“The Restitution of Conjugal Rights” – making a case for international feminism

ABSTRACT: This article discusses how Indian and British women in the late nineteenth century began a campaign against child marriage. An analysis of the 1888 case Dadaji versus Rukhmabai, a trial of ‘restitution of conjugal rights,’ illustrates how the genesis of international feminist campaigns against the premature sexualization of children arose around this issue. Conventional historiography has omitted the more radical voices of nineteenth century feminist activists, in particular those voices drawing attention to and resisting male sexual practices protected by religion culture and the law. I reintroduce some of the voices of nineteenth century Indian feminists Pandita Ramabai Sarasvati and Rukhmabai in order to demonstrate how their involvement in controversies to do with child marriage, consent, and ‘conjugal rights,’ brought women’s subordinated status into international focus.

In mediæval England the condition of women was of deep degradation. Wives were bought and daughters sold for many hundred years after the introduction of Christianity. Although England was christianized in the fourth century, it was not until the tenth that the christian wife of a christian husband acquired the right of eating at table with him, nor until the same century did a daughter gain the right of rejecting the husband her father might have selected for her. While the sale of daughters was practiced in England for seven hundred years after the introduction of Christianity, we note that by the ancient law of India, a father was forbidden to sell his daughter in marriage, or receive the smallest present therefor [sic]. [1]
Introduction

In 1888 child marriage was understood in association with traditional and religious customs, and as mostly occurring in countries such as India, Egypt and various African countries. However, the above quotation by nineteenth century American feminist and suffragist, Matilda Joslyn Gage, suggests that the practice of child marriage was widespread and central to the sexual exploitation of girls and women in western nations long before it was taken up as an international issue. In her criticism of patriarchal religious practices, she demonstrates that child marriage had existed for centuries in England under christian law.[2] She argues that male control of conjugal rights underpinned the idea of girls and women as property of men in a generic sense.

In the nineteenth and early twentieth centuries, Indian, British and American feminists fought against various forms of childhood sexual assault including child marriage. Central to the feminist struggle was getting child marriage recognised as a problem in connection with conjugal culture and male sexuality. For example, in 1888, Indian feminist Pandita Ramabai Sarasvati argued that marital laws favoured men whether under the ancient hindu codes of Manusmitri, or under christian British rule in India. [3] Ramabai's critique of patriarchal law and religion as protecting conjugal rights, coincided with the emergence of international feminist involvement in the campaign to end child marriage. The feminist challenge to conjugal rights centred on the problem that the age of consent at the time was age 10 for girls.

According to feminist historian, Padma Anagol-McGinn, the ‘Age of Consent’ debates in the 1880s impacted on and contributed to the beginnings of international feminist social reform movements already in force against the practices of sexual violence in child marriage in India and child sexual abuse in Britain. [4] [5] [6]

I
suggest in this article that the recognition of male sexual privilege as systemic, existing at the expense of women’s rights and autonomy in the control of their bodies, was made apparent through persistent and strategic feminist intervention in legal and parliamentary debates on ‘consent.’ My central argument is that the patriarchal institutions of religion and the law, in Britain and in India, contributed to a tradition of masculine power that relied upon men’s conjugal dominance of girls and women and undermined feminist challenges to eliminate child marriage.

A feminist analysis of the 1888 case Dadaji versus Rukhmabai, a trial of ‘restitution of conjugal rights,’ illustrates the genesis of international feminist campaigns against the premature sexualisation of children. In India and in Britain, feminist intervention in the Dadaji Bhikaji versus Rukhmabai case contributed to changes in social attitudes challenging the cultural defence of child marriage. [7] The ensuing controversy over ‘conjugal rights’ brought ‘child marriage’ into international focus. Central to my analysis is the feminist approach of Padma Anagol-McGinn in her article “The Age of Consent Act (1891) Reconsidered: Women’s Perspectives and Participation in the Child-Marriage Controversy of India”. [8] Anagol-McGinn has identified second wave feminist scholarship of the 1970s as responsible for addressing the ‘absence of gender’ in the question of child marriage. Prior to the 1970s Anagol-McGinn claims that a ‘gender analysis’ was excluded from literature on the ‘Rukhmabai case’. [9] In her research, Anagol-McGinn is representative of a current resurgence of feminist scholarship intent on reintroducing women’s political voices into the literature of the ‘Age of Consent’ debate in India.
Pandita Ramabai Sarasvati (1858-1922) was one political voice active at the time of the Rukhmabai case, and important for her critique of hindu religion as a root cause of child marriage. [10] In addition to Anagol-McGinn’s study on Pandita Ramabai, I also draw on the work of historian, Uma Chakravati. Her insightful article, “The Myth of ‘Patriots’ and ‘Traitors’: Pandita Ramabai, Brahmanical patriarchy, and militant Hindu Nationalism,” demonstrates the impact of class, caste, gender and religion in obstructing “proto-feminist” work in India in the last quarter of the nineteenth century. [11] Chakravati’s use of “proto-feminist” as a description for Pandita Ramabai’s work against child marriage suggests that Ramabai was a pioneer among Indian feminists.

Ramabai publicly criticised patriarchal religion and culture as causal factors of child marriage, at a time when it was dangerous to do so, and in a manner that brought attention to what became an international controversy about the issues of ‘conjugal rights’ and ‘child marriage’. Chakravati places Ramabai’s life and work “at the intersection of religion, nation and gender.” [12] More recently, feminist historian Meera Kosambi, has newly translated Ramabai’s manuscripts and letters, thus bringing greater accuracy and detail to the political controversy. Kosambi argues that Ramabai’s contestation of the hindu religion and patriarchal power, “extracted a heavy price in her being socially marginalised and erased from the official histories of Western India.” [13] Until recent feminist scholarship and a resurgence of interest in nineteenth century women’s rights activism, Ramabai’s feminist achievements lay marginalised in archival crypts. Later in this article and in order to demonstrate Indian women's critique of child marriage at the time of the Rukhmabai case, I will introduce Pandita Ramabai's book, The High Caste Hindu Woman, in which she
explains the gender inequality underlying child marriage. Ramabai's critique of religion was an important political tool for raising the consciousness of women, in India and abroad, on the issues contributing to their subordination. Political scientist Kumari Jayawardena has referred other nineteenth century feminists and their manuscripts disappearing from history due to the controversies caused by their agitation against patriarchal dominance. [14] She cites as an example of such a disappearance, the work of nineteenth century feminist Tarabi Shinde, who wrote a book called *The Comparisons of Men and Women*. [15]

In addition to the absence of gender analysis, Canadian political scientist Deborah Stienstra, in her book *International Women’s Movements and Organisations*, claims that largely, conventional historiography has omitted the importance of the contribution of international feminists to social change in the late nineteenth and early twentieth centuries. [16]

