Chapter IV

INFANT MARRIAGE AND ISSUES OF CONSENT:
DEFENDING HINDU MARRIAGE, 1884-1930

Introduction

In 1772, with its first intervention in Indian legal systems, the East India Company decided that ‘disputes’ relating to ‘marriage and inheritance’ would be governed by existing legal and religious prescriptions. By the middle of the nineteenth century, these ‘prescriptions’ developed into ‘personal laws’, marked off as a separate area, to be governed primarily by religious affiliation, whether Hindu, Islamic, Parsi or Christian. The ‘evolution’ of such personal laws in India was, however, never completed. Difficulties remained, argues Radhika Singha, with the consignment of all disputes concerning the possession of women to civil jurisdiction. In pre-colonial India, rulers exercised the power to punish infringement of sexual morality, thus adding a crucial dimension to their authority over the indigenous elite. Company officials, however, partially withdrew from punishing cases of sexual misdemeanours, like adultery, seduction and rape.¹ The colonial state instead redeployed existing normative codes of rule, rank, status and gender, to a changed political economy with a more exclusive definition of sovereign right. The making of colonial law was, thus, a ‘cultural enterprise’, a continuous exercise in accommodating and reconciling existing legal norms and customs of the indigenous people.

The chief difficulty was in the conflict between the state’s claim to a monopoly of legitimate violence, and patriarchal claims to control the sexual and reproductive power of women within the household. The family that stood as the sole warrantor of the ‘personal’ domain of the subject people demanded a degree of immunity from legal intervention. Since marriage remained fundamental in household or family formation, colonial regulations laid a great deal of emphasis on defining its scope. The trend was towards, argues Samita Sen, elevating family authority, i.e. the authority of male heads of

¹ Radhika Singha, A Despotism of Law, Crime and Justice in Early Colonial India, Oxford University Press, New Delhi, 1998, 138-139.
the household. Fathers and husbands were given the aid of civil and criminal instruments to move court to enforce their will on daughters and wives. To dispense justice in accordance with existing social and moral orders, judicial authorities had to cooperate with and conciliate the indigenous patriarchy. Colonial regulations, thus, increased familial control over female sexuality. After 1860-61, the Indian Penal Code and Code of Criminal Procedure enabled husbands to use criminal law to enforce marriage obligations on the wife.²

The task of imposing civil and criminal regulations on the moral and sexual code of indigenous subjects never appeared quite so difficult as during the Rukhmabai Case (1884-1888) and the Age of Consent controversy (1888-1891). This chapter focuses on these two controversies to highlight the conflicts and conciliations between colonial legislators and a section of the Indian elite with regard to the husband’s rights over his wife. The Rukhmabai Case, in the eye of a legal storm in the 1880s, has been researched by many historians who have focussed on the roles of caste, state, colonial law, and issues of gender.³ Drawing on these studies, the first section of this chapter will discuss some of the responses to Rukhmabai’s rejection of the ‘sacramental’ bond of Hindu marriage. A section of the elite grew increasingly strident in their ‘defence’ of Hindu marriage against women who appeared to be newly empowered by the colonial legal machinery. Their rhetorical flourishes sought an unprecedented elevation of Hindu marriage, which was depicted as the primary marker of India’s moral and cultural superiority over the West. Hindu marriage emerged as the major site of the nationalist resistance against colonial domination, as cultural nationalism closed any further possibility of colonial intervention. The irony in the Rukhmabai Case is, of course, that it was the so-called orthodoxy who appealed to colonial courts to enforce the English law of the restitution of conjugal rights. Traditional Hindu law had no such provision.

Directly in response to the Rukhmabai Case, the Bengali bhadralok wrote copiously on the cultural and spiritual value of the Hindu marriage. They addressed a range of issues on controlling female sexuality, retaining patriarchal power in the family

³ Sudhir Chandra, Enslaved Daughters, Colonialism, Law and Women’s Rights, Oxford University Press, New Delhi, 1998; Chakravarti, Pandita Ramabai.
and protecting the existing gender hierarchy. In western India, the long drawn-out Case brought reformists and the emerging defenders of tradition into headlong conflict. The Parsi reformer, Behramji Malabari, launched a public campaign (1884-88) to abolish child marriage or ‘ill-assorted’ ‘baby marriages’. The second section in this chapter discusses responses to Malabari’s ‘Notes on Infant Marriage and Enforced Widowhood’, which recommended, among other things, state legislation to increase the marriageable age of woman.

The reformist debate came to a climax at the close of the nineteenth century with the Age of Consent (1890-91) controversy. Adopting its avowed policy of non-intervention in 1856, the state had become more cautious about interpreting Hindu law and intervening against established caste and patriarchal practice. The error, if there was to be any, was to be in the direction of orthodoxy. The only significant deviation from this non-interference came in the last decade of the nineteenth century with the death of a child-bride in Bengal from marital rape. The death of Phulmoni pushed the government to raise the age of marriage by legislation. Following closely on the heels of the Rukhmabai controversy and the campaign of Malabari, Phulmoni’s death produced a stir in reformist quarters. The cultural nationalists, to whom state intervention in ‘family’ was anathema, now found themselves in a defensive position, when faced with the brutal killing of a young girl. However, in course of the debate, their position became more inflexible—no colonial intervention, however well-meaning, was to be allowed in matters of marriage. The government proposed the Age of Consent Bill to ensure the physical capability of sexual consummation of girls entering into marriages. According to defenders of tradition, however, legalizing ‘consent’ within marriage would compromise the fundamental principles of the sacrament.

Since the 1950s, nationalist historiography has focussed on the Age of Consent controversy as a turning point in the ‘modernity versus tradition’ debate, signalling the rise of extremist and militant nationalism, with an aggressive ‘Hindu’ cultural overtone. There was a fiery campaign against the so-called liberal, humanitarian initiative of the colonial state. Nowhere was this more evident than in Bengal. A newly constituted ‘nationalist’ Hindu Bengali elite succeeded in diluting its provisions so as to render the Bill virtually ineffective. From the 1980s, feminist historians have discussed at length the
gender implications of these debates. Drawing on both nationalist and feminist research, the third section will focus on the various levels of debate about Hindu marriage conducted in Bengal around that time.

There are some common issues that emerged from these three major controversies between 1880 and 1890. These controversies together created a broad consensus among Indian public opinion that the shortcomings in marriage systems, even if at times admitted, could not be addressed through legislation. By and large, the colonial state agreed. There were, however, some occasions when the state became, willy-nilly, implicated in civil and criminal disputes regarding marriage. Over the 1860s and 70s, issues of consent in infant marriages had been plaguing the judiciary. The judiciary, found it particularly difficult to accommodate the notion of women as ‘perpetual minors’ within the framework of a law that was, at least, professedly liberal. There was, within the officialdom, some feeling against endorsing the inequities and injustices against women resulting from infant marriage. The Rukhmabai Case, and Malabari’s intervention in the following decades, focussed intensely on infant marriage and the difficulties of endorsing a complete denial of consent to women.

Yet, the majority of the official voice upheld the view that non-consensual, infant marriage was sanctioned, even enjoined in Hindu religion and must, therefore, remain undisturbed. The Phulmoni case broke this pattern. The pro-reform lobby within officialdom prevailed, one last time. The failure of this initiative signalled an end to state-sponsored social reform. For several decades liberal intervention in the Hindu marriage system remained suspended.

**Revoking Hindu Marriage? The Rukhmabai Case**

On 8 October 1887, the Bengal Theatre in Calcutta staged a popular social comedy, ‘Rukmini Ranga’ (The Comedy of Rukmini). The play depicted a recusant Hindu wife, Rukmini, who refused to cohabit with her husband Handaram Chattopadhyay on grounds of ‘intellectual incompatibility’. Rukmini, representing the new woman of colonial India, rejected her husband, and continued to live independently with her liberal father, Kantaram. While Handaram coaxed and cajoled, Rukmini, induced by her ‘Anglo’ friends, Jemmy and Brush, sought divorce. Handaram felt betrayed when Rukmini
decided to marry her lover Dinesh. Aggrieved Handaram sued his wife, demanding ‘the restitution of conjugal rights’. A meeting was held in the Calcutta Town Hall on the liberation of women (*ramani uddhar*), but failed to prevent the arrest of Rukmini who was sentenced to six months’ jail by the High Court. Rukmini’s father lent his assurance, ‘why do you fear, my daughter? The six-month imprisonment will seem like staying with your husband’.4

*Rukmini Ranga* parodied the Rukhmabai Case, a dramatic legal controversy, taking place in Maharashtra during 1884-1888. Rukhmabai Pandurang, a 21-year-old woman, refused to return to, and cohabit with, her husband Dadaji Bhikhaji. Daughter of Janardan Pandurang and Jaentibai, Rukhmabai was married at the age of 11, (controversially at 13), with 21-year-old Dadaji. After eleven years of separate living and her repeated refusal to cohabit, Dadaji moved court demanding ‘restitution of conjugal rights’. In her defence, Rukhmabai questioned the merit of an unconsummated child marriage, solemnized at a time when she was unable to exercise her ‘intelligent discretion’. She stated that a wife could not be compelled to surrender her person even to her married husband. She cited several counts of ‘incompatibility’: Dadaji was uneducated, insolvent (living in the house of his maternal uncle), and a patient of asthma with symptoms of consumption. In the court, Rukhmabai asked ‘freedom’ from her non-consensual marriage, seeking a legal divorce. Her stand gave rise to a nation-wide debate over infant and non-consensual marriage. The legal and social controversies provoked by the case revolved round notions of colonial law, marriage and conjugality, and the prospect of state intervention. For the first time, the social orthodoxy, which had so far resisted state intervention in ‘family’ and ‘religion’, appealed to colonial law to discipline the disobedient wife.

The legal battle between Rukhmabai and Dadaji came at a time when Hindu nationalism was posing a hegemonic brahminic conjugal norm over ‘other aberrations’. However, Justice Pinhey, before whom the case of Rukhmabai vs. Dadaji was tabled for the first time, absolved Rukhmabai of her obligations in an unconsummated marriage, to which she had never ‘given consent’. Pinhey also maintained that the colonial judiciary

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could not be a party to a 'forced consummation' as it was 'barbarous' to force a woman against her will to cohabit with a man she disliked.5

The verdict invoked fierce social opposition. Did the colonial state have the right to adjudicate on Hindu marriage? Could issues like child marriage, consent in marriage, and the sacramental and irrevocable nature of Hindu marriage be resolved in colonial courts by 'alien' judges? How could the husband’s ‘natural’ rights over the person of his wife, usually endorsed by colonial law, be compromised by a wife’s ‘right’ to consent, a right non-existent in Hindu law?

The so-called progressive press celebrated Pinhey’s judgment as ‘striking at the root’ of non-consensual early marriage in India. The Times of India hailed his verdict as ‘a shrewd blow at the whole system of infant marriages, a blow that coming from so authoritative a quarter, could not fail to have a wholesome influence in the direction of reform’.6 The Indian Spectator, published by Malabari, upheld Pinhey for refusing the husband the right to perpetrate ‘legalized rape’ on his wife. As the case revolved round the ‘consent’ of a wife within marriage, Indian Spectator declared that Hindu marriage was a samaskar only when women gave ‘intelligent consent’ to it.7 Malabari who had undertaken an extensive study on infant marriage stated, ‘this mode of hunting down an unwilling wife is un-English... I for one would devoutly pray that the judgment might be upheld on appeal, so as to remain a worthy precedent to open our eyes to the evils of the disastrous custom’.8 Had it been upheld, Rukhmabai also believed, it ‘would have altered the fate of millions and millions of daughters of India and the longed-for freedom would have been easily secured’.9 This, however, was not to be.

