

**EMPIRE, LAW AND COMMUNITY
CONSCIOUSNESS: DEBATES ON 'HINDU'
CONJUGAL PRACTICES IN LATE NINETEENTH
CENTURY BENGAL**

**DISSERTATION SUBMITTED TO THE JAWAHARLAL
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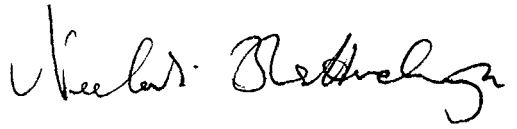
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DECLARATION

Certified that this dissertation entitled 'Empire, Law and Community Consciousness: Debates on "Hindu" Conjugal Practices in Late Nineteenth Century Bengal' submitted by Sohini Dasgupta is in partial fulfilment of the requirement for the award of the degree of Master of Philosophy of this University. This dissertation has not been submitted for any other degree of this University or any other University and is her own work.

We recommend that this dissertation be placed before the examiners for evaluation.


Centre Chairperson


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INTRODUCTION

With the adoption of Hasting's Judicial Plan in 1772, an important policy was inaugurated in British India. It was laid down that in all matters of a 'personal' nature, by which was meant 'inheritance, marriage, caste, and other religious institutions', the law that was to be administered was 'Hindu law' for the 'Hindus' and 'Muslim law' for the 'Muslims'.¹ This 'Hindu law', believed to be founded on religion, and at first understood to be contained in the Sastras, was, by the middle of the nineteenth century, recognized as also vested in custom. The policy of upholding 'Hindu' religion was confirmed by the Queen's Proclamation in 1858. In the context of non-intervention, this dissertation takes up two moments of encroachment in the 'private arena' of 'Hindu' domesticity by way of proposed reform. I will be discussing the positions of the three principal participants in the enterprise of intervention, and in the debates that surrounded that proposition – the colonial state, the missionaries, and the subject population. With regard to the first, I will be analyzing the contestations within policy as administrators vacillated between non-interference and intervention. The activities of the Christian Fathers will be studied with a focus on their mission of conversion which was closely tied to their intervention in custom. Further, I will be examining public responses to the proposed reforms in terms of the appropriation and restructuration of, and resistance to colonial logic, and with reference to indigenous knowledge and experiences.

¹ *Plan for the Administration of Justice Extracted from the Proceedings of the Committee of Circuit*, 15 Aug., 1772 being pp.13-15 of *Extract of a letter from the Governor in Council at Fort William to the Court of Directors*, 3 Nov. 1772, cited in J.D.M. Derrett, *Religion, Law and State in India*, New York, 1968.

HISTORIOGRAPHICAL ISSUES

Existing literature has dealt with the ways in which justice was dispensed in colonial India, and with the making of laws. I take up for review some of these writings.

One of the most outstanding achievements of British rule in India, writes Marc Galanter,² was the establishment of a modern legal system. This system, distinguished from 'traditional tribunals', was marked by uniform territorial rules, 'universalistic norms' that apportioned rights and obligations 'as incidents of specific transactions rather than of fixed statuses', a hierarchical arrangement, and a professional staff. It was this legal system that enjoyed a 'government-imposed monopoly' over the settlement of disputes, permitting other tribunals to function only in its interstices and subject to its authority. The new legal system, thus, gradually 'transformed and supplanted' indigenous legal systems.

The most striking impact of the provision of 'government courts', Galanter suggests, was the shift of dispute settlement from local tribunals and local notables to the 'government courts' that had a 'powerful allure' with their 'strange methods'. Thus, their power to compel the attendance of parties and witnesses, their compulsory execution of decrees that eliminated protracted negotiation, their 'one or none clear-cut decisions' that dispensed with face saving compromises and delays that informal pressures involved, and their concern with equality before the law rather than with status and ties, were factors that ensured the popularity of the British Courts.

The establishment of this new legal system, writes Galanter, coincided with other changes brought about by British rule. With the impingement of new regulations and the arrival of new forms of power from outside, sooner or later, some party in the village found it feasible to resort to 'government courts'; other parties were obliged to

² Marc Galanter, *Law and Society in Modern India*, New Delhi, 1984.

defend themselves. New opportunities of 'social and spatial mobility' made the tool of social boycott less fearsome for parties who desired to grab the advantages provided by the Courts. As more and more people learned to use official courts, the authority of the village tribunal was displaced.

In pursuing his case, Galanter does not take into account the strength of tradition and caste or community. 'Social and spatial mobility' in colonial India did not necessarily imply the surrender of the membership of caste and community. On the other hand, a colonial context could often reinforce traditional ties; and indeed, opposition to the colonial state and its institutions was not infrequently structured along such lines. Loyalty to traditional agencies, and submission to their disciplinary mechanisms, are factors that cannot be denied.

The question of the suitability of British Courts for Indians has been addressed most directly by Bernard Cohn.³ On the basis of field studies undertaken in the 1950s, Cohn noted the survival of traditional agencies of dispute settlement, meting out justice by procedures unique to indigenous adjudication. Field studies, moreover, pointed to the nature of 'traditional Indian society'. Cohn found this to be characterized by 'multiplex relationships, that is, the structure of relationships in which a person tends to occupy the same position relative to the same set of other persons in all networks of purposive ties ...'.⁴ In such a society, Cohn argues, 'ties cannot be severed summarily'. Traditional justice was peculiarly suited to maintaining the society in which it was born, and was, therefore, employed in preference to the adjudication of 'government courts' that were survivals of the British-Indian legal system. On this

³ Bernard S.Cohn, 'From Indian Status to British Contract', and 'Some Notes on Law and Change in North India' in *An Anthropologist Among the Historians and other Essays*, New Delhi, 1987.

⁴ Cohn quotes Max Gluckman, in 'From Indian Status', *Ibid.*, p. 467.

basis, Cohn concludes that the British-Indian Courts of colonial India must necessarily have been unpopular.

In this context, Cohn compares the methods of dispute settlement of indigenous tribunals and the British-Indian Courts. While the indigenous method of settlement by effecting compromises through discussions, informal pressures, and postponements, did not disturb a 'status-based' society, quick and clear-cut decisions, such as that the British-Indian Courts provided, threatened the radical upheaval of established hierarchies. Again, the principle of equality before the law clashed with the caste system that arranged people in a hierarchial structure. Moreover, the system of pleading through an alien *vakil*, rather than through a familiar agent or an appointed representative, was abhorred by Indians who refused to trust public pleaders. Cohn comments: 'the way a people settles disputes is part of its social structure and value system. In attempting to introduce British procedural law into their Indian Courts, the British confronted the Indians with a situation in which there was a direct clash between the values of two societies'.⁵

Further, Cohn points to the inability of the Courts to administer the law. The British civil servants of the eighteenth and the early nineteenth centuries were 'generalists' with virtually no legal training. Difficulties related to terminology and precise translations of English, Persian and vernacular words added to the complication of court proceedings. In addition, judges were unable to check the falsification of public records by powerful men.

Cohn sets out the result of the introduction of the new legal system: 'The British Courts were alien and inefficient. The Indians in response thought only of manipulating the situation and did not use the Courts to settle disputes but only to

⁵ Cohn, 'Some Notes on Law and Change', *Ibid.*, p. 569.

further them'.⁶ Courts, then, were not, the places for the quick settlement of disputes, but where 'false cases' would serve to protract disputes and gain revenge. A wealthy litigant looked forward to a series of appeals, counter-appeals and adjournments by which Court proceedings could be lengthened, and a poorer competitor outlasted and ruined. Courts were useful battlegrounds; caste councils, Cohn writes, would have remained the real dispensers of justice.

Cohn argues his theories on the colonial legal system almost wholly on the basis of field-studies conducted in middle-twentieth century post-colonial India. If observations on the 'field' pointed to the importance of 'status' in Indian society, and to the unpopularity of 'government courts', the British-Indian Courts in colonial India, Cohn argues, must also have been rejected. This, Cohn believes, was because British procedural law clashed with the 'value-system' of the people. Cases that came up before the Courts would, then, have been 'false' ones. In arguing so, Cohn ignores historical specificity. The focus on a colonial context and historical evidence would serve to explain how far the new Courts were used and for what purpose. Again, not just the varying procedures of dispute settlement, but varying notions of what constituted legitimate law and morality would have determined the 'native' perceptions of the new Court system. Further, Cohn's theories reveal his understanding of the static nature of Indian society. Colonial laws were not always resisted; the transformative impact of colonial rule often reconstituted indigenous laws and perceptions. This meant that the authority of the colonial legal system was often invoked. Moreover, the colonial state's recognition of law courts as the only legitimate body of arbitration on certain matters often compelled Indians to resort to Courts.

⁶ *Ibid.*, p. 573.

The process of the transformation of indigenous law in the British-Indian Courts, has been explained by J.D.M. Derrett.⁷ The British exploration of 'Hindu law', Derrett explains, was founded on the misunderstanding of its nature, when they identified the Dharmasastras as the repository of 'Hindu law' and the *pandits* as its exponents. When, instead of documenting the present, the British chose to find existing law in the most ancient Dharmasastras, they had in fact failed to recognize that the text moved with the times, providing interpretations in the light of the present, accommodating custom as far as possible. Derrett shows how in pre-British times, Sastric law was in a constant state of flux, so that what was meant by the Sastras was only the way it stood at that particular moment. There had been ways and means by which older versions of the text could be continually circumvented and updated. Thus, according to the hermeneutic theory of *ekavakya* (all sages were in harmony), any text could be interpreted in the light of parallel and often apparently inconsistent other texts, which were seen to be equally binding. This obviously left space for the introduction of alternatives and even for the application of principles which a text did not contain. Again, a text, unless otherwise stated, was always illustrative rather than exhaustive, and inappropriate rules might be seen as 'explanatory' material by way of illustration, distinguished from *vidhis* or Sastric injunctions. Further, rules could be treated as moral rather than legal principles. Most importantly, the Sastras provided that injunctions incompatible with the demands of contemporary life could be abrogated as *lok vidvasta* or 'intolerable to the public'. In these and other ways, the text moved with the times in the manner in which the *pandits* interpreted it. It was therefore absurd to search the 'originals' and the works of old and respected commentators or to present these in digest form as inviolate principles of 'Hindu law'.

⁷ Derrett, *Religion, Law and State*, Chapters 8 and 9.

Indeed, when *pandits* were compiling their digests under British patronage, they were only recording the state of Sastric evolvement at the time of their compilation. The most brilliant of these men were able to accommodate within their Sastras the new developments initiated by the British administration in exactly the same way as generations of *sastris* had adjusted the text to new needs. Thus, in this period of British government, new works pointed to the potentiality of the Sastras to accommodate many principles of English law in 'Hinduized' forms. These remarkable productions were never used for their authors were suspect. It was the British search for the certainty of law and their distrust of *pandits* that made them rely on translated works of ancient authorities and on European textbook writers. In 1864, the much-maligned *pandits* were dismissed from Court. It sealed a process that had begun with the establishment of the judicial system: the Dharmasastras died as a 'living body of law' in the hands of its new custodians, as the text was 'frozen' into a set of principles.

Closely related to the British insistence on the certainty of law had been their suspicion of the traditional jurisprudential method. Through elaborate discussions on 'mimamsa' (hermeneutics) and 'nyaya' (logic), it had been typical to give every interpretation of the text its due scope, setting out a medley of solutions for the judge to choose from. This method of Hindu reasoning was exactly appositional to the crisp decision that British Courts sought; Derrett points to the constant conflict between these two conceptions within the legal system. Thus, the style of textbook writing by 'native' scholars changed considerably to concentrate on rules and to skip complex discussion in order to subserve an Anglo-Indian need. Yet, the maze of rules was itself confusing. Throughout the last decades of the eighteenth century and the whole of the nineteenth, there was a process of eliminating rules thought unfit to survive and choosing rules fit to be enforced. This process of selection was arbitrarily executed. New productions and new translations of so-called obscure texts were not admitted;

vyavasthas were sometimes accepted and at other times dispensed with if they should happen to contradict text writers; different parts of the country were artificially divided so that some texts might be consulted in each with no overlaps, a scheme that repeatedly broke down; sometimes the *smṛiti* was taken as a standard and the commentaries ignored, at other moments, commentaries over-rode the 'originals'. At all events, once a line of decisions had been established, the Court was reluctant to deviate from it. 'The British method of deducing the law from the European text writer's idea of what the pandits meant, coupled with whatever might be deduced from the translations of a few prominent Sanskrit texts and put cheek by jowl with decided cases enabled the law to be deduced in a most artificial and remote manner'.⁸

The British administration of 'Hindu law' therefore changed the very character of the Sastras. As alternatives provided by the Sastras were narrowed down by a process of picking and choosing, as misinterpretations distorted its very character, the text moved further and further away from present practice.

Thus, Derrett sees the transformative impact of alien rule on indigenous law in terms of a conflict between two diametrically opposite systems of law based on different sets of principles, leading to misunderstanding on the part of the colonial judges. Any chance that they might have had of understanding the 'Hindu system' was thwarted by the corruption of *pandits*. Corruption made it imperative to dispense with the *pandits*: the resulting appropriation of indigenous law by judges tutored in a different legal tradition, completed its transformation.

In arguing so, Derrett dissociates the making of judicial knowledge from the specific colonial context in which it took place. The interaction between the *pandit* and the British judge must be placed within the hierarchical relationship between the

⁸ *Ibid.*, p. 298.

colonizer and the colonized. In this context, it would be fruitful perhaps to investigate how far 'native' voices were accommodated and silenced in the making of Orientalist knowledge. Further, even as texts were translated, they often remained open to multiple interpretations by both colonial authorities as well as Indians; again, the repertoire of texts was an ever expanding one to choose from, and one which presented no settled hierarchization within itself. The 'fossilization' of the Dharmasastras was, then, not as complete as Derrett suggests. Again, the privileging of the text over practice was, by the second half of the nineteenth century, replaced or paralleled by an importance accorded to custom.

The concerns that lay behind colonial law-making, and its impact on the histories of the colonizer and the colonized, have been discussed, among others, by 'feminist' historians. They focus on legislations on women's issues as integral to the study of larger processes and formations. Gender, it is argued, is crucial to the shaping of historical forces: 'feminist' scholars thus call for the recontextualization and the reconstitution of established histories by rethinking historiographical questions from a gender perspective.

In the context of the controversy over the Age of Consent Act, Tanika Sarkar⁹ studies the birth of militant nationalism in Bengal; she reassesses too the liberal-reformist image of colonial rule.

