Restitution of conjugal rights and the dissenting female body: The Rukhmabai Case

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Colonial laws in late-nineteenth century India often reduced the native female to her corporeal body, and this was especially the case with laws regarding marriage and a woman's rights within that marriage. This essay closely examines the Rukhmabai case where intertwined laws on age of consent as well as restitution of conjugal rights focused on the body of the Hindu woman while ignoring her thoughts and desires, thus seeking to render her a mute spectator in her own life.[1] This attempt at muting women in their own lives is replicated in mainstream historiography which remains a deeply patriarchal enterprise and largely ignores 'what the women were saying'.[2] Even when focusing on age of consent women are repeatedly framed as objects rather than subjects, despite the fact that many contemporary women were speaking and writing about these issues. The woman as subaltern is not allowed to speak for herself, instead many influential tracts on the history of age of consent in India focus on the male voices prevalent at the time, with particular emphasis on men such as Behramji Malabari or BG Tilak.[3]

For the purpose of this essay, I seek to posit Rukhmabai as a subaltern subject and attempt to recover her voice by tracing the defence that was articulated on her behalf in the courtroom and examining the letters that she wrote to *The Times of India* within the country and *The Times* in England. Her first-hand accounts of the plight of the child wife married to a man she would have never chosen for herself lent a strident voice against the institution of child marriage and the idea that a Hindu woman must always acquiesce to conjugal relations with her husband even against her own wishes. Rukhmabai's rigorous public intervention reveals that for brief moments, though always closely circumscribed by the patriarchal norms

determined by the elite in the society, the subaltern woman can attempt to have her dissent registered.

Marriage and conjugal relations in colonial India

In colonial, and indeed post-colonial India, marital laws were based on the religions of the parties involved. Since Rukhmabai and her husband were Hindus, this paper focuses closely on Hindu marital law which relegated the woman to a subaltern and subordinate position in relation to her male family members. In particular I will be examining the legal doctrines of age of consent and restitution of conjugal rights, both of which sought to control a woman and her body without her permission.

As the scholarship on the age of consent debate in India has shown, within the country this age was linked entirely to notions of physical maturity of the girl child.[4] When the Indian Penal Code (IPC) of 1860 was first introduced it was assumed that by the age of ten the female body had attained the physical maturity to engage in sexual intercourse without sustaining physical harm. As a result, the minimum age of consent for girls was set at ten but the IPC remained silent on the issue of a minimum age of marriage for such girls. Social and religious norms dictated that a Hindu girl was married at a young age – often only a few months or years old – and colonial law intervened to establish that such a marriage could only be consummated after the girl turned ten years old. The IPC also remained silent on a minimum age of consent or marriage for boys.

In the early 1880s certain reformists began to urge the government to raise this age of consent to twelve years old, arguing that twelve marked the age of puberty for most girls and that girls would give birth to healthier offspring after that age.[5] The latter being deemed to be

beneficial to the Hindu race as whole. On the other hand, members of the Hindu orthodoxy argued that their religious injunctions dictated that a marriage must be consummated immediately after a girl reached menarche. They further argued that in a country with a hot climate such as India, girls were likely to reach puberty before the age of twelve and that under the proposed reform they would be forced to delay consummation, hence, going against their religious duties.[6] As we see, for both the reformists as well as the traditionalists, the parameters of the debate were determined by concerns over the physical maturity of the girl with no thought given to her intellectual maturity at the time of consummation of the marriage.

As Tanika Sarkar notes of the protection that age of consent laws offered to girls: 'The protected person was nothing more than a protected body. Personhood for her did not extend to anything beyond her sheer physical existence.'[7] Within this debate, Rukhmabai, ably supported by the Advocate General of Bombay, FL Latham in the courtroom, attempted to articulate the need for marriages to be arranged with a girl's consent after she had reached a certain level of intellectual maturity. She also supported the increase in the minimum age of consent, but she pleaded with the government to link this age to the intellectual maturity of the girl child and not her supposed physical development alone. To appreciate the uniqueness of Rukhmabai's stance against an infant marriage arranged without her consent and her husband's subsequent desire to institute conjugal rights, we must first understand the legal device of the suit for restitution of conjugal rights.