The argument that infant marriage had no validity because the parties, especially the wife, had no consent in it appeared absurd in nineteenth-century India. When Dadaji appealed to the Bombay High Court against his ‘wicked wife’, traditionalists stood firmly behind him. The Indian Daily News sympathized with Dadaji, who was ‘saddled with a wife who is not a wife... not in the sense that she is a burden upon him... but in the sense

5 Chandra, Enslaved Daughters, 38.
6 Times of India, 22 September 1885, cited in Chakravarti, Pandita Ramabai, 165.
7 Indian Spectator, 18 March 1887, cited in Chakravarti, ibid, 164.
9 Rukhmabai’s letter in The Times, 9 April, 1887, cited in Chandra, Enslaved Daughters, 216.
she is still legally his wife'. In the second round of the protracted litigation, the case was placed before Justices Sargent and Bayley.

The two-judge bench decided to set aside Pinhey’s verdict. Macpherson, Vicaji and Mankar, advocating for Dadaji, argued that the Hindu marriage was deemed achieved simply by its sacramental quality. Consent or consummation or cohabitation was not necessary to effectuate it further. Hindu dharmashastra, they said, enjoined a wife to offer her person to her husband after her first menstruation or the sacramental ceremony of garbhadhan. Ceremonial performances of marriage rites unquestionably rendered Hindu marriage complete and, thereby, irreversible. Maine’s ‘Hindu Law’ also confirmed that the wife was constrained to live with her husband on the attainment of puberty. The plaintiff’s counsels further quoted from Section 260 of the Civil Procedure Code (XIV of 1882), derived from the English ecclesiastical law, and asked for enforcement of an English court decision in India, which made a denial of conjugal rights punishable by imprisonment. Sargent pressed, ‘If by the Hindoo Law the marriage is perfectly valid, quite independent of any consent as we understand the word—for she has been given away by her parents and they have the right to do so—can the court refuse to grant the relief?’ He also argued that after marriage, ‘a woman’s proper place was her husband’s home’, which was also endorsed in Hindu law.

Ironically, for Dadaji, Hindu marriage laws did not contain any provision for ‘restitution of conjugal rights’. Manu laid down clearly that the first duty of a wife was to live in harmony with her husband, but said nothing about how to enforce this duty. The Vyavahar Mayukhya enjoined a man who deserted his wife to pay a third of his income as a fine, and failing that, to provide maintenance. But the Mayukhya provided no reciprocal provision for the deserting wife. Even the more conservative Vyavastha Chandrika did not spell out any punishment to be enforced by the king. Arthashastra proclaimed, ‘a wife who, out of dislike for her husband, refuses to adorn herself and does not let her husband sleep with her for seven menstrual periods shall either return her husband the endowment and jewellery, or let him sleep with another woman’. According to

11 Chandra, ibid, 85-87.
12 Ibid, 90-95.
Arthashastra, 'a woman shall not run away from the marital home, except on being ill-treated by her husband'. While there was no provision for 'divorce' in marriage, the sacred texts were elusive about the restitution of conjugal rights.

Liberals like K.T. Telang and F.L. Latham, accompanied by J.D. Inverarity fighting the case for Rukhmabai, contended that English authority could not be enforced, since restitution of conjugal rights was alien to Hindu law. Latham argued that the duty of a wife 'under certain circumstances was one of imperfect obligation', outside the perimeter of legal restitution. If any society had possessed the right to decide upon marital disputes, maintained Telang, it was the caste authority, i.e. caste-council, and not civil courts. Moreover, in the 1860s, William Muir, Lt. Governor of Bengal, had suggested that the courts should consider unconsummated infant marriages as betrothals.

Either way, Rukhmabai stood on stronger legal grounds. If the English law of 'restitution of conjugal rights' was applied, then the door was opened to issues of 'consent' in marriage. If she was denied 'consent' by Hindu law, by that law she could not be forced to live with Dadaji or submit to sexual consummation. Dadaji's legal counsels sought to circumvent this dilemma by invoking the notion of a 'systematic and uniform' judicial policy. In their verdict, Sargent and Bayley argued that the English law was to offer remedy in restitution suits in a homogenous fashion to all natives, without making any distinction between Hindus, Muslims or Christians. The judges also ruled out the distinction between 'restitution' and 'institution', as the essence of Hindu marriage impelled the couple to live together. Besides, the Hindu vyavahars, argued the judges, recognized the king's sovereign authority to intrude into private social/matrimonial disputes. In supporting the plaintiff, Macpherson upheld, 'your lordships stand in the shoes of the king and would have the power to order a restitution of conjugal rights'.

The upholders of 'traditional' Hindu law were actually drawing on English law as a new instrument of patriarchal control. The strident defence of 'tradition' masked a colonial reinterpretation. An important element of this new interpretation was the

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14 Chandra, Enslaved Daughters, 87.
15 Ibid, 34.
16 Ibid, 95.
extension of *brahminic* social norm over middle or lower castes. Here too, a dual discourse was at play. On the one hand, her low caste (Sutar) background was deployed as an explanation of Rukhmabai’s aberrance. In this characterization, again, two elements were at play. First, a universal low-caste social laxity symbolized by her mother, a remarried widow and, second, her access to education, especially ‘western’ education, indicating looser social mores. On the other hand, Dadaji’s case depended on arguments about Hindu practice and the hegemonic extension of upper caste norms. This duality was addressed in the language of discipline—the need to control aberrant low castes, especially women, in the interests of the wider good of Hinduism.

These nuances were clearly evident in popular writings against Rukhmabai. In Bengali journals like *Sambad Prabhakar, Bangabasi, Nababibhakar* and *Sadharani*, the universal nature of *brahminic* marriage norm was upheld, dubbing low caste practices, current in Rukhmabai’s caste, as ‘deviations’ and ‘transgressions’. They sought to ignore the fact that Rukhmabai’s demand for divorce was neither outrageous nor an extraordinary assault on Hindu sacramental marriage. Rather, Rukhmabai was drawing on customs and usages of her caste, which sanctioned divorce.

There was, however, another significant dimension to the case. The crux of the case, pointed out Dadaji, had little to do with his wife’s discretion or her disgust for an incompetent partner. At the core of the actual suit, he said, lay property worth Rs. 25,000 that Rukhmabai inherited from her father Janardan Pandurang. In ‘An Exposition of Some of the Facts of the Case’, Dadaji wrote, ‘in this little history of property lies the whole secret of the world-wide case’. According to him, ‘[T]here is property in the case, and also a mother-in-law, both very good things in their way, but beyond these two great social factors there is nothing special, absolutely nothing Hindu in it’. Dadaji quoted from the will of deceased Pandurang to show that Jaentebai, the widowed mother of Rukhmabai, was the sole heiress of his property. But Jaentebai forfeited her claims after her remarriage with Dr. Sakharam Arjun. If Rukhmabai, now the sole inheritor of the property, started living with her husband, she (or her husband) might assert control over the property, thus depriving her mother and stepfather. ‘If this Will and this property had

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had no existence', declared Dadaji, ‘there would have no case of Dadaji vs. Rakhmabai, there would have been no separation between myself and my lawful wife’.19

Rejecting outright the claim of Rukhma’s intellectual superiority, Dadaji argued, if the heroine was to be represented as a great scholar, then the hero must be furnished as a great fool. He also dismissed the claim that his poverty rendered the match with Rukhmabai unequal. Dadaji asked,

If I am a poor man in the conventional sense, does my poverty place me outside the pale of justice? It does not. If I am today an unmarried man legally wedded to Rakhmabai, and if my wife, Rakhmabai, is today a married woman without a husband, we have not been placed in this unfortunate position by Hindu Law or by the Hindu marriage system.20

On 3 March 1887, Justice Farran gave the ruling that in the event of Rukhmabai’s further refusal to return to her conjugal home, she would be imprisoned. Rukhma acknowledged defeat. But in an unprecedented gesture, she declared that she would accept the maximum penalty the court enjoined, including imprisonment, rather than return to Dadaji.21 Such a dramatic moral defiance startled both her sympathizers and her fiercest critics. Even the bureaucracy was baffled by the prospect of ‘hunting down’ a rebel wife who refused to be victim to a ‘legalized rape’. Malabari’s sharp attack further unsettled the official establishment.

Henceforth we are to understand that Hindu parents may go on perpetrating infants marriages, and that in the case of dispute, the benevolent British government will aid and abet them, in the triple capacity of marriage-broker, policeman and jailor.22

W. Wordsworth, the chairman of the Rukhmabai Defence Committee, agreed that the penalty of imprisonment was too harsh. This punishment further ‘bears a peculiarly odious aspect when applied to marriages contracted at an age when the parties could have no rational knowledge of the obligations to which they were committing themselves...’.23

20 Cited in Chandra, ibid, 224-233.
21 Ibid, 103.
22 Gidumal, Life and Life-Work, 223.
The Rukhmabai Case exposed the anomaly of grafting English civil law upon Hindu marriage custom, which by enforcing the marital ‘rights’ of the husband left the wife virtually unprotected. At home, the British government was warned of a widespread popular discontent if authorities in India succumbed to the pro-Rukhmabai lobby. Disillusioned by the decision of the government, Malabari maintained in March, 1887,

...[T]he High Court of Bombay, .... hold a tournament of chivalry, and these Christian umpires rule that a mere woman can have no right to consult her heart, or may be, her honour. .... So Rukhmabai should either go to jail or live under the protection of her so-called husband’s protectors. Perhaps the husband, who loves her so, may one day bring another ‘wife’ to keep her company.24

However, in July 1888, the case reached an anti-climax. After ‘intermittent’ and ‘behind the scene’ negotiations the case was settled out of court. Rukhmabai purchased her freedom by paying Rs. 2000 to Dadaji who finally agreed to withdraw the case. Immediately, Rukhma left for England to take up medical studies, and Dadaji settled down with a new wife.

This resolution of the case deepened the anxieties of the orthodox. Rukhmabai’s defiance added fuel to a deep-seated apprehension regarding uncontrollable female sexuality, which was always under the surface of the Hindu cultural system. Dadaji’s compromise was construed as a defeat of the principle of wifely obedience. Rukhmabai’s freedom challenged an essential element of brahminic patriarchy—the family’s (father’s, husband’s and son’s) proprietary right over women. Hindu social order, with the shastric marriage at its core, was perceived as besieged and betrayed. Rukhmabai’s successful repudiation of marriage and her subsequent decision to travel independently to Britain to acquire a medical education was perceived as symptomatic of a crisis in the Hindu marriage system. The Rukhmabai Case also witnessed a peculiar reversal in alignments. The anti-reform lobby, otherwise resistant to state intervention in marriage practices, had appealed to English law and the colonial judiciary to provide the means of disciplining the Hindu family.

There was, in addition, an issue of agency. In the case of most of nineteenth-century social reform, elite male leaders took the initiative for the benefit of women.

24 Malabari, Indian Spectator, 6 March 1887, in Chandra, Enslaved Daughters, 112.
Rukhmabai, however, was asserting her own independence. She pursued the case for four years as an adult wife who refused to be pressured into a distasteful marriage. Writing under the pseudonym of a *Hindu Lady* in contemporary journals, she upbraided the custom of child marriage.

In our matrimonial laws, or rather in the prevailing customs, a man can marry any number of wives... keeping all of them with him, or driving away those for whom he does not care much, while a woman is wedded once for all. She cannot remarry even after the death of her first husband, nor can she deny to live with him even on reasonable grounds...  

Rukhmabai was like the nineteenth-century nightmare come true—her liberal stepfather, Dr. Sakharam Arjun, allowed her to achieve independence of mind through western education, and colonial law allowed her command over property, inherited from her late father on her mother’s remarriage. In this world turned upside down, the young Rukhmabai could ‘discard’ her husband and exercise her independent choice. Rukhmabai’s challenge unleashed the already heightened concerns about the possibilities of feminine revolt against domestic discipline and patriarchal authority. Tilak, in *Mahrratta* and *Kesari*, used the Rukhmabai case as a launching pad for his attack on social reform. Wifely devotion had to be reasserted on the most extreme terms. Fifty years after its abolition, the practice of *Sati*, aestheticised and reified, was invoked as the epitome of Hindu wifehood, of feminine sacrifice and commitment. In a country where women gladly embraced the pyre of their dead husbands, wrote Tilak, Rukhmabai had wreaked havoc on the moral economy of Hindu marriage by preferring confinement in jail to the sacred abode of her husband. Tilak’s press depicted her as a licentious and unscrupulous woman who seduced Justice Pinhey for a verdict in her favour. K.R. Kirtikar of the Bombay Brahmo Samaj warned Indian parents not to make Rukhmabais of their daughters, ‘educate your women not to abandon their husbands’, but to ‘construct a happy home and maintain a high tone of life’.

