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Female Childhood in Focus

How and when did the female child become the centre of reform discourse? Once more, what was the interplay between scripture, custom and caste in the perceptions of female infanticide and child marriage, and how was legislation envisaged as changing that scenario? How did early feminist campaigns against child marriage challenge colonial and nationalist discourse on female childhood?

A punitive law criminalized what had long been acknowledged as 'tradition' (sati) ambiguously based on scriptural 'sanctions', while another law made the violation of tradition (that is, widow remarriage) legal and permissible, though it undercut custom—and therefore women's rights—in very different ways. Both legislative efforts were in some ways linked to the pernicious consequences of early marriage, hence early widowhood, and an absent or curtailed childhood. But this was also tied to fears about the 'incorrigible' sexual appetite of widows, which had resulted in infanticide, which had to be stopped or curtailed. One could argue that the 19th century, usually understood as being about women, was in fact all about the child.

Controlling Female Infanticide

Infanticide, and particularly female infanticide, the British 'discovered' in Benares in 1789, had grave consequences for communities as a whole in parts of northern and western India where intervention began at a brisk pace.[1] This led to the passage of the Female Infanticide Prevention Act (or Special Act) of 1870 to curb female infanticide in the Northwest Provinces before it was withdrawn in 1906.[2]

[1] Andrew Major, 'Ritual and Symbolism in the Anti-infanticide Campaign in Early Colonial Punjab', *Journal of Punjab Studies* 12, no. 1 (2005), pp. 95–110.

[2] Lalitha Panigrahi, *British Social Policy and Female Infanticide in India* (Munshiram Manoharlal, 1972), p. xii.

Was the Special Act of 1870 a philanthropic and humanitarian move,[3] an attempt of the colonial regime to gain legitimacy,[4] an invasion of the Hindu home with the intention of controlling it,[5] or an effort aimed at merely pruning the excesses of the patriarchal family?[6] Feminist scholars have also shown how the practice was intimately linked to the transformations of the agrarian structure brought about by colonial rule itself. [7]

This is not to suggest that female infanticide was a creation of British rule. But it was treated as a gender-specific crime quite distinct from infanticide in England.[8] Thus, T. P. Madhav Rao, *dewan* of Baroda state, demanded an amendment to the IPC but also urged the colonial regime to be very sympathetic to Indian social reality.[9] Yet the British preferred novel administrative measures, both persuasive and punitive, leading to the criminalization of entire communities. It also deepened the shadows around the home/*zenana*, which previous campaigns against sati and widow remarriage had already portrayed as a chamber of horrors.

The practice of female infanticide was found to be most common among certain castes and tribes such as the Rajputs, Jats, Gujars, Ahirs, Jharejas, Jaitwas and Bedis, of the Kathiawar, Rajputana, Punjab and Northwest Provinces regions. While the strict laws of exogamy forbade intermarriage between families of the same clan, rivalries between clans about superior and inferior ranks further restricted the marriageable clans to which women could be given. The pressure to display dignity and rank at marriages often reduced families to penury. It was equally disgraceful to raise an unmarried daughter. In these areas and among these agrarian clans therefore, girl children were considered an unmitigated burden from which infanticide provided an easy release.

The earliest efforts to suppress the system were made in Kathiawar and Kutch. The Jhareja Rajputs were encouraged through coercive, sumptuary and

[3] Panigrahi, *British Social Policy*.
[4] Major, 'Ritual and Symbolism'.
[5] Satadru Sen, 'The Savage Family: Colonialism and Female Infanticide in Nineteenth-century India', *Journal of Women's History* 14, no. 3 (Autumn 2002), pp. 53–79, esp. p. 54.
[6] Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press, 2000), pp. 121ff.
[7] Veena Talwar Oldenburg, *Dowry Murder: The Imperial Origins of Cultural Crime* (Oxford University Press, 2002).
[8] Daniel Grey, 'Gender, Religion and Infanticide in Colonial India, 1870-1906', *Victorian Review* 37, no. 2 (Fall 2011), pp. 107–20.
[9] Arvind Ganachari, 'Infanticide in Colonial Western India: The Vijia Lakshmi Case', *Economic and Political Weekly* 38, no. 9 (1–7 March 2003), pp. 902–06, esp. p. 902.

educative measures to preserve, rather than destroy, infant girls. Alexander Walker, the chief resident of Baroda, attempted to encourage clan chiefs to enter into deeds renouncing the practice in 1808, and later even rewarded those with babes in their arms with cash awards.[10] When the authorities discovered that the deeds were violated with impunity and implementation was weak, they issued threats of heavy penalties, alongside the establishment of an infanticide fund to defray marriage expenses. The assistant resident J. P. Willoughby gained notoriety for his elaborate system of informers, and the punitive measures of 1834–35 included fines and imprisonment.[11] Though these coercive measures worked to an extent, they also produced terrorized and resentful communities. An 1841 report showed that the Jhareja male child population of Kathiawar was 5,760 against 1,370 girls.[12] Although better progress was made in Kutch, which had a cooperative indigenous ruler, the 1841 census showed only 335 girls to 2,625 boys. The new political agent in Kathiawar, James Erskine, recognized the need for educative measures and encouragement to end the practice without surveillance. Although census takers faced an uncooperative population determined to suppress all information on births, by 1852 it was believed that a progressive preservation of daughters by Rajputs had occurred.[13]

In Rajputana, the chiefs and rulers were encouraged to dissuade their followers from practising infanticide. Since the extortions of the Bhats and Charans in the area made the marriage of daughters burdensome, the colonial authorities attempted to regulate the payments due to these communities in 1839. In addition, sumptuary and educative measures were passed, restricting marriage expenses. In mid-century, the strategy followed in Rajputana appeared to have borne fruit and had sufficiently reduced the importance of Bhats and Charans, as well as the incidence of female infanticide.