The resistance to the Age of Consent Bill, Sarkar argues, is to be located within the 'distinct political formation' she terms as 'revivalist-nationalist' -- this was a 'mixed group of newspaper proprietors, orthodox urban estate holders of considerable civic importance within Calcutta and pundits as well as modern intellectuals whom they

⁹ Tanika Sarkar, 'Rhetoric Against Age of Consent: Resisting Colonial Reason and Death of a Child-Wife', *Economic and Political Weekly*, 28:36, September 4, 1993.

patronized'.¹⁰ The opposition to the Bill, Sarkar explains, must be placed against the backdrop of the 'recently acquired notion of the colonized self' which grew out of the repressive policies of the post-1857 era, and which led to the rethinking of the 'choice of loyalism' by the Bengali intelligentsia. To this was added the failure of indigenous economic enterprises and the disenchantment with western education as a means of economic and political advancement. Restricted to the occupations of parasitic petty landlordism and clerical service, the *bhadralok* lost the 'public sphere' as an arena for the 'test of manhood'. The household, and specifically, conjugality, thus became the only independent and 'uncolonized' space for 'self rule' by the Hindu male.

The perception of the household as an autonomous domain beyond the purview of colonial rule was strengthened by the premises of colonial law. Hindu and Muhammadan law, which were to operate in the sphere of family relations, family property and religious life, were termed as 'personal law' and distinguished from British and Anglo-Indian law covering the 'public' world of land relations, crime, contract and evidence; the colonial state's pledge of non-interference in religion and custom led to its distancing from the arena of 'personal law'. Even further, the colonial state had begun to accord to unwritten custom, local Hindu opinion, and family practices increasing 'deference, even obedience'.

The 'uncolonized' domain of the Hindu family was 'reimagined as a contrast to and critique of alien rule'. This was done by contrasting the loss of 'manhood' in the 'public sphere' to the subordination of the wife at home. Again, the feeble male physique, maimed, supposedly, by the grind of western education, office routine, forced urbanisation and the loss of traditional sports, was the 'visible site of surrender and loss' to colonization; the woman's body, on the other hand, came to represent not only independence from alien discipline and loyalty to the rule

¹⁰ *Ibid.*, p. 1869.

of indigenous custom and the Sastras, but also strength, which was evident from the woman's capacity to bear pain. At the same time, the Hindu marriage was projected to be superior to the western one: the Hindu 'marriage of souls' symbolized 'spiritual' and 'higher love'; again, the Hindu marriage was said to be founded on superior rationality in that it provided greater security to women.

It was the interference of the Consent Bill in the only remaining 'uncolonized' zone of Hindu conjugality that provoked the massive nationalist resistance associated with the measure, Sarkar argues. She shows too how, by questioning marital love and the security of women in the Hindu marriage system, the Consent Bill altered the arguments that had hitherto been put forward to assert the superiority of Hindu marriage. The Hindu system of marriage was no longer vindicated on the grounds of 'rationality and pleasure'. What was celebrated, rather, was the 'pain and coercion' that it imposed: the harsh discipline of pain imposed on the chaste Hindu woman was her 'pride and glory', and was to be found only in Hindu society, it was proclaimed. Militant nationalism, Sarkar argues, was founded upon a rigorously patriarchal construct of Hindu conjugality that celebrated the suffering of women as a symbol of Bengali-Hindu greatness and nationalism. 'Nationalism' was defined in terms of 'brahminical patriarchal reason', as distinguished from 'universal reason'; this was an attempt to disassociate Hindus from 'colonised reason' and to lay down an alternative path to self rule.

The further point that Sarkar makes is that this resistance was tied to schemes of domination within the imagined Hindu community. Lower caste norms that allowed women greater freedom than did upper-caste ones, were to be subsumed within brahminical norms and reason. Women too, were to be disciplined and dominated by brahminical patriarchal norms.

Another argument put forward by Sarkar is that the colonial state itself was unwilling to legislate on the consent issue. Westernization, leading to middle-class agitation for constitutional rights, had proved to be a threat to colonial racial structures; concessions to 'Indian liberal reformism' was believed to be dangerous. But further, given the experience of Victorian feminism in England, it is possible, Sarkar suggests, that the absolute form of patriarchal domination found in Hindu society appealed to the conservative English male. The colonial authorities 'compromised much' with Hindu patriarchal norms in creating an 'impracticable and messy' legislation. Again, lessons learnt from 'native' patriarchy structured many of the debates in late nineteenth century England.

By arguing for the complicity between the colonial state and the indigenous 'orthodoxy', Sarkar blurs the colonial divide that separated them. Patriarchal systems operated in different forms in the metropolis and in the colony; again, support by the colonial state to principles upheld by the 'barbaric natives' could make difficult the maintenance of the 'civilized' and superior image of the colonial rulers. Further, Sarkar subsumes the varying shades of opposition to the Consent Bill in the all-encompassing explanation of the defence of the 'uncolonized' sphere of 'native' patriarchy. Again, to argue for a conscious disassociation of 'brahminical reason' from 'universal reason' ignores the fact that in a process of interaction between two rival systems of ideas, there also lies a process of conscious and unconscious assimilation of doctrines. Finally, rather than viewing the 'private sphere' as autonomous of colonial control, we could, perhaps, study the emergence of 'Anglo-Hindu' law, and look into the process of how colonial law itself often reshaped the 'native' understanding of 'Hindu law'.

More recently, Mrinalini Sinha¹¹ has explained the Consent debate in terms of the politics of 'colonial masculinity'. Sinha examines the constructs of the 'manly Englishman' and the 'effeminate Bengali', and finds that the interactions between the two stereotypes framed the polemics on the Age of Consent Bill. She argues that the Consent controversy is to be located within a larger 'imperial social formation'; this would indicate that the projects of colonialism and nationalism, far from being contending forces, were closely 'aligned' to each other in terms of their respective 'agendas'. The 'categories' of the 'colonizer' and 'colonized' were not always rival ones; identical projects of domination within their respective societies forged a common itinerary for both groups.

An important premise upon which Sinha rests her theories is the emergence of the class of western-educated Indians, mainly Bengalis, as the 'effeminate Babus' of the late nineteenth century. Following the Mutiny, the 'landed orthodoxy' and 'religious leaders' emerged as the new collaborators of the colonial state. Western-educated men were marginalized and came to be seen as an 'unrepresentative' and 'artificial' minority. At the same time, new developments in the economy eroded the Bengali elite's relationship with land, a relationship that was associated with the concept of 'manhood' in colonial society. Isolated from both the colonial rulers and the 'native' population, deprived of economic power and increasingly associated with professional and administrative employment, the western-educated middle-class had become the class of 'effeminate Babus' in the colonial discourse of the late nineteenth century.

Following Sarkar, Sinha argues that the displacement of the western-educated 'Babus' from the private sphere of government and economy, was accompanied by their 'transfer' to the 'indigenous domestic realm'. It was this realm, made autonomous by

¹¹ Mrinalini Sinha, *Colonial Masculinity: The 'manly Englishman' and the 'effeminate Bengali' in the late nineteenth century*, Manchester, 1997.

the British policy of non-interference in the 'private' affairs of the 'natives', in which the 'effeminate Babu' was allowed to locate his authority. The household became a sphere in which the 'effeminate Babu' could exercise his 'mainly authority'. Again, 'official nationalism' constructed its own unique identity on the basis of its autonomy in a separate domain. But, if the maintenance of an 'uncolonized' domestic realm was important for Indians, it was equally so for the colonial state. Its policy of non-interference and its 'agreement' with the nationalists by which the latter had been settled in their own independent space, made it imperative for the colonial state to keep its distance from issues concerning social reform. Sinha writes that the Consent debate must be placed, in part, in the necessity for the autonomy of the 'domestic realm', a necessity that was felt by both the colonizer and colonized.

Most importantly, the 'colonial-nationalist agreement' and the Consent controversy must be situated within the universal ideology of patriarchy. The threat of the feminist movement in Britain and the debate on the British Consent Act made their marks in colonial policy in India. It was a movement in which an 'embattled British masculinity' would take the side of 'native patriarchy', and make no concession to women on the issue of female consent in the Age of Consent Act for India. Again, the debate in Britain on moral purity structured 'native' opposition to regulating consent. The Indian Age of Consent Act, for its part, influenced the British Consent Act in forcefully reiterating the irrelevance of female consent within marriage.

Sinha attempts to show not only the complicity between colonial and nationalist politics in that both were mediated by 'masculinist politics', but also how this complicity itself was obscured in the 'politics of colonial masculinity'. In demonstrating the convergence between nationalist and colonial interests, Sinha argues, for example, that the widespread agitation for the removal of the marital rape clause from the Consent Bill (a clause by which husbands consummating marriages with

wives under twelve years of age were to be tried for rape) only gave the appearance of being a nationalistic one. For, the 'nationalist' objection to the clause was quite in keeping with the distaste of the British male for the exercise of female consent within marriage; this was evident in the exclusion of the provision of marital rape in the British Consent Act, and the issue of a Circular that made prosecution for rape under the Indian Age of Consent Act virtually impossible. Again, the nationalist opposition to the Bill, which largely veered around the protection of the domestic realm as an autonomous space for 'native' patriarchy, squared with the colonial intent to withdraw from it. Further, that the logic of 'colonial masculinity' favoured the 'revivalists' over the 'reformers' is evident. Sinha writes that the 'reformist' argument that the Bill was in keeping with the principles contained in the Sastras conceded the important point that Hindu domesticity was an exclusively 'native' domain. Moreover, the charge by the colonial authorities that the early consummation of marriage led to the 'degeneration of the race' or 'effeminacy', provoked an apparently nationalist protest against this theory; yet, the focus on race in colonial discourse allowed the practice of premature consummation to be identified with the 'effeminate' race of Bengalis, as distinguished from the 'manlier races of India' who were free from this vice: the race argument 'preserved a certain ambivalence towards the reform of orthodox Hindu patriarchy'.¹² In every case, the bitter nationalist opposition to colonial policies 'obfuscated' the very fact that 'colonial masculinity' 'not only discouraged support for reform', but that 'it underwrote the very protest against social reform'.¹³ Under the circumstances, it was not just domestic reform that was 'sacrificed'; rather, 'nationalist

¹² *Ibid.*, p. 142.

¹³ *Ibid.*, p. 156.

politics itself was sacrificed to a more thorough recuperation within the limited area of colonial masculinity'.¹⁴

In arguing that the colonizer and the indigenous 'orthodoxy' were accomplices in the thwarting of the Consent Bill, Sinha discovers the cause for complicity in the shared agenda of the defence of patriarchal norms; she ignores, in the process, a whole range of interactions that lay embedded in a colonial context. Sinha places the differences that separated the colonizer and the colonized at the level of rhetoric, disassociating these from the divergent concerns of the rulers and the 'subject' population. Again, she theorizes on the assumption of a common set of patriarchal norms universally adhered to. Further, Sinha's usage of the term 'orthodox' encompasses every form of opposition to the Consent Bill; yet, it must be recognized that all shades of resistance need not be underlined by a common aspiration. As homogenized bodies, the 'orthodox' and the 'reformers' were also not allowed to display the ambivalence that could characterize each position.

Sudhir Chandra¹⁵ takes up a celebrated case for the restitution of conjugal rights. Filed against Rukhmabai by her husband, Dadaji Bhikaji, with whom she refused to 'live as his wife', it came up before the British Indian Courts in the Bombay Presidency between 1884 and 1888. Chandra shows how Rukhmabai's uncompromising stand – that she would not abide by a marriage entered into on her behalf at an age at which she could not have given her 'intelligent consent' to it – hit at the very basis of the custom of non-consensual child-marriage. Her declaration that imprisonment was preferable to complying with the judgement of any Court remanding her to the custody of her husband, questioned the 'justness' and legitimacy of colonial law.

¹⁴ *Ibid.*, p. 143.

¹⁵ Sudhir Chandra, *Enslaved Daughters: Colonialism, Law and Women's Rights*, New Delhi, 1998.

Rukhmabai's case provides Chandra with the context for exploring the nature of the colonial legal system, particularly, with reference to its dispensation of justice; he analyzes also the polemics on 'Hindu law' and custom that Rukhmabai's protest gave rise to.

Chandra shows how the judgement of the Bombay High Court granting Dadaji the restitution of his conjugal rights was indicative of the intervention of the colonial judiciary in the realms of 'personal law' and caste. The British Indian judiciary refused to be drawn into the 'fine distinctions' of Hindu law, arguing that it was the religious duty of Hindu wives to live with their husbands. The 'dynamic interpretation of Hindu law' provided by Rukhmabai's lawyers -- that Hindu law left marital disputes to settlement by the caste and not the king -- was rejected. Thus, as Chandra shows, the suit was admitted on the authority of the Indian Penal Code which had imported restitution suits from English law. The existing law was admitted to be 'out of harmony with morality', but 'with due regard to consistency and uniformity of practice', the Courts could not recognize any plea for relief, except in the event of marital offence, as was held by the divorce courts in Britain. Of marital offence perpetrated on Rukhmabai, the Bombay High Court found no evidence. The repudiation of Hindu law, the insistence on a uniform procedure, and the reliance on the practices of English Courts indicated, Chandra writes, the intervention of the colonial state in indigenous laws and usages, and in the jurisdiction of the caste. 'The British would now be the sole arbiters in India, even settling cases relating to the subjects' private lives. They would assume the powers of the king and the functions of the caste.'¹⁶ Thus, the caution and restraint earlier exercised by the judiciary was transformed into a policy of intervention in the post-1857 years of imperial consolidation. Chandra argues that the colonial state's commitment of ensuring a 'systematic' administration of justice led

¹⁶ *Ibid.*, p. 100.

to the deadening of customary laws and usages. It resulted also in the obstruction of justice, a fact that was clearly revealed in Rukhmabai's case. The divergence between 'uniform laws' and justice calls for a rethinking of the conception of colonial jurisprudence as being liberal and humanitarian, Chandra points out.

The 'imperialist' discourse on Rukhmabai's case was pervaded by a widespread conviction of the villainy of 'Hindu law' and society, and the liberating power of colonial mediation. Yet, British authorities were staunchly opposed to legislative intervention in what they found to be a degrading custom'. This, they maintained, revealed their democratic tolerance of 'native law'. Again, in the context of the inaction of the state, 'Hindu laws and customs' were described to be 'most suited to the race'. The rationalization of the status-quo soon began to mark all discussion on Rukhmabai's case. Chandra comments that the reluctance to disturb the 'existing balance of forces' in 'native' society, and a 'cross-cultural' consensus on the 'obedience' that wives should render to husbands, lay behind colonial inaction in Rukhmabai's case.