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27 Ibid, 120.
28 Ibid, 121.
In Bengal, public opinion responded negatively to Rukhmabai’s ‘victory’. Brahmo reformists had never quite recovered from the Cooch-Behar marriage fiasco, but Sanjivani, the journal of the Sadharan Brahmo Samaj, was the only exception, attempting a spirited defence of Rukhmabai. The Burdwan Sanjivani, though initially sympathetic, strongly recommended the chastisement of women who sought to forsake their husbands. It maintained that the likes of Rukhmabai be legally punished or at least be made to atone for their sins in keeping with Shastric prescriptions. Indian Mirror, the journal of the Brahmo Samaj of India, provided tepid support or ambiguous censure. It cautioned against a degeneration of marriage in the event of this ‘sacrament’ becoming a ‘contract’. But even such equivocation was rare. Apart from the Brahmo lobby, Bengali public opinion was united in wholesale condemnation of Rukhmabai. To the proto-nationalists, she represented a ‘wilful and disobedient’ wife keen to wreck the ideals of femininity, on which the Hindu social order rested. Rukhmabai soon became an infamous household name in Bengal. Bankim Chandra’s Prachar vilified her as a low caste woman set on alien and corrupt ways of life. The repeated portrayal of Rukhmabai’s defiance as a low caste aberrance drove home the belief that such a transgression could not take place within high caste respectable homes. Her motive in discarding her husband was questioned. She was, many argued, bent on marrying a native or a vilayati saheb (a British man).

On 6 August 1887, the Shobha Bazar Rajbati organized a public debate on Hindu marriage. A coterie of orthodox Bengali literati stood united against the threat posed to the non-consensual, infant marriage. In 1886-87, a library was founded in Calcutta, named after Savitri, the ideal Hindu wife. It published articles, invoking the indissolubility of Hindu marriage, in a booklet bearing the same name. In an article, Akshaya Chandra Sarkar, a forerunner of cultural nationalism in Bengal, characterized Hindu marriage as a kula-dharma (family rite), a material instrument for propagating family and lineage. He elaborated the spiritual sanction behind the Hindu marriage,

30 Indian Mirror, 25 June 1887.
31 Cited in Sen, Hindu Revivalism, 375.
‘where salvation is the primary aim’, and not ‘desire’. ‘An incomplete man becomes complete when he unites with his wife’. He said that Hindu marriage expressed the unison of man and woman in such a manner as ‘water blends into water, air mingles with air and flames meet the fire’.

Akshaya Chandra invoked the ancient marriage chant, ‘Dhruba Douh, Dhruba Prithvi, Dhrubang Biswamidang Jagat, Dhrubsavh Parbataime, Dhruba Stree Patikule Yam’, comparing the steadfastness of the Hindu wife with that of the pole star, epitomizing constancy in an ever-changing world. The brahminic ideology of pativratya was reinstated to sustain the ritual status of Hindu women, with increasing emphasis on deathless fidelity and female monogamy. A woman’s devotion to her husband was extended beyond death. Pativratya became a vital component of feminine identity. Like the star Arundhati, constantly following her lord, Vashistha, Sarkar reaffirmed, a wife was impelled to follow her husband in this mortal world and in the world beyond.

Akshaya Chandra’s celebration of pativratya was not only a direct critique of Rukhmabai but also aimed at Malabari’s treatise on Infant Marriage and Enforced Widowhood. A sharp rejoinder came from Behramji Malabari. ‘In spite of his novelty’, retorted the Parsi, ‘the argument is not worth of a moment’s thought’. Malabari charged, ‘What spiritual relation can there be in a union, both parties to which are irresponsible?’ While marriage remained inviolable for the woman, Malabari asked, ‘how happens it that the widower can remarry at any time and to any extent?’

The retaliation came from Chandranath Basu, another exponent of cultural nationalism in Bengal. In his article ‘Hindu Patni’ (Hindu Wife), Basu emphasized that Hindu marriage was neither a contract nor did it involve reciprocal obligations. Citing from Manu Samhita, he argued that a pious Hindu must donate/give away his share, words, and daughter only once in his lifetime. The donated commodity/property/woman then came to be possessed by the receiver-owner. The husband’s right over his wife, Basu

34 Ibid.
35 Ibid.
maintained, was that of control, dominance and possession. The wife became the property of her husband just like a piece of land, a tree or a utensil. ‘However humiliating it may sound for a woman’, wrote Basu, ‘this symbolism has an inner meaning’. The act of marriage, submerging the selfhood of a woman, ennobled and justified her existence. He reiterated, ‘unless a man achieves the three components of his life, i.e. his wife (jaya), his soul (atma) and his offspring (apatya), he remains incomplete’. After marriage, the wife became a part of the self of the man. Marriage sanctified the sexuality of women, harnessing her reproductive capacity to the interests of her husband and his lineage, for the liberation of his ancestor’s souls. It was thus, and thus alone, that women could aspire to higher status and glory. Not only a wife, said Basu, but also a widow was required to inculcate lifelong devotion by a continual exercise of stridharma and pativratyadharma (rites of wifely devotion).37

In his article ‘Bibaher Bayas O Uddeshya’ (The age and objective of marriage), Chandranath Basu rejected the question of ‘consent’, raised by reformers. While a girl should be always given in marriage at her infancy, Basu maintained, a man must be older and maturer than his wife. According to the Hindu Shastra, a man of thirty years should marry a girl of twelve and a man of twenty-four should marry a girl of eight. Like a young sapling, the author affirmed, a wife must be rooted into the new soil of her new family as early as possible. ‘It is easier to tame a baby animal’, he declared, ‘than to master an old and adamant one’.38

Unlike the British, Basu maintained, Hindus envisaged the sexual and marital union as part of a greater cosmic union. While in Europe, marriages were dissoluble, reflecting their civilizational impulse towards revolt, chaos and destruction, Hindu marriage laid emphasis on creation and permanence. In the words of Amiya Sen, Chandranath’s work was more ‘literary’ than ‘polemical’. Basu was trying to rewrite marriage in an idealistic sense, rather than treating it as a social institution.39

An unexpected rejoinder to the Sarkar and Basu position came from a leading intellectual of contemporary Bengal, Rabindranath Tagore. Tagore’s ‘Hindu Bibaha’

38 Chandranath Basu, ‘Bibaher Bayas O Uddeshya’ (The age and objective of marriage), Savitri, 73-91, translation mine.
39 Sen, Hindu Revivalism, 370.
(Hindu Marriage), written in 1887, was an extensive refutation of the nationalist’s spiritual and mystic defence of Hindu marriage. Tagore pointed out that all the high claims regarding marriage were exclusively reserved for the wife, but never extended to the husband. While a widow was enjoined to dedicate her life to the memory of her husband, the widower declined any such commitment. Hindu marriage, as defined by the dharmashastra, had little to do with spiritualism, pointed out Tagore. Scriptural annotations like ‘Putrarthe Kriyate Varya’ underlined the importance of marriage in begetting sons. He also quoted Manu who was unequivocal in stating, ‘Prajanarthang Mahabhaga Pujaragrihadwiptayah’, i.e., ‘the woman illumines the home and acquires all success when she gives birth to children’.40

If marriage was indeed to signify spiritual union, Tagore argued, it would have to be monogamous for both the wife and husband, upholding the ideal of ‘one husband and one wife in one unified marriage’. Hindu civilization, however, celebrated male polygamy. ‘How then do we come across sixteen hundred queens of lord Krishna? Not to speak of the much-married kings, the celebrated saint Vashistha, who was constantly followed by his devoted wife Arundhati, had another (secondary) wife, Akshamala’. According to Tagore, romantic love alone should be the basis of marriage, and conjugal relations must rest on love.41

In 1882, Savitri published a strong statement against child marriage. Written by Shyamasundari Debi, the article argued that child marriage, if practiced in the classical past, could never have produced great women like Sita, Savitri, Damayanti and Shakuntala. All these legendary women had chosen their own bridegrooms exercising their choice. Shyamasundari designated child marriage as the root cause of national degradation, destroying the character of the race. It dwarfed the race, and was an impediment to physical, moral, social and political vigour, she said.42

But such contrary voices were few and far between. In the 1880s, the Bengali literati veered towards conservatism. At a meeting at the Shobha Bazar Rajhati, Rajendralal Mitra insisted, ‘in it (Hindu marriage) there is no selection, no self-choice, no

40 Rabindranath Tagore, ‘Hindu Bibaha’ (Hindu Marriage), Rabindra Rachanabali, 13, 79-81.
41 Ibid, 79.
42 Shyamasundari Debi, ‘Balyabibaha O Aborodh Pratca’ (Child Marriage and the Custom of Incarceration), Savitri, 216-227, translation mine.
consent on the part of the bride. She is an article of gift, she is given away even as a cow or any other chattel'.\textsuperscript{43} Bireshwar Pare, writing on Hindu’s cultural practices in \textit{Savitri}, described Hindu marriage as the greatest festival of life. With all its ceremonial properties, ritual norms and sacramental qualities, Pare said, marriage was integral to Hindu civilization. Hindus were not guided by sensual and carnal desires like the Westerners, he argued. There was no scope for choice or consent in a Hindu marriage. It could not be like any business contract that first selected the commodity and then registered its ownership deed.\textsuperscript{44}

Manomohan Basu, another exponent of revivalism in Bengal, wrote that Manu’s eight types of marriages, Brahma, Daiba, Arsa, Prajapatiya, Asura, Gandharva, Rakshasa and Paisacha, could hardly be applied to modern marriages. Chiding liberal marriage reforms, Basu said that the catalogue of new-fangled marriages included marriages of young, adult woman (\textit{Taruni Bibaha}), inter-caste marriage (\textit{Asavarna Bibaha}), love marriage (\textit{Gandharva Bibaha}), contract marriage (\textit{Chukti Bibaha}) and rational or free marriage (\textit{Jukti ba Mukti Bibaha}), as the last named marriage also involved marriage of prostitutes through court registration. While marriages of adult women (\textit{Taruni Bibaha}) were a clear violation of the traditional child marriage, Basu argued, ‘contract marriage’ (\textit{Chukti Bibaha}) negated the notion of irrevocable sacrament, vulnerable as it was to a ‘breach of contract’.\textsuperscript{45}

Manomohan Basu deplored, ‘we are the half-civilized, defeated and despised Hindu nation. We have only one possession left to take pride in, which was dearer than anything on earth’. The prized possession was the chastity (\textit{satitva}) of Hindu women. He said, ‘to salvage that chastity we can put at stake our property, dignity, cow, bull, horse and elephant’. Not only that, for the sake of chastity, Bengalis, declared Basu, could even sacrifice their most valuable possession—their government jobs (\textit{chakri}).\textsuperscript{46}

Tanika Sarkar has argued that the Rukhmabai episode provided an opportune moment for cultural nationalists to rewrite the narrative of love and pleasure in marriage

\textsuperscript{44} Bireshwar Pare, ‘\textit{Hindu Reeti Neeti Hindu Jaiti Abinaiti Karon Nahe’}, (Hindu customs are not the reasons of the decline of the Hindu nation), Chaitra, 1885, \textit{Savitri}, 203-204, translation mine.
\textsuperscript{45} Manomohan Basu, \textit{Hindu Achar Vyabhahar} (Hindu customs and behaviour), Bengal Publishing Company, Calcutta, 1886, 18-22, translation mine.
\textsuperscript{46} Ibid, 27.
in the language of force. Sarkar remarks that Rukhmabai had forced a choice upon her community, between the woman’s right of free will, and the pristine essence of Hindu marriage: the two could no longer be wedded together as a perfect whole, as in mid-nineteenth century constructions of romantic conjugalit.y. The case brought to the forefront a conflict between women’s selfhood and the traditional marriage system.

