

## Reading Gender through the Lens of Law: The Case of Phulmonee Dasi and Rukmabai

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This article discusses the impact of the Act of Consent Laws on the women of the nineteenth century. I have discussed the laws pertaining to women in the late nineteenth century. I discuss the Age of Consent law, which dragged on for many years as modernists and traditionalists were divided in their opinion on raising the age of consent from ten to twelve for girls for the consummation of marriage. Other laws regarding child marriage, property laws, the right for widows to remarry, infant mortality, and patrilocal laws are also discussed. I have also taken two case studies of Rukhamaibai, who was a child bride who refused to consummate her marriage and Phulmonee Dasi, a child bride married to Hari Mohan Maitee, who raped her. To both goes the credit of starting a discourse on the age of consent.

**Keywords:** Feminine Sensibility, mythology, culture, tradition, Letters.

### Introduction

The lives of women in nineteenth-century India were not good. They had to struggle in a patriarchally dominated society to get themselves heard. The laws governing the state and the home were hard on her. For every little thing, she was dependent on the elders in the family. She was not educated. The social evils like child marriage, illiteracy, polygamy, purdah system, denial of widow remarriage, and lack of property rights were the chains that society was bound to. To educate a girl was considered a sin, and widowhood was sure to be her fate if she transgressed the laws laid down by the elders. In such a condition, the girls in purdah found life to be a burden. The few who could educate themselves wrote their stories, and we have their autobiographies to get an idea of the miseries that the girl child had to face in the nineteenth century. Abortion was unheard of; birth control and family planning, too, were unheard of during those times. Girls who were child-brides immediately got pregnant and, without any knowledge of self-care or care for the baby,

gave birth in closed rooms. The facilities of doctors were also unavailable, and they just had a midwife who assisted them in their childbirth. Many girls died during childbirth, and many babies also could not survive infancy. There were many such incidents. This research paper studies the age of consent laws, grounding it on two women Phulmonee Dasi and Rukmabai, who were instrumental in bringing about a change concerning women and marriage laws.

A child bride Phulmonee Dasi was brutally raped by her husband, and she died. There was a public outcry against this, and many reformists came together to urge raising the age of consent. As a result of their continuous efforts, the age of consent was raised from ten to twelve. Thus, the society was not fit for Indian women. Hence, many social reformists who had undergone child marriages, victimisation at in-laws' place, and been ill-treated by husbands came forward to reform society.

The following were the cruel practices followed in Indian society in the nineteenth century:

**Sati System:**

A Hindu woman was supposed to burn herself to death if her husband died. The same rule was not applicable to the husbands. They could remarry if their first wife died.

**Low status of women:**

Women denied education, married off while in their cradle, had no legal or property rights, with miserable conditions, left to remain under the control of the father, husband, sons and never could lead an independent life of her own.

**Female Infanticide:**

There was gender inequality in society. The birth of sons was welcome; the birth of a daughter was cursed. The woman giving birth to daughters was also cursed, as she had brought a burden to the family. In the autobiography Kamala, after giving birth to a daughter, she is ill-treated by her in-laws and leads a miserable life at their home. The newly born daughters were put to death by the family itself.

**Denial of education:**

Girls were neither sent to school nor college. Their main goal in life was to look after and take care of the family. They were taught to cook and look after the family. But, lacking education, these girls had to welcome motherhood without any knowledge of childcare or self-care.

**Dowry system:**

The dowry system has taken away the peace of mind of both the daughters and their

parents. Many girls commit suicide to save their parents from humiliation

**Patriarchal families:**

The nineteenth century was a patriarchally dominated society. Women had no say in the matter of their own marriage, pregnancy and life. They had to obey the males in their families.

**Child marriage:**

Girls and boys were married off in their cradles. Due to the high infant mortality rate, they also became child widows.

Widow remarriage was not permitted. A widow was a social burden; she was considered to be a curse in society. No auspicious function was held in her presence. She was also illiterate, so she was not trained for any employment. Due to these social evils, she had to suffer silently.

**Right to property denied:**

Women did not have any property rights. So they were at the mercy of the rest of the family. They were illiterate and hence could not lead an independent life.