In the Northwest Provinces, Regulation 21 of 1795 was passed against the Rajkumars of Benares, making infanticide punishable, and Regulation 8 of 1803 extended the law to areas ceded by the nawab of Oudh.[14] Yet it was soon realized that some effective means of restricting dowries and finding suitable bridegrooms was called for. Civil servants in some areas found that moral pressure was useful, but the method was too reliant on the personal influence

[10] Kanti Pakrasi, *Female Infanticide in India* (Editions Indian, 1970), p. 38.
[11] Ibid., pp. 95–97.
[12] Panigrahi, *British Social Policy*, p. 41.
[13] L. S. Vishwanath, 'Efforts of Colonial State to Suppress Female Infanticide: Use of Sacred Texts, Generation of Knowledge', *Economic and Political Weekly,* 33(19) (9 May 1998), pp. 2313–18; Pakrasi, *Female Infanticide in India*, p. 233.
[14] Panigrahi, *British Social Policy*, pp. 84–85.

of magistrates and officers, and the Rajputs soon reverted to the custom in the absence of such pressure. There appeared to be no alternative to criminalizing the practice. Elaborate mechanisms of coercion, including strict surveillance involving village servants, such as the *chaprasi* (peon), *gorait* (messenger), *chowkidar* (watchman), midwife and even the *patwari* (accountant), were introduced and met with striking success in controlling the practice.

Anti-infanticidal measures in Punjab once more adapted to local peculiarities. Recognizsing that infanticide there resulted from intense factional rivalry, government efforts were directed at bringing about reconciliation.[15] Punitive measures tried elsewhere and sumptuary regulations for marriage celebrations and exchanges constituted the most holistic set of measures adopted anywhere. It is a sign of the relative lack of hostility to these measures that Punjab remained loyal to the British during the revolt of 1857. A first attempt was made to persuade the influential natives of offending communities from engaging in the practice. Beginning in 1853, attempts were made to get chiefs to agree to reduced marriage expenses and dowries and reduce the crushing burdens that had led to the rise in female infanticide.[16]

The Northwest Provinces were more difficult, and the fiercely combative stance of its inhabitants during 1857 temporarily stalled the efforts of colonial authorities who were determined to push ahead with special legislation to outlaw the practice. The Jats, Gujars and Ahirs appeared to be no less guilty than the Rajkumars against whom measures had earlier been passed. Furthermore, turbulent political conditions in the region produced a situation where the severe shortage of girls for marriage had led to kidnapping of lower-caste girls to be sold as brides.

John Strachey's draft bill outlined the measures the government could take, ranging from increased surveillance, thorough censuses and an enlarged police force to restrictions on marriage expenses. Despite considerable scepticism about its effectiveness, and resistance from the local chiefs, Strachey's bill became law in 1870 was made applicable to the Northwest Provinces, Punjab and Oudh and could be extended elsewhere.

This called for new apparatuses to implement such an act: periodic censuses, the monitoring of pregnant women by the village authorities, the meticulous registration of births, inquests leading to imprisonment if the child died within a week were together far more invasive than anything that had gone before. In his draft bill, Strachey gave local governments legal authority to effectively

[15] Panigrahi, *British Social Policy*, pp. 102ff.
[16] Major, 'Ritual and Symbolism'.

enforce the measures, and disobedience of any of the provisions of the bill was punishable with six months' imprisonment or a fine of 1,000 rupees or both. Yet although the 1870 act has been compared with the Criminal Tribes Act of 1871, in its reach and sweeping characterization of collective criminality,[17] it did not deal as harshly with the landed, revenue-paying communities as it did with the peripatetic criminal tribes.[18]

Since the percentage of women and girls was decidedly lower than that of men, entire villages were declared 'guilty'. In 1872, after the first comprehensive census, only those clans which had less than 40 per cent girls in the total under-12 age group were declared guilty of the crime, and those with less than 25 per cent girls very guilty.

The act affected the lives of large numbers of people and involved keeping a record of nearly half a million families. In 1872–73 alone, the 40 per cent standard was enforced in the 25 districts of the Northwestern Provinces, and 4,959 villages inhabited by 485,938 people were considered guilty of the crime. Of these, 1,213 villages were 'blood red', with girl populations less than 25 per cent. However, when it was felt that innocent families may be unjustly penalized with such strict criteria, it was decided to lower the cut-off point between guilty and non-guilty families to 35 per cent.

Within just two years of the operation of the act, there was a slight but perceptible rise in the population of girls, from 32.3 to 35.4 per cent. Of the actual number of inquests held, a very minute percentage were actually convicted. Nevertheless, the maintenance of registers of births, deaths and marriages was an effective instrument of suppression. By making the local midwives, *dai*s (local midwives), and *chowkidar*s also responsible for the crime, and by keeping a vigil on pregnant women, a considerable number of people were discouraged from attempting the crime. Some clans went to the extent of borrowing girls from neighbouring villages at the time of the head count or hiding in the fields. But between 1875 and 1881 alone, the percentage of girl children rose from 30.2 to 38.6 per cent. From 1881 onwards, the age under which children were placed under surveillance was reduced to six; and by 1888, the number of proclaimed villages dropped to 1,381 from 1,951, just five years before. By 1905, the Government of the United Provinces, Agra and Oudh (the former Northwest Provinces) had declared the Special Act of 1870

[17] Maria Brun, 'Institutions Collide: A Study of Caste-based Collective Criminality and Female Infanticide in India, 1789–1871', LSE Working Paper Series No. 10–104, London School of Economics, 2010.

[18] Singha, *A Despotism of Law*, p. 135.

unnecessary, as 'one of the worst social crimes had been stamped out', and it was withdrawn in 1906, only placing certain pockets under close watch.

Scholars have questioned this narrative of colonial triumph.[19] No doubt, positive and negative sanctions were imposed, a range of village officials and functionaries held responsible, prosecutions and convictions pursued with vigour, and graded fines were introduced.[20] Were these 'illiberal means' used 'to achieve liberal and human values'?[21] Were the British more eager than the Indians to eradicate this problem?[22] Were the British perplexed by a practice that seemed to have no relationship to scriptural sources or religious belief?[23]

Most important, the measures against female infanticide revealed the confidence with which the colonial state interfered in most private spheres of family life and regulated the reproduction of the proclaimed populations (that is, those who were under surveillance). In the case of both sati and female infanticide, the colonial state was anxious to maintain a monopoly over the right of taking human life, so its respect for custom was severely limited by its need to establish the overwhelming authority of the state, overriding those customs which encroached on its monopolies. In its approach to the criminalization of infanticide, the colonial regime investigated the ways in which Rajput/upper-caste rank and patriarchal right could coexist with colonial rule.[24]