The Rukhmabai Case redrew alliances for and against liberal social reform. For the first time, a large section of old reformers, the bulk of the colonial judiciary and social conservatives found themselves ranged on the same side. Rukhmabai’s challenge to patriarchal control over woman’s mobility and sexuality was too drastic. The few supporters she found like Behramji Malabari had to argue against consolidated opinion on a national scale.

Legislating against Infant Marriage? Failure of the Malabari Campaign

The Rukhmabai Case gave Behramji Malabari’s campaign against Infant Marriage and Enforced Widowhood nationwide publicity. Basing his arguments on the statistics of the imperial Census, Malabari sought immediate state intervention to increase the age of consent in marriage and to enable young widows to get remarried without incurring social excommunication. Malabari, in his ‘Notes’, urged specific provisions upon the Government. First, bachelors should be preferred in government services; second, degrees should be withheld from male students if they married; third, scholarships for University examinations should be restricted to bachelors; and, fourth, if children were married, they must be given the opportunity to ratify the contract on attaining adulthood.

Malabari was not the first person to raise his voice against child marriage. In the 1850s, Bengal reformers began to write against the evil. Ishwarchandra Vidyasagar’s treatise on ‘Balyabibaher Dosh’ (the evil of child marriage) in Sarba Subhakari Patrika questioned the scriptural merit of Gauridan (giving away a daughter before she reached her puberty) and called for its social censure. Vidyasagar, however, did not call for

47 Sarkar, Hindu Wife, Hindu Nation, 208.
48 NAI, Home-Public, Infant Marriage and Enforced Widowhood in India, November 1886, proceeding no 131-138E, 1-22.
49 Vidyasagar, ‘Balyabibaher Dosh’.
legislation against child marriage, in contrast to his later campaign for legislation to enable widow remarriage. The period between 1850 and 1860 witnessed a limited but vigorous campaign against child marriage in contemporary Bengali magazines like Sambad Prabhakar, Vividarthana Sangraha.\footnote{Abhijit Dutta, Child Marriage an Adult Obsession, (Bengal 1891-1929), Minerva Associates, Calcutta, 2002, 115.} Child marriage was berated in popular Bengali theatres.\footnote{The period between 1860 and 1870 witnessed a serial publication of popular plays reproving child marriage, viz. Sripati Mukhopadhyay, Balyabibaha (Child marriage) (undated), Shyamacharan Srimani, Balyodibaha, (Child marriage) 1860, Anonymous, Sambandha Samadhi Natakam (A play on the burial of marriage relations), 1867, Ramchandra Dutta, Balyabibaha, (Child marriage) 1874, cited in Murshid, Samaj Samaskar, 231-251.} In Dacca, Balyabibaha Nibarani Sabha, led by Nishikanto Chattopadhyay, Nabo Kanto Chattopadhyay, and Sitala Kanto Chattopadhyay, was set up to eradicate the practice of child marriage. In fact, Malabari was not even the first person to invoke state legislation against child marriage. The Brahmo Marriage Bill, in 1871-72, already envisaged a similar reform, and the Special Marriage Act of 1872 legally increased the age of marriage of girls from 10 to 14. However, by the time Malabari started his reformist campaign, the Bengal reform movement had suffered heavy setbacks with the Brahmo leadership compromising on the fundamental principles of marriage reform.

In the late nineteenth century, the theatre of action shifted from Bengal to Maharastra. Malabari was acute in his perception of the ‘new patriarchy’ embedded in Bengal reformism. The anti-child marriage programme, he said, was based on ‘the preconceived idea of woman’s inferiority, her duty to be everything to everybody—to father, brother and husband’. In the first ‘Notes’ that came out on 15 August 1884, Malabari termed infant marriage as a social malaise, graver than infanticide. An ill-sorted infant marriage entailed life-long misery for one or both parties. He added that ‘absence of choice’ was not the only complaint but ‘the area of selection was so narrow, where society was split up into numerous castes and sub-castes, that practically Hindu parents had to make Hobson’s choice of it: to accept the first boy or girl, or to buy the one who comes the cheapest, all things considered’. In that case, the wife may outgrow the husband or ‘the husband may become fit for the grave when the wife becomes fit for the
home’. According to Malabari, in any of these events the ‘married martyrs’ were socially alienated from each other, though perhaps living under the same roof.\(^{52}\)

Malabari’s opponents, predictably, highlighted the sanctions and prescriptions for infant marriages in Hindu Shastras. Malabari remarked,

I have heard an argument in favour of infant marriage as a national institution, except that it is enjoined by the shastras. In India every custom that is unintelligible, or actually indefensible, becomes a religious question, the merits of which we are not supposed to appreciate in the kali-yuga.\(^{53}\)

According to Malabari, infant marriage had received no sanction from *Sruti* and *Smriti*. ‘Manu wishes a man to marry when he may become a *grihastha*, i.e. when he is about 24 years old. As to the girl, she is to marry when she is fit for it and that may vary in different climates’. No legal authority, he said, could contemplate an engagement between infants. Max Muller endorsed Malabari’s point and wrote, ‘I doubt whether any *Shastri* will now dare to invoke any *Sruti* or *Smriti* in support of infant marriage’.\(^{54}\)

However, both Max Muller and Malabari were wrong when they said that ancient texts in India did not uphold infant marriage. *Shastras*, though not in congruity in prescribing the ‘precise’ age of marriage for girls, favoured ‘baby’ marriage starting from extreme infancy, (even at the time of birth). However, child marriage or pre-puberty marriages were, supposedly, not in vogue in Vedic times. Both the *Rig Veda* and *Atharva Veda* contained instances of adult courtship followed by adult marriages. The term ‘*udvaha*’, defined as marriage enjoining the ‘carrying away of the bride to her husband’s house’ immediately after the nuptial ceremony, presupposed the existence of post-puberty marriages. The ritual of ‘carrying of the bride’, for immediate consummation of marriage, perhaps signified the marriage of ‘sexually mature’ brides. There is no evidence, however, that infant marriage was not practised. It may have co-existed with adult marriages and ‘*udvaha*’ implied that an infant bride would remain in her father’s house till the attainment of puberty. *Garbhadhan*, the impregnation rite, indicated the formal sending off of the daughter. It might, of course, have been introduced at a later


\(^{53}\) Ibid, 3-4.

\(^{54}\) Ibid, 202.
period. The fifth century Grihya Sutra and Dharma Sutra contained a number of safeguards against pre-puberty marriages, and some of these texts enjoined that the bride should be a nagnika (one who had not reached her puberty) at the time of marriage. The Mahabharata, however, described a girl of sixteen as nagnika, and directed against infant marriage.\(^55\)

While the epics, Ramayana and Mahabharata, referred to the provision of ‘choice’ or ‘discretion’ exercised by women in the selection of bridegrooms, the Smritis of a later period preferred pre-puberty marriages, ‘to ensure complete chastity’ of women. While Yajnavalkya Smriti insisted on pre-puberty marriages, Manu Samhita was beset with contradictions. In some of his statements, Manu favoured pre-puberty marriages. He said, ‘a man of thirty must marry a girl of twelve and a man of twenty-four, a girl of eight’.\(^56\) However, Manu contradicted his own arguments when he said, ‘a maiden rather stay at her father’s house even till her death, if a proper husband can not be procured in the long run. A maiden after attaining puberty may wait for three years, but after this period she should seek a husband who is similar to her’. He strongly reproved pre-puberty marriages, reproaching carnal commerce with little girls as the most horrible of sexual offences.\(^57\)

Other scriptural texts by Vashistha and Baudhayan spoke of the necessity of early marriage, condemning the father with the sin of slaying an embryo, if he failed to give his daughter in marriage before she reached puberty. Parasar, on whose authority Vidyasagar had argued a sanction for widow remarriage, favoured pre-puberty marriages, endorsing the well-known practice of gauridaan (gift of a daughter at the age of eight). According to Parasar’s famous dictum, (‘astavarsat bhabet gauri, nababarsatu rohini, dasame kanyaka prkta tad urdhang rajasvala’) a daughter was to be deemed pubertal by age of ten and must be married by then.\(^58\)

Infant marriage emerged, in the eye of cultural nationalists, a ‘cultural exemplar of oriental tradition’. Malabari, however, addressed infant marriage as an economic and demographic question. He argued that infant marriage led to early consummation, high

\(^57\) Cited in Dutta, Child Marriage, 11.
\(^58\) Cited in Dutta, ibid, 14-15.
maternal morbidity and mortality, the birth of sickly children, over-population, and also to poverty and dependence. When death came to the relief of the husband, it added one more widow to the forty million and odd and two or three orphans to the fraternity of unprotected infants.\(^5\) Seeking state intervention, he said, ‘government does not deserve the name of government, if it declares itself unable to protect each individual subject from personal torts, whether sanctioned by customs or not.’ ‘Infant betrothal is a tort’, wrote Malabari, ‘it is a contract made without consent of one of the parties’. Reacting to the debate on ‘restitution of conjugal rights’, he said, ‘if ...one party suffers and wishes to be released from unjust contract, the government ought to protect him or her.’\(^6\)

On the issue of state intervention Max Muller was unequivocal, ‘Do you not invoke the aid of the government to stop drunkenness or Thuggee? The Thugs appealed to the custom and to their protected goddess, but the Government did not listen but did its duty’. Max Muller went on to sympathize with Malabari, ‘Now that apparently you are beaten, I cannot remain silent, and the more my friends in India abuse me, the more proud I shall feel. If they call you ignorant, because you are a Parsi, what will they call me, a mere Miekkha!’\(^6\)

The first bureaucrats who responded to Malabari’s proposal were J. Gibbs and the Marquis of Ripon. In August 1884, they dismissed the notion that infant marriage and enforced widowhood involved criminal actions to be suppressed by direct state legislation. Sir Charles Aitchison, Lt. Governor of Punjab, and W.W. Hunter, member of the Viceregal Council at Simla, also endorsed the inefficacy of government intervention. On 21 January 1885, at a meeting at the Sobha Bazar Debating Club, Hunter, however, spoke highly of Malabari and his arduous campaign, ignoring the question of state intervention.\(^6\) In March 1885, Lepen Griffin though sympathetic to Malabari’s cause,

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\(^6\) Gidumal, ibid, 203.

\(^6\) Ibid, 204. Malabari’s identity as a Parsi played a significant role in the history of Hindu marriage reform in colonial India. While addressing the question of *infant marriage and enforced widowhood*, Malabari consciously underwrote his identity as a liberal Indian reformer, and a non-Hindu cohort of an alien government in reforming the Hindu society. The cultural nationalists were, at the same time, dismissive of his critique of the Hindu marriage system, as Malabari sought to judge it through the eyes of an ‘outsider’. See, Antoinette Burton, ‘A “Pilgrim Reformer” at the heart of the Empire: Behramji Malabari in Late-Victorian London’, *Gender and History*, Vol 8, no 2, August 1996, 175-196.

\(^6\) Extract from William Wilson Hunter’s address at a meeting of the Sobha Bazar Debating Club, Calcutta, *Infant Marriage and Enforced Widowhood In India: Being A Collection of Opinions, For And Against*,
criticized him for misreading the ‘intensity of Hindu conservatism’.

Writing in January 1885, Allan Octavian Hume, soon to found the Indian National Congress, dismissed Malabari’s claims. The Parsi, he wrote, had depicted the evil in unnecessarily dark hues. In any case, he argued, a total prohibition of infant marriage was neither feasible nor necessary. The campaign was, according to him, a huge waste of time, not destined to yield any permanent results. He also stated that social reform should follow and not precede freedom. He preferred to defer to parental control in the matter of consummation.

Indeed, in terms of concrete results, Malabari’s campaign was ‘a huge waste of time’. The government made it clear that further legislation on marriage, and on such a sensitive and widespread practice like infant marriage, was out of the question. Nor were they convinced that such a sweeping law could be of any practicable benefit. The doubtful benefits of the Widow Remarriage Act strengthened their resolve. Having failed to persuade the Government of India, Malabari took his campaign to Britain, not only to convince the Home Government but also to convert British public opinion. Malabari’s London Committee, consisting of Lord Reay, C.P. Ilbert, Max Mueller, British feminists like Millicent Fawcett, recommended increasing the Age of Consent, the abrogation of child marriage and the reversal of the restitution for conjugal rights in India. Mrinalini Sinha shows, however, that in private letters the committee members, Reay and Northbrook, described to the Viceroy how cleverly they had succeeded in diluting Malabari’s radical ‘Notes’, and advised the Viceroy to show similar caution in dealing with a prospective Bill.