Despite the silence of histories of the period 1840-1920, women were actively organising at the international level. Individual women kept contact with women in other countries about suffrage for women and peace activity, but women also organised international groups to bring about changes in national and international structures. These groups responded to changes in the world around them and challenged the assumptions around gender embedded in that world. [17]

According to Stienstra, the overarching debates of peace and suffrage dominated the focus of international feminist activism. Stienstra's analysis of women's movements
primarily concentrates on ‘first world’ women from ‘monied classes.’ She claims that due to the powers of colonisation the genesis of international feminism was mainly modelled on western ideology. She argues that in the late nineteenth century, women’s groups failed to make significant attempts to enable ‘third world’ women to participate in, for example, campaigns against ‘white slavery’. [18] The International Congress of Women (ICW) was the first formal women’s organisation, established in 1888 in Washington, drawing together middle and upper-class women. [19] Indian women were representatives at the first meeting in 1888 together with women from Europe and North America. [20] By 1913 the ICW had six million members from 23 countries, including India. According to Stienstra, the ICW’s platform included equal access to education and work for women. [21] Suffrage issues were deliberately omitted from the ICW’s agenda, which meant that women’s unequal civil status underpinned any quest for social reform. The ICW did not engage with the politics of women’s and girls’ sexual subordination. Stienstra’s history of women’s international feminist activism is a valuable record. However, in excluding the politics of sexuality in her analysis of women’s movements, Stienstra overlooks the history that within and outside India, Indian and English feminist activists in the nineteenth century followed a more radical and difficult path in their campaigns against the traditional practice of ‘early marriage.’ In Britain, the parallel campaign to ending child marriage was the campaign to end childhood sexual abuse and incest. Both campaigns involved feminist action that publicly challenged men’s sexual practices. In the following discussion of the “Dadaji Bhikaji versus Rukhmabai” case I argue that the concept of prioritising men’s conjugal rights was uppermost in the minds of the judiciary.

“Dadaji Bhikaji versus Rukhmabai:” Testing Conjugality
The ‘Rukhmabai Case,’ or the ‘case for restitution of conjugal rights’ as it came to be known in the late nineteenth century, brought into high relief the problems associated with enforced sexual ‘consummation’ and its results on prepubertal girls in situations of early marriage. [22] Rukhmabai was married at the age of eleven to Dadaji Bhikaji who was then nineteen. They never lived together during their eleven-year marriage. Rukhmabai’s childhood was spent at home with her mother, several siblings, and her stepfather, prominent Bombay physician Dr. Sakharam Arjun. [23] Rukhmabai wrote that she did not want to live with Dadaji because of his immoral pursuits, his refusal to educate himself and, due to his ill-health, his inability to provide for her material needs. [24] [25] When, as an educated woman of twenty-two she refused to comply with Dadaji’s demand of cohabiting with him, he sued through the Bombay court, attempting to reclaim Rukhmabai as his wife on the grounds of restitution of conjugal rights. [26] [27] [28] [29] Meera Kosambi argues that “the controversy which raged around the case was a confrontation between the largely traditional society and the reformers who sought to introduce the Western values of choice and compatibility in marriage which presupposed adult marriage.” [30]

The verdict, handed down by Justice Pinhey in the Bombay High Court on September 21, 1885, rescinded Dadaji Bhikaji’s claim to restitution of conjugal rights over his wife Rukhmabai. As the marriage had never been consummated in the first place he argued there could be no ‘restitution’ as such. In 1884 in Britain, the ‘Matrimonial Causes Act’ had been repealed which meant that legally, the ‘restitution of conjugal rights’ no longer existed under British law. In India there was no equivalent legislation, but India as a British colony was under British judicial influence and in
any case the concept of the importance of conjugal rights took precedence even though the law had been repealed. Anagol-McGinn has argued that the question of the consummation of the marriage was of material importance to the restitution of conjugal rights. [31]

Restitution of conjugal rights was not part of Hindu law but an importation from English ecclesiastical law. By the working of this law Indian women lost their traditional right (operative under customary law) whereby, in case of disagreement with the marital arrangement, they could choose to remain with their parents or guardians. [32]

The underlying assumption of Justice Pinhey’s decision was based on the idea of marriage as a form of social contract where consent to ‘conjugality’ was founded on the prerequisite that marriage partners had to have attained ‘adulthood’ in order for consent to be possible. In the event that the marriage occurred when Rukhmabai was a child, Pinhey argued that consent was out of the question and that ‘restitution of conjugal rights’ was a “misnomer.” [33] Sudhir Chandra, commenting on the judgement recorded in the Indian Law Reports, indicates Pinhey’s closing address was more of a moral plea against ‘child marriage:’.

[I]n the view of the law which I take, I am not obliged to grant the plaintiff the relief which he seeks, and to compel this young lady of twenty-two to go to the house of the plaintiff in order that he may consummate the marriage arranged for her during her helpless infancy. [34]
Although the decision was against Dadaji, Pinhey’s phrase ‘the relief which he seeks,’ demonstrates the common understanding between men, that within marriage laws a woman’s role was to be sexually available for her husband. Dadaji Bhikaji, exhibiting the same notion, was confident that his claim upon Rukhmabai’s body remained his entitlement within the hindu marriage tradition and the associated codicil that bequeathed girls and women as property to men through systems of child marriage, dowry and sati. Consequently, he applied for costs and mounted a court appeal against Justice Pinhey’s decision. [35] [36] [37]

The result of the appeal, tried by yet another British national, Justice Farran, was that Pinhey’s decision was overturned. Farran’s pronouncement demanded that Rukhmabai return to her husband within one month or undergo six months imprisonment. [38] At this point, the outcome of a trial that intended to send a woman to prison on a moot point of law risked becoming an international incident, and was already an embarrassment for the imperial judiciary. Nevertheless, Rukhmabai’s continued public refusal to cohabit with her husband was a direct threat to her freedom. She understood that the concept of ‘conjugal rights’ was strongly embedded in patriarchal law, and feared being sent to prison if she were to be seen as flouting the law. While awaiting the outcome of yet another appeal against her prison sentence, she wrote a letter to her friend and supporter, Pandita Ramabai Sarasvati, expressing the fear of her impending incarceration.