Colonial officials foregrounded the female complicity that lay at the heart of the continuation of female infanticide. Speaking of the Jharejas, Erskine said in a letter to Trevelyan, the deputy secretary of government, in 1835 that he could understand why the men were reconciled to female infanticide since it was part of their culture, 'but several instances have been told to me where young mothers, just before married from other tribes … and even brought in from other countries, have strenuously urged the destruction of their own infants'.[25] Once more, the patriarchal structures which encouraged and sustained the practice of infanticide were obscured by recourse to arguments about female 'nature'.[26]

[19] Malavika Kasturi, 'Law and Crime in India: British Policy and the Female Infanticide Act of 1870', *Indian Journal of Gender Studies*, 1(2) (July–December 1994), pp. 169–194.
[20] S. Sen, 'The Savage Family', p. 69.
[21] Upendra Baxi, *Towards a Sociology of Indian Law* (Satavahan, 1986), p. 43.
[22] Vishwanath, 'Efforts of Colonial State to Suppress Female Infanticide'.
[23] Ibid.; Brun, 'Institutions Collide', p. 9.
[24] Singha, *A Despotism of Law*, p. 131.
[25] Pakrasi, *Female Infanticide*, p. 143, fn. 6.
[26] Ibid.

But the meticulous data also revealed that the devastating changes in colonial revenue collection had exacerbated what might have been a rarer practice.[27] Veena Talwar Oldenburg has linked the colonial focus on upper-caste perpetrators of female infanticide (while ignoring those communities who received bride price rather than dowries) to a way of seeking legitimation for the annexation of Punjab. The 'masculinization' of the economy was likewise a consequence of colonial agrarian policies, which led to the devaluation of women, and converted bride price into dowry over time.[28] From a different perspective, Anshu Malhotra suggests that upwardly mobile and urbanizing middle classes also increasingly adopted dowry in the place of bride wealth with pernicious consequences for women.[29] As L. S. Vishwanath has shown, the practice of neglecting, rather than actually killing, the female child may have replaced earlier practices, but the sex ratios of castes and groups collected between 1901 and 1921 showed a definite decline, even among castes that had no record of female infanticide.[30]

The continued decline of the Indian sex ratio has also been enabled by new technologies that have been adapted to extreme son preference and gender-biased sex selection. It would be anti-historical to place too great an emphasis on continuity with what was initiated in the colonial period, given dramatically altered educational attainments of women, varying family strategies and new technologies, and the growing importance and vigilance of the women's movement.[31] New historical investigations reveal both breaks and continuities with the tumultuous years of colonial rule and intervention.[32] For sure, questions about childhood, and manners in which the state could legally fix the age of children and infants, were foregrounded in ways that had lasting effects, as was revealed in the debates over age of marriage and consent.

[27] Vishwanath, 'Efforts of the Colonial State to Suppress Female Infanticide', p. 2314.

[28] Oldenburg, *Dowry Murder*.

[29] Anshu Malhotra, *Gender, Caste and Religious Identities: Restructuring Class in Colonial Punjab* (Oxford University Press, 2002).

[30] Vishwanath, 'Efforts of the Colonial State to Suppress Female Infanticide'.

[31] See, for instance, Mary E. John, *The Social Economy of Sex Selection: Exploring Family Development Linkages* (Centre for Women's Development Studies and United Nations Population Fund, 2017).

[32] Yogesh Snehi, 'Female Infanticide and Gender in Punjab: Imperial Claims and Contemporary Discourse', *Economic and Political Weekly* 38, no. 41 (11–17 October 2003), pp. 4302–05.

Child Marriage and Age of Consent

The quest for a standardized legal status out of slippery social relationships, says Radhika Singha, created a new infrastructure of power in the colonial period, especially after 1857.[33] This new world of public documentation was necessary not just for the implementations of law, but also to fix taxes, register documents, ascertain pension claims, and so on. Despite an overall concern about making the population more easily governable, *purdahnashin* (veiled) women were at first exempt from the drive to visibility. But such respect was caste-, class- and region-specific and, even when applied, often defeated the purpose of legal reform. Meanwhile, the question of fixing age was at the centre of many 19th-century debates and discussions about when childhood ended and adulthood began—the child-wife and the child-widow being the focus. At what age did (female) sexual maturity/reproductive capability occur (when did biological childhood end and adulthood begin)? When did rationality and the capacity to consent develop (when can a female person make choices, become educable)? When should the state step in as *loco parentis* to protect the child from strenuous labour or enable her education (should children be employed, for how long; what are the appropriate ages for learning)? By the end of the century, as campaigns for a minimum age of marriage and consent began to gather force, the focus on age as the usable criterion to establish childhood was redoubled.

A statute that declared rape an offence punishable with death when the girl was below eight years and imprisonment in other cases had been part of the criminal justice code administered in the towns of Calcutta, Madras and Bombay from as early as 1828.[34] In 1846, the Law Commission members who drafted the IPC first decided to extend the penalties of rape to husbands who consummated marriages with underage wives. Among Indians themselves, a concern for fixing the minimum age for marriage of men and women by law was voiced as early as the mid-19th century by Ishwar Chandra Vidyasagar and Keshab Chandra Sen. Vidyasagar himself attacked the institution of child marriage for causing misery and blamed the practice on 'outmoded shastras'.[35] In response to Vidyasagar's article in 1850, the Government of India decided

[33] Radhika Singha, 'Colonial Law and Infrastructural Power: Reconstructing Community, Locating the Female Subject', *Studies in History* 19, no. 1 (2003), pp. 87–126.

[34] *Indian Women, Marriage and Social Status (Reprint of the Report of the Age of Consent Committee, 1928–9)* (Usha Publications, 1984), p. 9.

[35] Geraldine Forbes, 'Women and Modernity: The Issue of Child Marriage in India', *Women's Studies International Quarterly* 2, no. 4 (1979), pp. 407–19, esp. p. 408.

on 10 years as the 'age of consent' for sexual consummation with girl children, whether married or unmarried. Any violations of this—that is, intercourse with girls under 10 years of age—was considered statutory rape and was punishable under Section 376 of the IPC of 1860.

Part of Vidyasagar's argument rested on the belief that child marriage was detrimental to the health of women and consequently to that of the nation. This argument, which mirrored the anxieties of eugenicists and racists in 19th-century Britain, was repeated from the time of Ram Mohan Roy as an explanation for the weaknesses in the Indian social fabric that had led to colonial rule. (That the decline of female liberty and individuality had occurred as a result of Muslim rule in India was another explanation that had enduring consequences.)[36] If the Widows Remarriage Act had set the stage for the mobilization of reformers nationally, it was the bill on the age of consent which polarized the debate on women and tradition most forcefully.