The British had learnt their lessons well. The commitment to non-interference (1858) acquired more teeth as issues like the Brahmo Marriage Bill, the Hutchi and the .Rukhmabai Case raised major storms between the 1860s and 1880s. Officials from the Bengal Presidency anticipated hostile native response to the proposed legislation. C. H. Tawney, Director of Public Instruction of Bengal, was unequivocal:

Received by Behramji M. Malabari, From Representative Hindoo Gentleman And Official And Other Authorities, Bombay, 1886, 13, cited in Abhijit Dutta, Child Marriage, 85.

Infant Marriage and Enforced Widowhood In India, ibid, 14, Dutta, 86.


Cited in Mrinalini Sinha, Colonial Masculinity, The ‘Manly Englishman’ And The ‘Effeminate Bengali’ In The Late Nineteenth Century, Manchester University Press, Manchester, 1995, 144-145.
The days when such pressure could produce magic effect are forever gone, and I do not much regret them. Besides official pressure is utterly incapable of dealing with a sentiment based on reflection and long established custom, allied with the best instincts of feminine delicacy. 66

Clearly, Tawney had developed some sympathy for the 'best instincts of feminine delicacy', enforced by infant marriage. Other officers were fearful of so great a change. Denzil Ibbetson, Director of Public Instruction, Punjab, questioned, 'would it be wise, even if it were possible, to tempt women to fly in the face of public opinion the code of morality and decency in which they have been brought up?'67 Indeed, the conservative temper of many officials leaned in favour of infant marriage, rather than merely counselling restraint for fear of 'native hostility'. J.G. Cordery, Resident at Hyderabad, detailed such arguments.

The obligation of the tie makes the honour of the child respected by others and by no means necessarily leads to premature consummation.... [C]ould the principle of free choice be wisely advocated or safely introduced in a country where physical capacity for sexual intercourse existed at so early an age?68

C.T. Metcalfe, Commissioner of Orissa, counselled pragmatism. 'Many natives' would 'depreciate government interference' as they believed that the purity of families, the preservation of their caste and social customs, depended on infant marriage and ascetic/enforced widowhood. J.F.K. Hewitt, Commissioner of Chota Nagpur, argued on the same lines albeit with more sympathy, '[U]nfortunately Mr. Malabari's ideas were in advance of the time'. They were unlikely to rise above the insurmountable caste prejudices and superstitions of the land. Dr. R. Lyall, Commissioner of Chittagong, echoed the fear that the tyranny of caste was the tyranny of religion, as at present understood by people. 'It was not possible for Government to maintain a policy of non-interference with religion and yet assail caste prejudices based on religion or what is believed to be religion'. 69

66 Gidumal, Status of Women, 222-223.
67 Ibid, 224.
68 Ibid, 226.
69 Ibid, 221-223.
The weakest element in Malabari’s proposal, according to some officials, was the linkage between state employment and patronage to education with marital habits. C. Bernard, the Chief Commissioner of British Burma, pointed out that ‘married undergraduates and scholarship holders were not unknown at our English Universities’. Such a rule, if extended to betrothals and unconsummated marriage, would lead to great administrative confusion. F. M. Halliday, the Commissioner of Patna, went further in pointing out that Hindus were not alone in their eccentric marital customs, and that the variety and plurality of marital practices would confound direct state regulation.

If we exclude Hindus from the professions and the public services from marrying too soon, we may also exclude Europeans for not marrying at all, Mahomedans for marrying too often, Buddhists for marrying without exclusive possessions and men of all creeds for marrying rashly and failing to keep matrimonial engagements.70

British officials like MacDonnell found other loopholes. Malabari had not defined ‘infant marriage’. The term ‘baby marriage’ was hardly usable in legal terminology.71 However, the British could not overlook the great extent of child marriages in India. Census records had shown that nearly 80 per cent Hindu females were married before the age of fifteen, about one-third of these were married before the age of ten. Infant marriage was clearly a staple of Indian society. The Census of India in 1881 showed that more than one-fifth of girls under the age of fifteen were either wives or widows.72

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<th>Table 9: The civil condition of Hindu girls, including Sikhs and Jains in India, aged between 0 and 15</th>
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Source: NAI, Home-Public, Infant Marriage and Enforced Widowhood in India.

70 Ibid, 219-220.
71 NAI, Home-Public, Proceeding no 138C, File No 35/1614-27, True Extract of the Resolution of Mr. A.P. Mac Donnell, Officiating Secretary to the Government of India on the Notes of Malabari, November 1886, 55-57.
Moreover, by repetition, the notion of Hindu sacramental marriage acquired greater force. Court decisions between 1860 and 1880 emphasized that marriage by civil contract did not exist among Hindus. The Government of India continued to shy away from the issue of infant marriage, admitting that non-interference ‘was neither accidental nor undesigned’. The legislature had already burnt its fingers during the Act III of 1872, having faced widespread dissatisfaction within the Hindu community.

Government apprehension of a hostile response was reinforced by adverse returns from indigenous officials, especially from the Bengal Presidency. During 1884-1885, other ‘native’ respondents struck a strident warning note. Among the first of those opposing legislation were three leading Bengali Hindus, namely Satyendranath Tagore, Manmohan Ghose and Rajendralal Mitra. In 1884, Tagore wrote to Malabari describing child marriage as ‘a canker that eats into the vitals of our nationals existence and if not removed in time, may lead to the degeneracy and decay of the whole race’. Yet, he did not support legislation. Protap Mozoomdar, an erstwhile Brahmo reformer, considered that ‘premature marriages are doomed, but the problem of finding suitable matches for over-grown young ladies is far from solution’.73

Jessore Indian Association found Malabari’s ‘Notes’ ‘generally exaggerated’, ‘impracticable’ and without any ‘moral influence on society’. Infant marriage, they argued, was the ‘most powerful check on our youth’ and as a result, ‘Hindus are the only nation among whom the matrimonial scandals, and disgraceful breaches between the husbands and wives are rarely heard of’. Moreover, ‘to invoke the government in social and domestic concerns is a shocking idea to us, especially when the nation does not want it, and when it is not necessitated by emergencies’.74 A. Barooah, Magistrate of Noakhaly, opposed infant marriage but deprecated government intervention.75 According to Kailash Chandra Bhattacharji, Head Master of a zillah school of Noakhaly, the whole

73 Gidumal, Status of Women, XXIX.
74 WBSA, General-Miscellaneous, Proceedings on Infant Marriage and Enforced Widowhood In India, File 90-36/37, from Baboo Chand Mohan Bandyopadhyay, Secretary to the Jessore Indian Association to the Secretary to the Government of Bengal, Jessore, 10 June 1885, 357-358.
question of ‘infant marriage’ turned on the unanimous injunctions of *Shastras*. The British Indian Association and Mymensingh Association echoed an aversion towards Government interference, as they believed that ‘native society’ had to be reconstructed by indirect state influence. The Utterparah People’s Association also observed that all sound social growth must be ‘a process of evolution’ and ‘not one of revolution’.

While Bengal was clearly against the proposed Bill, a sizeable section of ‘native’ opinions in Bombay espoused the necessity of Government intervention. In August 1884, M.G. Ranade said that state legislation was the cardinal need of the hour. In Bombay Presidency, B.N. Pitale, T.B. Dani, G.W. Kanitkar and G.H. Deshmukh supported Ranade, while Navalram insisted on the formation of anti-child marriage associations. In the Southern Presidency, the Madras Association headed by Rughunath Rao proposed not to marry girls under ten and boys under fifteen. ‘Choice, after all is a blind guess’. Rao said, ‘Can there be any meaning in the high-sounding phrase “liberty of choice”?  

However, the bulk of official judgments weighed against Malabari. To provide a remedy in checking marriage at an early age in India ‘is rather fighting against the nature itself’. Democratising marriage or family was, they argued, against tradition, Hindu identity and wider social good. Along with such arguments, the much-discussed issue of preserving the ‘private’ from colonial intervention came up strongly. Most British Indian officials remained ‘pathetically dangling between mere sentimentality on the one hand and conservative dogmatism on the other’. The Chief Secretary to the Government of India ruled out any Bill on the lines proposed by Malabari, since ‘to alter by legislation or executive action the social custom of an entire nation is a very difficult matter’. He maintained that any real reformation must await the widespread desire for social change and state interference would be of no use in such matters.

But Malabari was not speaking in a void, as represented by some local official opinion. When he was preparing his ‘Notes’ on infant marriage, England had become the

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76 WBSA, General-Miscellaneous, from Baboo Kailash Chandra Bhattacharjee, Head Master, Zillah School, Noakhaly, to the Magistrate of Noakhaly, Noakhaly, 11 December 1884, 316.
77 Gidumal, *Status of Women*, 221.
78 Ibid, 210-211.
79 Ibid, 211.
80 Ibid, 222-223.
site of state sanctioned sexual politics, points out Burton.\textsuperscript{81} The Contagious Diseases Acts (1882, 1884, 1886) against prostitution were imported to India on the ground of military exigency. Moreover, the issue of consent in marriage continued to raise its controversial head throughout the 1880s, at both legal and social levels.

By their refusal to act against infant marriage, the British recognized and accepted infant marriage as a ‘native custom’ with the sanction of religion and, therefore, personal law. Events, however, were to overtake these settled convictions. Arguments used against Malabari’s proposal would return to haunt and defeat the Government’s own subsequent legislative efforts. Such legislative effort was provoked when ‘infant marriage’, no longer a chronic social misery, took on all the aspects of a ‘hideous crime’, and a direct threat against the lives of young wives. The reams of written ‘native’ opinion on social and ritual sanctions against early consummation and the moral benefits of child marriage were immediately called into question.

Rape within Marriage: ‘The Consent Dilemma’

On 15 June 1889, Phulmoni, a child-wife aged 10 or 11, was raped and killed by her 35-year-old husband Hari Maiti in Calcutta. Malabari’s proposals no longer seemed quite so ‘absurd or impractical’. The argument that the \textit{Shastra} authorized intercourse with a girl above the age of ten began to hold less water when faced with its actual consequences of marital rape—the violent death of a girl-wife.

However, Section 375 of the Indian Penal Code provided that ‘sexual intercourse by a man with his own wife not being under ten years of age is not rape’.\textsuperscript{82} Consequently, in July 1890, Justice Wilson declared that Hari Maiti could not be tried for ‘rape’ but only for the lesser charge of committing a ‘rash and negligent act’. Though Maiti was acquitted of the charge of murder, the administration could not ignore the phenomena of ‘Hari Maitisim’, Hindu husbands forcing intercourse on their child-wives and killing them in the process.\textsuperscript{83}

\textsuperscript{81} Burton, ‘The Pilgrim Reformer’.
\textsuperscript{82} NAI, Home-Judicial, January 1891, proceedings 36-40, from Viscount Cross, C.R.B. Her Majesty’s Secretary of State for India to His Excellency the Most Honourable Governor General in Council, 59-63.
\textsuperscript{83} Sinha, \textit{Colonial Masculinity}, 144.
Phulmoni’s was not a unique case. It came as one of a string of similar cases. In Bengal, where a section of the male elite and officials had rejected Malabari’s proposals, the problem was most acute. The institution of child marriage was widely prevalent among almost all castes. From the mid-nineteenth century, police reports in Bengal pointed towards the high incidence of child marriage leading to several cases of rape within marriage. In 1849, a man from Sylhet was sentenced to two years imprisonment for causing the death of his child-wife aged below ten. On 28 May 1857, the *Englishman* reported the death of an eight-year-old girl wife who died of haemorrhage from forced intercourse by her husband. In 1861, a man was convicted at the Calcutta Criminal Sessions for raping his child-wife, and in the next year the *Bengal Hurcurra* referred to a case, filed by a girl under ten, who charged her husband with the offence of ‘rape’.