My dear friend, I shall have been cast into the State prison when this letter reaches you: this is because I do not, and cannot obey the order of Mr. Justice Farran. There is no hope for women in India, whether they be under Hindu
rule or British rule; some are of the opinion that my case so cruelly decided, may bring about a better condition for women by turning public opinion in her favor, but I fear it will be otherwise. The hard-hearted mother-in-law will now be greatly strengthened, and will induce their sons, who have for some reason or other, been slow to enforce the conjugal rights to sue their wives in the British Courts, since they are now fully assured that under no circumstances can the British government act adversely to the Hindu law (Rukhmabai’s letter to Ramabai, March 18, 1987). [39]

Justice Pinhey, according to Chandra, was outraged at Farran’s overturning of his judgement. Pinhey’s comments to The Times of India left no doubt of his moral affront at Dadaji’s seemingly successful petition in claiming Rukhmabai’s body as his personal possession, as though she were livestock. Pinhey argued that “[w]hen the plaintiff found that the young lady was unwilling to share his home, he should not have tried to recover her person, as if she had been a horse or a bullock. [40] Pinhey’s comment to the press showed less restraint than his legal summation, revealing a more adamant stance on the decision of consent as necessarily mutual, and that an outcome denying Rukhmabai’s consent would result in revoking any possibility of rights of personhood and autonomy. Historian Antoinette Burton, in her account of the trial, has expressed the situation between Pinhey and Dadaji as, “the colonial native and the English judge who faced each other off over the body of the Indian woman.” [41] After numerous appeals, Rukhmabai mounted a final challenge to the Privy Council of England. Dadaji offered to settle out of court if Rukhmabai paid him out. Upon receiving 2000 rupees as a settlement from Rukhmabai, Dadaji withdrew his claim. [42] [43]
Sudhir Chandra’s article, “Rukhmabai: Debate Over Woman’s Right to Her Person”, claims that Pinhey’s comments at the time fuelled a massive media debate in England and British India, with the ‘Anglo-Indian press exultant at the proven moral superiority of the British legal system, and the native press alarmed at the threat of socio-cultural subversion of Hindu family and society’. [44] The Anglo-Indian position, backing Pinhey's commentary, was represented in the Times of India. The Native Opinion, representing Indian nationalists strongly opposed to British rule stated that Pinhey’s decision was tantamount to a “war in discussion.” [45] Chandra writes:

It was for some a bold declaration of the Indian woman’s right to personal freedom and dignity. For others it was an assault on the sanctity and integrity of Hindu marriage and family that threatened to turn the whole society upside down. [46]

Chandra’s article reveals that detailed debates conducted in the press of the day were largely argued and controlled by male publishers. Reports, usually in opposition to each other, adopted either the Indian reformist position, or the traditionalist position. Traditionalists wanted to uphold Indian marriage cultures, untainted by imperialist legal intervention. Behramji Malabari is most quoted by conventional historians for his role as the leading reformer against child marriage and enforced widowhood. According to Meera Kosambi, Malabari’s pamphlet entitled “An Appeal From The Daughters of India,” targeted the British public, in particular British women. [47] Kosambi explains that the pamphlet was responsible for the formation of a committee
of “British elite concerned enough to take active steps in the matter.” [48] Following on from Kosambi, Burton’s article casts Malabari as the most vociferous advocate for advancing the Age of Consent Act. [49] She claims that in 1884, Malabari, a Parsee reformer and Bombay journalist, published his reform manuscripts, “Notes on Infant Marriage and Enforced Widowhood.” He also “championed Rukhmabai’s case not only in Bombay but in Britain as well.” [50] Chakravati has pointed out that Malabari’s tactics for social reform proved too radical for most reformers and defenders of custom and tradition. [51] Apparently his descriptions of the personal tragedies resulting from enforced widowhood, his suggested punitive measures for young men who forbad their wives’ access to university entrance, and his recommendation to introduce school text books in order to illustrate the evils of early marriage received lukewarm attention from reformers and Governor-General Ripon’s government. [52] Kosambi has also argued that Malabari, as an outsider to the Bombay Presidency, and as a non-hindu, received mixed support. [53]

Unlike Burton and Chakravati, Padma Anagol-McGinn argues that Malabari’s “Notes on Infant Marriage and Enforced Widowhood” were representative of the modernising discourse of liberal men. She claims that Malabari’s ‘Notes’ primarily protected men’s social benefits rather than targeting girls’ and women’s interests. According to Anagol-McGinn, Malabari’s ‘Notes’ suggested that child marriage should be addressed purely on economic grounds of over-population, poverty and public health. [54] He publicised the idea that the consequences of child marriage contributed to
[a] too early consummation of the nuptial troth, the breaking down of
constitutions and the ushering in of disease. The giving up of studies on the
part of the boy husband, the birth of sickly children, the necessity of feeding
too many mouths, poverty and dependence; a disorganised household leading
perhaps to sin. [55]

However, if we look at the original transcript of his notes, in his appeal to the
government, he upholds the laws favouring the continuation of conjugal rights for
men. He writes, “I would not propose a legal ban to be placed upon it.” [56] Anagol-
McGinn claims that as early as the 1890s, Malabari contextualised the child marriage
controversy within liberal and imperial discourse which focused on management of
the nation's health and overarching population ideas. Inasmuch as he claimed to want
an end to child marriage Malabari prioritised the importance of upholding conjugal
rights and in so doing marginalised the work of ‘proto-feminists’ intent on ending
child marriage.

Pandita Ramabai’s correspondence with Dorothea Beale on 22 May 1887 sums up the
‘proto-feminist’ position, as a political position, that was on trial with Rukhmabai:
“They [the government] have promised to please the males of our country at the cost
of women’s rights.” [57] Throughout the trials, Rukhmabai, using her pseudonym “A
Hindu Lady”, wrote letters to The Times of India protesting the harms of child
marriage. There are various interpretations of whether the impact of Rukhmabai’s
writings on child marriage contributed to social reform. Although the government
refused to legislate against child marriage in 1886, the Age of Consent Act was
passed shortly after the Dadaji versus Rukhmabai case. Interestingly, Antoinette
Burton has argued that the British response to Rukhmabai’s articles in the British press did little to advance her cause, but resulted in turning the story of her trial into a controversy over female virtue. [58]

As she did in Bombay, Rukhmabai used the press in Britain to author her own explanations of what her case signified, what was flawed about the Hindu marriage system, and what should be done to secure socioeconomic emancipation for Indian women. The gendered critique of both imperial rule and indigenous patriarchy that she produced for the English reading public meant that in this debate about the fate of empires and civilisations at least, the speech of an Indian woman had to be reckoned with. [59]

Burton does not engage with specific issues raised by Rukhmabai concerning the subordinated status of girls and women in marriage. In contrast to Burton, Anagol-McGinn demonstrates that Rukhmabai made a clear contrast between the status of a ‘girl-wife’ and that of a ‘boy-husband’. [60] “Men, she argued, protected the interests of the male child, whether it was over the right to education or re-marriage, and actively connived in prohibiting the mental development of women.” [61] Tanir Sarkar has pinpointed Rukhmabai’s protest as the catalyst that brought the idea of sexual abuse within Hindu child marriage into international accountability. “[Rukma Bai]’s action violently foregrounded the sexual double standards and made a mockery of the notion of the loving heart of the Hindu conjugality.” [62] Sarkar describes the case as instrumental in “rewriting the narrative of pleasure in the language of force.” [63] The ‘narrative of pleasure’ described by Sarkar, is the pleasure associated with the construction of male sexual practice of penile penetration at any cost to girls or
women, disguised within a utopic vision of religious tradition as cultural practice and further protected by the law. The next section explains the legal protection of men’s conjugal rights in the instance of marital rape.