Before being transplanted in India, suits for restitution of conjugal rights had originated in English Ecclesiastical law, which aimed to protect monogamy and compel the husband and wife to 'live together after God's ordinance'.[8] This duty to cohabit was enforced by issuing

decrees for restitution of conjugal rights against erring spouses. Failure to obey the decree was punished by excommunication from the faith till the early nineteenth century, after which the Ecclesiastical Courts Act 1813 mandated committal to prison for disobedience of the decree, though erring husbands or wives were only occasionally imprisoned.[9]

A successful suit for restitution of conjugal rights allowed a man to claim the unwilling body of the female, who would have to cohabit with her husband against her wishes. At a time when marital rape was not recognised as rape, even though the courts only enforced the woman's return to the marital home and not the marital bed, this distinction was of little use to many women.[10] However, it cannot be overlooked that many abandoned women, both in India and England, themselves actively sought decrees for restitution of conjugal rights, usually in order to gain ancillary relief from their husbands. Plaintiff wives hoped that the judges would either order their husbands to take them back or pay them maintenance.

Such suits had gradually made its way into Hindu personal law in the decades before Rukhmabai's case. This incursion had been slow and had arrived by way of the personal laws of other native religions of the country.[11] However, the suits were quickly adapted to the Indian situation and were applied regardless of the infancy of the parties to the marriage[12] or the polygamy of the husband.[13] Usually the courts were only willing to recognise legal cruelty on the part of the husband and his family as a suitable defence against a suit for restitution of conjugal rights, but the threshold for such 'cruelty' was set very high.[14] The following judgment reveals just how lightly the courts treated physical violence against a wife. In this case, the Calcutta High Court held that a wife who had been threatened by knives and other weapons and had subsequently run away from her husband but had later returned to reconcile with him and bear his child, had condoned his previous behaviour. Her

later allegation of cruelty based on a slap by the husband was dismissed as not being cruel enough.

> The slap on the face was given with the open hand, at a time when the husband was under the influence of drink, and in a moment of irritation, when his wife was worrying him for money – a subject which seems to have been a very frequent cause of discord between them…but, considering the state of temporary excitement under which the husband was labouring, we think it would be taking too serious a view of the circumstances to say that the blow was sufficient to neutralize the effect of the condonation.[15]

Instead of protecting the wife from domestic violence, the Court admonished her for bringing up 'irritating topics' in front of her intoxicated husband and asked her to regulate her own behaviour and 'deal patiently and judiciously with her husband's frailties'.[16]

Once suits for restitution of conjugal rights came to be recognised within non-Christian marriages, the courts also had to decide on adequate punishment for those who refused to obey a decree for restitution. In India following section 200 of the Code of Civil Procedure (CCP) of 1859 the spouse against whom the decree was enacted was to be delivered physically to the abandoned spouse or punished for disobedience through imprisonment or the attachment of their property. Though the wording of this section was gender neutral, and it seemed to imply that a reluctant husband as much as a reluctant wife could be physically delivered to their abandoned spouse, as we shall see below, its enforcement was entirely gender biased. An examination of case law suggests that the colonial judges were strongly divided on how to enforce such a decree against a non-consenting wife, with judges sometimes disagreeing on the punishment to be meted out in the same case.[17]

Whether she was delivered bodily to her husband against her wishes, or sent to prison for her disobedience, we can see that the punishments for disobedience more often than not were enacted upon and through the female body. In 1875, at the Calcutta High Court Justice Markby vociferously attacked the gendered nature of the enforcement of such decrees and the violence that they perpetuated on the body of the unwilling wife:

> It appears to be have been at one time thought that, in this country, the duty of cohabitation should be enforced by seizing and making over the recreant party bodily to the claimant; and cases are mentioned in which this has been directed in the case of a wife refusing to return to her husband. I am not aware of any case in which it has been suggested that similar violent measures should be taken against a husband refusing to receive his wife: and the cases in which a wife has so been treated are obviously based upon the notion that the husband purchases the wife at marriage, and that she thereby becomes article of his property.[18]

The woman was marked as subordinate and subaltern in such cases precisely because of her identity as a wife. In their judgment, Justices Markby and Mitter attempted to end her subordination, in this narrow field at least, by boldly criticising any punishment at all for disobedience of a decree for restitution of conjugal rights, and by attempting to reduce such a decree to a declaration alone. They were particularly critical of courts ordering a wife to be bodily delivered to her husband against her wishes, describing it as 'universally condemned' and 'shocking to our feelings of humanity'.[19]

Following this case, section 200 of the CCP was updated in 1871 to note that the 'lady' could not be treated as a 'specific moveable', i.e. the courts could not enforce the decree by physically returning the woman to her husband.[20] Sadly, however, Justice Markby and Mitter's liberal intervention was short-lived, and was directly criticised and overturned by the Bombay High Court in the very next year.[21] Once again, women were firmly the subaltern in cases of restitution of conjugal rights.