In 1868, Dr. Norman Chevers, in his *Medical Jurisprudence for India*, cited 14 cases of forced intercourse and killings of child-wives by their elderly husbands. He referred to two cases in Dacca and Jessore, in which two girl-wives were killed from forcible rape and strangulation for refusal to cohabit, respectively. In both these cases, husbands hung up the dead bodies by the neck to pass them off as suicides. Cases of sodomy were also not unknown where only token punishments, if any, were awarded to the husbands. Chevers justified the need for a harsher penal system to deter these ‘elderly’ husbands. In his report, Dr. Kenneth McLeod included 48 cases of rape, in half the cases the victims were under the age of ten. While in two cases the child-wives were five years old, in seventeen cases they were six to ten years old. On 1 October 1890, the *Calcutta Gazette* produced a list of similar cases of marital rape and sodomy. In 1871, 1872 and 1873, Dr. Robert Harvey included 372 cases, in which fifty-one per cent victims were under the age ten and eighty-nine per cent were below fifteen. He added that

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87 Ibid, proceeding no 8, Report on the Third National Social Conference held in Bombay on 29 December 1889, from K.T. Telang, President National Social conference to the Secretary to the Government of India, August 1890, 21.
88 Ibid, proceeding no 11, from Brigade Surgeon K. McLeod, Professor of Surgery, Medical College, Calcutta, to A. Hilson, the Inspector General of Civil Hospitals, Bengal, 43-44.
children between nine and thirteen years were reported, 'accustomed to intercourse'. While the reasons advanced by the medical men were 'all based purely on physical and physiological grounds', according to Nicholson, Civil Surgeon of Dacca, there were also 'strong moral grounds' to raise the Age of Consent.

Returns by the Civil Surgeons during 1868-1869 revealed that in twenty per cent of marriages, children were borne by child-mothers below the age of twelve. Untimely motherhood, forced by premature intercourse, often resulted in serious injuries and death. The medical reports furnished cases of death and injury suffered by child-wives and mothers at Eden hospital between 1885-1889.

Table 10: Some of the recorded cases of injury to juvenile mothers aged below 18 at the Eden Hospital, Calcutta, between 1885-1889

<table>
<thead>
<tr>
<th>Name</th>
<th>Age in Years</th>
<th>Date</th>
<th>Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saroda</td>
<td>16</td>
<td>14 July 1885</td>
<td>Instrumental labour, child dead</td>
</tr>
<tr>
<td>Saroda</td>
<td>13</td>
<td>8 February 1886</td>
<td>Metritis-strain of uterine ligaments</td>
</tr>
<tr>
<td>Bindu</td>
<td>13</td>
<td>3 September 1887</td>
<td>Vulvar sores</td>
</tr>
<tr>
<td>Sohidan</td>
<td>17</td>
<td>30 January 1889</td>
<td>Died undelivered</td>
</tr>
<tr>
<td>Phulmoni</td>
<td>16</td>
<td>30 January 1889</td>
<td>Puerperal septicaemia, died</td>
</tr>
</tbody>
</table>

Source: NAI, Home-Judicial, Extracts from the Records of the Eden Hospital, Calcutta.

Phulmoni’s death brought all these cases into sharp focus. In court, Phulmoni’s father, Kunja Behari Maity, referred to the specific caste practices among the Oriya Kayasthas, to which they belonged, that forbade consummation prior to menstruation. In the court, it was, however, reported that Hari occasionally visited his wife while she was still residing at her father’s house. In his defence, Hari insisted that he slept with his wife at least a fortnight in his house, though there was no act of coition between them on the

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91 Ibid.
92 Ibid, proceeding no 24, from Surgeon Major C.H. Joubert, Professor of Midwifery, Medical College, Calcutta, to the Inspector General of Civil Hospitals, Bengal, 9 August, 1890, 49-50.
fatal night.\textsuperscript{93} The judicial proceedings, nevertheless, revealed that on 15 June (1889), at about 1.30 A.M., the house was aroused by the cries of the girl. Phulmoni was found lying on a \textit{charpoy} bleeding profusely, her husband standing beside her. After thirteen and a half hours of bleeding the girl died.\textsuperscript{94}

To deal with the subject, the council opined, ‘even if the case of the unhappy child Phulmoni Dossee had not brought into discussion’, the time was favourable, where ‘action appears to be almost imperative’\textsuperscript{95} Even at this favourable time, the colonial government was faced with a difficult decision, considering on the one hand, the difficulty in legislating on matters like marriage, and on the other, the weight of medical opinion regarding the fatal outcome of early consummation. Defending the need for a new legislation, a section of the officials argued that the provisions against rape in the Indian Penal Code were insufficient. First, the age of ‘statutory rape’, fixed by the Code, was ten years. Sexual intercourse with a girl under ten years, with or without her consent, by any man, would per se constitute rape. Secondly, in case of women over ten years of age, sexual intercourse against her will, or without her consent, or if consent was obtained by threat of death or hurt, would constitute rape. But none of these applied if the perpetrator was the husband. Clearly, women’s ‘will’ and ‘consent’ regarding sexual intercourse were to be disregarded within marriage.\textsuperscript{96}

This was not an unusual provision, borrowed from contemporary English law. The recognition of ‘marital rape’ was still a century away. For nineteenth century British officials in India, however, the absence of a provision for marital rape caused special problems in conjunction with the practice of child marriage and early consummation. The Age of Consent legislation was meant as a highly limited instrument: neither encroaching on the custom of child marriage nor interfering with the husband’s marital rights in general. The limited aim of the Act was to protect girls from consummation of marriage.

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\textsuperscript{94} NAI, Home-Judicial, January 1891, proceeding no 35, Extract from the ‘Indian Medical Gazette’, December 1890, 57-58.
\textsuperscript{95} Ibid, proceeding no 11, from W.J. Simmons, the Honourable Secretary, Public Health Society of Calcutta to the Chief Secretary to the Government of Bengal, Calcutta, 26.
\textsuperscript{96} Ibid, proceeding no 36-40, Resolutions recently adopted by a meeting held for the purpose of discussing the subject of infant marriage and other cognate questions, Explanatory Statement, Infant Marriage, 60.
\end{flushright}
for two additional years, thus setting the age of statutory rape at under twelve, rather than
under ten, and including the husband within the definition.

Consequently, on 9 January 1891, Sir Andrew Scoble introduced the Bill in the
Legislative Council, raising the age for legitimate sexual intercourse with girls from ten,
as fixed by the Indian Penal Code in 1860, to twelve. Henceforth, the consummation of
marriage by the Hindu husband prior to the wife’s attainment of twelve years was to be
regarded as statutory rape. A violation of this age limit was a criminal offence under the
Bill. The Bill nevertheless had a wider objective. To check the sexual exploitation of
native women within and outside marriage, the Bill was designed for the protection of
both wives and prostitutes, below the age of ten. The Age of Consent Bill equated sexual
cohabitation with a child-wife and sexual transactions with a minor prostitute.97

However desirable the reform on ‘the age of consummation’ may have been from
every point of view, its implementation was attended with some difficulty. Scoble’s letter
pointed out that even among those in favour of raising the age, there was fear of police
interference in enforcing the law. ‘It is said that as rape is a cognizable offence, for which
a police officer may arrest without warrant, the proposed change in the law would lead to
much vexatious action and black-mailing, on the part of the police, whereby respectable
families would be seriously harassed and annoyed’.98 Hindu husbands, hitherto enjoying
full and unhindered proprietary rights over the body of the wife, were unwilling to accept
any curtailment of their rights. W. J. Simmons, the Honorary Secretary to the Public
Health Department, observed that law-enforcers would be faced with the ‘silent but
coercive force of traditions, the sanctions of immemorial customs, and the misunderstood
injunctions of the religious systems’.99 Sir Thomas Strange argued, ‘by no people is
greater importance attached to marriage than by the Hindus’. Marriage was a matter,
‘with which no government could meddle, and ...ought to meddle’.100 Ramesh Chandra
Mitter, an Indian member of the Council, opposed the Bill on the ground that it would

97 NAI, Home-Judicial, January 1891, proceeding 1, Proposal to Raise the Age of Consent, Diary nos 1428-
1464, letter by Andrew Scoble to the Honourable Member, C.J.L. 16 December 1890, 1-9.
98 Ibid.
99 Ibid, proceeding no 11, from W.H. Simmons, Secretary to the Public Health Society of Calcutta, to the
Chief Secretary to the Government of Bengal, Calcutta, 25-35.
100 Cited by Simmons, ibid.
cause widespread discontent in the country. The Act would thus ‘cause more harm than good’.\textsuperscript{101}

Thus, even while medical science and physiology could have justified an immediate imposition of Age of Consent, the officials, both indigenous and European, procrastinated. Babu Nobin Chunder Sen, Deputy Magistrate of Chittagong, suggested that instead of raising the Age of Consent, the Government should declare ‘either marriage before puberty’ or the bringing of ‘husband and wife together before the latter had reached her puberty’ as a criminal offence. However, Sen doubted, ‘How will the law find out an offence committed in the strict privacy of the zenana?’ Except the cases of fatal accidents, the law would be powerless to reach offenders. Finally, he said, ‘a law for dragging our women to police station and courts of law’, ought not to be lightly passed at the sole bidding of a Parsi agitator, ‘who knows little about the inner working of the Hindu society’.\textsuperscript{102} In his response, N.K. Bose deprecated Government interference in marriage. He said, ‘the custom has \textit{grown} (emphasis added) among the people and is considered a great restraint on immoral conduct’.

Some officers were more sympathetic to legislation this time round. C.G. Allen, Magistrate of Noakhaly, suggested that sexual intercourse with a woman, above the age of 10 and below the age of 11, should be punished with imprisonment for a term, which may extend to 2 years, or with fine, or both. While Hindu \textit{Shastra} enjoined a Hindu father to marry off his daughter at the age of ten, he said, after marriage the mothers and mothers-in-law took delight in egging on the little wives and encouraged them to sleep with their husbands.\textsuperscript{104} D. R. Lyall, the Commissioner of Chittagong, feared that a rise in the Age of Consent was likely to interfere with the Hindu religion. He rather wanted that \textit{garbhadhan} or the second marriage ceremony should be given a wider publicity and the government should enforce it legally. If such a law declared cohabitation before the

\textsuperscript{102} NAI, Home-Judicial, January 1891, proceedings nos 14-15, from Baboo Nobin Chunder Sen, Deputy Magistrate, Chittagong, to D.R. Lyall, Commissioner of the Chittagong Division, Feni, 20 September 1890, 41.
\textsuperscript{103} Ibid, proceeding no 31, referred in the letter from A.W.B. Power, Officiating Commissioner of Dacca to the Chief Secretary to the Government of Bengal, Dacca, 14 October, 1890, 53-54.
\textsuperscript{104} Ibid, proceeding nos 14-16, from C.G. Allen, Magistrate of Noakhaly to the Commissioner of the Chittagong Division, Noakhaly, 21 September 1890, 41-42.
second marriage as rape, and if persons who encouraged such cohabitation were treated as abettors of rape, 'the system would die a natural death'. However, Baboo Obboy Chunder Dass was ‘decidedly in favour’ of an Age of Consent. While, customarily, the performance of the ceremony called garbhadhan or second marriage still continued, child-wives were allowed or sometimes even forced to go to their husband’s beds long before their menstruation or the ceremonial garbhadhan took place.

The official discussion was carried out primarily on the basis of physical examination of the body of child-wives who died in the act of coition. The post-mortem of Phulmoni, who died after thirteen hours of profuse bleeding, brought to light the premature body, the sexual incapacity and the underdeveloped reproductive organs of a child-wife. Facts found on the post-mortem detected a clot in her underdeveloped vagina. Hutchins, a member of the Governor-General’s Council, concluded that ‘either the private parts had undergone artificial enlargement with a view to early consummation or that, she had been subjected repeated acts of intercourse’ before puberty.