_Till Death us do Part?_

Patriarchal control of women’s sexuality was central to the controversy over national identity and the Age of Consent debates in India. Tanikar Sarkar’s article, “Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child-Wife”, points out that constructions of hindu conjugality were central to militant nationalism. [64] Dagmar Engels argues that protecting the idea of christian conjugal rights was central to the intervention of British imperialists. [65] Sarkar, like Uma Chakravarti, has claimed that the publicity revealing the sexual torture of girls as a national phenomenon highlighted brahmanical patriarchy as “one of forced and absolute domination of upper caste, male standards, [and] not one of universal reason leading towards freedom and self-determination for the dispossessed.” [66]

In addition to naming brahmanical patriarchy as an overarching influence, Anagol McGinn has pointed out that “liberals and conservatives alike argued that women themselves were active proponents of the institution of child-marriage and opposed all reform.” [67] Traditionalists and conservatives adopted ‘woman-blaming’ as a political device in defence of criticisms of child marriage. ‘Woman-blaming’ as a political device that also protects male sexual practices from accountability is commonly used today in defence of men’s participation in prostitution. [68] In a similar manner to the privileging of men’s access to women in prostitution, ‘woman-
blaming’ was used as a smoke screen for men’s sexual involvement in cases of child marriage. Anagol-McGinn gives as an example, the writings of Tirmal Rao Venkatesh, a traditionalist who claimed child marriage was a recent phenomenon, owing “entirely to the whims of females, belonging to rich families, who not only put up, but compel their male members to bring about infant marriages.” [69] Moreover, Venkatesh claimed that “infant marriage ceremonies” were carried out, not for sexual consummation, but “for the sake of enjoying the fun and pleasure of going through the ceremonies attendant upon such marriages.” [70] Anagol-McGinn claims that so-called ‘reformers from within’ India were the “chief culprits” in blaming women for continuing the practice of child marriage. According to Anagol-McGinn they argued that,

women in India were conservative by nature, that they imbibed the claptrap of Hindu religion more effectively than men, first in their parents’, and subsequently in their in-laws’ home, and that by the time they reached middle age they personified orthodoxy itself. Therefore legislation would make no difference and child-marriage would only disappear with modernization. [71]

In the late nineteenth century feminists had their own agenda in opposition to ‘woman-blamers.’ In arguing that child marriage was a form of sexual slavery, feminists such as Krupabai explained that women had been subjugated by patriarchal religion and the law for centuries and that “man-made conditioning could not be wiped out overnight.” [72] Krupabai claimed that hindu men jealously guarded their rights through the connivance of brahmanical priests, with men treating women as “mere appendices to their own great selves.” [73] Religious laws protected men’s
sexuality and as Krupabai has suggested, men were keen to protect conjugal rights whatever the religion. In addition to constructing women’s sexual subservience, patriarchal power depended on women being intellectually subordinated. An educated woman was not welcome because “The fact that of [sic] his wife being in any way above him will be gall-wormwood to his inflated self-satisfied nature” [74]

Unlike Rukhmabai’s escape from marital rape, other young girls were not so fortunate. In 1890, “Phulmonee, a girl of about ten or eleven was raped to death by her husband Hati Mari, a man of thirty-five.” [75] Wilson, an English judge, exonerated Hati Mari on the basis that despite medical evidence to the contrary, he denied having intercourse, and that in any case, Phulmonee was ‘above the age of consent.’ [76] Tanika Sarkar has argued that the mounting medical evidence of physical atrocities suffered by young girls as a result of rape before the onset of puberty did not directly deter the judiciary in handing down light sentences. Importantly, Sarkar has disclosed the judge’s genuflection to male conjugal rights as taking precedence over homicide.

The law itself was shaped so as to preserve custom as well as the male right to the enjoyment of an infantile female body. What needs to be particularly noted here is that throughout the trial, the judge was saying nothing about a husband who was sleeping with a child, or about the custom which allowed him to do so with impunity. [77]

Unanimous evidence in support of Phulmonee’s death by rape was given by her mother, grandmother, aunt and medical doctor. As Sarkar has stated in quoting from
the medical report, “the dry medical terminology somehow accentuates the horror more than words of censure:”

A clot, measuring 3 inches by one-and-a-half inches in the vagina… a longitudinal tear one and three quarters long by one inch broad at the upper end of the vagina… a haematoma three inches in diameter in the cellular tissue of the pelvis. Vagina, uterus and ovaries small and undeveloped. No sign of ovulation. [78]

The Age of Consent legislation did not include clauses dealing with marital rape. The omission of such clauses led to the protection of male perpetrators of child rape. Whether the ‘age of consent’ was levelled at ten or twelve, or thirteen as in sexual assault cases in Britain, girls could be raped to death with impunity. The Phulmonee case unearthed many similar instances, each accompanied by medical data delineating results of sexual torture. Tanika Sarkar has suggested that with medical evidence decrying the practice of “premenstrual cohabitation,” the idea of consent itself attracted a biological mantle, centred around, and prioritising, the age at which a girl’s body might be sufficiently mature enough to admit a penis. “Consent was made into a biological category, a stage when the female body was ready to accept sexual penetration without serious harm. The only difference was in assessing when this stage was reached.” [79] With emerging institutional debates focused on defining the onset of menstruation as the official category of puberty, and as timely for the first experience of sexual intercourse, it is not surprising that the law offered protection to marital rapists. [80]
It could be argued that English judges such as Wilson and Farran handed down biased decisions exonerating perpetrators of sexual violence in Hindu marriages because they had not recognised the offences as rape. Considering the legal precedence of exonerating perpetrators of the sexual abuse of young girls in Britain a similar bias was exhibited in not recognising male sexual violation of girls as problematic. It is therefore not surprising that Farran concluded in Dadaji Bhikaji’s favour, given that under hegemonic British law, women and children suffered a similar lack of civil status as their Indian sisters. Feminists such Pandita Ramabai Sarasvati and Matilda Joslyn Gage, who were actively critiquing hegemonic power at the time, demonstrated through their writings that women and children were long considered property of men and subjected to the sexual control of their bodies through the law, religion and the state. [81] While English girls may not have undergone child marriage in the same way as Indian girls or boys, forms of child sexual abuse and child prostitution were rife in the late nineteenth and early twentieth centuries. [82] The Criminal Law Amendment Act of 1885 was only introduced after much feminist advocacy, in order to curtail the sexual abuse and prostituting of young girls by male perpetrators and procurers. [83] Furthermore, it was not until 1908 in Britain that the Children’s Act, an anti-incest Bill, was passed as legislation. Prior to the passing of the Bill, there had been no provision in British law to prosecute male perpetrators of incest. Men’s reluctance to deal with incest clauses in the British parliament motivated the feminist activism necessary to expose incest as a problem of men’s sexual practices. [84]