The question of prohibiting early marriage was not easily resolved, and it absorbed the energy of Keshab Chandra Sen, who continued Vidyasagar's efforts in the 1870s and 1880s. Particular efforts were made to revise the marriage customs of Brahmos, culminating in the Native Marriage Act, or Act 3 of 1872, which instituted prohibitions against polygamy, a legal allowance for divorce, no reference to the caste of the marriage partner, and a minimum age for marriage of 14 for girls and 18 for men.[37] There was stiff opposition to the act from male memorialists, so although the act was passed, it effectively separated Brahmos from the rest of Hindu society and was applicable only to them.

Yet even those who were committed to liberalizing the position of middle-class women within the family and in the field of education faltered in their personal lives. Sen's own commitment to the education of women (it was he, incidentally, who encouraged Pandita Ramabai Saraswati to read the Vedas) and the encouragement of widow remarriage, and so on, was seriously undermined when he allowed his daughter to marry the 16-year-old maharaja of Cooch Behar when she was just 13—in other words, when both bride and groom were below the ages he himself had recommended when drafting the Native

[36] In his brief discussion of social reform legislation in the 19th century, M. P. Jain writes: 'The prejudices of some of the Dharmasastra writers along with the degenerate customs which arose in Hindu society in course of time under the impact of foreign domination, mainly Muslim rule, were responsible for making the social position of women rather weak and inequitable.' M. P. Jain, *Outlines of Indian Legal History* (Tripathi, 1987), p. 485.

[37] Charles Heimsath, *Indian Nationalism and Hindu Social Reform* (Princeton University Press, 1964), pp. 92–93.

Marriage Act. The gap between the public (political) and private positions of reformers such as Roy, Sen and Ranade was one of the persistent ironies of the process of social reform and was an expression of the contradictions inherent in the colonial social order.

The real theatre of action for the debate on the age of consent was in fact western India, where much more nuanced debates, at the intersections of caste and gender, had been occurring. The journalist and publicist Behramji Malabari did not have much of a public following, but in 1884 wrote 'Notes on Infant Marriage and Enforced Widowhood', which was an argument for regulating the age of consent based on statistics generated by the census.[38] Comparing the English Criminal Law Amendment with the IPC, he found the protection of girl children in India fell far short of the protection offered to English girls under a comparable regulation.[39] Malabari's efforts paralleled those of Mahadev Govind Ranade (1842–1907), a prominent theist and social reformer. Ranade encouraged his friends and relatives to pledge themselves to personally assist him in the demand to raise the age of consent.[40] Jyothiba Phule and early feminist writings of western India deployed Malabari's arguments regarding the necessity of reform, calling for an end to early marriage among both boys and girls. This was also Phule's emphasis when he criticized the arguments out of Bengal, which were too closely focused on Brahmin child marriage and did not adequately acknowledge the place of caste and labour in structures governing marriage. Writers such as Ramabai in 1888 and B. R. Ambedkar much later in 1916 agreed that the Brahmin girl had suffered the worst iniquities, yet she became the exemplar for castes lower in the hierarchy.[41]

The Government of India displayed no haste in acting on the pleas of reformers, seeking instead the opinions of several groups of people, orthodox and liberal, Indian and English. The majority of the 200 replies received favoured some form of government intervention. In fact, the National Social Conference involving several Congressmen was set up in 1887 partly as an outcome of the response of the public. In his thunderous speech on that occasion, Mahendralal Sircar said:

[38] Heimsath, *Indian Nationalism*, p. l53; Forbes, 'Women and Modernity', p. 409.

[39] 'Appendix III: The Indian Law Regarding the Seduction of Girls', in *The Status of Women in India; or, a Guide for Hindu Social Reformers*, by Dayaram Gidumal, pp. 281–82 (Publications India, 1989 [1889]).

[40] Forbes, 'Women and Modernity', p. 409.

[41] Mary E. John, *Child Marriage in an International Frame: A Feminist Review from India* (Routledge, 2022), p. 40.

> The Hindu Race consists at the present day … by virtue of this blessed custom, of abortion and premature births.... And are you surprised that the people of a nation so constituted should have fallen easy victim to every blessed tyrant that ever chose to trample on them?[42]

Yet state interference in Hindu law went against the stated proclamations of 1858 and was the key objection of those opposed to the reforms. In response, Ranade used the well-worn strategy of the 19th-century reformers, painstakingly refuting doubts by citing the authority of the *smriti*s and *sruti*s.[43]

Two cases of the period riveted national attention and spoke of an urgent need for early marriage reform. The first was the celebrated Rakhmabai case which came to light in 1884, wherein Rakhmabai's refusal to live with her uneducated, consumptive and unemployed husband, Dadaji Bhikaji, led to two legal suits stretching over four years.[44] Padma Anagol's work reveals that restitution suits in the early part of the 19th century concerned women pleading for either restitution of conjugal rights or at least adequate compensation for abandonment.[45] The most celebrated case, *Ardaseer Cursetjee v. Perozeboye* (1856), concerned a Parsi couple, in which even the Privy Council agreed with the woman's contention that 'British courts were obliged to provide legal remedies to subjects in suits arising in matrimonial matters'.[46] By the 1880s, the terms of this debate had changed dramatically. In a five-year period (1881–85), there were as many as 727 suits for the restoration of conjugal rights while there were 2,874 cases filed by women for maintenance, some even risking a brief time in jail in that quest.[47] Anagol's work points to a large wave of women willing to approach courts for relief from difficult marriages.

Rakhmabai's plea was that she had married Dadaji, then 20, at the age of 11. The marriage was not consummated, and Dadaji did not claim his conjugal rights for 15 years, but only did so when Rakhmabai became heir to a small fortune from her father. Rakhmabai's plight—and above all her submission that Dadaji's inability to earn an honest livelihood, his immoral lifestyle, his refusal to educate himself and his poor health (he was in the intermediary

[42] Heimsath, *Indian Nationalism*, p. 152.
[43] Gidumal, *The Status of Women in India,* apps. vi and vii, pp. 299–337.
[44] Padma Anagol-McGinn, 'The Age of Consent Act (1891) Reconsidered: Women's Perspectives and Participation in the Child Marriage Controversy in India', *South Asia Research* 12, no. 2 (November 1992), pp. 100–18.
[45] Padma Anagol, *The Emergence of Feminism in India, 1850–1920* (Ashgate Publishing, 2005), pp. 186–87.
[46] Ibid., p. 186.
[47] Ibid., p. 194–95.

stage of tuberculosis) had resulted in her aversion to joining him—became most useful in supporting the plea for raising the age of consent. Ironically, it also aided those opposed to social transformation.