The Age of Consent debate was, in fact, the most publicly conducted discussion on female sexuality in India. Where ‘personhood’ was equated with ‘physical existence’, argues Himani Banneiji, the body of the woman became the central point of discussion. There was almost no reference to any volition or moral agency of the girl and/or the woman. The ‘Hindu’ woman was seen as a mere sexual object for Hindu males, an instrument of his use and a vessel for biological reproduction. Either as a wife or as a child prostitute, maintains Bannerji, the Hindu woman constituted a site for the extension of the state apparatus of criminal and medical jurisprudence.

A variety of medical and physiological contentions about sexual potency and precocity among native women were formulated during this period. The Indian Medical Gazette strengthened the belief that statistics of rape of child-wives/prostitutes were

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105 Ibid, proceeding no 13, from D.R. Lyall, Commissioner of the Chittagong Division to the Chief Secretary to the Government of Bengal, 25 September 1890, 39-40.
106 Ibid, proceeding no 12, from Demi-Official Obboy Chunder Dass to the Chief Secretary to the Government of Bengal, Calcutta, 23 August 1890, 39.
109 Banneiji, Inventing Subjects, 80.
'fortunately peculiar to India'. The native sexual practices were considered 'perverse' and 'unnatural', and the Bengalis, in particular, were identified with unnatural sexual practices. The Status of Women, edited by Dayaram Gidumal, the reformist friend and the secretary to Behramji Malabari, brought together some opinions of the indigenous and foreign doctors on the question of puberty. Physiologists and doctors who were taken as authorities on this issue commented on growth and development of female sexuality, in the context of tropical weather and an unenlightened social framework. Dr. S.G. Chuckerbutty and Dr. T. Edmonston Charles clarified further that the beginning of menstruation should not be taken to represent the marriageable age of a girl. It would be improper, said Charles, to style a girl of fourteen as a child, but then, it would be equally wrong to regard her as a woman. Before the age of sixteen, considered Dr. D.B. Smith, some parts of the osseous structure of the female body, essential for reproductive functions, were not developed.

Dr. Mohendralal Sircar, representing Bengali reformists, favoured the Age of Consent legislation.

Little fathers, little mothers! Little brides and little bridegrooms! Little widows and virgin widows! Are these to be proud of? Are these the only glory now left of the only glorious Aryan race? The little pigeons coo and woo and are happy. The whole of animal nature presents wonderful cases of sexual selection—of adult marriages—of happy couples and healthy offsprings. When will India conform to nature in this respect?

The Bengali doctor, Bolye Chunder Sen, similarly condemned the custom of his country, which allowed handing over little girls of ten and less to lustful men. In his paper 'The Nubile Age of Females in India', Dr. Sen questioned the commonly accepted idea that 'females mature earlier in this country than in colder climates'. Dr. Joubert of the Calcutta Medical Society refused to agree that tropical little girls 'ripened' early in this country. 'Actually', he said, 'it happened like ripening an immature fruit by bruising it.

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110 NAI, Home-Judicial, January 1891, proceeding no 20, Extract from the Indian Medical Gazette, submitted by Brigade Surgeon K. McLeod, Professor of Surgery, Medical College, Calcutta to the A. Hilson, Inspector General of Civil Hospitals, 19 August, 1890, 45.
111 Gidumal, Status of Women, 244.
112 Gidumal, ibid, Appendix 1, 251.
The human fruit was bruised into a spurious semblance of maturity'. At the trial of Hari Maity, the Bengali Hindu barrister affirmed that such bruising was a common custom among Bengalis with their child-wives at ten or nine, or even eight years of age.

In the debate on raising the ‘Age of Consent’, the word ‘consent’ was used in peculiar ways. While neither the state nor the community actually considered ‘consent’ to reside in the woman’s decision to permit her husband sexual access, Joubert commiserated the child-wives. He said, even ‘among animals “consent” is apparently necessary for fertile intercourse, as the immature female will not permit the access of the male if the approach produces pain… In this lies a safeguard which is not allowed to the unfortunate human child-wife’. According to Himani Bannerji, the notion of ‘consent’ was a nominal gesture towards women and girls as objects of a legal and social transaction. In reality, the Act provided the legal guardian (father or custodian) with permission to alienate his daughter’s or ward’s body to the male user as husband or client or sexual keeper, and also to initiate her pregnancy. Legal penetration or impregnation crucially depended on the determination of the ‘age’, which would provide the state with a fixed or justifiable criterion for ‘consenting’ to the guardian’s ‘consent’.

Tanika Sarkar has argued, that the legislation evidently disputed the ‘right’ of the husband to have sexual intercourse with his wife and that too at the climactic moment of cultural nationalism. The colonial state’s position on ‘consent’ came into direct conflict with the indigenous patriarchal authority that did not concede to the wife the right to express her consent. The Act empowered the alien state to monitor or to protect its weakest subject, ‘the Hindu wife’, argues Uma Chakravarti, transcending traditional caste, community control and rights of the husband.

The Age of Consent Bill constituted the Hindu wife’s body as the discursive ground between the coloniser and the colonised. Her body became the site of a struggle, argues Tanika Sarkar, in which the ‘natives’, for the first time, declared war on the very

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114 Ibid, 44-45.
115 Ibid, proceeding nos 24-27, from Surgeon-Major C.H. Joubert, Professor of Midwifery, Medical College, Calcutta to the Inspector General, Civil Hospitals, Bengal, Calcutta, 9 August 1890, 49.
116 Bannerji, Inventing Subjects, 77-78.
117 Sarkar, Hindu Wife, Hindu Nation, 244.
118 Chakravarti, Pandita Ramabai, 184-185.
fundamentals of an alien power-knowledge system.\textsuperscript{119} The Bill explicitly forged a connection between sexual intercourse and racial deterioration, as Bengali ‘unmanliness’ and ‘effeminacy’ was attributed to sexual perversity, physical deterioration, mental disability and moral debility—all linked with child marriage and premature maternity. The Indian tradition of ‘marriage of children, often with aged males’ was run down in the European medical reports for ‘physical deterioration of the human stock’. Europeans boasted further, ‘the more robust races of the world contract and consummate marriage after and not before maturity…’\textsuperscript{120}

Indigenous opponents denounced this forced linkage. While Rajendra Lal Mitra rejected Western medical science as ‘pseudo-scientific’, Babu Nabagopal (National) Mitra provided examples of Bengali men with impressive physical prowess that outdid the Europeans. In his retort, Bireshwar Pare attributed ‘the miserable state’ of Indians to the fact that they were ‘subjugated, debilitated, ignorant and poor’, while the ‘westerners are independent, mighty, powerful and learned’. ‘But’, he further argues, ‘we are not uncivilized and barbaric like the Bhil, Kuli and Santhal and other aboriginals …. We are the descendents of the Aryan race’. Then he posits the unquestionable superiority of the Aryans to the Europeans—‘who can better the Aryans in civilization, enlightenment and longevity?’\textsuperscript{121}

Locating the Age of Consent controversy within the logic of colonial masculinity, Mrinalini Sinha has argued the success of the agitation largely depended on the perception of a ‘crisis’ of Indian/Bengali masculinity with another parallel ‘crisis’ of British masculinity perceived in Britain. The politics of colonial masculinity in the consent controversy did not provide a model for a more militant nationalist politics against colonial rule, she writes. Rather, in an ambiguous fashion, it recuperated the energies of nationalism by forging a deeper complicity with a colonial agenda.\textsuperscript{122}

For the Bengali bhadralok, the Age of Consent provided a test of their political strength and groundwork for a broader nation-wide movement that culminated in the agitation against the Partition of Bengal. One conservative journal felt that the Bill would

\textsuperscript{119} Sarkar, 'Hindu Conjugality and Nationalism', 112.
\textsuperscript{120} NAI, Home-Judicial, January 1891, proceeding no 20, \textit{Extract from the Indian Medical Gazette}, 43-44.
\textsuperscript{121} Pare, 'Hindu Reeti Neeti', 185-215, translation mine.
surely get passed, as ‘the English are so very fond of women’. The movement against the Age of Consent was given an extra edge, argues Amiya Sen, when Bangabasi gave the clarion call for financial boycott of foreign goods, substituting it with self-help (atmasakti). Foreign sugar and salt came to be prohibited in ritual offerings. Sanjivani reported that there were appeals by enthusiastic campaigners to sell off government securities. Manufacture and marketing of Swadeshi goods began as Bangabasi announced the formation of a joint-stock company with one-lakh shareholders. The bulwark of the resistance against the Bill came not from intellectuals and pandits, but from petty shopkeepers, clerks, salaried middle class from town and mufassils, students and housewives, the last being one of the strongest supporters of the anti-reform group.

The Age of Consent also witnessed an impressive political alliance among Hindus and Muslims, both upholding child marriage as a mark of Indian culture and tradition. Though the Muslim members of the Viceregal Council including Nawab Ehsanullah, the influential zamindar of Dacca, supported the Bill and Muhammedan Literary Society of Calcutta observed that the Act had nothing to do with the Islamic law or Shariat, Muslim organs like Sudhakar, Ahmadi and organizations like Central National Mohamedan Association vehemently opposed the Bill. In a public meeting in Dacca, Zamindar Sayyid Golam Mostapha bellowed,

[If the Bill [is] passed into law, doctors and police men will be empowered to violate the chastity of Muslim women. Hindus may tolerate this, but Muslims will never suffer such indignity. We will ask the British, ‘who the hell are you to outrage our modesty? Get out from here. We will cut off your head with swords’.

Some members of the Muslim aristocracy like Abdul Sobhan Chaudhury of Pabna joined the protest meeting organized at the Shobhabazar Rajbati on 1 February 1891. Muntasir Mamun pointed out that apart from some orthodox and belligerent Muslims, the reaction

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124 Sen, Hindu Revivalism, 389.
of Muslims were passive.\textsuperscript{126} Amiya Sen, however, argues that though belated, the Muslim response to the Bill was more categorical in its rejection.\textsuperscript{127}

Various Muslim journals raised an alarm against the prospective Bill. On 20 July 1890, \textit{Dacca Prakash} wrote that while both Phulmoni and her husband ‘were sleeping fast at night… all of a sudden Phulmoni cried out, “I am dying”, and died immediately’. It would be improvident, asserted the paper, for the British government to penalize the whole nation on the basis of unfounded charges against a guileless husband.\textsuperscript{128} Many protestors accepted this as a denial of the facts of the Phulmoni case. In February 1891, a protest meeting was organized in Dacca, attended by several leading Hindus of East Bengal. The resolution of the President, Kunjalal Nag, cited from Parasar, Vyas, Vashistha and Raghunandan, which approved sexual cohabitation with girls after her first menstruation.\textsuperscript{129} Nag was the most strident. He gave the clarion call, ‘Rise up, Oh Hindu! Let your clamour resound from all ten sides. Let your scream shake the seat of the royal representatives and the Queen of India. Failing that, get ready to throw away the Hindu religion, social order, lineage and dignity’. He similarly exhorts the Muslims, ‘Child marriage is also in practice in your society. Just think of the danger and humiliation looming large on your daughters, sons-in-law, sons and daughters-in-law, if the Act comes to power’.\textsuperscript{130}