**Dread of Divorce among Muslim women:**

As Muslim men could marry and take wives any number of times, their women lived under the constant threat of divorce and fear of sharing their husband with other wives.

As women were denied education in the nineteenth century, they were unaware of their rights. They were married off at a very early age, as children or in their cradles themselves, and as mortality rates were high in

infancy, the girls were widowed very early in life. Without even passing the threshold of childhood. They were sent to their husband's home when they attained puberty. A child bride was brutally raped by her husband, and she died in the hospital. This incident highlighted the need for changes in the age of consent law in the nineteenth century. There are many such cases where girls who were lucky enough to be educated and become aware of their rights refused to consummate their marriage on the grounds that their choice now mattered, such is the case of Rukhmabai

The long-drawn-out battle over the consummation of marriage was reported in detail in the newspapers of the time. Pandita Ramabai's sister, Krishna, was also married off at a very young age on the agreement that the boy would stay at her home and gain education from Anant Shastri. But the boy turned out to be useless; he, too, went to court for consummation of his marriage. Unfortunately, Ramabai's sister died of cholera and the shock of the court case. For this reason, Pandita Ramabai escaped child marriage, educated herself, and became a voice of social reform in the nineteenth century. These stray incidents, which are archived, tell us the story of the agony and pain of the child brides of India during the nineteenth century. The raising of the age of consent from ten to twelve, and then to eighteen, was a long-drawn-out battle that raged for many years. The British gave a lame excuse that they did not want to interfere with the religious sentiments of Indians. The problems of Sati, child marriages, and the age

of consent were all beyond their purview. They were interested only in amassing wealth from India. Pandita Ramabai, while asking for donations to build homes for child widows in India, gave a raving speech asking for generous donations, as the British had amassed ample wealth by ruling over India. She got a standing ovation for her speech.

In this article, I will examine case studies that shed light on the denial of women's rights over their own bodies. The patriarchal society bound by its social and cultural values has denied women the basic right of education, employment and freedom to choose their vocation. Rassundari Devi had eleven children. A woman was supposed to give birth and rear kids till her menstrual cycle stopped. It meant that she gave birth every year. This she writes in her autobiography *Amar Jiban*. She was a self-taught woman. She learnt to read and write by scribbling on the kitchen walls. She apologises on every page of her autobiography, asking the reader to forgive her for transgressing societal norms by educating herself. Rassundari often complains about the lack of facilities that were unavailable to her. In the preface of her book, she writes that in modern times, a woman can choose whether to be a mother of one child or two. She also writes that rearing one child is very different from rearing many. The kind of facility to time one's pregnancy was not available to Rassundari. Her autobiography is about how she reared her eleven children. She is happy that she had the mental strength and physical endurance to endure her eleven pregnancies. She also narrates with pride that

it was her faith in God that helped her go through the eleven childbirths. Her confessional tone is very obvious that had MTP act been available maybe things and her life would have been different.

### **The Case of Rukmabai and The Age of Consent**

The case of Rukhmabai Raut was a raging issue in the 19th century regarding the age of consent. Rukhmabai was a child bride of Bhikhaji. Rukhmabai wanted to continue her studies, so she remained at her natal home. It was also decided that Bhikhaji would get a proper education. Meanwhile, Bhikhaji's mother passed away, and he fell into wrong ways, wandering after lust and money. He lived with his maternal uncle, who instigated the court case. Rukhmabai was not happy with this development. To Rukhmabai goes the credit for orchestrating the Age of Consent Act in 1891. And began the discourse on child marriage. Rukhmabai had inherited property and was well educated. She was one of the first Indian women to practice medicine. She refused to consummate her marriage. This led her husband to file a case in the Bombay High Court. This case was well documented in the newspapers of the time and garnered the interest of the local public. Rukhmabai had to face the wrath of the public and the religiously orthodox people of her time, but she remained unbending. Her love for learning and knowledge was unquenchable. She realised that if she went to live with Bhikhaji, she would have to discontinue her education. She wrote a letter to the Times of India under the pseudonym 'A Hindoo Lady', The letter says-