Inasmuch as Rukhmabai’s case was embarrassing for the British colonial government, according to Dagmar Engels, the case of Phulmonee’s death by rape and Hati Mari’s
exoneration proved doubly so. [85] Lord Lansdowne, in disagreement with the judicial leniency given to Hati Mari, used the case as an opportunity to address the embarrassment of the law that “allowed girls to have sexual intercourse at ten.” [86] The ‘embarrassment’ that Engels alludes to is the embarrassment arising out of the sudden public and international exposure of men’s participation in the sexual violation of young girls. Unmistakably, the question on the international table was “who was consenting and to what?” As political scientist Carole Pateman has pointed out, the problem was in “attempting to show how and when citizens perform this act.” [87] Pateman argues that while ‘consent’ is central to liberal democracy, consent as an ideology cannot be distinguished from habitual acquiescence, assent, silent dissent, submission or even enforced submission. Unless refusal of consent or withdrawal of consent are real possibilities, we can no longer speak of ‘consent’ in any genuine sense. [88]

With the male sex right as the basis of conjugal rights in law, the “habitual acquiescence, assent, silent dissent, submission and enforced submission,” described by Pateman as representative of girls’ and women’s inability to refuse unwanted sexual intercourse, consent was not a real consideration of the Age of Consent legislation in either Britain or India. Feminist advocates for women’s rights in India and in Britain took up the task of challenging the concept of conjugal rights in order to instigate social change.

Laws and Acts Constructing Consent
In India the Age of Consent Act of 1891 raised the ‘age of consent’ from ten to twelve, and defined ‘consummation’ under the age of ten a crime of marital rape. [89] [90] [91] The Indian Penal Code and the Code of Criminal Procedure were amended so that ‘sexual intercourse’ with unmarried and married girls below the age of twelve was punishable by ten years’ imprisonment or transportation for life. [92] Anagol-McGinn claims that the Act was an historical landmark in the social legislation of British India, ending the “long drawn-out debates on child marriage in the 1880s,” the decade in which the ‘Rukhmabai Case’ occurred. [93] The ‘Rukhmabai Case’ was debated within complex political tensions between Indian traditionalists keen to preserve practices of child marriage and Indian reformists who campaigned against sati and child marriage, with both positions overlaid by imperialist intervention in the judiciary. However, as Anagol-McGinn has pointed out, little has been written about the controversy from the perspective of the nineteenth-century feminist activists in their courageous campaign against child marriage. [94] In both India and Britain at the time, feminist investigation into patriarchal traditions challenged the cultural defences that enabled and perpetuated the premature sexualisation of children.

**International feminists: Indian and British**

Rukhmabai, Pandita Ramabai Sarasvati and Dr Anandibai Joshi were key Indian feminists in the 1880s, whose grassroots campaigns against child marriage developed into international efforts for social reform. [95] Each of these determined women grappled with, and overcame with varying degrees of success, their subordinated status as women, within the hierarchical imposition of both national and colonial rule. As a result of having been educated as young girls, each was able to negotiate the
complexities of customary caste restrictions, and in adulthood pursue their work by travelling abroad at a time when such travel was usually reserved for privileged males. At the time, Indian feminists worked in conjunction with British feminists including Dr Edith Pechey-Phipson, Lady Reay, and Millicent Fawcett. [96] [97] Anagol-McGinn has suggested, as a result of her extensive analysis of feminist writings on child marriage, that feminists networked internationally in defence of Rukhmabai. Women’s activism surrounding the Rukhmabai case was pivotal in unifying feminist opinion across caste, race and religion. According to Anagol-McGinn, “A solidarity between Hindu, Christian and Jewish Indian is discernible over the Rakhmabai [sic] case and the age of consent controversy.” [98] Women publicised their own controversial opinions on conjugal rights at a time when women were not invited to discuss legalities concerning women’s welfare. In the district of Maharashtra, “women voiced their opinions through their own press, through literary writings and letters in the Anglo-Indian press, and by enlisting the support of British feminists.” [99] Rukhmabai, using the nom-de-plume, “A Hindu Lady,” wrote her own “gendered critique” of conjugal rights, and in her first letter to the Times of India in 1885, stated that child marriage had ruined her life:

I am one of those unfortunate Hindu women, whose hard lot it is to suffer the unbearable miseries entailed by the custom of early marriage. This wicked practice has destroyed the happiness of my life. [100]

Rukhmabai gained much support from feminists in India and Britain throughout her trials and through this network challenged the institutions of marriage and religion.
International Feminism Beyond 1888

The writings, lectures and grassroots activism initiated by Pandita Ramabai, Anandibai Joshi, and Rukhmabai, contributed to a growing concern among women, within India and abroad, that child marriage resulted from patriarchal oppression and could not be excused under the rubric of religion or custom. As such, a feminist movement, in a national and international sense, had its genesis in the political activism of these and other like-minded women. Vir Bharat Talwar, a Hindi scholar and socialist, in his essay Feminist Consciousness in Women’s Journals in Hindi, 1910-20, argues that women’s groups began in the late nineteenth century, despite the fact that feminist consciousness was often subsumed within the overarching anti-colonial and nationalist movement. Talwar’s chronicle of nineteenth and early twentieth century women’s social reform organisations was researched from women’s journals and periodicals of the time, especially in the Hindi regions. Talwar, like Anagol-McGinn, claims that the consolidation of women-led groups of the World War I period resulted from women-led movements of the late nineteenth century rather than the earlier male-led reform movement. [101] Reform was approached from a woman’s standpoint rather than men’s. [102] According to Talwar, women wrote “sharp criticisms of the ego-centric behaviour of men, their privileged position in society, their disparaging attitude towards women and their predilection to exploit and rule over women.” [103] Talwar attributes the beginnings of “feminist consciousness” to women such as Pandita Ramabai, Rukhmabai, Anandibai Joshi, Forana Sorabji, Annie Jagannathan, and others who travelled abroad to study and on their return to India, organised themselves to promote women’s rights. Their
contributions to social change were brought about as a result of “crossing the bounds of familial and cultural restrictions in a patriarchal society.” [104]

For the first time women formed independent organisations. In 1886 Swarna Kumari Devi started the Ladies Association. Pandita Ramabai started Sharda Sadan in Pune in 1892 to provide employment and education for women. Ramabai Ranade started the Hindu Ladies Social and Literary Club in 1902 and Seva Sadan in 1909 in Pune. [105]

Female agitators faced resistance to social change, especially if their reform measures were interpreted as upsetting existing hierarchical family structures, which was usually the case. Raising such issues as education for women and child marriage in connection with the Age of Consent controversy were met with resistance.

One form of criticism, as Meera Kosambi has pointed out, was that feminists were seen to be imposing western values on traditional customs at a time when western customs were touted by nationalists as symbols of colonial oppression. [106] In a similar manner to Kosambi, Anagol-McGinn argues that immediate familial retribution, as well as broader social resistance often impeded individual and group feminist initiatives. Anagol-McGinn has explained how Ramabai Ranade suffered domestic abuse by family members each time she attended ‘Age of Consent’ lectures or meetings.