The 'orthodox' 'native' reaction, writes Chandra, was largely framed by the conviction that the colonial state would intervene in favour of Rukhmabai. An appeal to the British pledge of non-interference in the 'private domain' of Hindu domestic arrangements, and the defence of Hindu marriage as being a system of protection for women, were two important themes in the 'orthodox Hindu' rhetoric on Rukhmabai's case. The control of women via a 'socially-organized domesticity' was central to 'orthodox' opposition to Rukhmabai's 'recalcitrance'; a particular construct of *sanskritic* marriage and Rukhmabai's violation of it formed vital constituents of their arguments. Further, the opposition of the 'orthodoxy', Chandra argues, is expressive of their perception of a 'crisis of the Hindu community' – the appeal to the authority of colonial law had exposed the 'ineffectuality of the community's venerable role models

and of its internal disciplinary mechanisms'.¹⁷ The reaction against perceived colonial interference in the domestic realm must be understood in the context of the fears aroused by a 'politico-cultural confrontation' with colonialism.

The 'reformist' position, Chandra writes, veered around a certain construct of 'Hindu tradition'. 'Tradition', it was said, did not allow for 'force in conjugal Indian marriage'. In countering the 'orthodox' argument that errant wives could not be punished except by restoration to their husbands, the 'reformers' argued that just as husbands who refused to live with their wives were made to pay maintenance, 'ancestral' 'Hindu law' punished wives who refused to live with their husbands by denying to them remarriage. 'Hindus' of the present day, who pressed for the restitution of conjugal rights, had moved away from the 'ancient laws of the Rishis', the reformers argued. The universal principles of justice and inalienable human rights were thus found in an 'uncorrupted tradition'. In attempting to argue that the proposed reforms were not an invasion of the domestic sphere, the supporters of Rukhmabai were committed to merge 'tradition' and 'reason'.

Yet, Chandra points out that the 'imperialist', 'orthodox' and 'reformist' positions were not neatly separated, and were marked by 'overlaps' in logic. Thus, the 'imperialist' and 'orthodox' discourses shared common androcentric assumptions about the duties of wives to husbands. Again, the 'reformers' were 'unmindful of the similarity with the orthodox argument' when they lobbied against remarriage. On the other hand, 'some remarkable orthodox Hindus' 'radicalized orthodoxy and contributed in a major way to the reformist discourse' by supporting Rukhmabai.

Chandra points to 'another variation of the Hindu response to Rukhmabai' in the simultaneous denigration of 'Hindu marriage' and the assertion of its superiority over 'European marriage'. Whatever be the discontent with tradition, Chandra explains, the

¹⁷ *Ibid.*, p. 123.

'sense of a beleaguered community/nation' asserted itself in the face of 'cultural subjection' and the fear of women's liberation.

In arguing for the reversal of the British policy of non-interference in the second half of the nineteenth century, Chandra demonstrates that in the post-1857 years, restitution suits had merely entailed declaring whether conjugal rights existed; the enforcement of conjugal rights was left to the caste. Chandra neglects the fact that the pre-1857 years had seen a change in the colonial position on restitution suits: the earlier judgement of 'bodily restoring' a wife to her husband was replaced by the verdict to make these suits 'declaratory'. Instead of periodizing interventionism, we should perhaps focus on the constant shifts within colonial policy, as administrators sought to define their role as the arbiters of 'Hindu law'. Further, Chandra's categorization of Indians as 'orthodox' or 'reformist' lacks a consistent basis. On the one hand, those in favour of restitution rights are termed 'orthodox' and those who would abolish such rights, 'reformers'; on the other, he refers to one of the staunchest opponents of restitution suits as 'a remarkable orthodox Hindu' defining 'orthodoxy' here in terms of caste consciousness. Further, because Chandra categorizes responses for and against intervention in favour of Rukhmabai as 'reformist' and 'orthodox' respectively, he fails to recognize ambivalence within each of these positions, and takes, instead, to identifying several 'variants' of 'Hindu response'.

This body of historiography on the systems of adjudications available in colonial India and on law-making points to the scope of exploring some questions. In recognizing the parallel existence of the British-Indian Courts and Legislature on the one hand, and the caste or community on the other, we should perhaps investigate not merely which was the more popular form of arbitration, but how each sought to define its own position, and resist the other in the shared realm of adjudication. We should look too at the notions of 'Hindu' law and custom that each put forward, and how each

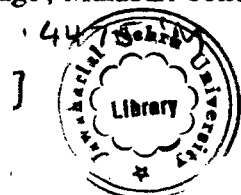
understanding influenced the other. Further, we must take into account the various shades of opinion that went into the making of a stand for or against a particular measure. Thus, to categorize, for instance, every strain of opposition to and acceptance of a specific proposal for reform as 'orthodox' or reformist would be to ignore the complexities of a position formed in a colonial situation. This dissertation will examine some of these observations in the context of certain issues pertaining to 'Hindu' domestic arrangements in the concluding decades of the nineteenth century. I take up here one instance of the proposed reform of 'Hindu' domesticity in which the colonial state is perceived to have followed a policy of non-interference, and another instance of legislative intervention. In this context, I will study the debates that centred around B.M. Malabari's 'Notes' on 'infant marriage' and 'enforced widowhood', and the Age of Consent controversy.

In August, 1884, B.M. Malabari, a Parsi reformer in Bombay, submitted to the Government of India his first series of 'Notes' on 'infant marriage' and 'enforced widowhood' – the two 'evils', he said, which were widespread in 'Hindu society'. With regard to the first, Malabari noted that it was a practice 'more serious than infanticide'. 'Infant marriage', he argued, resulted in 'ill-assorted unions', not merely due to the lack of choice by the parties entering into marriage, but because caste considerations severely restricted selection. The incompatibility between child-wives and aged husbands, and 'physical defect' or 'moral taint' in either party were the consequences of being limited to a 'narrow area of selection'. Further, Malabari pointed out that early marriage led to its early consummation, leading to the 'birth of sickly children', the 'ushering in of disease', and 'the breaking down of constitutions'. The abandonment of education in the case of boy-husbands, and the strain of feeding too many mouths, poverty, and 'the wreck of two lives grown old in youth' were the other results of 'infant marriage' on the well-being of the family. 'Infant marriage', Malabari believed,

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was a 'pernicious custom', not a religious institution, for it did not enjoy the sanction of the Sastras.

Malabari's remedy for 'infant marriage' was not solely education, which, he believed, would not percolate to the 'lowest classes', but the 'indirect' show of government disapproval. In place of 'direct' intervention by means of legislation, Malabari proposed that Universities disallow married candidates to appear for examinations, and that the heads of government departments appoint unmarried candidates in preference to married ones, all other qualifications being equal. He advised that textbooks contain a discussion on the 'evil' effects of 'infant marriage'. He pointed out too that the marriage of an infant girl with an old man could be discouraged by ruling that the money received from a bridegroom by the bride's family who arranged such a match, be deposited in the name of the bride. So far as 'native' action was concerned, Malabari suggested that University graduates organize themselves in associations, and pledge not to be married 'under a certain age'.¹⁸ In his 'Note II', submitted in October, Malabari added that in the case of betrothed children, they may be given, on arriving at years of discretion, the opportunity of ratifying the contract entered into on their behalf.¹⁹

Closely connected to the 'evil' of 'infant marriage', Malabari observed, was 'enforced widowhood' imposed by the caste. Whereas *sati* was 'one single act of martyrdom or heroism', as the victim perceived it, the practice of 'enforced widowhood' was a 'perpetual agony', Malabari contended. In this context, he pointed to the failure of Act XV of 1856 that had hoped to remove all legal disabilities to widow marriage.

¹⁸ B.M. Malabari, 'Note on Infant Marriage in India', *Papers relating to Infant Marriage and Enforced Widowhood in India, Selections from the Records of the Government of India in the Home Department, No. CCXXXIII, Home Department Serial No. 3* (henceforth *Papers*), Calcutta, 1886.

¹⁹ B.M. Malabari, 'Note II on Infant Marriage in India', Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

This, Malabari attributed to the influence of the caste, and of the 'priestly class' which directed the caste. In this struggle between the caste and the State, Malabari suggested some measures that were to be adopted by the government. In a 'suspected case', the State was to ascertain whether a widow had voluntarily adopted widowhood or whether it had been forced upon her. The State was also to entertain complaint from a widow facing excommunication and ill-usage, and was to provide to her 'proper facilities' such as the free service of counsels and exemption from stamp duty, and attendance at court. Further, it was to be ensured that priests would exercise no right to excommunicate parties contracting a second marriage.²⁰ In his 'Note II' on 'Enforced Widowhood', Malabari suggested that a widow be awarded an allowance from her husband's effects, so as to make her independent of those whose interest it may be to keep her unmarried. Further, Malabari proposed that marriage ceremonies be made inexpensive in the case of widows by ruling that declarations before a Registrar may constitute marriage. Malabari encouraged the government to grant funds to a Widow Marriage Fund in aid of the movement. Special educational facilities were to be provided to widows to enable them to qualify themselves as school-mistresses, midwives, medical practitioners, and so on.²¹

Malabari's proposals for government action were not accepted by either the colonial state or the 'natives'. But the issue of child-marriage was to be once again brought into public focus. In 1890, came a shocking report from Bengal of the death of an eleven year old child-wife, Phulmonee Dasi, caused by cohabitation with her husband, Hari Maiti, twenty nine years of age. However, since the Indian Penal Code of 1860 had put down the minimum age for the consummation of marriage at ten, this

²⁰ B.M. Malabari, 'Note II on Enforced Widowhood', Government of India, Home Department, File No. 131-138-E, November 1886.

²¹ B.M. Malabari, 'Note on Enforced Widowhood', *Papers*, pp. 5-7.

was not a case of rape. Phulmonee's death was followed by the prosecution of Hari Maiti by the Queen Empress in the Sessions Court of Calcutta. Maiti was convicted on the charge of committing a 'rash and negligent act' that 'endangered human life'. But, even further, the Government of India introduced, in the Imperial Legislative Council, the Age of Consent Bill to amend the Indian Penal Code. The Bill, which became the Age of Consent Act, raised the age of sexual intercourse for Indian girls from ten to twelve; cohabitation with a girl below that age was to be termed as rape. The reason for the amendment was set out thus: 'The limit at which the age of consent is now fixed favours the premature consummation by adult husbands of marriages with children who have not reached the age of puberty, and is thus, in the unanimous opinion of medical authorities productive of grievous suffering and permanent injury to childwives, and of physical deterioration in the community to which they belong. It has, therefore, been determined to raise the age of consent to twelve...'²²

In the context of Malabari's 'Notes' and the Age of Consent Bill, Chapter I of this dissertation will study the arbitration of the colonial state in 'native' domestic arrangements. Chapter II will study the background to, and the logic of missionary intervention in social legislation. Chapter III will survey the position of those who sought some sort of reform of custom, with particular emphasis on their constructs of the 'Hindu' and the 'Hindu community'. Chapter IV will study resistance to reform, and the constructs of 'Hindu' identities that emerged in the course of that opposition.

²² A.R. Scoble, 'A Bill to Amend the Indian Penal Code and the Code of Criminal Procedure, 1882', 'Statement of Objects and Reasons', January 9, 1891, Government of Bengal, Judicial Department, Original Consultation (hereafter O.C.) No. 96-218, October 1891.

CHAPTER I

NEUTRALITY AND INTRUSION: SHARING A 'NATIVE DOMAIN'

In the early years of Company government, the British had identified the Sastras as the repository of the 'true' 'Hindu religion', its institutions and usages.¹ Orientalist scholars 'discovered' a 'glorious' 'Hindu past' in the ancient texts: the present Hindus were found to have moved away from their 'authentic' religious practices and fallen into decadence. Present practices, then, were seen to represent the illegitimate distortion of the 'original' principles contained in the Sastras, and were invalidated by their very distance from the text. The despoilment of textual authority was believed to have been the handiwork of a manipulative priestcraft; the self-imposed task of 'giving back' the Sastras to the people had provided the British with a powerful basis for legitimizing their rule.²

But even further, the assertion that the present was 'unsastric' was used to both vindicate and mask British intervention in custom. Thus, the 'civilizational' duty of colonial rule, insisted upon by the Anglicans, converged with the pledge to uphold the Sastric tradition, a tradition in which, the British argued, certain practices had no place.³ Interventionism could then be argued away in the language of non-interference. This Orientalist construct of a pure 'Hindu' past contrasting the present persisted in the colonial discourse of the late nineteenth century.

¹ Derrett, *Religion, Law and State*, Chapter 8.

² Lata Mani, 'Contentious Traditions: The Debate on Sati in Colonial India', in Kumkum Sangari and Sudesh Vaid (eds.), *Recasting Women, Essays in Colonial History*, New Delhi, 1989.

³ Rosanne Rocher, 'British Orientalism in the Eighteenth Century: The Dialectics of Knowledge and Government', in Carol A. Breckenridge and Peter Van der Veer (eds.), *Orientalism and the Post-Colonial Predicament: Perspectives on South Asia*, Philadelphia, 1993.

In the closing decades of the nineteenth century however, colonial officials began to accord a new legitimacy to the customs and rituals practised by the people. This new focus on custom was part and parcel of a larger current of Romanticism in Europe – it was an ideology that militated against Enlightenment Reason and Classicism; it was one that celebrated folk traditions and local customs, and upheld 'cultural pluralism'.⁴ Custom, then, came to be accorded importance as representative of religion and practice. In colonial India, this tradition brought about a focus on the customs of families, castes and communities in which the 'natives' were seen to be organized. Yet, custom was often denied its specificity, and universalized across groups of people. But, most significantly, the importance accorded to custom signalled an uncertainty within the colonial administration. In attempting to define what constituted custom, colonial discourse presented a medley of perceptions on the interactions between the present and the past, between religion and custom, and between text and practice. These interactions were situated within varying understandings of the linear movement of time, and within various perceptions of continuum and breaks.

The legitimacy gained by custom was accompanied by an importance accorded to caste which was often understood to be the institution that regulated 'Hindu' religion and usage. It was, then, not always the text, but caste that was the voice of 'Hindu' religion, norms and practices. The pledge of administering the 'Hindu law' became linked with administering the laws and usages determined by caste. This brought an uneasiness within British policy, for, even as the colonial state projected itself to represent superior western morals, it was also committed to upholding the moral standards set up by castes. Since, the colonial state had long established itself as the arbiter of 'Hindu law', caste became a competing judge of law and usage. In the

⁴ Neeladri Bhattacharya, 'Remaking Custom: The Discourse and Practice of Colonial Codification', in R. Champaklaxmi and S. Gopal (eds.), *Tradition, Dissent and Ideology*, New Delhi, 1997.

common space of indigenous custom and law there operated, then, two tribunals – the British judiciary and legislature on the one hand, and the caste 'tribunal' on the other. The debates on custom and reform in colonial discourse pointed to the ways in which the state mediated between non-interference and intervention in caste norms and attempted to carve out its own position in a shared realm of 'Hindu law' and usage.