All the while, such legal wrangling in distant courtrooms had little effect on women's everyday lives. As the judges debated over the legal nitty-gritties, women who were actually affected by these laws remained largely unaware of their choices, however limited they may have been. As Padma Anagol notes, lawyers for women who were unable to successfully defend against suits for restitution of conjugal rights rarely apprised them of their options.[22] As a result, most women continued to remain unaware that they could choose imprisonment rather than cohabit with their husbands. As a District Judge, Mahipatram Rupram, noted in 1887 it was only the wide coverage of Rukhmabai's case in the vernacular press that made women of the Bombay Presidency aware of their choices.[23]

Rukhmabai: The subaltern dissident

In the early 1870s, when she was just eleven years old, thus over the minimum age of consent, a prepubescent Rukhmabai was married to nineteen-year old Dadaji Bhikaji. Hindu customs of the time dictated that the child bride would continue to live with her natal family till she reached the age of puberty. Upon reaching menarche, in short order the *garbadhan* (literally gift of the womb) ceremony would be performed, the marriage consummated, and the girl would be sent to live in her marital home. However, Rukhambai's stepfather was a

well-known social reformer in Bombay who stood against the early consummation of child marriages. At his suggestion, Bhikaji came to live with them to receive an education and become a 'good man'.[24] Variously described in the media as an 'ignorant and idle boor' and 'little better than a coolie'[25] and unfavourably referred to by the Advocate General in the courtroom as 'a block head with whom you could do nothing'[26] Bhikaji had little interest in his education, and within a few months he began to neglect his studies. Confined to his bed by consumption for three years, after making an unlikely recovery, he went off to live with his uncle and attempted to persuade Rukhmabai's family to send her to live with him. Missives and visits to the family proved unsuccessful with Rukhmabai finally declining to live with Bhikaji on the grounds that he was not in a position to provide her with a suitable residence and maintenance and that his ill-health would be dangerous for her too if they were to cohabit as a couple.

Failing to convince Rukhmabai to join him in the marital home, in 1884 Bhikaji approached the Bombay High Court to file a suit for restitution of conjugal rights against her. When the case was first filed, at twenty-two years old Rukhmabai was not only above the legal minimum age of consent, she was also significantly older than the age at which Hindu marriages were usually consummated. Rukhmabai believed that Bhikaji did not truly mean to pursue the case or expect her to respond to him in court. [27] Instead she felt that he had hoped that the public scandal of the potential trial as well as pressure from their community would have been enough to convince Rukhmabai's family to immediately send her to live with him or at least allow him access to her wealth. However, Rukhmabai surprised not just her husband, but society at large, when she refused to acquiesce quietly to his demands and sought to defend herself in court. Bhikaji's supporters attempted to posit Rukhmabai's refusal to live with her husband as a decision based on their class differences alone. It cannot be

denied that Rukhmabai's wealth, education and social status not only allowed her access to the courtroom and enabled her to appoint very well-known lawyers for her defence within it, they also facilitated social and economic support for her cause outside the courtroom. However, as much as Rukhmabai was marked by her class, it was her subaltern gender identity that determined her role in the trial.

Writing in 1981, in his preface to the first volume of *Subaltern Studies*, for the purposes of the project Ranajit Guha defined the 'subaltern' as 'a name for the general attribute of subordination in South Asian society whether this is expressed in terms of class, caste, age, gender and office or any other way.'[28] Under this broad definition all women are subaltern, for while they may enjoy caste or class privileges, their gender accords them a subordinate position in society. In most of the works of subaltern studies, the female is conceptualised as subaltern in a rather blunt manner. As Kamala Visweswaran has noted, there is a central problem in the subaltern studies group's understanding of gender, i.e. 'Either gender is subsumed under the categories of caste and class, or gender is seen to mark a social group apart from other subalterns.'[29] Visweswaran draws our attention to the need to distinguish between the figure of 'woman as subaltern' on the one hand and the question of 'subaltern women' on the other. This is necessary because the category of woman as subaltern comes to rest on the identity of middle-class women and further silences the voice of the subaltern woman. Within this complex identity, Rukhmabai occupies an interesting position. Her gender marks her as subaltern, as does her 'lower' caste – her family belonged to the *Suttar* or carpenter caste. And yet, this case would not have been brought against her if she was not an independently wealthy woman whose husband was using the suit for restitution of conjugal rights as an attempt to access her considerable wealth.