I am one of those unfortunate Hindu women whose hard lot it is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice has destroyed my happiness. It comes between me and the thing which I prized above all others-study and mental cultivation. Without the least fault of mine, I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked down upon with suspicion and is interpreted in the most uncharitable manner (Chandra 17)

Her husband filed a case against her in the Bombay High Court, contending that she was held back by her stepfather and mother because she had some property. Justice Pinhey, who fought the case for her in 1884, said that to ask a lady who is now 22 years of age to cohabit with a man whom she dislikes amounts to cruelty. He concluded that the court cannot compel a young woman to live with her husband against her will. The case came up for retrial in 1886, and this time the court ruled in favour of Bhikhaji. Rukhmabai was unbending; she wrote to Queen Victoria, who dissolved the marriage. In 1888, a resolution was finally reached in which Rukhmabai had to pay two thousand rupees to Bhikhaji, who was quite satisfied and gave up his claim over her. She finally sailed to England to study medicine. This case sparked debates in India about Women's education. While the case was in court, it garnered public attention from social reformers like Lokmanya Tilak and Max Mueller, who argued that Rukhmabai's education enabled her to judge and make the right decision. Whereas Tilak argued that Western education was the reason that Rukhmabai refused to join her husband.

Rukhmabai's courage and quest for a proper education opened up avenues that women had never dreamt of. Her revolt against the social norms of her time proves that she was the 'New Woman' in the making

### **Phulmonee Dasi- The Child Bride**

The case of Phulmoni Dasi, the child bride of Hari Mohan Maitee, was also influential in stirring the consciousness of the nation against child marriage and sexual exploitation of minor girls in the name of Hindu rites and religion. The age of consent is also known as Act X of 1891. This was a legislation enacted in British India on March 19, 1891. This was an amended act of the Indian Penal Code and Code of Criminal Procedure, Section 375, 1882, ("Of Rape") and was introduced as a bill on January 9, 1891, by Sir Andrew Scoble in the Legislative Council of the Governor General of India in Calcutta. It was debated on the same day by Sir Romesh Chunder Mitter, arguing that it interfered with the orthodox Hindu code. It was supported by council member Rao Bahadur Krishnaji Laxman Nulkar from Mumbai and by the council's president, the Governor General.

Phulmonee Dasi was a child bride aged 11 who was raped by her husband brutally and died. Her death stirred the consciousness of the nation, and many voices came together to protest against the law. For a long time, the British refused to legislate the laws pertaining to the Hindu

The Marriage Act gave the excuse that it would pertain to interfering with the religious laws of the Hindus. Due to the public

outcry, the British were forced to intervene in Hindu acts of consent and marriage laws. But later, with the intervention of Hindu anti-colonial reformists and protests carried out by many women organisations, the Sati law, as well as the age of consent, was raised from 11 to 13 and later to 18." A committee consisting of influential British and Anglo-Indian statesmen, established in London, submitted recommendations to the colonial government, including a change in the age of consent. The law was signed on March 19, 1891, by the government of Lord Lansdowne, raising the age of consent for consummation from ten to twelve years."

"The Age of Consent Act, 1891, also known as Act X of 1891, was a legislation enacted in British India on 19 March 1891, which raised the age of consent for sexual intercourse for all girls, married or unmarried, from ten to twelve years in all jurisdictions, its violation subject to criminal prosecution as rape. The act was an amendment of the Indian Penal Code and the Code of Criminal Procedure, Section 375, 1882, ("Of Rape") and was introduced as a bill on 9th January 1891 by Sir Andrew Scoble in the Legislative Council of the Governor-General of India in Calcutta. It was debated the same day and opposed by council member Sir Romesh Chunder Mitter (from Bengal) on the grounds that it interfered with orthodox Hindu code, but supported by council member Rao Bahadur Krishnaji Lakshman Nulkar (from Bombay) and by the president of the council, the Governor-General and Viceroy Lord Lansdowne. (Basu 48))

In 1889, Hari Mohan Maitee, a child bride, Phulmoni Dasi, aged 11, was brutally raped by her 35-year-old husband. There was a public outcry, and the British were forced to intervene in the Hindu act of consent and marriage laws. Another prominent case was that of Rukmabai in 1884, who was also a child bride but later refused to live with her husband, Bhikaji. The husband filed a case against her in the Bombay High Court.