In addition to traditional mechanisms of control, existed a class of western educated elites organized in their Associations and associated with the Native Press. They attempted to become the spokespersons for indigenous norms and traditions, and for the 'native' population. It was this class of western educated 'natives' who were to occupy an important place in the making of colonial policy.

This chapter will attempt to study colonial policy with regard to the 'private' sphere of 'Hindu' domesticity in the late nineteenth century. This policy has been seen with reference to the persisting notion of a pure and untainted 'Hindu' past, the new importance accorded to practice, the authority of traditional agencies of control within the 'native' community and the importance gained by western educated Indians. In this context, I take up two instances of proposed reform in the realm of 'Hindu' domestic arrangements: one in which no executive or legislative intervention was undertaken, the other which saw intervention by way of a legislative enactment. Section I of this chapter will study colonial responses to B.M. Malabari's Notes on 'infant marriage' and 'enforced widowhood'. Section II will look into the debates on the Age of Consent controversy.

I

NON-INTERVENTION AND ENCROACHMENT

In September, 1884, the Government of India despatched copies of B.M. Malabari's 'Notes' on 'infant marriage' and 'enforced widowhood' to all local

Governments and Administrations under it. The Government of India pointed out that the subject brought to prominence by the 'Notes' was 'one of great importance to the social well-being of the people'; the Governor General-in-Council would, therefore, be 'glad to receive' any observations which the local authorities might desire to make on the proposals contained in the paper. The latter were encouraged to consult such official and non-official persons as were well-acquainted with 'native feeling' on the subject.⁵

The circulation of the 'Notes' launched elaborate investigations in every province. Provincial administrations set about determining how far the customs in question had taken root in the areas under their respective jurisdictions, and whether these were productive of the evil effects which had been described so vividly by Malabari. With reference to these enquiries, officials also commented on the necessity and desirability of colonial intervention in 'native' practice. The responses that came in were unanimous in deprecating the forms of intervention in custom proposed by Malabari; this overarching consensus on the undesirability of 'direct' interventionism was underlined by the attempt to mediate between the two images of the colonial government as a 'civilized government', and yet, one that upheld indigenous norms and practices. There were several ways in which reconciliations were sought. In the first place, the necessity of intervention in custom was denied by demonstrating that the practices in question were hardly known. Thus, provincial administrations enquiring into the 'tendency of the bulk of the population in the present day' reported that the customs of 'infant marriage' and 'enforced widowhood' were by no means widespread in the areas under their respective jurisdictions. Again, colonial officialdom rationalized 'infant marriage'

⁵ From A. Mackenzie, Secretary to the Government of India, Home Department, to the Secretaries to the Governments of Madras, Bombay, Bengal, North-Western Provinces and Oudh, Punjab, Chief Commissioners of the Central Provinces, British Burma, Assam and Coorg, and Resident at Hyderabad, dated Simla, the 11th September 1884, *Papers*, p. 8.

and 'enforced widowhood' in a variety of ways to prove that these were not the 'unmitigated evils' that they were alleged to be. Yet, rationalizations offered for the existence of custom were premised on certain perceptions of 'Hindu society' and of the 'Orient' – of the 'Hindu' and the 'Oriental' present and their past, of their location in linear time and their evolution in a historical process. Even as colonial authorities argued against the proposed interference in custom, their very understanding of that custom created the space for their intervention.

THE PARTICULAR AND THE UNIVERSAL

Most provincial governments were anxious to prove that the practices of 'infant marriage' and 'enforced widowhood' had not taken root among sufficiently large sections of their people so as to justify intervention. On the contrary, the absence of 'infant marriage' and the prevalence of widow marriages were observed by several administrations; this, they said, pointed to a state of affairs quite different from that which Malabari had been disposed to establish. In the Punjab for instance, 'throughout a very large proportion of our area infant marriage is the exception ...; while a very considerable proportion of our population – probably something like two-thirds of the whole – practise widow marriage ...'.⁶ The Government of Assam noted that there was 'on the whole' 'certainly a preponderance of custom in favour of adult marriages'. Further, the 'customs of the country lend themselves easily to contracts of cohabitation which, though, not formally recognised as marriage, are of validity scarcely illegal to that of the legal tie'.⁷ In the North-Western Provinces and Oudh only the 'twice-born

⁶ From Denzil Ibbetson, Officiating Director of Public Instruction, Punjab, to the Under-Secretary to the Government of Punjab, dated Lahore, the 13th November 1884. *Ibid.*, p. 258.

⁷ From E. Stack, Officiating Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Department, dated Shillong, the 16th October 1884. *Ibid.*, p. 266.

class' and those castes without *panchayats* or brotherhoods did not practise widow marriage: together they accounted for a little more than a fourth of the 'Hindu population' in the provinces. Further, 'the Levirate practice of marrying a brother's widow obtains special acceptance'.⁸ In Orissa, widows of all but three castes were 'at liberty' to marry; here 'infant marriage' was not the rule among many communities, while at all events, young children were not allowed to proceed to the homes of their husbands until they were old enough for cohabitation.⁹

Colonial officials used these findings to arrive at two premises upon which they based their arguments for non-intervention in custom. One was the provincial nature of custom. Thus, for instance, 'Hindu customs' in Assam were quite different from 'Hindu customs' elsewhere: Assam, it was quoted from the Census, was 'a young country comparatively free from the yoke of conventionalities'; thus, those who favoured child marriage 'ape the customs of other provinces, and they think they raise themselves in the social scale by adopting the inconveniences to which older civilizations of Hindustan have subjected themselves'.¹⁰ Bengal was identified to be the epitome of the 'old' and 'inconvenient' 'civilization'. Impurities had crept into the local customs of Assam by way of the imitation of Bengali customs. The 'true' customs of the 'Hindus' of Assam were established and exonerated, and the logic of interventionism deflected to Bengal. Much in the same way, the Government of Orissa distinguished the practices followed by the 'Uriyas' from those followed by the 'Hindus'

⁸ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 249.

⁹ From C.T. Metcalfe, Commissioner of the Orissa Division, to the Secretary to the Government of India, General Department, dated Cuttack, the 20th April 1885. *Ibid.*, p. 202.

¹⁰ From E. Stack, Officiating Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Department, dated Shillong, the 16th October 1884. *Ibid.*, p. 266.

of Bengal. Those who had practised 'infant marriage', the Government asserted, had done so under the influence of Bengalis.¹¹ The Government of the North-Western Provinces and Oudh noted that 'when ... Mr. Malabari condemns the caste customs of Hindus because they impose 'enforced widowhood', it is to be observed that his generalisations do not apply to these provinces'.¹² These customs were, then, to be found elsewhere. Indeed, 'infant marriage' and 'enforced widowhood', colonial officials said, were not practised by all 'Hindus', but largely by Bengalis. Such observations helped to look upon these practices as local questions; the 'Hindu community' as a whole was not to be defined by these customs. And if 'barbarism' did not exist among 'Hindus', intervention was unnecessary.

In a similar exercise, the observation of custom was employed to deny the power of the 'Brahmanical caste' in 'Hindu society', and thereby, to deny the 'universalisation' of the 'priestly' customs of 'infant marriage' and 'enforced widowhood'. The Government of the North-Western Provinces and Oudh quoted J.D. Mayne's treatise, *Hindu Law and Usage*, to concur with Malabari's view that the prohibition of widow marriage was a 'later Brahmanical custom'; but, it saw 'popular dissent' from the Brahminical custom in the widespread practice of remarriage. The 'second marriage' ratified by the *panchayat* or caste brethren was unaccompanied by religious ceremonies; this procedure, it said, marked the breach between the 'people' and the priests. The Brahmins 'stood aloof' from such celebrations of remarriages which were not allowed by their own customs and traditions: thus, 'the people have taken the law into their own hands and found in their own *panchayats* a machinery for celebrating

¹¹ From C.T. Metcalfe, Commissioner of the Orissa Division, to the Secretary to the Government of India, General Department, dated Cuttack, the 20th April 1885. *Ibid.*, p. 202.

¹² From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 251.

a ceremony on which the priesthood has laid its interdict ...¹³ With the exceptions of the brahminical and the upper castes, the 'Hindus' did not practise 'enforced widowhood'. The evil, it was thereby proved, was limited to a particularly small fraction of the 'Hindu community' -- the upper castes -- while the practices of the greater part of the community were observed to be quite the opposite from those described by the 'reformers'.

Yet, the Census of 1882, taking the 'marriageable age' as fifteen, reported that 7.8 per cent or six million Hindu girls were married before the age of fifteen; about a third of them were married before they were ten years old. The government now rationalized the existence of the practices of 'infant marriage' and 'enforced widowhood' in a variety of ways. One method of doing this was to deny that the customs were vices in 'Hindu society', by providing reasons for their existence. A.P. MacDonnell, Officiating Secretary to the Government of Bengal, set out to demonstrate the restricted influence of priestcraft in promoting the customs of 'infant marriage' and 'enforced widowhood'. It was necessary, MacDonnell wrote, to compare the extent of the prevalence of these customs among the Muhammadans 'who are not similarly exposed to the operation of that influence'. It was found from the Census that 'only about one percent more of Hindu than of Mahomedan females are married before the age of 15'. Again, in comparison to the figures received on Muhammadan widows, '0.9 per cent measures the excess of Hindu widowhood over what it ought to be'. Evidence quoted from the Census by the reformers was pronounced to be misleading.¹⁴

¹³ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 249.

¹⁴ Note by A.P. MacDonnell, April 5, 1886, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

Closely related to the link established between Hindu and Muhammadan practices was a powerful argument against intervention; this was one that was grounded in a theory of 'Oriental' peculiarity. The demonstration that infant wives and a large number of widows were to be found both among Hindus and Muhammadans allowed the British to identify over-arching 'Oriental' customs; these common 'social customs' had stemmed from the racial particularities of the 'Orientals'. Europeans and 'Asiatics' were differentiated on the basis of their respective racial characteristics that were said to have led to the development of two different social formations. 'Infant marriage' and widowhood were then rationalized as being born of, and often suited to, the racial peculiarities of the 'Asiatics'. It was reported that 'Asiatic' girls became 'marriageable' earlier than did European ones, and it was 'doubtful' whether the present system of the betrothal of children at an early age by their parents was not especially well-suited to this condition.¹⁵ It was true that 'as in many countries, the parties to the contract have little or nothing to say to their selection of each other. But [,] could the principle of free choice be wisely advocated or safely introduced in a country where physical capacity for sexual intercourse exists at so early an age?' This was a question that was 'beset with difficulties' and one to which the 'Orientals' themselves had found 'the best solution' in the custom of parentally arranged, non-consensual early marriage.¹⁶ Similarly, the early consummation of marriage was justified in terms of the early 'physical maturity' attained by Indian women. A.O. Hume noted that consummation having been 'deferred by parents ... till a reasonable age, I mean for Asiatic girls, the progeny are, so far as we can judge, perfectly healthy, physically and mentally'.¹⁷

¹⁵ *Ibid.*

¹⁶ From J.G. Cordery, Resident at Hyderabad, to the Secretary to the Government of India, Home Department, dated the 13th August 1885, *Papers*, pp. 267-268.

¹⁷ A.O. Hume, *Gup and Gossip*, February 28, 1885, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

It was further observed that the very large number of Hindu widows when compared to European figures was linked to early maturity and early marriage. The Secretary to the Government of the North-Western Provinces and Oudh explained: 'as an Indian woman reaches a marriageable age earlier than a European, so she passes it sooner'. The Census returns of 1882 recording the number of Hindu widows had been analyzed and it had been observed that 'the proportion of Hindu women living in widowhood only begins to get excessive in the fourth decade of life'.¹⁸ The Government of India agreed that this was because Hindu women were 'past the age of child-bearing' at thirty and 'therefore less often sought in marriage' than younger women.¹⁹ This was a 'state of things' that was likely to continue 'until some radical change in the national physique and constitution occurs which may check the development (of the state of widowhood) and prolong the youth and vigour of the race'. Thus, the 'excess' of widows was because of 'physical and social causes' which were 'probably inseparable from the ethnological and climatic conditions of the country'.²⁰ The existence of 'enforced widowhood' was thus denied. The construct of the 'Orientals' as a race allowed their social institutions to be located in their particular racial traits; custom derived the rationality for its existence from race.

At the same time, the practices of the 'Orientals' were denied their 'uniqueness' and found to be of a more universal nature. These then became less objectionable because they were known to the West. The Governor of Bombay was reported to have noted

¹⁸ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885, *Papers*, p. 251.

¹⁹ Note by A.P. MacDonnell, April 5, 1886, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

²⁰ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885, *Papers*, p. 251.

that 'in many highly civilized countries such as France, girls have ordinarily very little voice in the choice of their husbands'. The Governor in Council 'is not aware that marriages are ordinarily less happy in France than in England. There is something to be said in favour of both systems'. The 'native' marriage system based on contract by parents was therefore not 'uncivilized': the objection that parties entering into marriage were denied their 'freedom of choice is perhaps rather sentimental than real'.²¹ Again, there was also nothing distinctively 'Oriental' about 'infant marriage'. It was observed that 'infant betrothals and marriages are not specifically Oriental institutions. They were well known in Europe at a comparatively recent historical period. They have disappeared without any special action on the part of any State'. The customs 'may be trusted to disappear when the country is no longer suited for them as has been the case in Europe'.²² The colonial state could show its disapproval of the custom, but 'active interference' was unnecessary, customs would change in a natural process. The Secretary to the Government of the North-Western Provinces and Oudh noted that spinsterhood in England was as pernicious as widowhood in India in its effect of depriving women of protection, and of unleashing immorality in society. The Secretary concluded that 'the position of women everywhere is imperfect and often very unsatisfactory'.²³

²¹ From J. Monteath, Under Secretary to the Government of Bombay, General Department, to the Officiating Secretary to the Government of India, Home Department, dated Bombay Castle, the 26th March 1885. *Ibid.*, p. 38.

²² From C.R. Hawkins, Deputy Commissioner, Amritsar, to the Under Secretary to the Government of Punjab, dated 27th October 1884. *Ibid.*, p. 253.

²³ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 249.