Bal Gangadhar Tilak was one of the most vociferous opponents of reform of the Indian tradition, which was seen as a bulwark against imperialism. Tilak saw Rakhmabai's refusal to live with her uneducated husband as indicative of the dangers of female education. Accusing the reformers of using the case 'to fire bullets at our religion with the intention of castrating our eternal religion', he insisted that it be dealt with under criminal rather than civil law,[48] promising that he would 'arrange the marriage of 100 widows the day India became independent'.[49] He therefore strictly subordinated the question of social reform to the cause of political freedom.

Tilak represented an important moment in the transformation of cultural nationalism into a distinctly political nationalism, when embarrassment about Indian tradition was turned to pride. To some extent the new-found pride was the response of a community in crisis: mounting challenges from tenants in the late 19th century, for example, were a cause for anxiety among the propertied classes. In contrast to the earlier formulation which envisaged reform as a mode of national regeneration, the household was acknowledged as the only zone where autonomy and self-rule could be preserved.[50] This shift was symbolized by the physical expulsion of the National Social Conference from the Indian National Congress *pandal* in 1887. The anti-Western element of this revivalist strand had other pernicious implications; thus, in Bengal, revivalism in the writings of Rabindranath Tagore emphasized not only anti-Westernism but anti-Muslim sentiments as well.[51]

But the debate over Rakhmabai clearly indicated that while the nationalists were reluctant to allow colonial law to penetrate and reorganize familial arrangements, especially when it resulted in greater female power, they did not hesitate to invoke colonial law to strengthen patriarchy, such as in the restitution of conjugal relations. Respect for the sanctity of the domestic sphere was not scrupulously observed by colonial authorities, especially when it came

[48] Uma Chakravarti, 'Whatever Happened to the Vedic Dasi? Orientalism, Nationalism and a Script for the Past', in *Recasting Women*: *Essays in Indian Colonial History*, ed. Kumkum Sangari and Sudesh Vaid, pp. 27–87 (Rutgers University Press, 1990), p. 75.

[49] Ibid, p. 73.

[50] Tanika Sarkar, 'A Prehistory of Rights', in *Hindu Wife, Hindu Nation: Community, Religion and Cultural Nationalism*, by Tanika Sarkar, pp. 226–49 (Permanent Black, 2001).

[51] Radha Kumar, *The History of Doing: An Illustrated Account of Movements for Women's Rights and Feminism in India, 1800–1990* (Kali for Women, 1993), p. 27.

to the lower castes. The Rakhmabai case revealed that the colonial regime was only too willing to step into the sphere of the family in order to reinforce patriarchal arrangements. Act 15 of 1877 recognized the right of the husband to his conjugal privileges and provided for the imprisonment of recalcitrant wives. Rakhmabai was thus sentenced under this act.[52] Though some attempts were made to introduce a concept of divorce or judicial separation, these were stoutly resisted, and imprisonment continued to be a legally permitted method for implementing the restitution of conjugal rights until Act 22 of 1923 finally did away with it.[53] Meanwhile, Dadaji finally negotiated an out-of-court settlement for 2,000 rupees, assuring Rakhmabai of no further legal action.[54]

The Rakhmabai case caused ripples in national and international forums, since it led to intense discussions and mobilization of the public, including women, who demanded legislation while drawing the attention of women's rights activists elsewhere. Tanika Sarkar also claims that the other celebrated case of the century—the 1890 death of Phulmoni Das—led to the first public campaign around the necessity or otherwise of reform.[55]

Malabari meanwhile had shifted his energies from India to England in 1890, where there was a more receptive climate for the extension of the state into private life after the passage of the Criminal Law (Amendment) Act of 1885 which legislated a shift in patriarchal arrangements, raising the age of consent for girls in Britain from 13 to 16, purportedly to defend their interests against sexual offenders. In an emotional pamphlet entitled 'An Appeal from the Daughters of India', Malabari echoed English fears about early marriages producing a serious shortage of heroes and heroines. Dayaram Gidumal, another campaigner, also attributed the physical feebleness of Hindus as arising from the custom of early marriage. Both, however, drew attention to medical rather than sastric reasons for prohibiting infant marriage.[56]

By this time, the definition of childhood was linked neither to biological changes in the body of the girl child nor to cultural practices which ensured the smooth transfer of authority over the child-wife from the father

[52] Dagmar Engels suggests that Rakhmabai's release from her marriage was obtained through the intervention of Queen Victoria. Dagmar Engels, 'The Limits of Gender Ideology: Bengali Women, the Colonial State and the Private Sphere, 1890-1930', *Women's Studies International Forum* 12, no. 4 (1989), pp. 425–37, esp. p. 429.

[53] Ibid., p. 430.

[54] Anagol, *The Emergence of Feminism in India*, p. 289.

[55] T. Sarkar, 'A Prehistory of Rights'.

[56] See Gidumal, *The Status of Women in India*.

to the husband. It was increasingly tied to chronological age. This became even more pronounced with the more gruesome case which led to the 1890 death of Phulmoni Das at the age of 10 as a result of injuries sustained during sexual intercourse with her 35-year-old husband, Hari Mohan Maity. Not only did Maity defend himself by citing the 1860 law fixing the age of consent at 10, but his conviction to 12 months of hard labour also aroused a chorus of orthodox protest.

How did the campaign against child marriage turn into legislation on the age of consent—namely how was the concern about marriage transformed into a question of child sexuality? Ishita Pande's work tracks the ways in which the shift first occurred from biology to chronological age, such that it was not 'puberty at all but *age of twelve* that was enshrined as the boundary between child and woman'.[57] Second, she sees an important shift in the legislation which came to be concerned more about sexuality, and therefore a woman's consent to intercourse, within and beyond marriage.[58] Finally, she also links the increasing concerns about the age of childhood to parallel concerns about the age at which children could join the world of work. In short, childhood was by this time firmly linked to age on several registers.