Ramabai Ranade recalls in an autobiography, which became a classic of Marathi literature, how about fourteen widowed aunts, cousins, and a sister-
in-law, along with her step-mother-in-law in the vanguard, formed an orthodox camp within the household to torment her when she persisted in educating herself. [107]

Anagol-McGinn reports that Ramabai was forced by her step-mother-in-law to undergo ritual cold water baths each time she went out to promote women’s education. Ramabai often fell ill as a result and in such situations of retribution often felt betrayed by her husband who, although present, did not intervene. “It was the unanimous view of women writing on this subject that, in the face of such formidable circumstances, only a very few courageous young women would continue to educate themselves.” [108]

Feminists were critical of men who had embraced modern ideas but who remained supportive of child marriage and restricted education for girls. Anagol-McGinn has cited Marathi journals in which women registered their shock and disgust at the cowardice of men and their “studied indifference” at girls’ suffering in situations of child marriage. [109] Feminists criticised so-called learned young men as hypocrites and worse than conservatives, as they “aped modern ideas only as far as dress and diet.” [110] Widespread lack of support for feminists and the unwillingness demonstrated by men in relinquishing conjugal rights was one of the issues that united feminists in a cross-cultural sense. Indian women enlisted the help of British feminists “both for guidance as well as to mobilise strength for propaganda purposes.” [111] In borrowing Chakravarti’s term ‘proto-feminist’, one could argue that British women such as Edith Pechey-Phipson, engaged in the struggle to end child marriage, were also among ‘proto’ or first feminists active on these issues.
Dr. Edith Pechey-Phipson was born in Essex, Britain in 1845, but, for most of her professional career as a medical doctor, was based in India and was active in the campaign to eradicate the practice of child marriage. As a feminist pioneer in her own right, Pechey-Phipson stormed the gates of the all male domain of Edinburgh University in October 1869 with Sophia Jex-Blake and three other women in order to gain admittance to university and the right to obtain a degree in order to practice medicine. [112] At the end of their third year of study, the women students were told by Edinburgh University that their studies had been discontinued. Pechey-Phipson completed her medical degree in Berne, Switzerland and travelled to India in 1883 to begin practicing medicine. From 1884 to 1894, she befriended and supported Rukhmabai in her defence against Dadaji and the imperial legal system. Throughout their friendship, Pekey-Phipson encouraged Rukhmabai in her ambition to become a medical doctor at a time when Rukhmabai encountered familial opposition in continuing her education. According to Edith Pechey-Phipson’s biographer Edythe Lutzker, Rukhmabai attended the London School of Medicine for Women and in 1894 returned to India with a medical degree. [113] Both women continued to fight against child marriage. [114]

In the course of her medical work in Bombay, Pechey-Phipson discovered the extent of physical damage experienced by young brides as a result of premature sexual intercourse. One argument frequently used to defend the practice of sexual intercourse in child marriage was that, due to the hot climate, girls in India reached puberty earlier than their English counterparts. [115] Pechey-Phipson's research dispelled the ‘early maturity’ myth. Edythe Lutzker quotes Pechey-Phipson reporting
to be surprised “to find that far from being precocious in physical development, they are much behind – so that an Indian girl of fifteen is about the equal of an English girl of eleven.” [116] Pechey-Phipson publicised her findings through writing articles for periodicals such as The Indian Magazine, and by delivering public lectures within India. The topics of her lectures and articles included the results of her research into the morbidity and mortality experienced by child wives as a result of premature sexual intercourse. She suggested that physiologically, women’s bodies were not sufficiently mature for child-bearing until the age of twenty, when their skeletons were fully developed. She defined the two stages of maturity as ‘nubility’ and ‘puberty’. [117] Edith Pechey-Phipson is an example of a feminist who networked with both individual women and organisations bringing international attention to the need to end sexual slavery. In addition to her friendship with Rukhmabai, she worked with Pandita Ramabai Sarasvati and Dr. Anandibai Joshi in the promotion of women’s education and against child marriage.

Pandita Ramabai and Anandibai Joshi both received independent educations and were pioneers in travelling abroad to further their studies. [118] Joshi came from a high caste Brahman family in Poona. Ramabai had already travelled extensively within India, before going first to London, then to America. In America, Ramabai gathered enough support to establish the ‘Pandita Ramabai Fund’ to collect money to be used in the campaign to eradicate child marriage and to promote education for girls. In 1886, Anandibai Joshi graduated from the Women’s Medical College of Philadelphia, as the first hindu woman to receive the Degree of Doctor of Medicine. Joshi lived in the house of Rachel Bodley during her studies but experienced ill health for the duration of her stay in America. She returned to Kolhapur to practice medicine in
1886, but died of a ‘phthisic illness’ (tuberculosis) in early 1887 in Poona. [119] Pandita Ramabai and Anandibai Joshi had corresponded for several years before finally meeting at Joshi’s graduation. Ramabai continued her feminist activism into her nineties. In the next section I suggest that Ramabai’s critique of the hindu religion was instrumental in raising awareness within India and internationally of women’s subordinated status at the time of the Age of Consent controversy.

**The High Caste Hindu Woman (1888)**

Pandita Ramabai’s book, *The High-Caste Hindu Woman*, first published in America in 1888, is a scholarly and feminist critique of sacred hindu writings, The Code of Manu.[120] Ramabai, motivated by the Age of Consent controversy, recognised the need to actively campaign against organised patriarchy which she saw as comprising collusion between Indian and British men at the expense of women. She wrote her feminist manifesto during the Rukhmabai trials, critiquing the combined power of religion, Indian law, and British law as responsible for women's oppression. In praise of Rukhmabai’s courage, she wrote:

Taught by the experience of the past, we are not at all surprised at this decision of the Bombay court. Our only wonder is that a defenseless woman like Rukhmabai dared to raise her voice in the face of the powerful Hindu law, the mighty British government, the one hundred and twenty-nine million men and the three hundred and thirty million gods of the Hindus, all these having conspired together to crush her into nothingness. We cannot blame the English government for not defending a helpless woman; it is only fulfilling
its agreement made with the male population of India. [121]

Ramabai’s incisive critique of religious scripts, a privilege usually reserved exclusively for male scholars, was revolutionary in its call to end traditional practices that diminished the status of girls and women on the basis of divine directive. Such was her erudition, and expertise in sanskrit jurisprudence, that she earned the title ‘Pandita’ (holy woman), the female form of ‘Pandit’ (holy man). The introduction to her book, written by American doctor Rachel L. Bodley, indicates that the book was initially published in Philadelphia, and not in India due to its controversial critique of religious texts. It was not reprinted in India until 1984. As Bodley writes,

these are sentences too sacred for feminine lips to utter, and that few women in India had ever heard them, much less have beheld them with their own eyes and,