HAPPY FAMILIES

The rationalization of and justification for 'infant marriage' and 'enforced widowhood' were also argued in terms of the protection and affection provided to women by family life. It was observed that 'infant marriage' was not an 'unmitigated evil' and 'unrelieved of redeeming features', for it often worked 'fairly well'. There are millions of cases in which early marriages are believed to be daily proving to be happy ones ...', wrote A.O. Hume. In support of his opinion, Hume furnished a letter from a 'native friend' which demonstrated how 'Hindu' wives never learnt to frown upon their husbands. This was not because husbands made slaves of their wives, but because of a 'deep seated affection' between husbands and wives. Thus, impressionable infant girls taught to look upon their husbands as 'guardians, protectors and Gods', always developed into 'true' and 'contented' wives. The 'subjugation' of wives married in infancy was explained in terms of their willingness to serve their husbands. Hume believed that there must exist 'some foundation' for the contentions of his friend; indeed, 'everything in this world has its darker and brighter sides and [the] blackest could have some silver lining ...'.²⁴ Again, 'infant marriage' ensured that 'every woman is to a certain extent provided for'.²⁵ Several officials pointed to the ill-consequences that followed when women were not married. 'It must be remembered that infant marriage if it leads in one way to immorality and suffering, in another way prevents it. Unchastity and offences connected with women are conspicuously more frequent in the west of the Punjab where infant marriage is the exception than in the

²⁴ A.O. Hume, *Gup and Gossip*, February 28, 1885, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

²⁵ From Lieut. Col. H.C.A. Szczepanski, Deputy Commissioner, Wun District, to the Chief Commissioner, Hyderabad Assigned Districts, dated Yeotmal, the 17th February 1885. *Papers*, p. 258.

east where it is the rule'.²⁶ Indeed, if it were not for 'infant marriage', 'there would be many unmarried females, and the result from a moral point of view would probably be worse'. This was because in the present condition of female 'bringing-up' and 'debasement' among 'Hindus', it would be quite dangerous not to provide girls with a 'legitimate means of fulfilling what to their understanding is the aim and object of their lives'.²⁷ 'Infant marriage', therefore, performed the useful social function of preventing immoral acts which 'Hindu women' would otherwise have committed. The function of marriage in protecting women and social morals was not restricted to the 'Hindus'. The dangers of being unmarried were placed within a more universal logic of family life. Women, both in England as well as in India, indeed, women as a group, should not be allowed to remain in an unmarried state. All women were in need of their 'natural place in the household'; further, whatever may be the differences in the forms of society, 'the general social effect and result must be detrimental wherever a large body of unmarried women exists'. It was in terms of these considerations that 'infant marriage' could be viewed as an institution that performed the desired function of ensuring the marriage of women. In this sense, 'the Hindu woman was better off than her English sister'. The Secretary to the Government of the North-Western Provinces and Oudh pointed out that out of every hundred English females of twenty years and upwards, 25.8 were unmarried and 13.6 widows, while in the North-Western Provinces and Oudh, 0.81 were unmarried and 29.55 widows; the number of single women represented by widows and spinsters was thus much greater in England. These figures revealed that 'the Hindu woman is less exposed than the English woman

²⁶ From Denzil Ibbetson, Officiating Director of Public Instruction, Punjab, to the Under-Secretary to the Government of Punjab, dated Lahore, the 13th November 1884. *Ibid.*, p. 258.

²⁷ From Lieut. Col. H.C.A. Szczepanski, Deputy Commissioner, Wun District, to the Chief Commissioner, Hyderabad Assigned Districts, dated Yeotmal, the 17th February 1885. *Ibid.*, p. 258.

to the disadvantages attendant on exclusion from the married state and on the unprotected isolation in which those are left who are deprived of the solace and security of a household'. However, the position of single women was more tolerable in England than in India; further, the restrictions that *purdah* placed on Indian women of the highest castes made isolation even more disadvantageous. Presumably then, it was even more important for Indian women to find husbands; this vital task was performed by 'infant marriage'.²⁸ The perceived functions performed by the family structured the rationalizations of 'infant marriage', and put forward a case against interventionism.

A CASE FOR INTERVENTION

Yet, the various rationalizations for non-intervention in custom implied neither the abandonment of the colonial 'duty' of intervening for the purpose of improvement, nor a denial of the inherent inferiority of the 'Orient'. The understanding of 'infant marriage' and 'enforced widowhood' as being 'later Brahminical customs' alluded to a purer past from which the 'Hindus' had deviated. Present customs were 'immemorial customs' that had developed when 'time was young', but these were deviations from even more ancient Sastric usages in which 'infant marriage' and 'enforced widowhood' had no place. Priests, it was said, had 'so woven their freaks into popular religion' that 'they cannot be separated now without mutilating the religion itself, but:

We have very little doubt, that a great many of the injunctions now laid to the charge of MANU, the great source of Hindu religious doctrine have, in reality, no claim to such a high origin. But yet [,] these injunctions have not

²⁸ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 251.

lost their supreme influence over the minds of the communities who obey and live under the Hindu system of customs.²⁹

Present Brahminical custom was 'Hindu religion', but deeply tainted; the past was the repository of a better 'Hindu religion'. The early Orientalist notion of a superior Hindu past and a decadent present persisted in the discourse on custom, and provided the space for arguing for the improvement of the present.

The rationalizations of the institutions of 'infant marriage' and 'enforced widowhood' were also productive of precisely such a space for inferiorizing the 'Orient'. Thus, for instance, if the state of womanhood was declared to be 'unsatisfactory', it was particularly so in 'native' society where the *pardah* system prevailed. Racial characteristics justified the existence of 'infant marriage', but this custom had been found in the past of Europe. Europe, it was argued, had progressed, but the 'Hindu community' was 'enthralled' in 'hopeless servitude to the precepts and mandates of a grey and mystic antiquity that ought to have been discarded long ago'.³⁰ On the other hand, some colonial officials found that the 'Orientals', in their present stage of development, had not yet outgrown the institution of child marriage. Domestic customs 'may be trusted to disappear when the country is no longer suited for them, as has been the case in Europe'. On the scale of civilization, and in the carefully constructed evolutionary schema, the 'Occident' was placed ahead of the 'Orient'; the colonial state would lead 'Orientals' in their path towards progress.

THE SANCTITY OF CASTE

The discourse on custom was inextricably linked with the colonial state's insecurities about caste. Colonial authorities recognized the caste as a powerful

²⁹ Athanaeum and Daily News, Madras, August 28, 1884, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

³⁰ Athanaeum and Daily News, Madras, August 27, 1884. *Ibid.*

tribunal in the sphere of 'Hindu law' and usage, a sphere which was commonly occupied by the state and caste. Its power to command the obedience and loyalty of its members was well understood: 'any intervention in the customs of infant marriage and enforced widowhood would be considered by the people to be the invasion of the religion enunciated by their caste'; interference in caste would be considered an interference in religion and would not be tolerated by the people. Further, the ability of the caste to compel obedience to its laws was revealed in its much feared power to eject those who dissented from its ideology. It was observed:

... its resolutions or sentences, as that of degradation or expulsion from caste and the like, are not unfrequently more terrible than any decree or sentence of a Court of Justice. Whoever can appreciate the effect of excommunication in the Middle Ages in Europe may be able to realise to some extent the effects of expulsion from caste here in our time, but with the exception of such a person, or with the exception of such as have been eye-witnesses of the revolting consequences on the spot, none can possibly realize them. So far do the facts exceed anything that fiction can invent!³¹

The power of excommunication pointed to the independence of the caste as a tribunal -
- '... if a person, on social or religious grounds, or merely from personal dislike, declines to converse or eat with another, how can the state compel him to do so?' This was 'the real difficulty' in intervening in the power of excommunication exercised by 'high priests and heads of castes', and the 'great obstacle' in the path of reform. 'Supposing that the power were formally taken away, would not the social condemnation of the caste-fellows produce the same result?'. Any intervention in custom was to be determined by 'one common-sense test' - 'Can the State give effect to its commands by the ordinary machinery at its disposal? If not, the State had better abstain from making a rule which it cannot enforce'. The 'condition of success' for legislation is that it 'should keep within its natural boundaries, and should not, by overstepping those boundaries, disclose the limits set to its powers, and at the same

³¹ Letter from Mr. Serjeant Atkinson to B.M. Malabari, dated October 23, 1884, *Indian Spectator*, October 26, 1884. *Ibid.*

time place itself in direct antagonism to social opinion'.³² Intervention in the religious usages outlined by caste was declared to be fruitless and impolitic.

Yet:

The Hindus and Mussalmans are guaranteed, by pledges the most sacred, all their customs and usages in matters relating to their religion, inheritance &c., but they are not allowed to be the ministers of their own laws in such matters. The Romans ... allowed in some of their distant provinces, the tribunals ... to administer their own peculiar laws in matters spiritual: but such is not the case ... under the British Raj.³³

If the British were the upholders of 'Hindu law' and custom, their non-interference in custom meant also the upholding of caste prescriptions. For, '... by recognising the existence of the Hindu religion as a personal law in the matter of marriage, the British Government had contracted an obligation to enforce its provisions in their entirety upon those who choose to live under them'.³⁴ The rationalizations of the customs of 'infant marriage' and 'enforced widowhood' and the demonstration of their unpopularity among certain castes helped to prove that the colonial state was not upholding 'barbarity'. Previous interventions in custom by way of the abolition of *sati* and the suppression of infanticide were justified by terming these discredited practices as 'crime'. 'Where caste or custom enjoins a practice which involves a breach of the ordinary criminal law, the State will enforce the law, caste or custom notwithstanding'. 'Infant marriage' and 'enforced widowhood', it was argued, were not crimes, and 'all that can be said is that they have a generally evil effect'.³⁵

³² Note by C.P. Ilbert, August 28, 1886. *Ibid.*

³³ Letter from Mr. Serjeant Atkinson to B.M. Malabari, dated October 23, 1884, *Indian Spectator*, October 26, 1884. *Ibid.*

³⁴ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885, *Papers*, p. 252.

³⁵ From J. Monteath, Under Secretary to the Government of Bombay, General Department, to the Officiating Secretary to the Government of India, Home Department, dated Bombay Castle, the 26th March 1885. *Ibid.*, p. 38.

CARVING AUTHORITY

Yet, if the colonial state had always operated as arbiter in the sphere of 'Hindu law' and custom, its own status as a judicial authority, as well as the space for its operation needed to be defined: the colonial state as an independent authority for arbitration had to move beyond being merely the echo of caste. Within the shared field of 'Hindu' 'personal law', the state attempted to carve out a space in which to locate its authority, and to create its own following. 'Hindu law', it was argued, 'is a personal law from whose operation he who lives under it has the right to withdraw himself'.³⁶ Caste was a 'voluntary association', and only people who wished to belong to it were required to submit to its rules. It was hoped that 'enlightened public opinion' would prevent 'caste oppression' by 'making it easy for those who were affected by it to withdraw from connection with their castes without losing any social status thereby'.³⁷ The leadership in this direction was to be assumed by 'men of high position and independent means' who could withstand the pressures exerted by their castes; the 'timid ones' would follow their example.³⁸ The numerical strength of the dissenters from caste norms was the first condition of success against the caste, for:

excommunication fulminated against a large section of a community loses most of its terrors; and as dissenters from Brahminical custom multiply, they will form a rapidly increasing body desirous of living under the earlier law

³⁶ From Honorable H.St.A. Goodrich, Additional Member, Legislative Council, Government of Madras, to S. Harvey James, Secretary, Legislative Council, Government of India, dated the 22nd January 1886. *Ibid.*, p. 298.

³⁷ From D.G. Barkley, Member, Legislative Council, Government of Punjab, to the Under Secretary to the Government of Punjab, dated Simla, the 23rd October 1884. *Ibid.*, p. 254.

³⁸ From J.F.K. Hewett, Commissioner of the Chota Nagpur Division, to the Secretary to the Government of Bengal, General Department, dated Ranchi, the 9th March 1885. *Ibid.*, p. 206.

and usage which permitted remarriage and did not sanction child-marriage.³⁹

The western-educated 'leading men of the community' would provide the leadership in this movement; at the same time, if caste leaders could be 'educated', they would abandon their practices. It was hoped that more and more 'natives' would abandon their membership of their castes, reject the norms that castes upheld, and adopt the alternative system of laws and practices that would become increasingly popular with the dissemination of western education.

Yet, it was understood that 'direct' intervention to 'civilize' custom by means of legislation was undesirable. It was pointed out that 'the days are gone' when 'progress' could be forced on an 'unwilling people' by the 'friendly moral pressure of an alien government'.⁴⁰ Legislation would now be considered an act of blatant interference in the 'religious feelings and customs' of the 'natives' and a 'breach of neutrality in religion'. Such measures as recommended by Malabari would be 'repugnant' to the people and would give rise to a 'dangerous spirit of discontent' and widespread opposition to the government. But even further, legislation imposed 'from above', would defeat its very purpose of 'reforming' custom. Interference would 'stimulate' resistance to reform and severely retard its progress. The present customs would be 'maintained out of a spirit of opposition and the final reforms would be made more difficult by Government interference'.⁴¹ Further and importantly, legislation would

³⁹ From Honorable H.St.A. Goodrich, Additional Member, Legislative Council, Government of Madras, to S. Harvey James, Secretary, Legislative Council, Government of India, dated the 22nd January 1886. *Ibid.*, p. 300.

⁴⁰ From C.H. Tawney, Officiating Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, General Department, dated Calcutta, the 17th March 1885. *Ibid.*, p. 201.

⁴¹ From J.F.K. Hewett, Commissioner of the Chota Nagpur Division, to the Secretary to the Government of Bengal, General Department, dated Ranchi, the 9th March 1885. *Ibid.*, p. 207.

draw the government into an 'unequal conflict with social prejudice'.⁴² 'It would be impracticable to enforce legislation so far in advance of the general opinion of the community'. Legislation that was not in keeping with 'social opinion' was likely to be constantly defied; C.P. Ilbert, member of the Governor General's Council, warned that in 'the competition for influence between legislation and caste or custom, the former should not ... disclose the limits set to its powers'.⁴³

TRANSFORMATION FROM WITHIN

Legislation was undesirable, but intervention through western education could overcome many difficulties associated with legislative intervention. Unlike legislation which would provoke resistance to reform by contradicting public opinion, education would 'bring up' public opinion to the civilized values of the West. While in the present state of 'popular sentiment' 'compulsion' was ineffective in bringing about 'social change', the transformation of the 'conviction' of the people through western education would ensure the success of reform. C.H. Tawney, Director of Public Instruction, Bengal was confident of the impact of western education in establishing a humane and just society.