The Age of Consent Act, which raised the age of consent for girls to 12 while leaving the arrangement and performance of marriage unrestricted, was an indication of the compromises that had been effected by opponents of the bill. In March 1891, both the IPC and the CrPC were amended to raise the age of consent to 12 for married and unmarried girls; sexual intercourse with girls below that age was punishable with up to 10 years in prison or transportation for life. However, since it was consummation rather than marriage that was prohibited, prosecution under the act was difficult if not impossible.

The act's real importance was hardly in the effects it had on the marriage practices of Hindus but in staging a nationwide confrontation between liberal reformers and increasingly conservative no-changers. What should come first: social or political change? Were they mutually incompatible?

Regional Histories: The Princely State of Mysore

Even as these battles raged in British India, one Indian princely state was able to push through the first Infant Marriage (Prevention) Regulation with much

[57] Ishita Pande, *Sex, Law, and the Politics of Age: Child Marriage in India, 1891–1937* (Cambridge University Press, 2020) p. 38 (emphasis original).
[58] Ibid., pp. 63–65.

less fanfare, and without a public/political discourse comparable to western India and Bengal.[59] Mysore passed the regulation in 1894 after a debate which was not as acrimonious, but the formal democratic processes of debate, discussion and even voting on bills in the state legislature could be overturned by the will of the *dewan* acting on behalf of the sovereign. As soon as the amendments to the IPC regarding the age of consent were passed in British India, pleas were made for the passage of a similar act in Mysore.[60] Though refused at first, the *dewan* conceded to a request in 1893 for prohibiting the early marriage of girls, and of young girls to old men, which was couched in terms of a violation of sastric injunctions. Admitting the responsibility of the Mysore government to 'interfere for the protection of children', he said that 'such marriages are equally opposed to Hindu Law and common sense'.

His first response was to call on the heads of leading *matha*s (Hindu monasteries or corporations) to prescribe the limits within which such legislation could take place. Accordingly, it was suggested that the marriage of a girl below 8 years and of a man above 50 to a girl below 16 may safely be prohibited.[61] While 53 members of the representative assembly supported the draft legislation, suggesting that fines, not imprisonment, be imposed for violation of the law, the bill was opposed by 164 members.[62] The *dewan*, however, threw his weight behind the progressives by citing the Mysore census, which showed a 50 per cent increase in the marriages of girls under nine, even though the population had only increased by 18 per cent, and approved of a regulation prohibiting infant marriages in Mysore in 1894.

The pragmatics of implementing such a regulation were somewhat more complex. The primary task was to convince people that the caste practices to which they were accustomed were now liable to invite criminal prosecution. This was done primarily through the use of prosecution itself, which was intended to serve as a deterrent.

Yet even the process of prosecution was fraught with difficulties: if some village authority thought fit to report a case of infant marriage, proving the age of the girl at the moment of marriage was far more difficult, since the regulation hinged on an efficient registration of births and marriages at the village level, which did not exist. What the Government of Mysore may

[59] Janaki Nair, 'The Licit in the Modern', in *Mysore Modern: Rethinking the Region Under Princely Rule*, by Janaki Nair, pp. 219–244 (Minnesota University Press, 2011). The following paragraphs are based on this chapter.

[60] *Proceedings of the Mysore Representative Assembly* (*PMRA*), subject no. 12.

[61] Address of the Dewan of Mysore, *PMRA*, October 1892, p. 19.

[62] Appendix B, B2, *PMRA*, October 1892.

have possessed by way of a will to change was not matched by a comparable machinery of implementation.

The central paradox of the Mysore legislation was pointed out by K. Rangiengar (advocate from Mysore) when he said: 'This regulation, by punishing the promoters of an infant marriage, without declaring that marriage is illegal, would for the first time make an act right in civil law but wrong in criminal law.'[63] Indeed, the cases that came up for prosecution, which even in its most vigorous period of implementation never exceeded two dozen, frequently did not end in conviction. The conviction itself was no more than a symbolic fine, in most cases ranging between 1 and 25 rupees. It was not long before provisions for fines were made as part of marriage expenses.

There were, on the other hand, remarkably few protests against the regulation, and certainly nothing compared with the bitter British Indian debate. There were 202 prosecutions, ending in 175 convictions, over the first 16 years of the act's operation. The figure steadily fell, and no cases were reported for a while, with just 4 prosecutions involving 14 persons between 1922 and 1927.[64]

The Mysore state was eager to snuff out customary law-ways. Although some compromises were made, in declaring 8 rather than 12 as the age of marriage for girls, the government did not hesitate to punish even its own officials who violated provisions of the regulation. The dwindling numbers of cases prosecuted in Mysore in the 1920s suggest a decline in child marriages throughout the two previous decades.

Nevertheless, the Mysore example may be taken as an illustration of how the passage of such laws was compatible with a form of despotism, and did not produce the same effects on public life as elsewhere or encourage the participation of women themselves. Despite repeated requests, the Mysore state did not raise the legal age of marriage in the years before independence. When, following the passage of the Sarda Act, or the Child Marriage Restraint Act (CMRA) of 1929, the Mysore legislative council passed a similar bill, the *dewan* unilaterally declared that the climate of public opinion was not willing to accept such a change.

Elsewhere, as feminist scholars have shown, women were voicing critiques of legislation, but also demanding new rights and protections. By the 1920s and 1930s, they shed their timidity and became vociferous participants in the debate leading up to and after the passage of the CMRA.

[63] *PMRA*, 1893, p. 49.

[64] *Report of the Age of Consent Committee, 1928–29* (Government of India, 1929), pp. 346–47.