Similarly, Rukmabai's access to the English language, as well as the fact that she was published in leading newspapers of the time are a result of her middle-class status. However, as Gyanendra Pandey amongst others has shown, we must look beyond their privileges to identify the subaltern citizen, for the true subaltern identity remains both relational and situational. '[T]he condition of subalternity, of wretchedness and humiliation, attaches to individuals and groups and who are not obviously poor and downtrodden, and even to some who might be described as subaltern elites.'[30] Thus, while she may not be Visweswaran's 'subaltern woman', for our purposes Rukmabai is inevitably subaltern. She was marked as subaltern both within her marriage due to her relation as a wife, as well as within the colonial legal system where the particular developments of doctrine of conjugal rights and ideas of age of consent within Hindu marriages had created her situational subordination. Indeed, her relational identity as wife compounded her situational subordination in cases of restitution of conjugal rights.

This leaves us then with Gayatri Chakravorty Spivak's defining question, 'Can the subaltern (woman) speak?' This question has exerted tremendous influence on both the key disciplines that this paper deals with, namely South Asian history and gender studies.[31] Spivak's answer is an unequivocal 'No'. In fact, she argues: 'If, in the context of colonial production, the subaltern has no history and cannot speak, the subaltern as female is even more deeply in shadow.'[32] The subaltern is rendered mute due to the lack of 'institutional validation', which means that even her resistance is not recognised.[33] Not only was Rukhmabai's resistance not legally recognised in her time, it was publicly reviled. However, her persistent efforts to register her dissent have left enough traces of her strident voice in the public sphere for us to recover her views today.

The Rukhmabai case

A few months after Bhikaji had filed his suit at the Bombay High Court, the issue of age of consent entered the public debate in India, especially Bombay. The immediate impetus for this was the publication of two pamphlets by the Parsi journalist and social reformer, Behramji Malabari. His vocal critique of infant marriage was based on his belief that such a marriage caused physical and moral harm not only to the participants of the marriage but also the offspring born within it. He argued that infant marriages led to '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.' [34] As a result, Malabari suggested that the age of consent for girls should be increased to twelve.

Though Malabari's support for the reform in age of consent is commendable, it is important to note that for him notions of consent continued to be linked to ideas of physical maturity of the girl. Nonetheless, Malabari's public recommendation for raising the age of consent sparked a widespread public debate on the issue, eliciting responses from social and religious reformers and the Hindu orthodoxy alike.

It was within this public debate that Rukhmabai's first publicly written works in English emerged.[35] Titled "Infant Marriage and Enforced Widowhood" and "Enforced Widowhood", they were published as letters to the editor of the *Times of India* under the pseudonym 'A Hindu Lady' in June and September 1885, respectively. Initially meant to be written as one letter, when the original missive ran too long, the second half was published as a separate letter. The titles of the letters reflect Malabari's influence and Rukhmabai began by thanking him for advocating for the abolition of these 'evil customs'. In these letters, Rukhmabai's

position against child marriage was quite distinct from Malabari's as were the reforms that she sought. While the latter had focused on the damage wreaked by early marriage on the physical health of the infant bride and her children, Rukhmabai was far more concerned with the impact of infant marriage on the intellectual development of the child bride. Rukhmabai mentioned her own plight, and the sorrow that her infant marriage had brought to her, but through the letters she aimed to make a much larger point. She forcibly argued that the misery wrought through infant marriage cut across all classes and sections of Hindus – it effected 'the rich and the poor, the old and the young – though women are the greatest victims.'[36] She lamented the fact that even the most liberal parents put an end to a girl's education the moment she was married. She particularly singled out the Hindu religious texts and the orthodoxy for oppressing Hindu women.