...We have every reason to hope that as the diffusion of enlightenment extends, the dislike to early marriage that is gradually spreading with the spread of Western ideas, a feeling will spring up that it is unjust to debar child widows from re-marriage. This will perhaps bring with it as a natural corollary a shrinking from imposing restraints on human freedom even in the case of women who have lost their partners early in life and desire to re-enter the married state. Discussions such as have been set on foot by Mr. Malabari among the native community, will naturally aid the reforming movement that is gradually gaining strength,

⁴² From J.G. Cordery, Resident at Hyderabad, to the Secretary to the Government of India, Home Department, dated the 13th August, 1885. *Ibid.*, p. 267

⁴³ Note by C.P. Ilbert, August 28, 1886, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

and we may fairly look to the spread of education to ensure its ultimate triumph.⁴⁴

Malabari's proposal of closing Universities to those who had married infant girls hit against the dissemination of western education and was widely rejected -- 'Real and permanent reform must have its origin in the spread of general education and enlightenment, and therefore any means which would prevent or restrict freedom of access to schools and colleges would seem to defeat its own purpose'.⁴⁵ The objective of the state should be 'to educate up to a higher level so as to hasten the reaction which would be sure to follow in the native mind'.⁴⁶ The clash between the values upheld by the people and those embodied in colonial legislation was to be resolved in the transformation of the former to conform with the latter: education and especially female education 'which is now being vigorously promoted' would achieve this end. 'Educated native opinion would daily make itself more and more felt' in 'native' society, it was said.⁴⁷

The transformation of 'social opinion' was an effective way to counter caste. 'Natives' tutored in western education would discard the customs of 'infant marriage' and 'enforced widowhood'.

Caste prejudice -- their nursing mother -- will not we may be sure, die a violent death at the hands of the public executioner and by sentence of law,

⁴⁴ From C.H. Tawney, Officiating Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, General Department, dated Calcutta, the 17th March 1885, *Papers*, pp. 201-202.

⁴⁵ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 252.

⁴⁶ From J.F.K. Hewett, Commissioner of the Chota Nagpur Division, to the Secretary to the Government of Bengal, General Department, dated Ranchi, the 9th March 1885. *Ibid.*, p. 206.

⁴⁷ From J. Monteath, Under Secretary to the Government of Bombay, General Department, to the Officiating Secretary to the Government of India, Home Department, dated Bombay Castle, the 26th March 1885. *Ibid.*, p. 38.

but will dwindle away, as enlightenment advances and perish of inanition at the last just as the belief of witchcraft did in Europe.⁴⁸

There was every indication in this direction, for it had been learnt from an eminent *pandit* that widow marriage had taken place in an influential Hindu family once a bastion of 'Hindu orthodoxy'; but what was striking was that the parties involved had faced neither 'social ill-usage' nor excommunication.⁴⁹ Conversion through the teachings of western education would deprive 'priestcraft' and caste leaders of their followers.

The transformation of 'social opinion' by means of western education was closely linked with the policy of non-interference. Colonial officials harped on change from 'within' as the only true basis for reform. A vital ground for 'legislative action' was 'sufficient proof' that it 'has been asked for by a section, important in influence or number, of the Hindu community itself'.⁵⁰ But if the demand and movement for reform was to come 'from within' the 'native' community, the responsibility for this development was vested in the western educated elite. These 'leading men' of the 'native' community were to bring public opinion to bear through the Press;⁵¹ further, they were to unite by organizing themselves in Associations with the object of

⁴⁸ Letter from A. Mackenzie, Secretary to the Government of India, to B.M. Malabari, *Indian Spectator*, August 31, 1884, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

⁴⁹ From C.H. Tawney, Officiating Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, General Department, dated Calcutta, the 17th March 1885. *Papers*, p. 201.

⁵⁰ Home Department Resolution, Extract from the Proceedings of the Government of India, in the Home Department (Public), – No. 35-1616-26, under date Simla, the 8th October 1886. *Ibid.*, p. 2.

⁵¹ Letter from Hon. Mr. J. Gibbs, Judicial Member of the Viceroy's Council to Malabari, *Indian Spectator*, August 31, 1884, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

enlightening and directing public opinion.⁵² The government believed that 'the best and most practicable way of proceeding would be to form committees in every town and large village, and at the headquarters of every district and sub-division'.⁵³ There could be 'no objection' by the 'native' community if the associations were funded, encouraged and sometimes patronized by the state.⁵⁴ These associations were not, however, to simply demand government action, for the moment was 'premature' for legislation. 'You cannot scold or legislate the people at large', Mackenzie, Secretary to the Government of India advised the 'native gentlemen', 'but ... you can make it to an extent "fashionable" to despise them'.

Get, then, all the leading native gentlemen, whose education has already taught them the folly and wickedness of infant marriage and enforced widowhood, to band themselves into a national association for the propagation of sound ideas on those subjects. Education is, after all, the true and only common basis for Indian nationality. Make it the object of the association to encourage and support all who hold similar views. Get all the leading official and non-official Europeans to affiliate themselves as sympathisers and well-wishers. Raise funds for compiling and circulating vernacular tracts on the subject, letting it be known far and wide how influential the movement really is. Hold meetings periodically at all large centres to induce young men especially to join the association and pledge themselves to advance its aims; and you will, I feel sanguine, give a great and lasting impulse to the reforms you so much desire to bring about.⁵⁵

Legislation would endanger precisely such a movement for reform and 'put back for half a century the chance of reform from within on which alone we can really depend

⁵² From G.N. Barlow, Commissioner of the Bhagulpore Division and Sonthal Pergunnahs, to the Secretary to the Government of Bengal, General Department, dated Camp Bowsee, the 9th January 1885, *Papers*, p. 210.

⁵³ From J.F.K. Hewett, Commissioner of the Chota Nagpur Division, to the Secretary to the Government of Bengal, General Department, dated Ranchi, the 9th March 1885. *Ibid.*, p. 207.

⁵⁴ From G.N. Barlow, Commissioner of the Bhagulpore Division and Sonthal Pergunnahs, to the Secretary to the Government of Bengal, General Department, dated Camp Bowsee, the 9th January 1885. *Ibid.*, p. 210.

⁵⁵ Letter from A. Mackenzie, Secretary to the Government of India, to B.M. Malabari, *Indian Spectator*, August 31, 1884, Government of India, Home Department, General Branch, File No. 131-138-E, November 1886.

in such a matter'.⁵⁶ Western education was to free the 'natives' from 'the trammels of immemorial custom' and the 'tyranny of caste'; yet, the onus of change was to be placed on 'native' shoulders. An ideal meeting point between the civilizing mission of the colonial state and its policy of non-interference was the deployment of western educated 'natives' who could bring about change 'from within'.

CONCEPTUALIZING THE 'HINDU' RELIGION

The arguments put forward both for non-interference in custom as well as for the necessity for 'social change' were premised on particular notions of what constituted the 'Hindu religion' and custom, and further, who the guardians were of this religion and the usages of the people. Colonial officials debating on the desirability of intervention in the institutions of 'infant marriage' and 'enforced widowhood' linked these customs with 'the Hindu religion'. Custom, viewed as synonymous with practice and not the text, was seen to be the repository of the 'Hindu religion'; interference in custom was thus interference in religion: 'whatever the *Shastras* may or may not say', it was pointed out, the 'majority of the Hindus' regarded their 'rules of caste and their marriage laws and customs as more or less connected with their religion'. The 'Hindu religion' 'as practised today' was thus different from the *Sastras*. It was observed that

... the tyranny of caste is the tyranny of religion as at present understood by the people, and it is immaterial whether the religions views now held are in accordance with the *Shastras* or not ... Wherever Mr. Malabari's arguments are directed against caste, they are really assailing the Hindu religion as now understood; it is not possible for Government to maintain a policy of non-interference with religion; and yet assail caste prejudices based on religion, or what is believed to be religion.⁵⁷

⁵⁶ Note by C.P. Ilbert, August 28, 1886, Government of India, Home Department, General Branch, File No 131-138-E, November 1886.

⁵⁷ From D.R. Lyall, Officiating Commissioner of the Chittagong Division, to the Secretary to the Government of Bengal, General Department, dated Chittagong, the 3rd February 1885, *Papers*, p. 207.

Yet, if the 'Hindu religion' was believed to be constituted by the 'customs of caste', it was constituted by upper caste customs. For 'infant marriage' and 'enforced widowhood' were practised by the upper castes and those who 'strive to climb the social scale' by 'imitating' those 'whom birth and tradition have placed above them'. In several provinces, it was observed that all except the upper castes practised adult marriage and widow marriage. The Secretary to the Government of the North-Western Provinces and Oudh, having explained that the usages of the lower castes revealed the continuation of early law or custom provided in the Sastras, and 'marked popular dissent' from later 'brahmanical custom', did not accord to lower caste customs religious status. Thus, widow marriage was practised by the 'lower and less advanced castes' 'in defiance of the teachings and example of the enlightened and *religious* ones' (emphasis mine). Remarriage, it was reported, was a '*civil* contract' marked by the absence of '*religious* ceremonies' (emphasis mine).⁵⁸ Thus, those customs which were observed to be inconsistent with 'brahmanical custom' did not qualify as religious custom. Custom, in this case, was separated from religion; the *panchayat* or brotherhood could uphold the first, but religion was always the preserve of the brahmins.

The construct of the 'Hindu religion' as synonymous with 'brahmanical religion' was linked to a particular understanding of the movement of 'Hindu society' in the linear schema of time. The present 'Hindu religion' was seen to have a past in the rise of Brahminism in 'immemorial times', but 'Hindu society' itself had a remoter 'purer' and 'truer' past that was located in the Sastras. The early Orientalist notion of the decline of 'Hindu society' from a 'pure' past to a decadent present persisted in the

⁵⁸ From the Chief Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department, dated Allahabad, the 5th February 1885. *Ibid.*, p. 249.

colonial discourse of the late nineteenth century. Yet, in this notion of decline was now also embodied the perception of a static society. For, the 'brahmanical religion', born when 'time was young', had continued to exercise its hold on 'Hindu society'. The understanding of the static 'Orient' was strengthened by the assertion that 'infant marriage', known in Europe's past, had been rejected in the march of civilization. The concepts of 'Oriental' decline and its static nature were inherent in the colonial reading of custom and religion.

British perceptions of custom and religion were tied to the rethinking of the policy of non-interference and of the 'civilizational' role of the government. On the one hand, the Orientalist project of restoring the Sastric past was upheld. On the other, the logic of interventionism was vested in the evolution of the present to a more 'civilized' future: this future was the European present. The western-educated Indians were important to this second understanding, as interference was to be masked in the discovery of a 'native' movement towards reform. The 'civilizing mission' was to be reconciled with the policy of non-interference both with the help of the text and with the growth of 'native' public opinion. Intervention by means of legislation or executive action lay discredited.

II

THE POLICY OF INTERVENTION

In March, 1891, the Legislative Council of India passed an Act to raise the age of consent for sexual intercourse for Indian girls from ten to twelve years. The premature consummation of child-marriages leading to 'grievous suffering and permanent injury to infant wives, and of physical degeneration in the community to

which they belong' was sought to be checked by the Age of Consent Act.⁵⁹ Reports from Bengal of the death of Phulmonee Dasi, eleven years of age, by cohabitation with her husband, Hari Maiti, twenty nine years of age, called for the regulation of the consummation of child-marriages. Colonial authorities admitted that child-marriages were often 'attended by' 'evils' that were to be remedied by the Act; but, they harped on the fact that the legislation involved no interference with the 'religious observances' of the people.

Yet, one of the most powerful arguments against the Consent Bill put forward by the 'natives' was that it interfered with the 'Hindu' 'religious observance' of the *garbhadhan* ceremony. Held by large sections of public opinion to be a sastric sacrament, it entailed the consummation of marriage upon the attainment of puberty by wives. 'Native' objection to the Bill, that it would prevent the performance of a vital religious ceremony should puberty occur before the age of twelve, launched a colonial enquiry on the 'religiosity' and prevalence of the *garbhadhan* ceremony.

RELIGION VS. PRACTICE

British officials reporting on the *garbhadhan* ceremony, attempted to demonstrate that the Consent Bill did not interfere with the 'religious observances' of the Hindus. There were two ways in which they went about arguing this. In the first instance, the text was separated from present practice; in the former was vested the 'Hindu religion', in the latter, custom, Colonial administrators argued that the *garbhadhan* ceremony as understood by present day *pandits* to mean the consummation of marriages when the wives attained puberty, had no sanction in the Sastras; they thus denied to the

⁵⁹ A.R. Scoble, 'A Bill to Amend the Indian Penal Code and the Code of Criminal Procedure, 1882', 'Statement of Objects and Reasons', January 9, 1891, Government of Bengal, Judicial Department, O.C. Nos. 96-218, October 1891.

garbhadhan ceremony any religious bearing. Custom was often juxtaposed to religion. Colonial records are however vague about the origin of the *garbhadhan* ceremony as it existed in brahminical practice, although that brahminical practice itself was of 'long-standing' was understood: one British official suggested that the 'ceremony whatever it may be' was 'a somewhat indecent and bestial notion, most probably grafted on Hinduism during the later revival of Brahminism, or after the Muhammadans first appeared in India'.⁶⁰ At the same time, colonial officials tried to prove that custom had rejected the *garbhadhan* ceremony entailing cohabitation. Present practice was vested with legitimacy even when it was seen to move away from the text and religion. Yet, custom could not always be segregated from religion and the boundary between the two was difficult to maintain. In trying to establish the policy of non-interference, the colonial state was condemned to constantly shifting its definitions of custom and religion.

The argument that was deployed to deny the religious nature of the *garbhadhan* ceremony had been provided by the early Orientalists. Their notion of the existence of a pristine 'Hindu' past in which was located 'true' 'Hindu religion' and its practices was put to use by the colonial administrators of the late nineteenth century. The *garbhadhan* ceremony, in so far as it required the consummation of marriage immediately on the appearance of the first signs of puberty, it was observed, was not supported by the Sastras -- 'I have been unable to meet a single Hindu', wrote the Collector of Bankipur, 'who can give the text for this injunction, nor can any of the people I have come across give any but general authority for it'.⁶¹ The search for Sastric dicta on the *garbhadhan* ceremony was conducted with the aims of ascertaining 'first, whether the

⁶⁰ From J.A. Hopkins, Collector of Bankipur, to the Officiating Chief Secretary to the Government of Bengal, dated Bankipur, the 2nd February 1891, Government of Bengal, Judicial Department, O.C. No. 178, October 1891.