A committee consisting of influential British and Anglo-Indian statesmen established in London had submitted recommendations to the colonial government, including the change in the age of consent. The law was signed on 19 March 1891 by the government of Lord Lansdowne, raising the age of consent for consummation from ten to twelve years. (Basu, 48,51)

These raging debates of the nineteenth century shaped the idea of motherhood. Krupabai Sathianadhan is clearly for Western ideas of liberation and education for women. She scoffs at the idea of women not getting an education at all and aspiring only to be a wife and mother. She is clearly influenced by Western writers, and one cannot fail to notice the influence of Western missionary education on her. Krupabai was educated at home with her brothers and also by the missionaries. In Saguna, she highlights the plight of child brides and calls for education for girls. The debates raging during her time shaped the idea of ideal motherhood. Mothering the nation was considered a primary duty by the indigenous people of India. Giving birth to able-bodied sons and daughters was a clarion call given by Swami Vivekananda. Swami

even goes on to elaborate on the process of conception at the right time and asks men to stay away from their womenfolk at that time so that the sons born thus can free Mother India from the clutches of enemies. Krupabai idea of motherhood stems from her status as a Brahmin converted to Christianity.

### Women and Their Legal Rights

Women are generally unaware of their legal rights regarding their safety. These are the rights that every woman should know. In case of violence or domestic violence against her, she can approach any police station and file a complaint against any person, be it her husband or in-laws, who are pestering her either for dowry or for not giving birth to a male child or giving birth to only female children. Instead of taking away her own life, she should have had enough awareness to seek help. The violence against women is alarming. The statistics of domestic violence against women, harassment for silly and petty gifts and luxurious items like cars, fridge, and television, sadly have become a reason for crime against women.

No one can arrest a woman after sunset. This is her legal right. If she is a rape victim, she has the legal right to record her statement before a magistrate or a lady constable. The doctor, if approached, cannot pass judgment on her. It is for the court to decide. If she is a minor rape victim, her guardian is called, or, best, it is left to the gynaecologist to decide how safe it is to go for an abortion.

### The Medical Termination of Pregnancy Act (MTP Act)

The Medical Termination of Pregnancy Act (MTP), passed by parliament in 1971, legalised abortion in all of India except for the Jammu and Kashmir state. The majority of women in India still lack access to safe abortion. Basically, women are unaware of the law regarding abortions, unnecessary consents to be taken from many persons, husband, in-laws, parental concern, lack of awareness of contraceptives, accidental pregnancy, which becomes compulsory motherhood when women are not physically or mentally ready for motherhood, act as barriers. The need of the time is improved medical facilities aided with technology, and easy access to service providers are measures needed to improve access to safe abortion care.

The 1862 Indian Penal Code and 1898 Code of Criminal Procedure, originating in the British Offences Against the Person Act 1861, made abortion a crime, for which the woman as well as her doctor would land in jail. It was permissible only when the life of the concerned woman was in danger. The 1960s, 70s and 80s saw liberalisation of abortion laws across Europe, America and India. Because of an alarmingly large number of dying women due to unsafe abortions, a need was felt by the Doctors to make abortion safe. These women were married and were not under any compulsion to hide or terminate pregnancies. The reason largely felt was because of unsafe abortion methods practised by women. An urgent need was felt to decriminalise abortion and make abortion services available to women in safe settings.

Thus, the above study of the rules and regulations of the Medical Termination of

Pregnancy Act identifies loopholes in the system. By the time the law grants permission to the concerned woman to terminate the pregnancy due to abnormalities in the foetus growth, or even a normal married woman's ill-timed pregnancy, the state's intervention creates a barrier for a woman leading a normal life. At every stage of her pregnancy, there is an impediment that she has to face alone, with her partner, or with her aged parents. The state, despite giving her all the facilities and comprehensive abortion care, fails in giving her an identity of her own, a woman capable of making decisions on her own regarding her own body and her own life. The ethical aspect of the termination of pregnancy or induced abortion takes away her own life. In the delay in the judgment procedure, whether to grant her permission to proceed or terminate with the ill-timed pregnancy or of a minor rape survivor aged five or six or ten, these harsh, somewhat cruel laws kill the girl child and the woman inside her forever.