In Bengal, Brahmos were blamed for the Bill, even though by the 1880s, their movement had weakened. The Age of Consent Bill contained some elements of the Act III of 1872, and Brahmos were pilloried for showing the way to the Consent legislation. Indunibhusan Debi reproached, ‘Bemmos (Brahmo) have no regard for society’. According to her, these ‘blackguards and hypocrites… beguiled the foreigners into passing the Act.’\textsuperscript{131} Bengali vernaculars also ridiculed the England-returned Brahmos and other ‘go-ahead reformers of the Malabari class’ for the Age of Consent Act.\textsuperscript{132}

\begin{footnotesize}
\begin{enumerate}
\item[\textsuperscript{126}] Bangladesher Sambad, 86.
\item[\textsuperscript{127}] Sen, Hindu Revivalism, 389.
\item[\textsuperscript{128}] Dacca Prakash, 20 July 1890, Bangladesher Sambad, 92-93, translation mine.
\item[\textsuperscript{129}] ‘Sammatir Bayas Bridhi Bisayak Ainer Biruddhe Andolan Sabha’ (The protest meeting against the Age of Consent Act), Bangladesher Sambad, 104-112.
\item[\textsuperscript{130}] Ibid, translation mine.
\item[\textsuperscript{131}] Indunibhusan Debi, \textit{Ain! Ain!! Ain!!!} (Act! Act!! Act!!!), Dacca, 1890, 10, Bangladesher Sambad, 85, translation mine.
\item[\textsuperscript{132}] Sen, Hindu Revivalism, 380.
\end{enumerate}
\end{footnotesize}
The opposition to the Bill peaked in January 1891. There were protest lectures, meetings and resolutions in nearly every part of Bengal. While some five hundred pandits from Nadia, Howrah, Hooghly, Burdwan, Midnapore, Murshidabad assembled at the Calcutta Town Hall, *Barisal Dharma Rakshini Sabha, Jessore Hindu Dharma Rakshini Sabha, Nadia Hari Sabha* organized several meetings and sent resolutions to the government to annul the Bill. The largest meeting, Amiya Sen points out, was held at the Calcutta *Maidan* on 25 February 1891 where *Janmabhoomi* (The motherland), a leading nationalist journal, estimated an attendance of at least two lakhs. At Kalighat, ceremonial sacrifices and huge offerings (*Mahapuja*) were arranged at the temple of goddess Kali where tram-loads of devotees and carts carrying affluent housewives assembled.\(^{133}\)

The Age of Consent Bill produced a vague and equivocal response from the reformist camp in Bengal. The *Sadharan Brahmo Samaj* was the only exception, which supported the Bill through its organ, *Sanjivani*. Kadambini Ganguly, the first Indian woman doctor and the wife of Dwarakanath Ganguly, a foremost leader of the *Sadharan Brahmos*, petitioned the Government to pass the Bill to protect child-wives of India.\(^{134}\) But the majority of the reformists were hesitant to support the Bill. Maharani Swamamoyee, the widowed zamindar of the Cossimbazar Raj, celebrated for her charity and philanthropy, reprimanded the reformist elite who pressed the government to pass the Bill.\(^{133}\) Maharani Bibhasundari of Dighpatia held public meetings against the Bill.\(^{136}\)

In February 1891, just a few months before his death, Ishwarchandra Vidyasagar, the pioneer of the marriage reform movement, in a letter to Sir Philip Hutchins, wrote that he wished for adequate protection for child-wives, but he could not endorse the Bill. He proposed to make it an offence ‘for a man to consummate marriage before his wife has had her first menses’. He wrote, ‘as the majority of the girls do not exhibit that symptom before they are thirteen, fourteen or fifteen, the measure I suggest would give larger, more real, and more extensive protection than the Bill’. Vidyasagar considered that such a law, if it came into action, would serve the interests of humanity by giving

\(^{133}\) Ibid, 389-390.
\(^{134}\) Sinha, *Colonial Masculinity*, 145.
\(^{135}\) Ibid, 149.
reasonable protection to child-wives, and far from interfering with religious usage, enforce a rule laid down in Shastras.137

In spite of the resistance, the Age of Consent Act was passed on 19 March 1891. The Star Theatre staged the play *Sammati Sankat* (the Consent Dilemma), as its author Amrita Lal Basu named it, on 21 March, just two days after the passage of the Act.138 It satirized the medical and legal arguments in favour of the Act and sought to reinstate the sanctity of *garbhadhan*.139 The play contained a long sermon by the Sarabhouma, the connoisseur of wisdom, who defended early marriage on the ground of the racial and intellectual superiority of the Indians. On the age of sexual cohabitation of a woman, Sarabhouma undermined western medical opinion, ‘in fact, no one can predict when a mango will ripen, as it depends on its colour, smell and size’. He furnished an exhaustive list of gallant Hindu heroes born to child mothers, starting with Rana Pratap, Prithviraj, Mansingha including Raja Rammohan Roy, Ishwarchandra Vidyasagar, Dwarkanath Tagore, Rajendralal, Ramesh Chandra and many others.140

*Sammati Sankat* mocked the afflictions of an 11-year-old Rangini who regretted her early marriage. Berating conservative Bengalis, Rangini said,

If the wretched Bengalis are unable to provide any better, I will sail across to Bombay. There resides Malabari, the ardent devotee of women. He is always eager to do damage to husbands.... The Parsi has come to the land to salvage women. He will enact a law overnight to unfasten the snare tying husband and wife.141

Rangini’s dream was never to be fulfilled. The notion of infant marriage, as enjoined in Hindu dharmashastra, continued to hold sway in the public mind in the next few decades. The resistance to the Act rather produced anachronistic consequences. In 1892, in Mymensingh, a girl who refused intercourse with her husband was beaten up by her mother-in-law. In Sirajgunge, a husband killed his 12-year-old wife on the same
ground and absconded. In Dinajpore, a husband brutally raped his wife to death.\textsuperscript{142} The census figures, however, showed a downward trend in child marriages (of females) during 1881-1891.\textsuperscript{143}

The Child Marriage Restraint Act of 1930

Child marriage disappeared from the agenda of social reform for almost half a century. Emergence of several women's organizations in the 1910s, however, ensured continued debate over the issue. A series of Bills were introduced and defeated in the Legislative Assembly until in 1927 Rai Sahib Harbilas Sarda introduced the Hindu Child Marriage Bill.\textsuperscript{144} In that year, American journalist, Katherine Mayo published \textit{Mother India}, a comprehensive indictment of gender relations in India, condemning among many other practices that of child marriage. In her representation, much older men marrying infant brides stood accused of rape and murder of their 'child-brides'. Mayo's book was written on the basis of hospital records and police accounts, and attributed the racial inferiority of Indians to their sexual habits and held them unfit to rule themselves. Her report touched a raw nerve among the Indian elite. Mahatma Gandhi was stunned to learn from the Census reports of 1921 that there were over 600 brides in India below the age of one year. Gandhi began the 'Vidhwa Kunwarî' movement to campaign against child marriage.\textsuperscript{145} A section of the reformers also blamed the British government for shying away from legislative intervention. The Sarda Bill was consequently referred to a select committee to gauge the public reaction. As in the case of the Age of Consent, the Bill ratified adult marriages on biological grounds, and not as a question of individual right or choice.

Unlike in the 1890s, however, in the 1920s, women's organizations allowed women, albeit elite women, to actively participate in debates around the Sarda Bill. From all over India women campaigned in support of the Bill, and helped the passage of this otherwise unpopular legislation. The All India Women's Conference organized meetings all over the country, campaigning for the Sarda Act. Women participated at various public meetings, voicing against child marriage. It was a custom, which, they said,

\textsuperscript{142} Report from H.J.S. Cotton, Officiating Secretary to the Government of India, Home Department, Calcutta, 12 April 1892, cited in Sen, \textit{Hindu Revivalism}, 387.
\textsuperscript{143} Gait, \textit{Census of India}, 1901, VI, I.
\textsuperscript{144} Forbes, \textit{Modern India}, 85.
\textsuperscript{145} Tahir Mahmood, 'Leave the kids alone', \textit{The Hindustan Times}, 1 August 2002.
'crushed their individuality and denied them opportunities for education and development of mind and body'. Sharifah Hamid Ali of Sind and Mrs Diwan of Gujarat questioned women's socialization into the system of child marriage. While the AIWC claimed to represent all Indian women, a section of Muslim male elite threatened 'formidable agitation', if the law was passed into law. They demanded the exclusion of Muslim women from the ambit of the coming Act. Muslim women, however, challenged the 'right' of Muslim men to 'speak on their behalf'. Notably, the campaign for the Sarda Bill drew together Hindu and Muslim women in a remarkable solidarity never to be witnessed again.

On 1 April 1930, the Child Marriage Restraint Act (XIX of 1929), popularly known as the Sarda Act, came into force. The ten-member Select Committee, chaired by M.V. Joshi, recommended fifteen as the minimum age of marriage for girls, while 21 was fixed as the age of consent. The Act, in its final form, however, prescribed 14 years as the minimum age of marriage for girls and 18 years for boys. The Act also laid down penalties—short-term imprisonment and/or fine—for those responsible for its violation, leaving wholly unaffected the legal validity of marriages not conforming to the law. In Bengal, the law was vehemently opposed by various groups. Once again, the rise in the age of marriage was considered an interference with the social and religious customs of the subject population. Opposition was encountered from both Muslims and Hindus, although there was no serious agitation against it.

Ironically, the Act was countermanded by an increase in the number of child marriages. There was a 'great rush to get children married' before the Act came into force. The postponement of marriage of daughters aggravated the anxiety of many parents, who now had to maintain them for a longer period. In Bengal, Census figures reflected this anxiety in the vast increase in the numbers of both sexes returned as

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147 Forbes, ibid.
148 Ibid, 89.
149 The Sarda Act was subsequently amended thrice. The age at marriage of girls was raised to 15 in 1949 and to 16 in 1956. The Act was amended for the third time in 1978, and the minimum age at marriage was increased to 18 for girls and 21 for boys. The lowest permissible age of marriage then laid down under this Act was incorporated by simultaneous amendments into all the family-law statutes as well - the Christian Marriage Act 1872, the Parsi Marriage and Divorce Act 1936, the Special Marriage Act 1954 and the Hindu Marriage Act 1955.
150 Porter, Census of India, 1931, 202.
married at early ages. In 1931, the Bengal Census showed an increase of seven to eight times in the number of Hindu married children aged between 0-5 years, compared with that of 1921. To avoid the forthcoming restrictions on marriage, there was a great increase in the number of marriages, registered or solemnized, during the months immediately preceding the Act. In the districts of Bengal, the monthly average of minor marriages taking place during 1921-1929 was 305. In the four months from January to April in 1930, the numbers registered were 419, 1,320, 8,782 and 4,452 respectively compared with the monthly averages of 166, 382, 494 and 366 for the same months respectively. In many cases, baby girls and even children in arms were given in marriages, a trend that is illustrated in the following chart.


Speaking on behalf of all women of India, the All India Women’s Conference hailed the Act as a ‘great achievement’. In reality, however, the Act remained a dead letter. Child marriages continued to take place even after the passage of the Sarda Act.
Conclusion

From Sati to the Age of Consent, the social reform campaigns of the nineteenth century, Tanika Sarkar argues, revolved round the question of the woman's death. While both these issues related to the violent destruction of the woman's body, the widow remarriage program was centred on her sexual death. The death of a girl wife, in the Age of Consent, underlined the extent to which the Hindu community had marked the woman as the vehicle of cultural authenticity.151

The Age of Consent controversy has always been seen as the turning point in the reformist discourse. As the renaissance dreams turned sour, the movement against the Act signalled a new nationalism with aggressively Hindu overtones. The Age of Consent debates rewrote the rhetoric of social reform turning on marriage. The narrative of Hindu marriage, argues Tanika Sarkar, could no longer use the rhetoric of love; it had to be rewritten in terms of force and pain. Conjugality provided a variety of registers to test, confirm and contest the Hindu's political domination.152 During the reformist era, widows could remarry; infant kulina wives could repudiate their marriage. The pressure of upbeat nationalism, at the end of the century, closed these emerging possibilities. There remained, says Tanika Sarkar, 'no gradations within marriage'. 'The politics of women's monogamy' became 'the condition of a possible Hindu nation'.

The cultural symbolism of the nationalist era made an explicit link between sacrifice and power, which were woven together with the notion of 'discipline'. The subjection and regulation of widow's sexuality was glorified as the ideal amalgam of the three—sacrifice and discipline as the path to spiritual power. A woman's devotion to her husband was extended beyond death. Pativrata (devotion to one's husband) became the vital component of regulating the feminine self. The anti-reformers proclaimed that 'pativrata' had to transcend viable conjugal life. It should work even when the pati (the husband) was not alive'.153 Brahmacharya or life-long ascetic exercise became the mark of sacrificing widowhood, the power of a potent nation.

153 Nayaratna, Bidhaba Bibaha, 113, translation mine.