⁶¹ *Ibid.*

texts cited really support the position in aid of which they are invoked (i.e., that *garbhadhan* entailing cohabitation must be performed immediately on the attainment of puberty by wives); and secondly, whether other texts of equal authority can be adduced in an opposite sense'. It was discovered that Raghunandan, 'who lived at the time of the great revival which is associated with Chaitanya' and 'held so high in popular esteem in Bengal as to be practically unassailable', had provided evidence which 'goes all in support of the Bill' -- *garbhadhan*, in Raghunandan's view, need not be performed at the first instance of puberty; even further, he had specifically stated that a 'contemptible offspring' was produced by mothers who had not completed sixteen years of age. Again, commentators on the works of Manu and Vyas proved that 'cohabitation with a wife even after puberty if she is too young to enter in this relation' was prohibited. But, commentators were accepted as authorities only when they were found to favour the Bill; at other times, the 'originals' -- the Sastras -- were the highest authority in the identification of religious custom. Asvalayana's *Griha Sutra*, it was said, necessitated the performance of not *garbhadhan*, but some other ceremony on the appearance of puberty. Further, many texts of the Sastras such as the *Brahma Purana* which enjoined cohabitation 'in the first menstrual cycle of wives' were declared to be 'notorious for advocating late marriages'. Again, there was a need to 'reconcile' 'conflicting texts'. Parasara who made consummation of marriage on puberty compulsory except when husbands were 'not in the neighbourhood' ought to be studied, it was said, in conjunction with other texts which imposed very many 'limitations on the practice', so that actually only 'abstinence arising from aversion or want of affection' was sinful. Above all, all texts, it was stated, should be read in keeping with the 'spirit of the Shastras'. In this case, 'all texts are governed by the underlying principle that a son is to be begotten, -- not a sickly or short-lived son, but one who will be able to do the father spiritual service'. In view of that 'dominant principle', it

seemed 'to involve some violence to urge that the spirit of the Shastras is obeyed by enforcing cohabitation at the first signs of puberty in the wife' -- indeed, it was 'more reasonable' to read any texts prescribing the time for the ceremony in subordination to those which declared the age at which cohabitation was permissible.⁶² Thus, in determining Sastric practice, no particular principle was adhered to -- commentators were sometimes viewed as the highest authorities and at other times neglected, the 'originals' could be seen as either unassailable or secondary to commentaries; some texts were not to be trusted on their own authority and had to be studied along with others, or with an eye to the 'spirit of the Sastras' -- at all events, colonial administrators were the final arbiters of Sastric principles and thereby, of legitimate religious practice. Thus, colonial non-interference in religion was demonstrated by disproving that the ceremony of *garbhadhan*, as understood by the people, enjoyed any claim to Sastric approval.

In denying the religious nature of the *garbhadhan* ceremony, a ceremony which *pandits* had upheld as a religious practice, the British made a distinction between custom and religion. Religion was vested in the Sastras; custom could be religion only if it was supported by the text. Even if *pandits* had proclaimed the religious character of the *garbhadhan* ceremony, 'their contentions are scarcely supported by their own authorities'. It was shown 'how dangerous it is ... to select a single text for the dogmatic support of a principle, without reference to the context, the general spirit of the writer, and to other texts which limit, control and sometimes even contradict, the particular text on which reliance is placed'.⁶³ The particular form of *garbhadhan* that

⁶² From Sir Alfred Croft, Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 24th February 1891, Government of Bengal, Judicial Department, O.C. No. 207, October 1891.

⁶³ From Sir John Edgar, Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Legislative Department, dated Calcutta, the 26th February 1891, Government of Bengal, Judicial Department, O.C. No. 209, October 1891.

was said to be practised was thus seen to be the custom of *pandits*, and one which had developed in contradiction to the Sastras and the 'Hindu religion'. The Government of Bengal desired 'to record its distinct and hearty support of this Bill, which involves no interference with the religion of the people'.⁶⁴

AN UNKNOWN CUSTOM

That *garbhadhan* entailing cohabitation was not a 'religious observance' of the people was also sought to be proved by asserting that the ceremony was not observed at all; *garbhadhan*, as defined by the 'orthodox' failed to be backed by the sanction of custom. Custom throughout India, it was said, was 'found to put its own interpretation upon the Shastras or even to ignore them altogether with the march of ideas or with local necessities'. 'To show that a practice is enjoined in the Shastras is quite consistent with its being ignored in practice without objection or difficulty'. Illustrations of this could be 'quoted without end' and an act considered a sin in the Sastras was no longer so regarded. Thus, for example, while in the past, Brahmins who served Sudras were required to perform penance, present day Brahmins served not only Sudras, but also a '*mlechha* government' without so much as thinking of penance'.⁶⁵ The present, then, had moved away from the past; it had rejected the prescriptions, religious obligations and moral standards of the Sastras that were no longer suited to it. Custom, differentiated from religion/text, derived its legitimacy from the norms and needs of the present. The *garbhadhan* ceremony, it was now argued, was not found in custom.

Reports on the prevalence of the *garbhadhan* ceremony confirmed that it was unknown in most parts of the country. It was not observed in Upper India and the

⁶⁴ *Ibid.*

⁶⁵ From Sir Alfred Croft, Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 24th February 1891, Government of Bengal, Judicial Department, O.C. No. 207, October 1891.

North-Western Provinces; it was 'probably also' not observed in Bombay and Madras.⁶⁶ Again, if the *garbhadhan* ceremony was integral to child marriage, it was noted that 'child marriages are regulated with much greater strictness in the east than in the west of India'.⁶⁷ Colonial officials in Bihar observed that the *garbhadhan* ceremony 'about which there is so much agitation in Bengal' was 'unknown up in these parts'.⁶⁸ As a rule, cohabitation did not take place until after the 'second marriage' which was not performed until 'three to five years' after the appearance of puberty'.⁶⁹ Among the 'higher classes', it was considered a 'degradation' to have 'single girls in the house after they have arrived at puberty'.⁷⁰ *Garbhadhan*, then, was no part of the custom of the 'Hindu residents' of the areas under scrutiny.

Colonial officials reporting on the prevalence of the *garbhadhan* ceremony in Bengal found that 'the ritual is known to few, and to the people generally the ceremony has lost, if it ever possessed much importance'.⁷¹ Thus, 'with regard to the Sanskars,

⁶⁶ Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

⁶⁷ From J.A. Hopkins, Collector of Bankipur, to the Officiating Chief Secretary to the Government of Bengal, dated Bankipur, the 2nd February 1891, Government of Bengal, Judicial Department, O.C. No. 178, October 1891.

⁶⁸ From G.A. Grierson, to the Officiating Chief Secretary to the Government of Bengal, dated Gaya (Camp Karpi), the 2nd February 1891, Government of Bengal, Judicial Department, O.C. No. 178, October 1891.

⁶⁹ From C.R. Mandarin, to the Officiating Chief Secretary to the Government of Bengal, dated Darbhanga, the 3rd February 1891. *Ibid.*

⁷⁰ From W.H. Grimley, Commissioner of the Chota Nagpur Division, to the Chief Secretary to the Government of Bengal, dated Camp Cheraidhar, Jushpore State, the 13th February 1891, Government of Bengal, Judicial Department, O.C. No. 201, October 1891.

⁷¹ Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

of which the Garbhadhan is one, the best information at my command leads me to believe that most of them are either neglected, or at any rate, are not performed at the time or in the manner which the Shastras prescribe ...'.⁷² It was learnt from a 'highly educated gentleman, a graduate of the Calcutta University and a Sanskrit scholar' that the *garbhadhan* ceremony had been reduced to a symbolic performance and celebrated often in the absence of husbands.⁷³ 'According to a widespread custom in Bengal, custom in this, as in so many other instances, governing the conduct of men in religious matters atleast as much as text do, the symbolic performance of Garbhadhan, by means of a gold ring passed down under the bride's clothes, is accepted as satisfying the religious obligation ...'. This ceremony, however, only granted the 'license to cohabit', actual cohabitation being considered unnecessary to the ritual and deferred until much later.⁷⁴ But, even the 'mutilated and symbolic' version of the *garbhadhan* sacrament was 'constantly neglected'.⁷⁵ Thus, 'young men in service at a distance from their homes are unable to visit their wives for some time after the latter have shown signs of puberty'.⁷⁶ Again, 'among the students of our Government

⁷² From Sir Alfred Croft, Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 24th February 1891, Government of Bengal, Judicial Department, O.C. No. 207, October 1891.

⁷³ Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

⁷⁴ From Sir Alfred Croft, Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 24th February 1891, Government of Bengal, Judicial Department, O.C. No. 207, October 1891.

⁷⁵ *Ibid.*

⁷⁶ Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

Colleges the Garbhadhan ceremony has fallen into almost total disuse'.⁷⁷ The ceremony is 'as often as not put off to suit the convenience of the husband'.⁷⁸ It was observed that the proportion of 'orthodox Hindus' among the 'educated classes' of Bengal was restricted; the latter 'daily, in secret and openly violate the injunctions of the Shastras for their social and spiritual guidance'. With many, 'so complete is the indifference to the teachings of the Shastras that no attempt is made to master them'. To these men, the existence of the *garbhadhan* ceremony 'came as a revelation'. It was thus difficult to 'believe in the sincerity of the appeal to religion'. Again, for the want of husbands, Kulin fathers kept their daughters unmarried beyond the age of puberty. The assertion that the performance of the *garbhadhan* ceremony was imperative on the appearance of the signs of puberty was 'manifestly inconsistent' with these facts. The Government of Bengal noted that there was much evidence that 'the Garbhadhan ceremony is rapidly falling into disuse even in Bengal'.

That the *garbhadhan* ceremony was no part of custom was thus established in several ways. While it was asserted that the ceremony was completely unknown to custom in several provinces, it was demonstrated in the case of Bengal that the *garbhadhan* ceremony was not practised in the form in which it was said to exist. Further, it was proved that the ceremony altogether was being 'quickly lost' to custom. The 'educated and advanced' sections of the 'natives' were important in this determination of custom; their practices and their observations on what constituted practice were central to the colonial construction of 'native practice'; in this construct

⁷⁷ From Sir Alfred Croft, Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 24th February 1891, Government of Bengal, Judicial Department, O.C. No. 207, October 1891.

⁷⁸ From J.A. Hopkins, Collector of Bankipur, to the Officiating Chief Secretary to the Government of Bengal, dated Bankipur, the 2nd February 1891, Government of Bengal, Judicial Department, O.C. No. 178, October 1891.

rested very largely the assertion of non-interference in the 'religious observances' of the people.

A NON-INTERVENTIONIST INTERVENTION

Colonial authorities were keen to establish that legislation, far from being an interference in the religious customs of the people, aimed to uphold them. One fact that was harped upon was that child marriage, founded upon 'religious tradition' which 'enjoined such marriages upon large and influential classes of the Hindu community throughout India', was not to be touched. What was to be 'regulated' was the age of consummation within marriage. 'Premature consummation', it was argued, was a practice which implied a debasement of the custom of child-marriage, and which was not tolerated by religion. This was proved with the help of the text. The Lieutenant-Governor of Bengal, Steuart Bayley, observed that 'whereas it is a religious obligation among Hindus for their daughters to go through the ceremony of marriage before the age of puberty, it is no part of Hindu religion that they should be subjected to cohabitation with their husbands before that period'.⁷⁹ Even further, it was asserted that the Sastras had termed 'cohabitation at immaturity' a 'sin', for which there was no penance. A recent edition of the *Dharma Sastra Sangraha* was quoted by the Director of Public Instruction, Bengal: 'For the great sinners in this respect, and for their associates, there is no atonement except by falling from a precipice or plunging into the fire'.⁸⁰ The Law Member of the Governor-General's Council, Andrew Scoble,

⁷⁹ From C.C. Stevens, Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Darjeeling, the 8th November 1890, Government of Bengal, Judicial Department, Original Consultation (hereafter O.C.) No. 117, October 1891, West Bengal State Archives, Calcutta.

⁸⁰ From Sir Alfred Croft, Director of Public Instruction, Bengal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 24th February 1891, Government of Bengal, Judicial Department, O.C. No. 207, October 1891.

cited the 'eminent scholar' and 'pillar of orthodoxy' Pandit Shashadhar Tarka Churamoni to point out that the Sastras 'anticipating these evil consequences' (of premature cohabitation) had provided for punishment by death. The 'practice' of premature consummation, Scoble continued, 'is so strongly condemned by the Hindu religious law, that there could be no valid objection to prohibiting it by general legislation'. Infact, the law could prevent 'thousands and thousands of instances' of husbands 'committing sin by cohabiting with their immature wives'. 'Indeed, it may be said', Scoble wrote, 'not merely would it (the Bill) not interfere with their religious obligations, but on the contrary, it would assist in enforcing their due observance'.⁸¹

Again, the custom of premature cohabitation was seen to be dying out. 'I am confident that the custom of premature consummation is not universal but local. The Uriyas who are bigoted Hindus do not practise it, nor most certainly do the Rajput Chiefs of Chota Nagpur'.⁸² In Bihar, the 'going away' ceremony never took place before the age of twelve and no cohabitation was allowed until the ceremony was performed.⁸³ Colonial officials were 'assured' in the knowledge that no Bihari girl was allowed to leave her parents' house 'till she is properly developed'.⁸⁴ Premature consummation was, then, not the custom of the 'Hindu community'. A 'native' in the *Calcutta Review* was quoted to show that the average age of marriage in India, as

⁸¹ Note by A.R. Scoble, September 6, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

⁸² From C.C. Stevens, to the Chief Secretary to the Government of Bengal, dated Camp Muzaffarpur, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 177, October 1891.

⁸³ From G.A. Grierson, to the Officiating Chief Secretary to the Government of Bengal, dated Gaya (Camp Karpi), the 2nd February 1891, Government of Bengal, Judicial Department, O.C. No. 178, October 1891.

⁸⁴ From J.A. Bourdillon, to the Officiating Chief Secretary to the Government of Bengal, dated Muzaffarpur, the 3rd February 1891, Government of Bengal, Judicial Department, O.C. No. 178, October 1891.

revealed by the Census, ranged between ten and twelve; assuming that in keeping with religion, Hindu fathers married their daughters before the latter attained puberty, 'we find Hindu practice very much in conformity with medical opinion, and it seems safe to adopt twelve years (as the age of consent) before which age (according to medical opinion) puberty is seldom attained'.⁸⁵ The Consent Bill, thus, upheld 'native' practice.

The demand for reform, it was argued, had been generated by public opinion. If the 'history of British rule' and 'the working of its Courts' had demonstrated 'a distinct leaning to tenderness towards and non-interference with the religious observances of the Indian peoples', the Consent Bill was also in keeping with the spirit of non-intervention and tolerance. The proposed Bill was founded not upon the 'sentiments, wishes and opinions of the people of England', or of the Anglo-Indian community, but upon a 'wide-spread native movement' for the reform of the domestic sphere. The discussion on premature consummation by a 'thoughtful few' had grown of late into a 'prominent topic' in the Native Press. Further, Phulmonee's case had 'provoked stir and attention' in 'all sections of the Indian community'. Discussion, it was said, had been 'brought to a point' where 'action' was 'imperative'. The Bill 'at this juncture' would 'help our native fellow-subjects over the stile' and 'secure to them an immense advantage to which many are already sensible, but which when regard is had to all their circumstances, perhaps can only be secured for them by the judicious interposition of the State'.⁸⁶ The Governor-General noted that the raising of the age of consent was 'infact, a question entirely of expediency based upon public opinion; and so far as

⁸⁵ A.R. Scoble, 'A Bill to Amend the Indian Penal Code and the Code of Criminal Procedure, 1882', 'Statement of Objects and Reasons', January 9, 1891, Government of Bengal, Judicial Department, O.C. Nos. 96-218, October 1891.