If we understand feminism to mean the quest for equality of the sexes and a recognition of how society and religion collude with patriarchy to oppress women, Rukhmabai's writings form one of the earliest feminist writings in India. I have replicated this paragraph from her letter in full to highlight the indigenous feminism that she professed in late nineteenth century:

> The treatment which even servants receive from their European masters is far better than falls to the share of us Hindu women. We are regarded as playthings – objects of enjoyment, to be unceremoniously thrown away when the temporary use is over. Our law-givers (i.e. the writers of shastras [religious texts]) being *men* have painted themselves (like Aesop's Man and the Lion) noble and pure, and have laid every conceivable sin and impurity at our door. If these worthies are to be trusted, we are a set of unclean animals, created by God for the special service and gratification of man who by right

> divine can treat, or maltreat, us at his sweet will. Reduced to this state of degradation by the dictum of the shastris, looked down upon for ages by men, we have naturally come to look down upon ourselves. Our condition, therefore, cannot, sir, be improved, unless the practice of early marriage is abolished and higher female education in largely disseminated.[37]

While addressed to the editor of *The Times of India*, through the letter Rukhmabai sought to speak directly to her 'English readers', officials of the Indian government as well as men of the Hindu community. Whereas Malabari and other reformers were advocating an increase in the minimum age of consent from ten to twelve years old, Rukhmabai adopted a far more stringent stance. She urged the government to raise the age of marriage to 15 for girls and 20 for men, and to punish parents who married their children below this age. At a time when divorce was not allowed within Hindu marriages and even the dissolution of marriage was extremely difficult to obtain, Rukhmabai advocated that if underage marriages were 'disputed within a certain period, [they] shall be [declared] null and void.'[38] Though Rukhmabai never spoke about a desire to dissolve her own marriage, the thought must have crossed her mind. Trapped by the legal parameters of her religion and her time, the most that she could hope to successfully achieve was the ability to live apart from her husband, but she pressed for greater rights for other women who may find themselves in a similar situation. In the same letter, in what can only be read as an oblique reference to the custom of dowry, Rukhmabai urged the government that 'If it is found that the parents have laid a tax on, or in other words sold, their daughters, they shall be punishable by law.' In all the issues that she had raised, Rukhmabai was long ahead of her time. Today, each of the reforms that she had suggested in 1885 are indeed part of the matrimonial laws of the Hindu community in India, but they were introduced piece-meal decades after she had first suggested them.[39]

Three months after her first letter was published, her second letter appeared in *The Times of India*, this time on the issue of enforced widowhood. In this letter Rukhmabai focused on the plight of Hindu widows who were allowed to remarry under colonial law but were prevented from doing so due to religious norms. While critical of the 'perpetual widowhood' enforced upon all Hindu women, Rukhmabai was particularly critical of the condition of the child widow, who married in her infancy, may never have even known her husband or lived with him, was by virtue of his death reduced to a life of 'rigid austerities' and 'unflinching severity'.[40] Though critical of infant marriage and the plight that it inflicted on Hindu women, at this stage Rukhmabai did not directly address the fact that a marriage arranged in a girl's infancy must necessarily be without her consent.

Rukhmabai's second letter was published to coincide with the start of the first trial against her at the Bombay High Court. She had submitted a written statement to the court, where she noted that her marriage had been performed before she had reached the age of discretion, before delineating her reasons for declining to live with Bhikaji.[41] These were namely his inability to provide for proper residence and maintenance of the couple, his continuing ill-health due to asthma and tuberculosis, and lastly the character of his uncle who was residing in the house that Bhikaji wished to take her to.[42] The fact that this statement differs quite strongly from the other literature written by her, and that this statement was meant for the courts, both strongly indicate that the statement bears the heavy imprint of the defence counsel.

In September 1885, the Rukhmabai case was heard by Justice Pinhey of the Bombay High Court. In addition to the defence counsel, KT Telang and JD Inverarity, Rukhmabai's case

was supported in the courtroom by the Advocate General, FL Latham. Aware of the precedent in suits for restitution of conjugal rights, Latham did not attempt to convince the court that Rukhmabai's marriage was invalid due to lack of consent. He focused instead, more narrowly, on whether the lack of 'personal consent' to a marriage could be used as a defence against a suit for restitution of conjugal rights. Latham's argument proved to be particularly important for framing the trial, because Pinhey gave his judgment without giving the defence a chance to present their case. While finding in her favour he noted that suits for restitution of conjugal rights had only recently been recognised in India, and had already fallen into disuse in England, their country of origin. He expressed his regret that such suits were ever allowed within Hindu marriages, when they did not, in fact, have any foundation in Hindu law. At the heart of his judgment lay his distinction between 'restitution' and 'institution' of conjugal rights, and he held that in an unconsummated marriage, such as that between Rukhmabai and Bhikaji, it was beyond the powers of the court to force an unwilling wife to consummate her marriage. Making his displeasure known at the idea, he noted: 'It seems to me that it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will'.[43]