My father and mother did not do with me as others were in the habit of doing with their daughters, i.e., throw me into the well of ignorance by giving me in marriage in my infancy. In this my parents were both of one mind. [122]

Ramabai’s parents recognised her intelligence and encouraged her pursuit of education. As an educated adult and without the burden of undergoing marriage in childhood, she became an educator and campaigner against child marriage, gaining international support, particularly from women’s organisations in Britain and America. Rachel Bodley writes:
With the view to improve the degraded condition of her countrywomen,
[Ramabai] formed in Poona, a society of ladies, known as the Arya Mahila
Somaj, whose object was the promotion of education among native women,
and the discouragement of child-marriage. [123]

Bodley gives an account of how Ramabai, from 1882, embarked on a lecture
campaign in the district of the Bombay presidency, advocating an end to child
marriage and promoting education for women. Ramabai based her platform for
social reform on the premise that women were subordinated by men in the home and
within civil society. Her platform for reform called for separate education for girls by
women teachers, and promoted the idea that women should be educated to become
doctors. Ramabai claimed that girls and women were too embarrassed to talk to male
doctors about their physical problems, particularly if they were to do with sexual
relations. She suggested, as a solution to women being subjected to intimidation by
male authority figures, that more women become educated as doctors. In her
dissertation to Dr. Hunter, President of the Education Commission, she explained:

Though in Hindustan there are numbers of gentleman doctors, there are no
ladies of that profession. The women of this country are much more reserved
than women in other countries, and most of them would rather die than speak
of their ailments to a man. The want of lady doctors is, therefore, the cause of
hundreds of thousands of women dying premature deaths. I would, therefore,
earnestly entreat of our Government to make provision for the study of
medicine by women, and thus save the lives of those multitudes. The want of
lady doctors is one very much felt and is a great defect in the Education of the women of this country. [124]

In the case of child marriage in particular, it is unlikely that young brides would have had the language to be able to explain their ailments, let alone be able to speak about the sexual practices that caused them.

Ramabai argued that vedic (religious) scriptures devalued girlhood and promoted son preference. From childhood, Ramabai claims that “the ancient code established the superiority of male children.” [125] As Ramabai explains, son preference benefits the father in several ways. Firstly, “Through a son he conquers the worlds, through a son’s son he obtains immortality, but through his son’s grandson he gains the world of the sun.” [126] And secondly, Ramabai suggests that the main value of daughters was as property to be sold off. Ramabai’s statement that “Fathers very seldom wish to have daughters, for they are thought to be the property of somebody else,” illustrates how male ownership of women passes from father to husband, and if the husband dies, to brothers in law. [127]

It is a universal custom among the Rajputs for neighbors and friends to assemble to congratulate the father upon the birth of a child. If a boy is born, his birth is announced with music, glad songs and by distributing sweetmeats. If a daughter, the father coolly announces that “nothing” has been born into his family, by which expression it is understood that the child is a girl, and that she is very likely to be nothing in this world, and the friends go home grave and quiet. [128]
Ramabai pointed out that girl children were killed by various methods, suggesting that female infant lives were insignificant and easily dispatched by fathers, even though such customary practices were never sanctioned by religion.

After considering how many girls could safely be allowed to live, the father took good care to defend himself from caste and clan tyranny by killing the extra girls at birth, which was as easily accomplished as destroying a mosquito or other annoying insect. Who can save a babe if the parents are determined to slay her, and eagerly watch for a suitable opportunity? Opium is generally used to keep the crying child quiet, and a small pill of this drug is sufficient to accomplish the cruel task; a skillful pressure upon the neck, which is known as “putting the nail to the throat,” also answers the purpose.

[129]

Ramabai was concerned that the practice of female infanticide had become ingrained as a cultural practice, in tacit defiance of laws governing its prohibition. In 1880, the census revealed that there were five million fewer females than males in existence. A later census in 1870 explained the disappearance of three hundred young children, all girls, from the town of Umritzar as being stolen by wolves. If a young girl survived slaughter in her infancy, Ramabai ascertains she is likely to be married before adolescence. The earlier the girl is given in marriage, the more ‘heavenly rewards’ for the parents, and a greater economic advantage for the father to be rid of his liability.
It is not easy to determine when the childhood of a Hindu girl ends and the married life begins. The early marriage system, although not the oldest custom in my country, is at least five hundred years older than the Christian era. According to Manu, eight years is the minimum and twelve years of age the maximum marriageable age for a high caste girl. [A man aged thirty years shall marry a maiden of twelve who pleases him, or a man of twenty-four a girl of eight years of age Manu ix, 94]. [130]

In a similar way to western marriage laws at the time, girls became their husbands’ property. Upon marriage, the young Indian girl, initially the property of her father, was given in marriage to her husband and his family. She thus lost all personal identity, including her name, becoming a persona non grata of sorts, in the fraternity of manhood. Not only is the young girl physically isolated, but according to Ramabai, even in cases where the “conjugal relation is brightened by mutual love, the happy wife has nothing to complain of except the absence of freedom of thought and action; but since wives have never known from the beginning what freedom is, they are generally well content to remain in bondage.” [131] She further elaborates:

The women’s court is situated at the back of the house, where darkness reigns perpetually. There the child-bride is brought to be forever confined. She does not enter her husband’s house to be the head of a new home, but rather enters the house of the father-in-law to become the lowest of its members, and to occupy the humblest position in the family. Breaking the young bride’s spirit is an essential part of the discipline of the new abode. She must never talk or laugh loudly, must never speak before or to the father and elder brother-in-
law, or any other distant male relatives of her husband, unless commanded to do so. [132]

The bondage that Ramabai speaks of leaves no room for escape. For example, while there is provision for a husband to separate from a wife, there is no reciprocal provision for women. Rather, a wife is punished, according to Ramabai, if she treats her husband with aversion or ‘fails’ to provide the required offspring.

A barren wife may be superseded in the eighth year, she whose children all die in the tenth, she who bears only daughters in the eleventh, but she who is quarrelsome without delay. [133]

Ramabai’s unpopular 1888 critique of patriarchy remained largely uncirculated in India. After the Rukhmabai case, the ‘Age of Consent’ controversy and child marriage disappeared from international discussion, until they re-emerged in the twentieth century in the period between the two world wars. In Britain, Alison Neilans in the Association for Moral and Social Hygiene, continued her work against child sexual assault. Ramabai, in India and abroad, continued her political activism and was one of the few delegates to the Indian National Congress sessions in 1889. [134] Political scientist, Partha Chatterjee, in his chapter “The Nationalist Resolution of the Women’s Question” claimed contentious issues such as child marriage, widow immolation, and the move to abolish polygamy, disappeared from the Indian political agenda at the end of the nineteenth century, in Bengal, at least. [135]. According to Chatterjee, the passionate debates over issues of ‘Age of Consent,’ while vociferous in the last decades of the nineteenth century, later became submerged within the
politics of nationalism. As part of anti-colonial activism, theatrical productions acted out cautionary tales to address the problems of westernising Bengali women. In protecting Indian identity from westernising culture, traditions harmful to women, such as child marriage and deva dasi (temple prostitution) were defended. The women’s movement was undermined by ridicule from male nationalists who accused them of imitating ways and customs of the west. [136] Kumari Jayawardena points out that the political response to imperialism was initiated late in the nineteenth century with the growth of Indian nationalism, centered on the Indian National Congress, formed in 1885. [137]