The Sarda Bill and the Women's Movement

A definite sign of the shifts in the constellation of political forces in the country was the emergence of women as a significant, though subordinate, group within the Congress. They participated equally in the debates leading to the passage of the CMRA in 1929. This, in a vastly altered international setting which had important consequences for the scrutiny of the plight of Indian women, and India's place in the League of Nations, given the Declaration of the Rights of the Child in 1924. Moreover, childhood was emplaced in a universalized and more homogenous discourse which was linked to the healthy development of nations. Simultaneously, as Mrinalini Sinha has shown, it opened up new possibilities for the framing of women's rights, becoming the 'crack' which revealed that gendered solidarities had the potential to breach nationalist control of the 'women's question'.[65]

From 1922, following the enhanced powers of the reformed legislatures, various bills were introduced to raise the age of consent within and outside marriage, but these were obstructed, frequently by the government itself.[66] Thus, H. S. Gour's 1924 bill to amend Section 375 of the IPC, raising the age of consent for girls to 14 years in both marital and extra-marital cases, was not passed due to the intransigence of government members.[67]

Nevertheless, a government-sponsored bill in 1925 fixed 14 as the age of consent in extramarital cases and 13 in marital cases. The bill was passed by 84 votes to 11, and the opinions of the local governments and administrations were sought. The 1925 amendment for the first time made a distinction between consummation within and outside the marriage. Opinions sought from various parts of India generally acknowledged that 'very few cases of a breach of law within the marital relationship' came before the courts even though there were clearly more infringements of the act within marriage.[68]

The reasons were not too far to seek: there was widespread ignorance of the law; the raising of the age of consent by a mere year made no impact; and, most importantly, the wife and her parents were usually reluctant to speak out. Before long, a bill to raise the age of consent for girls and boys to 14 and 18 respectively was introduced in the legislative assembly by Har Bilas Sarda in 1927. Meanwhile, opinion was already growing on the need for a more effective step than a mere rise in the age of consent, namely the prevention

[65] Mrinalini Sinha, *Spectres of Mother India: The Global Restructuring of an Empire* (Duke University Press, 2006), pp. 152–96.
[66] *Report of the Age of Consent Committee*, p. 11.
[67] Ibid., p. 13.
[68] Ibid., p. 17.

of early marriages altogether. Already in circulation at the time was the Children's Protection Bill introduced by Gour, which Sarda felt insufficiently addressed the problem of child marriage.[69] The Sarda Bill was referred to a Select Committee, which altered the name of the bill from the Hindu Child Marriage Act to Child Marriage Restraint Act, making it applicable to all communities and not just Hindus. Meanwhile, the Joshi Committee appointed to consider Gou's bill, expanded its mandate to consider the Sarda Bill and presented its detailed report to the assembly in 1929.

Rameshwari Nehru and M. O'Brien Beadon, of the the All India Women's Conference (AIWC), pursued the bill outside and within the legislative assembly. Others, such as Ramabai Nilkanth from Gujarat, testified before the committee, strongly urging that the minimum age of marriage of girls be fixed at 16 years, primarily on the grounds of protecting maternal health. In Madras, some women even suggested that the age of consent be fixed at 18: in 1928, the Madras legislative council unanimously passed a resolution recommending 16 as the age of marriage. The AIWC committee recommended 15 as the minimum age of consent for married girls and termed the offence of consummation with underage girls 'marital misbehaviour' rather than rape. Sections 375 and 376 of the IPC were applied to sex with girls below 18 outside marriage.[70] The committee also called for widespread publicity and held the state responsible for popularizing and also developing conditions conducive to prosecution under the act, encouraging the appointment of women police, jurors and doctors. It recommended that the punishment be at least 10 years with fine if the married girl was less than 12 years, imprisonment of one year and a fine for sex with girls between 12 and 15 years, and transportation for life in cases of rape.

In a separate note, Brij Lal Nehru voiced open scepticism about the effectiveness of such a law while specifying that 'we have recommended this law and I have agreed to its retention because of its educative value'.[71] She urged the reduction of the penalty but recommended better application and strongly opposed the holding of trials *in camera*, suggesting instead that shaming the offender was an effective way of preventing future offences. She also suggested that the right of complaint be withdrawn from anyone except social reform associations and parents.

Women had sought support for various legislative measures between 1922 and 1927, but the Sarda Bill infused their campaign with new vigour.

[69] Forbes, 'Women and Modernity', pp. 411–12.
[70] *Report of the Age of Consent Committee*, p. 196ff.
[71] Note by Brij Lal Nehru, in *Report of the Age of Consent Committee*, p. 237.

AIWC member Maharani Chimanbai said: 'On the reform of our marriage system will, I believe, rest the success or otherwise of our educational programme.'[72] Responding to the statement that raising the age of marriage may lead to the immorality of young girls, the women argued that such girls could be looked after just as well as widows were. Although the women were concerned with the prohibition of marriage of children, there was no attempt to offer any critique of 'the protection' of the family.

The bill weathered opposition from the Hindu orthodoxy and from some Muslim representatives. At a time when communal tensions were high, the government was less willing to override the opinions of prominent Muslim members who rejected social reform from a Hindu-dominated assembly. Yet other influential members such as Muhammad Ali Jinnah were convinced by the evidence in the committee report that child marriages were common among Muslims, and the bill finally included Muslims as well.[73]

But by the 1920s, it was clear that women nationalists were acutely aware of the use and abuse of 'custom', 'tradition' and '*sastra*s' in denying women equality before law. As Sinha shows, women's organizations made it a point to take everyone along in their cause, including Muslim organizations, and for the first time, women under the CMRA became truly universal subjects, overcoming the differences that had congealed around personal laws based on religion.[74] Echoes of support were heard within anti-caste and anti-Brahmin movements in southern India, where calls for self-respect marriages had long been made. Some members of the legislative assembly, such as Jinnah and T. A. K. Sherwani, argued that child marriage had no scriptural sanction among the Muslims. Sherwani even said that Muslims only practised child marriage in India because they were corrupted by the Hindus.[75] Muslim members of the AIWC countered the men who spoke on their behalf when they asserted that 'it is only a small section of Mussalman men who have been … demanding exemption from the Act. This Act affects girls and women far more than it affects men and we deny their right to speak on our behalf.' Likewise, Hindu opposition led by Madan Mohan Malaviya argued against raising the marriage age beyond 12 for girls and cited the *sastra*s in defence.

[72] Aparna Basu and Bharati Ray, *Women's Struggle: A History of the All India Women's Conference, 1927–1990* (Manohar, 1990), pp. 42–43.

[73] Dagmar Engels, 'The Changing Role of Women in Bengal: c.1890-1930, with Special Reference to British and Bengali Discourse on Gender', PhD dissertation, University of London, 1987, p. 339.

[74] Sinha, *Spectres of Mother India*.

[75] Forbes, 'Women and Modernity', p. 414.

This drew sharp and pointed responses from the AIWC delegation members, who then said: 'We want new sastras.'[76]

Male reformers' support for the Child Marriage Restraint Bill was couched in terms of societal and moral regeneration and a concern for the physical well-being of young mothers; the opposition framed its arguments in moral and social terms, tending to avoid the more controversial biological arguments.[77] And the women stood convinced that such legislation had to be accompanied by a commitment to greater education of women. The age of marriage was fixed at 14. The bill became law with surprisingly little opposition, only 14 votes going against and 77 for the bill, which spoke of the success with which consensus had been built around the question of prohibiting child marriage.