While the reformists rejoiced at Pinhey's judgment, it faced an immediate backlash from the Hindu orthodoxy. In Maharashtra one of the most vocal critics of the judgment were the newspapers *The Mahratta* and *Kesari*, started by the early Indian nationalist Bal Gangadhar Tilak.[44] The crux of the orthodoxy's concern was that if courts allowed girls to repudiate conjugal relations with husbands chosen for them in their infancy because of lack of consent at the time of marriage, how many millions of Hindu women could potentially leave their husbands on the back of this judgment? This deeply patriarchal objection was presented,

however, as a concern for women themselves and their right to maintenance: if consummation was required in order to complete the marriage contract, what would be the future of the girls widowed in childhood before their marriage was ever consummated?

It was against this backdrop that Bhikaji's appeal against Pinhey's judgment was heard at the Appeal Court by the Chief Justice Sir Charles Sargent and Justice Bayley. Though this time Rukhmabai's counsel were allowed to present her defence, despite Latham's offer to the court, the judges declined to give Rukhmabai a chance to speak on her own behalf. The judges stated that Pinhey had misunderstood restitution of conjugal rights as it emerged in Ecclesiastical Law, and held that it could be boiled down to the idea that 'married persons are bound to live together'.[45] They further held that since a Hindu marriage did not require consummation in order to be held valid, the distinction between restitution and institution of conjugal rights was meaningless. And that lack of consent to the consummation of a marriage could not constitute a valid defence against suits for restitution of conjugal rights. Though the judges hesitantly admitted that 'the law should not adopt stringent measures to compel the performance of conjugal duties'[46], they were unwilling to actually enforce this idea in this instance and returned the case to the High Court for a decision based on the facts of the case.

When the case returned to the High Court, Justice Pinhey had recently retired, and it fell to Justice Farran to hold the retrial in early 1887. Coincidentally, while a lawyer, Farran had drawn Bhikaji's original plaint, a fact that Rukhmabai's counsel did not employ to raise an objection, nor did Farran use it in order to recuse himself.[47] With the Appellate Court having established the legal parameters of the case with regards to the importance of consent, Farran had to base his judgment on whether or not Bhikaji could financially support his wife. Finding in Bhikaji's favour, he ordered Rukhmabai to 'go or return' to her husband or face

the punishment of six months imprisonment for disobeying the court's decree.[48] Since Rukhmabai had already made it known to the court that she would rather go to prison than live with Bhikaji, Farran argued that 'it was hard that a husband should be made to pay the costs for restitution of conjugal rights' and ordered Rukhmabai to pay his costs for the original hearing, with the costs of the appeal being borne by each party.[49]

Rukhmabai: A strident subaltern voice for female consent

While so far Rukhmabai had been focusing on the ills of child marriage, from 1887 she began to highlight the desperate need for law to take into account a woman's consent to her marriage. A couple of weeks after Farran gave his judgment, Rukhmabai's letter appeared in the *The Times* in England. Written before Farran began his hearing, this letter was sent by Rukhmabai to the sister of the Bishop of Carlisle, who in turn had sent it on to the newspaper. In this letter, more so than in any of her other known texts, Rukhmabai forcefully argued for the importance of female consent to a marriage. As her case had been progressing through the courts, many Hindu men – both reformers and the orthodox – were attempting to justify their stance on the issue of raising the female age of consent by offering differing interpretations of the Hindu religious texts. Critics of Rukhmabai argued that it was her education and Europeanised ways that had led her to shun the company of her husband.[50] However, Rukhmabai attempted to provide a justification for her stance not through the ideals of Western liberalism but through her own interpretation of the Hindu *Shastras*. She argued that the *Shastras* and Hindu laws stated that girls 'should be allowed to marry when they became of age and with their own choice…We find in ancient history marriage taking place between the boys and girls of mature ages and with their own liking.'[51] She further lamented that these 'good laws' had been over taken by the pernicious customs of the time. Through the letter

Rukhmabai took the opportunity to petition Queen Victoria in her jubilee year to intervene on behalf of 'her millions of Indian daughters' and raise the age of marriage to twenty in boys and 15 in girls.[52]