Conclusion

In this article I have reintroduced some of the voices of nineteenth century feminists in India as the first women to campaign nationally and internationally against child marriage during the Age of Consent controversy. The work of Indian feminists, Pandita Ramabai Sarasvati and Rukhmabai have, until recent feminist scholarship, received little recognition for their lifelong dedication in advancing the cause for women’s rights. Although western feminist historians have addressed controversial issues of child marriage and age of consent debates, such discussions, as Anagol-McGinn has pointed out, have mostly concerned the twentieth century period between the two world wars, when Age of Consent laws again resurfaced in India and in Britain. [138] The importance of Rukhmabai’s and Ramabai’s involvement in controversies to do with child marriage, consent, and ‘conjugal rights,’ brought women’s subordinated status into international focus. Their resistance against ‘conjugal rights’ meant resistance to an overarching combination of institutional
powers, comprising christian, hindu and muslim religions, British Imperialism and Indian nationalist groups.

In the case of “Dadaji versus Rukhmabai,” judicial power upholding Indian men’s conjugal rights brought men’s sexual ownership of women into international focus. In the case of Phulmonee’s death, evidence of male sexual violence in the form of marital rape that often meant child rape, was brought to international attention. Rukhmabai and Ramabai, through their initial grassroots activism that challenged the ideology and practice of ‘conjugal rights,’ gained international support in the campaign to end child marriage. They also contributed to a growing awareness that women’s subordinated status was founded on traditions of masculinity that depended on upholding conjugal rights. The reluctance by government officials to address male sexual practices in the debate on consent suggests, as Rukhmabai concluded, that women’s disempowerment was the result of a pact between Indian and British men.


[6] The term ‘Age of consent’ refers to legislation in Britain and in India legally defining the minimum age at which sexual intercourse can occur. In India in 1888, consent was set at the age of 10 for girls and 18 for men. ‘Age of consent’ usually
implies that consent means ‘informed consent’ and a girl or woman gives her permission to a man for sexual intercourse to occur.


[18] ibid.


[26] Antoinette Burton *Conjugality on Trial.*


[29] Pandita Ramabai Sarasvati *The High Caste Hindu Woman.*


[33] Sudhir Chandra *Rukmabai,* p.2937.

[34] ibid., p.2938.


[36] Sudhir Chandra *Rukmabai.*

[37] Padma Anagol-McGinn *The Age of Consent Act.*

[38] Sudhir Chandra *Rukmabai.*


[40] Sudhir Chandra *Rukmabai,* p.2938.


[43] Pandita Ramabai Sarasvati *The High Caste Hindu Woman*.


[45] ibid., p.2939.


[48] ibid.

[49] Antoinette Burton *Conjugality on Trial*, p.34.

[50] ibid.


[52] ibid.

[53] Meera Kosambi *At the Intersection of Gender*, p.111.


[55] Behramji M. Malabari (1887) Infant Marriage and Enforced Widowhood, in *Being a collection of opinions, for and against, received by Mr. Behramji M. Malabari, from representative Hindi gentlemen and official and other authorities*. (Bombay: “Voice of India” printing press).

[56] ibid., p.3.


[58] Antoinette Burton *Conjugality on Trial*, p.35.

[59] ibid.


[61] ibid.

[63] ibid.

[64] ibid., p.1869.


[70] ibid.


[72] ibid.

[73] ibid., p.107.

[74] ibid.


[76] ibid.

[77] ibid., p.1874.

[78] ibid.

[79] ibid., p.1875.
See Carole Moschetti’s PhD thesis, *Conjugal Wrongs Don’t Make Rights: International Feminist Activism, Child Marriage and Sexual Relativism* (2005). University of Melbourne, for a detailed account of western laws upholding conjugal rights and drawing attention to the fact that marital rape was not challenged in law in Britain and Australia until the last quarter of the twentieth century.

Matilda Joslyn Gage *Woman Church and State*.

Sheila Jeffreys *Spinster*.

ibid., p.16.

ibid.

Dagmar Engels *The Age of Consent Act of 1891*.

ibid., p.102.


ibid.

Antoinette Burton *Conjugality on Trial*.

Padma Anagol-McGinn *The Age of Consent Act*.

Dagmar Engels *The Age of Consent Act of 1891*.


ibid.

ibid.

On March 11 1886, Anandabai Joshi (1865-1887) graduated, with high honours, as the first Indian doctor of western medicine from the Women’s Medical College in Philadelphia, USA.

Pandita Ramabai Sarasvati *High Caste Hindu Woman*.

Edythe Lutzker *Edith Pechey-Phipson M.D.*

[99] ibid., p.103.

[100] Rukmabai quoted in Anagol Padma-McGinn ibid.


[102] ibid.

[103] ibid.

[104] ibid.

[105] ibid.

[106] Meera Kosambi *At the Intersection of Gender*.


[108] ibid.


[110] ibid.

[111] ibid.


[113] ibid., p.44.

[114] ibid., p.207.

[115] Justification for child marriage based on the belief that Indian girls matured earlier than western girls was a cross-cultural belief and tied in with racist stereotypical images eroticising people of colour. Inasmuch as early maturity in girls justified child marriage, Ronald Hyam has used similar justifications for the sexual use of young girls and boys in prostitution (Hyam 1990).


[118] Rachel Bodley (wrote the preface to Pandita Ramabai Sarasvati’s *The High-Caste Hindu Woman*).

[119] ibid.

[120] Meera Kosambi explains the Smritis as ancient hindu codes of religious law compiled by great sages such as Manu and based on tradition. The Manusmitri, or *Code of Manu* is considered to be the most authoritative of these codes. p.262,n.10.

2003.

[121] Pandita Ramabai Sarasvati *The High-Caste Hindu Woman*, p.67.


[123] ibid., p.xvi.


[125] Rambai, p.12.


[130] ibid.

[131] ibid., p.48

[132] ibid., p.43.


[134] Kumare Jayawardena *Feminism and Nationalism*, p.91.


[137] Kumare Jayawardena Feminism and Nationalism, p.77.

Author/s: Moschetti, Carole Olive

Title: The restitution of conjugal rights: making a case for international feminism

Date: 2007

Citation: Moschetti, C. O. (2007). The restitution of conjugal rights: making a case for international feminism.

Publication Status: Unpublished

Persistent Link: http://hdl.handle.net/11343/35060

File Description: The restitution of conjugal rights: making a case for international feminism