### **Gandhi and Sanger debate Love, Lust and Birth control**

Sanger came on a visit to India for nine weeks in 1935-36 at the invitation of the All-India Women's Conference. She wrote to Gandhiji before her arrival, and he welcomed her to his humble abode. They met for two days in December 1935. To discuss birth control, population and the plight of women in India. She wanted Gandhiji to endorse her views on birth control. Gandhi was in favour of spiritual bonds of marriage and was in favour of abstinence from sex once their families were complete. He was in favour of

the safe period or rhythm method, but rejected Sanger's plea for contraception to control population growth. According to him, non-procreative sex was immoral lust; he hoped that small families would become a social custom

In the conversation, Sanger asks Gandhi to endorse her view, to which Gandhi refuses. He says that he knows the minds of Indian women; he has identified himself with them; he is one among them. He knows his wife intimately, and he has used her and abused her as well. He says that he has taught his wife to resist. To assert herself, but she follows her husband. She follows in his footsteps because that is what Hindu wives have been taught from their childhood, obedience to their husbands. Hindu wives should learn to say no to sex, but they won't ever dare to oppose their husbands. Gandhi says that women should revolt, just as he gave the clarion call to the Nation with the slogan 'Civil Disobedience'.

### **Widow Remarriage in the Nineteenth Century**

In India, the nineteenth century was not favourable to women. Girls were not sent to school; the social evil of child marriage existed in society. Many girls were married in their cradles and, due to high infant mortality rates, many girls became widows. They also had to perform sati. Many social reformers fought against these evil customs. Finally, the British relented, and the Hindu Widow's Remarriage Act was passed in 1856, giving Hindu widowed women the right to remarry.

There were many girls who were widowed at a very young age. There was no provision for them to marry again. Their lives were very miserable: they were neither educated nor employed, yet they were considered a curse to society for no reason other than being married when they were ten years old or even younger. There were child and teenage widows. They had no property rights; they did not belong to their husband's family, nor were they acceptable to their natal family. In such a situation, their lives were miserable. Social reformers like Ishwar Chandra Vidyasagar, Vishnu Shastri Pundit, and Bal Gangadhar Tilak played an important role in raising public awareness. He advocated that widows should be allowed to remarry. He used ancient texts to support the remarriage of widows. His suggestion was accepted by the British. They were instrumental in changing people's thinking. Tilak was aware of the plight of widows as he himself had witnessed the horrible sight of his sister-in-law committing sati. Many reformists played an important role in negotiating this law. Their hard work bore fruit after almost a decade when the Widow Remarriage Act was enacted by the British in 1856.

Ishwar Chandra Vidyasagar married off the first widow, much to the disgust of Hindu conservatives who practised child marriage and Sati

There was a lot of tussle between the British and anti-colonial reformists regarding the Sati and the Widow Remarriage Act. The British were unwilling to negotiate on these social evils, saying they were internal matters and that they did not want to interfere in

religious matters. But under a lot of pressure, they finally relented and passed this very needed rule, which would benefit the daughters of India.

The Child Marriage Restraint Act, 1929, passed on 28 September 1929, in the imperial Legislative Council of India, fixed the age of marriage for girls at 14 years and boys at 18 years. In 1949, after India's independence, it was amended to 15 for girls, and in 1978 to 18 for girls and 21 for boys. It is popularly known as the Sarda Act, after its sponsor Harbidas Sharda. It came into effect six months later on April 1, 1930 and applied to all of British India. It was a result of the social reform movement in India. Despite strong opposition from the British authorities, the legislation was passed by the British Indian Government, which was majority Indian. However, it lacked implementation from the British Indian government, largely due to the fear of British authorities losing support from their loyal Hindu and Muslim communalist groups". (Basu 58)

From the above study of Women and the Law, it is quite clear that women had to fight for their rights regarding marriage, property ownership, and parental rights. Everything belonged to her husband. Society always... has been patriarchal. Patriarchy rules the laws, religion, homes and society. For a woman to come out of all these laws and write about her experiences must have been very challenging. Despite all odds, we have nineteenth-century women writing themselves into history, which is quite commendable.

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