Barely two weeks after this letter appeared, emboldened by the court's decision in his favour, Bhikaji immediately set about publishing his 'Exposition' in *The Times of India*. Here he alleged that Rukhmabai had always been sympathetic to his request, but it was her mother and grandfather who convinced her to fight this case as they feared that once in her marital home Rukhmabai would assert her right to the property of her deceased father that they were currently enjoying.[53] He further argued that since Hindu marriage was a sacrament and not a contract, his marriage to Rukhmabai was complete and binding and that both her 'person and her property' belonged as a 'right' to him. The fact that she did not consent to the marriage or to its consummation did not bother him in the least, for he believed that her consent was meaningless when her family had already consented to her marriage. 'It is both a precept and a divine law to the Hindoos that it is a wicked and undutiful act on the part of girls or women to form matrimonial connections without the consent of their parents and relatives.'[54]Completely disregarding his wife's own will and her intellectual being, Bhikaji sought to reduce her status to property that belonged to him. He had in mind a single objective: establishing ownership over Rukhmabai's body as a means of establishing ownership over the considerable wealth left to her by her father.

In her reply to his exposition, Rukhmabai defended her family against Bhikaji's accusations and argued that it was she who had to convince them about her dislike for Bhikaji and not the other way around. Once again, she asserted her desire to avoid conjugal relations with a husband that she found distasteful: 'Having watched his movements for the last five or six

years, I gave him up as irreclaimably lost and made up my mind to wash my hands of him forever.'[55] She also argued that at the root of the case against her lay 'money and property considerations' and Bhikaji 's desire to access her personal wealth.

In the aftermath of the trial Rukhmabai and her counsel made it clear that she was both willing to face imprisonment as well as appeal the case all the way to the Privy Council in London if needed. In the first instance, the appeal against Farran's judgment returned to Sargent and Bayley at the Appellate Court, where they were tasked with enforcing Farran's decree. Rukhmabai was faced with imprisonment and/or a fine, but at the behest of her counsel, all the parties agreed that for a sum of Rs 2,000 Bhikaji would give an undertaking that he would not execute the decree granted by Farran nor make any claims on Rukhmabai's person or property in the future.[56] It was a victory of sorts – Rukhmabai had her freedom, but she remained legally married to a man she detested till his death in 1904. Once the money had exchanged hands, Bhikaji remarried immediately; as Hindu marital laws of the time allowed polygamy this option had been open to him all along. With financial help from her Indian and British supporters, Rukhmabai moved to England to study at the London Female School of Medicine.

Conclusion

A strong proponent of female education, after studying in London and Dublin and gaining diplomas in Glasgow and Brussels, Rukhmabai returned to India to work as a house surgeon in Bombay and later practiced medicine in Surat and Rajkot.[57] In fact, due to the untimely death of Anandibai Joshi, Rukhmabai was the first practicing Indian female doctor. Having lived a long and varied life Rukhmabai died in 1955, coincidentally the same year that divorce was finally allowed for Hindu women under the Hindu Marriage Act.

While her court case has been examined at length, and usually credited with bringing the age of consent debate to the public eye in colonial India, which, in turn, led to the passing of the Age of Consent Act 1891, Rukhmabai's own thoughts on age of consent remain relatively undiscussed. Buried deep within the trial archives and newspaper cuttings lies the subaltern voice of Rukhmabai, one of many 'small voices which are drowned in the noise of statist commands' which subaltern studies aims to recover.[58] Together, her voice and her story strike an important note of dissent, which may not have received institutional validation in her age but have certainly stood the test of time.

Vociferously making a case for recognising the importance of female consent to marriage under the law, Rukhmabai sought to posit the absence of her consent to her marriage as a defence against her husband's demand for conjugal access. Refusing to let religious edicts or colonial law render her a pliable female body owned against her will by a husband she could not bear, Rukhmabai highlighted the importance of female education and the need for age of consent legislation to not focus on the supposed physical maturity of a girl alone, but also her intellectual development. Taking consent as her starting point, Rukhmabai had a larger view of female emancipation and also urged reform in marital law on disparate issues such as divorce and dowry. In fact, the reforms that she suggested far surpassed the aims of more well-known social reformers, and Indian law did not match her suggestion for the minimum age of marriage for girls for another six decades.

[1] Dadaji Bhikaji v Rukhmabai (1885) and Dadaji Bhikaji v Rukmabai (1886).
[2] Guha, "The Small Voice of History," 11.
[3] For instance, see Heimsath, Indian Nationalism and Hindu Social Reform, Ch 7 and Engles, "The Age of Consent Act of 1891".
[4] For instance, see Sarkar, Hindu Wife, Hindu Nation; Chandra, Enslaved Daughters; and Sharma, "Withholding consent and conjugal relations within child marriages in colonial India."