But the proof of any such legislation's capacity for social transformation lay in its implementation. British authorities were extraordinarily reluctant to overtly contest Indian patriarchal ideologies, fearful of the political repercussions of interference in a 'private domain' which was increasingly being represented as anti-colonial and autonomous. Days after the 1891 age of consent amendment was passed, the governor general, Marquess of Lansdowne, advised local governments via a circular that the act be applied only cautiously: enquiries were to be held only by Indian magistrates and prosecutions postponed if any doubts arose.[78] Not surprisingly, the new legislation was relatively toothless. In 1930 again, the Government of India warned against vigorous prosecutions under the new act, since it would 'unnecessarily disrupt family relations and ruin the wife's prospects for life'.

The CMRA came into operation in 1930. Members of the women's movement realized that their job did not end when the law, whatever its limits, was passed. Indeed, the Sarda Act's greatest lesson was 'to show the women who supported it how powerless they were when it came to actually effecting social change through legislation'.[79] There were few prosecutions under the act despite the fact that the AIWC constantly demanded amendments to make the prosecution of offenders easier and urged the formation of vigilance committees.[80] An editorial in the *Indian Social Reformer* pointed out that there

[76] Forbes, 'Women and Modernity', p. 415.
[77] Kumar, *The History of Doing*, p. 25.
[78] Engels, 'The Limits of Gender Ideology', esp. p. 427.
[79] Basu and Ray, *Women's Struggle*, p. 46.
[80] The punishment stipulated under the law was no credible deterrent to a determined parent, and prosecutions were few. But the age of marriage of Brahmin women at least was anyway rising in the first few decades of the 20th century. Neeraj Hatekar, Abodh Kumar, Rajani Mathur, 'The Making of the Middle Class in Western India: Age at Marriage for Brahmin Women (1900–50)', *Economic and Political Weekly* 44, no. 21 (23 May 2009), pp. 40–49.

was a 'veritable stampede' to register (child) marriages between September 1929, when the bill was passed, and April 1930, when it became enforceable, leading to a noticeable increase in child widows by 1931.[81]

On one occasion, the act was struck down on technical grounds. In 1932, *Tamil Nadu* and the *Dravidian* of Madras noted that the Calcutta High Court had set aside a conviction made under the CMRA since the defendants had successfully pointed to two EIC acts of 1780 and 1797 that remained unrepealed. These acts prohibited anyone from interfering in the marriage of a Hindu girl that was celebrated by her father. In addition, the *Dravidian* commented on the low fines that were imposed on lawyers themselves who contravened the provisions of the act.[82]

In Mysore, as seen previously, legislators demanded more than 12 times that the minimum age of marriage for girls be raised to 12, but their demands were easily dismissed. Ironically, one of the two women members of the assembly, Kamalamma Dasappa, herself expressed concern over the introduction of such a bill, arguing for education, rather than legislation, as a way of bringing about social change,[83] since some members of the Mysore Ladies Conference did not want state law to 'enter the household'. Although the bill was passed, the *dewan* argued for 'leaving things alone'. Mysore thus undid the democratic legislative process, remaining content with the prohibition of the marriage of infant girls to older men.

The 19th century, long understood as the century of 'social reform', presents a far more complex picture as we learn more about new regions and as new questions are asked from the feminist perspective. No doubt, there was the emergence of an incipient rights discourse, as questions of sastraic tradition were prised open both within and outside the courtroom, to allow for new ideas of individuated subjects to take root. Women emerged as subjects of rights and not as objects of reform [84]

Although Hindu society was split down the middle between liberal reformers and increasingly conservative revivalists, a new language of rights was born which queried the embeddedness of women in the discourse of community and religion. Active participation by women themselves in the making of 'social reform' discourse and as litigants raised different perspectives

[81] *Indian Social Reformer*, August 1936.

[82] *Tamil Nadu*, 7 April 1932; *Dravidian*, 8 April 1932, Native Newspaper Reports, Tamil Nadu State Archives.

[83] Ibid., p. 118.

[84] Tanika Sarkar, 'Enfranchised Selves: Women, Culture and Rights in Nineteenth-century Bengal', *Gender and History* 13, no. 3 (2001), pp. 546–65, esp. p. 548.

and uneven possibilities. Sometimes it was the colonial regime itself that upheld caste hierarchies. For instance, though the Vijia Lakshmi case in western India raised the demand for the commutation of sentences of upper-caste women, infanticide by a Mahar woman was denied any such concession on the grounds that there were no constraints on widow remarriage in her caste.[85] Family and marriage were still the preferred spaces within which the threatening sexuality of the Indian woman was contained.[86]

Did the 'women's question' drop out of the nationalist agenda by the late 19th century? Was it largely a failure or an incomplete process? No doubt, reform debates created some liberal space for middle-class women, without levelling gender relations in any fundamental way. The Indian woman therefore emerged in 20th-century public/political discourse embodying a reformed tradition and took her place in the public sphere, a sphere that was defined, enlarged and actively mobilized in the phase of Gandhian nationalism.

The homogenization of the Indian family form, through the operations of the law, was not an even process. The women's movement articulated a strongly feminist and inclusive position in the 1920s on child marriage, but was quick to learn that the language of rights for women needed linking to the larger question of national independence. Its contradictory relation to scriptural tradition and the increasing strength of revivalist nationalists gave rise not only to the ideal of Aryan womanhood but to Hindu communalism. The increasing identification of Aryan with Hindu and of Hindu with Indian drew on the culturalist arguments which revivalists made. And, finally, the linking of questions of law to questions of faith was never fully resolved, and the law's links to the scriptures was never fully laid to rest. Colonial governance sought to domesticate rather than transform patriarchal authorities, and reconstitute the boundaries between household, state and market, thus ensuring the continued sway of Indian patriarchy.[87]

[85] Anagol, *The Emergence of Feminism in India*, p. 177.

[86] Anagol shows that although quite a number of infanticidal women were abandoned wives, they were often sent to the penal colonies in the hope that they would marry and settle in those inhospitable places. Ibid., pp. 175–77.

[87] Singha, *A Despotism of Law*, p. 122.