which tended to justify 'the torturing of wives' only after they became twelve years old.³⁷

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Some scholars have lambasted Vidyasagar as they consider his position regarding this Bill was a retreat from his earlier reformist activities. Moreover, while in 1856, he utilized Hindu Shastras to bring about radical changes in the society, in 1891, as these historians state, his insistence on 'garbhadhana' ceremony as prescribed in the 'Parashara Samhita' strengthened the hands of the orthodox groups. However, the real case was just the opposite. Vidyasagar utilized the texts written by Parashara, Vachaspati Mishra, Kamalakar Bhatta to protect the child-wives. The Bill was drafted in a way that the conservatives could easily refute this by focusing on the issue of 'garbhadhana'. Vidyasagar was first to point out that fixing of age would result in such opposition and it would be unable to protect the girls. Rather, he emphasized the issue of first menstruation and tried to link it with the proposed Bill. Even 'Champion garbhadhanist' Shashadhar Tarkachuramani could not deny the fact that consummation of marriage should not be done before the first menstruation.³⁸

Jogendra Kumar Bandyopadhyaya in his book 'Vidyasagar Katha' (1933) argues that Vidyasagar did not join those who opposed the Bill. He neither directly accepted it, nor totally rejected it. Rather, he was concerned whether the Bill could be accepted according to the Shastras, and there he found it to be problematic. France Bhattacharya states that in this issue, he wanted to avoid offending Hindu religious sentiment. He took into consideration the usages and beliefs of his community as far as possible. However, it is true that he was not able to always maintain such 'difficult equilibrium.'³⁹ Bhattacharya concludes that in his entire life, Vidyasagar utilized the Hindu scriptures while promoting progressive social reforms. This enabled him to maintain his links with the majority of the Hindu community.⁴⁰

Conclusion

It may be argued that in the later half of the 19th century, the issue of women emancipation became inextricably interlinked with the question of nationalism and in some cases, with that of Hindu revivalism. Thus, in many cases, the nationalist leaders denied any kind of social reforms, whatever progressive it might be, through legislation as they were extremely conscious to preserve their autonomy in the 'cultural domain'. However, Vidyasagar's opposition to the Age of Consent Bill does not indicate any kinds of retreat from his earlier reformist position. He never bowed down before the harsh criticism of the orthodox section

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of the Hindu society by accepting any anti-women religious customs. The main reason behind his opposition to the Bill was that he thought it to be unsatisfactory as the position of the child-wives could hardly be improved by passing this Bill. Rather, he wanted to bring about certain changes in this Bill which he suggested to be beneficial for the child-wives. The allegation against him that he was more concerned with preserving the dictums of the Shastras than to maintain the interests of the women is no doubt faulty. It should be kept in mind that even in 1856, he utilized 'Parashara Samhita' to champion the cause of widow remarriage. Given the politico-cultural atmosphere of the Indian Subcontinent, it would be unrealistic to support a Bill, brought about by the alien government, by entirely ignoring the Hindu Shastras. Such an impractical attitude would have resulted in his alienation from the common mass. Moreover, some scholars tended to distinguish the 'earlier Vidyasagar', who fought against all kinds of social evils and the 'later Vidyasagar', who, they think, was opposed to the Consent Bill due to the pressure from his class and religion. However, such arguments do not hold ground as Vidyasagar never compromised with his reformist activities. He only wanted some slight changes in the Bill to ensure more protection to the child-wives.

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- ³ Bhattacharya, Ramkrishna, *Vidyasagar: Nana Prasanga*, Kolkata: Chirayat Prakashan, 2011, p. 86.
- ⁴ See Sen, Asok, *Iswar Chandra Vidyasagar and His Elusive Milestones*, Calcutta: Riddhi-India, 1977, p.56; Ghosh, Benoy, *Vidyasagar O Bangali Samaj: Tiritiya Khanda*, Kolkata: Bengal Publishers Private Ltd., 1338 Bangabda, p.45.
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Phulmani, a ten-year-old girl, died as his 35 years old husband Harimohan Maity forcefully made love with her.

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²⁴ Mitra, Subal Chandra, *Isva Chandra Vidyasagar* ,p. 654.

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³⁰ Basu, *Samakale Vidyasagar*, p. 13.

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³² Sen, Asok, *Iswar Chandra Vidyasagar*, p. 143.

³³ Ghosh, Benoy, *Vidyasagar*, p. 404.

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³⁵ Bhattacharya, Ramkrishna, *Vidyasagar*, p. 76.

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³⁷ Bhattacharya, Ramkrishna, *Vidyasagar*, p. 86.

³⁸ Bhattacharya, Ramkrishna, *Vidyasagar*, p. 79.

³⁹ Bhattacharya, France, *Pandit Iswarchandra*, p. 200.

⁴⁰ Bhattacharya, France, *Pandit Iswarchandra*, 202.