[5] For instance, see Malabari, "Infant marriage in India."
[6] Sarkar, Hindu Wife, Hindu Nation, 195.
[7] Ibid., 244.
[8] Cretney, Family Law in the Twentieth Century, especially see ch 4.
[9] Cretney, Family Law in the Twentieth Century, 143.
[10] This was changed in UK law only in the last decade of the twentieth century through R v R (1991) 4 All ER 481and marital rape is still not recognised as such in India.
[11] Such suits were first recognised in Parsi marriages [see Ardaseer Cursetjee v Perozeboye (1856)], then Muslim marriages [see Moonshee Buzloor Ruheem v Shumsoonnissa Begum (1867)] and finally in Hindu marriages [See Bai Prem Kuvar v Bhika Kallianji (1868)].
[12] Kateeram Dokanee v Mussamut Gendhenee (1875).
[13] Virasvami Chetti v Appasvami Chetti (1863).
[14] For instance, see Yamunabai v Narayan Moreshvar Pendse (1876).
[15] Jogendronundini Dossee vs Hurry Doss Ghose (1880), 507-508.
[16] Ibid., 508
[17] For instance see Chotun Bebee v Ameer Chand (1866).
[18] Gatha Ram Mistree v Moohita Kochin Atteah Domoonee (1875), 300.
[19] Ibid., 304
[20] Broughton, The Code of Civil Procedure being Act VIII of 1859.
[21] Yamunabai v Narayan Moreshivar Pendse (1876).
[22] Anagol, The Emergence of Feminism in India, 1850 – 1920, 194.
[23] Quoted in Ibid., 194.
[24] Rukhmabai, "A Jubilee for the Women of India," 8.
[25] "A Woman's Plea for Freedom"; and The Times, 22 March 1886, 5.
[26] "Suit by a Hindoo for the Restitution of Conjugal Rights: Dadajee Bikajee vs Rukmibai."
[27] Rukhmabai, "A Jubilee for the Women of India."
[28] Guha, "Preface" to Subaltern Studies I, vii.
[29] Visweswaran, "Small Speeches, Subaltern Gender," 88.
[30] Pandey, "The Subaltern as Subaltern Citizen," 4738.
[31] For a discussion on the impact of Spivak's essay see Morris, "Introduction", 1-18.
[32] Spivak, "Can the subaltern speak?" 83.
[33] Spivak, "In Response: Looking Back, Looking Forward," 228.
[34] Malabari, "Infant marriage in India," 1.
[35] As Anagol notes, Maharashtrian women has been debating these issues in the vernacular press for a few years already, 202-209.
[36] Rukhmabai writing as "A Hindu Lady", "Infant Marriage and Enforced Widowhood."
[37] Ibid. Emphasis and parenthesis in original.
[38] Ibid.
[39] The minimum age of marriage in India for both genders was introduced by the Child Marriage Restraint Act 1929. Initially set at 14 for girls, the minimum age of marriage was only raised to 15 in 1940 and today stands at 18 for women and 21 for men in India. Divorce was allowed within Hindu marriages through the Hindu Marriage Act 1955 and dowry transactions were finally outlawed by the Dowry Prohibition Act 1961.
[40] Rukhmabai writing as "A Hindu Lady", "Enforced Widowhood."
[41] Dadaji Bhikaji v Rukhmabai (1885), 531.
[42] Rukhmabai's allegations against Bhikaji's uncle, Narayan Dharmaji, led to a separate (ultimately unsuccessful) lawsuit filed by the latter against her and her grandfather, Hurrichundra Yadowjee, for defamation of character.
[43] Dadaji Bhikaji v Rukhmabai (1885), 534.

[44] For an examination of newspaper reports see Chandra, Enslaved Daughters.
[45] Dadaji Bhikaji v Rukmabai (1886), 311.
[46] Ibid., 313.
[47] "The Case of Ruckmibai."
[48] Ibid.
[49] Ibid.
[50] For a summary of popular responses to the case see Chandra, Enslaved Daughters.
[51] Rukhmabai, "A Jubilee for the Women of India."
[52] Ibid.
[53] Dadaji Bhikaji, "An Exposition."
[54] Ibid.
[55] Rukhmabai, "Rukhmabai's reply to Dadajee's 'Exposition.'"
[56] "The Last of the Rukhmabai Case".
[57] "Rukhmabai".
[58] Guha, "The Small Voice of History," 3.

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