⁸⁶ From W.J. Simmons, Honorary Secretary of the Public Health Society of Calcutta, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 1st September 1890, Government of Bengal, Judicial Department, O.C. No. 105, October 1891.

we can judge from the utterances of the Native Press, that opinion is ripe for change'.⁸⁷ The logic of intervention was reconciled with that of non-interference as the demand for legislation was vested in public opinion. Central to the constitution of public opinion were western-educated men associated with the Native Press. It was they who not only recognized the 'evil of the custom', but also that the Bill involved no interference with religion. It was, for example, 'easy for educated minds to perceive that the performance of the ceremony (of *garbhadhan*) need not be associated with the consummation'.⁸⁸ In colonial discourse, it was this group of western-educated 'natives' who were 'the leaders of public opinion in this country'.⁸⁹

Yet, reports that came in from the local administrations were emphatic in condemning the 'educated classes' as the principal agitators against the Bill. But these 'advanced Hindus' were found to be opposed to legislation as a 'political move'. Meetings against the Bill were found to comprise of pleaders, *vakils* and other 'disaffected' 'place-hunters' 'who oppose every act or measure of the government, not because they really disapprove of it, but because they like to hear the sound of their own voices'.⁹⁰ These protestors were mainly 'Congress-wallahs' who were simply opposed to the government. Their agitation therefore was to be put down to 'factious opposition to a move made by the government which they cannot but approve of in

⁸⁷ Note by C.J. Lansdowne, August 14, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

⁸⁸ From H. Savage, Magistrate of Backergunge, to the Chief Secretary to the Government of Bengal, dated the 1st February 1891, Government of Bengal, Judicial Department, O.C. No. 134, October 1891.

⁸⁹ Note by C.J. Lansdowne, September 15, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

⁹⁰ From G. Toynbee, Commissioner of the Burdwan Division, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 5th February 1891, Government of Bengal, Judicial Department, O.C. No. 161, October 1891.

their inner hearts'.⁹¹ Further, 'Hari Maiti's expose' had 'wounded' the 'national pride' and 'the educated class deem it necessary to secure the withdrawal of the Bill' to avoid embarrassment to 'the people'. The agitation was, therefore, 'obviously entitled to less consideration than it would merit if it proceeded from general and genuine conviction that the measure interferes with an important religious rite'.⁹² Again, 'educated and liberal minds' could be pressurized by women, priests or caste 'so that they dare not act on their own feelings'.⁹³ The resistance to the Bill which was reported to be carried on by the 'educated sections' was viewed as 'hollow', 'insincere' and bereft of any 'genuine feelings'. 'True' public opinion favoured the Bill; this 'truth' was concealed behind political motives and other compulsions. What was sought to be established, then, was that the 'educated sections' opposing the Bill secretly favoured its contents and supported its aims.

IRRATIONAL CUSTOM

In arguing for intervention, the rationalizations that had been offered for 'native' custom were done away with. If the early consummation of marriage had been explained in terms of the attainment of early 'maturity' by 'Asiatic girls', this logic of non-intervention founded on the racial characteristics of the 'Easterns' was now contradicted.

⁹¹ From D.R. Lyall, Commissioner of the Chittagong Division, to Sir John Edgar, Chief Secretary to the Government of Bengal, dated Chittagong, the 3rd February 1891, Government of Bengal, Judicial Department, O.C. No. 142, October 1891.

⁹² Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

⁹³ From D.R. Lyall, Commissioner of the Chittagong Division, dated Chittagong, the 5th February 1891, Government of Bengal, Judicial Department, O.C. No. 158, October 1891.

There is unquestionably a sexual precocity in India, and what is the reason? ... Owing to the complete want of privacy of an Indian house, the children are mixed up with all the functions of the married life of their seniors. At an early age they know all about child-birth from actual observation, and they probably know a deal about what precedes child-birth ... they have little more to learn about married life, their thoughts dwell upon it, for the young human mind is full of curiosity which easily takes a prurient direction if not checked or prevented.⁹⁴

Further, a 'spurious semblance of maturity' was brought about by 'artificial stimulation' much before puberty could appear in the 'natural course' at twelve or thirteen years of age. But further, medical opinion seriously doubted whether the appearance of the first signs of puberty implied a maturity to cohabit and bear children. The Lieutenant-Governor of Bengal, Steuart Bayley, noted that there existed an almost 'general practice' to subject Hindu girls to 'more or less frequent acts of connexion with their husbands' 'before puberty is even indicated, much less established'.⁹⁵ 'Asiatic girls' were then, presumably not 'marriageable' as early as had once been supposed. Again, if the custom of 'infant marriage' had been viewed as suited to the 'Asiatics' because Muhammadans had also been found to practise it, the practice with its attendant vices was now discovered to be a predominantly 'Hindu' one. It was explained that those Muhammadans who practised 'infant marriage' and premature cohabitation belonged to the 'lower classes of Muhammadans' who had been 'Hindus' in the past and who 'still admit the religion'.⁹⁶ The justification of custom by means of race was

⁹⁴ Dr. Joubert, 'Nubile Age of Females in India', Extract from the *Indian Medical Gazette*, December 1890, Government of India, Home Department, Judicial Branch, File No. 1-42, January 1891.

⁹⁵ From C.C. Stevens, Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Darjeeling, the 8th November 1890, Government of Bengal, Judicial Department, O.C. No. 117, October 1891.

⁹⁶ From D.R. Lyall, Commissioner of the Chittagong Division, to Sir John Edgar, Chief Secretary to the Government of Bengal, dated Chittagong, the 3rd February 1891, Government of Bengal, Judicial Department, O.C. No. 142, October 1891.

dispensed with; 'Hindu custom' was established and found to be debased and 'barbarous'.

The consequences of the 'custom of the Hindus' were also observed to be productive of much 'evil'. If in response to Malabar's condemnation of early motherhood, colonial officials had failed to notice that 'Hindu children' were particularly 'puny', they now revised their opinion. Bayley agreed with medical authorities to note that premature cohabitation brought 'disastrous' consequences on the 'capacity for bearing healthy children'.⁹⁷ Medical men maintained that the practice led to the 'physical deterioration of the human stock', 'implying effeminacy, mental imperfection and moral debility'.⁹⁸ But, what occupied a prominent position in the discourse of the colonial administration was the physical injury to, and often the death of, child-wives caused by the premature consummation of marriage. Colonial officials quoted medico-legal returns to point out how young females were 'fatally injured' by their husbands; but, 'still more numerous are the cases which are never known to the outside world'⁹⁹ due to the institutions of *zenana* and *purdah*. Further, diseases connected with premature cohabitation afflicted Hindu women. Thus western science and morality were deployed to demonstrate the 'evilness' of 'Hindu' custom and to argue for its immediate abolition.

⁹⁷ From C.C. Stevens, Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Darjeeling, the 8th November 1890, Government of Bengal, Judicial Department, O.C. No. 117, October 1891.

⁹⁸ Brigade Surgeon K. McLeod, Extract from the *Indian Medical Gazette*, attached to the letter from Brigade Surgeon K. McLeod, Professor of Surgery, Medical College, to the Inspector-General of Civil Hospitals, Bengal, dated Calcutta, the 19th August 1890, Government of Bengal, Judicial Department, O.C. No. 112, October 1891.

⁹⁹ Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated Camp Khulna, the 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

BRITISH PROTECTION

But if there was a need to combat 'a vicious practice of long standing' with drastic remedial measures, the colonial state alone could perform that function. British officials argued that the family and the community had failed to protect women; instead, these institutions were themselves implicated in upholding an 'evil' practice and in perpetrating the oppression of women. Colonial rhetoric often focused on 'poor little child-wives' pushed into premature cohabitation by their guardians, particularly by their mothers and other elder women of the house. The assertions earlier made, that women were protected by marriage and that parents deferred consummation until their daughters arrived at a 'reasonable' age, were now reversed. The observations of the Commissioner of Chittagong, D.R. Lyall, were typical of colonial officials reporting on the practice of premature cohabitation:

There is no doubt ... the women, the old ladies of the house are the main cause of the scandal, and that until they are got at or some control can be exercised on them the practice will go on. Men are apparently helpless in this matter ... and generally I may say that the men are theoretically opposed to it, but give in to the women.¹⁰⁰

The custom of premature consummation was seen to be a common and widespread one. The 'lower classes of Hindus' were particularly notorious in holding on to the 'vicious practice' because of 'sensual considerations'; it was only the 'upper classes' of 'educated' men, whose 'thought and action' was 'modern', who appeared to 'repudiate' the practice.¹⁰¹ Scoble noted that the practice was not confined to Bengal

¹⁰⁰ From D.R. Lyall, Commissioner of the Chittagong Division, to the Chief Secretary to the Government of Bengal, dated Chittagong, the 25th September 1890, Government of Bengal, Judicial Department, O.C. No. 107, October 1891.

¹⁰¹ From H.G. Cooke, Magistrate of Hooghly, to the Chief Secretary to the Government of Bengal, dated Camp Johanabad, the 1st February 1891, Government of Bengal, Judicial Department, O.C. No. 133, October 1891.

alone.¹⁰² Colonial officials were convinced that the 'mainspring' of the agitation was the 'feeling that it places the people in a position of discredit before the world by proclaiming the necessity for the protection of young wives from brutality at the hands of their husbands'.¹⁰³ The persecution of women by the family and the community questioned the claims of these two institutions to guardianship and protection.

Every plank upon which had rested the rationalization of custom was systematically destroyed. With it went the justification for upholding custom as determined by traditional authorities. The logic of intervention was expressed well by Scoble:

... there can be little doubt that the custom of child marriage, whatever its religious obligation or its convenience to the heads of families and however deeply rooted it may be in the Hindu social system, is attended by consequences to the children themselves against which it is the right and duty of the State to protect them.¹⁰⁴

The colonial state was especially required to step in to assume the role of protector because traditional agencies had neglected that duty. The Governor General-in-Council, Lansdowne, observed that 'if ever there was a case in which the State was justified in interfering with the conduct of individuals', it was the one provided by the oppression of a 'class' which was 'wholly unable to protect itself'.¹⁰⁵ Scoble observed that 'these poor little child-wives deserve and require the protection of the law against those

¹⁰² Note by A.R. Scoble, September 6, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

¹⁰³ Bolton, Magistrate of the 24-Pergunnahs, cited in the letter from A. Smith, Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal, dated Camp Khulna, the 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 192, October 1891.

¹⁰⁴ *Ibid.*

¹⁰⁵ Note by C.J. Lansdowne, September 15, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

who ought to be their natural protectors'.¹⁰⁶ The 'native' demand, that rape charges against husbands be instituted by the 'guardians' of the girls concerned, was dismissed by colonial authorities, 'premature connection' being 'encouraged by the women of the wife's family, including, I presume the mother'.¹⁰⁷ Member of the Governor General's Council, P.P. Hutchins, explained how 'the reluctance to disgrace a son-in-law' and 'other family considerations' prevented parents of injured girls from complaining.¹⁰⁸ The new law was to protect child-wives from 'grievous suffering' and 'permanent injury', and to prevent the 'physical deterioration of the community to which they belong'.¹⁰⁹ Thus, the argument for intervention in custom was framed on the understanding of the civilizing mission of colonial rule.

It was this image of a civilized government that had been fractured by Phulmonee's death. The most serious charge against the colonial state was that it abetted the crime of the premature consummation of marriages: by fixing the age of consent at ten years by the Indian Penal Code of 1860, 'the Legislature has drawn it too low'.¹¹⁰ Far from meeting the 'evil' of immature consummation against which it was directed, Bayley 'feared' that the law had 'done mischief to those whose interest it was designed to protect by fixing too low an age'. This, he believed, 'may have contributed to forming or confirming the opinion that the age of ten is suitable for the

¹⁰⁶ Note by A.R. Scoble, September 6, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

¹⁰⁷ C.J. Lansdowne, 'Further notes with reference to portions of Sir A.R. Scoble's note, dated 16th December 1890', December 22, 1890, Government of India, Home Department, Judicial Branch, File No. 1-42, January 1891.

¹⁰⁸ Note by P.P. Hutchins, December 20, 1890, *Ibid.*

¹⁰⁹ Note by C.J. Lansdowne, September 15, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

¹¹⁰ Note by A.R. Scoble, September 6, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

commencement of cohabitation and on this alone he would be prepared to recommend legislation'.¹¹¹ What was disturbing was that colonial law so closely approximated to 'evil' 'native' practice. The Penal Code, it was observed, 'almost seems to sanction ... the infliction of injuries which in many instances prove fatal, and in still more numerous cases seriously affect the future health and well-being of native women'. Most importantly, then, colonial law was a 'concession' to 'prevailing custom'¹¹² that was 'brutal' and 'barbarous'. This merging of the boundaries between colonial law and 'native' practice provided the ground for fresh legislation. There was 'no expectation that legislative action would have direct results'.¹¹³ This was because 'in no community or branch of community, does there exist any feeling that consummation immediately on the appearance of the first signs of puberty is sinful; indeed, such feeling as did exist was 'distinctly the other way': it was, therefore, 'morally certain' that 'no one will in the interests of the law, or of morality, voluntarily incur the odium of his caste-men and co-villagers by appearing as a complainant, under the new law'.¹¹⁴ Given the very different sense of 'native' morality, there were reservations among the administration as to the feasibility of the working of the Consent Act. Apart from the fear of offending 'native' susceptibilities, there was a widespread fear among colonial officials of the misuse of British Courts with 'false

¹¹¹ From C.C. Stevens, Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Darjeeling, the 8th November 1890, Government of Bengal, Judicial Department, O.C. No. 117, October 1891.

¹¹² From W.J. Simmons, Honorary Secretary of the Public Health Society of Calcutta, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 1st September 1890, Government of Bengal, Judicial Department, O.C. No. 105, October 1891.

¹¹³ From C.C. Stevens, Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Darjeeling, the 8th November 1890, Government of Bengal, Judicial Department, O.C. No. 117, October 1891.

¹¹⁴ From H. Savage, Magistrate of Backergunge, to the Chief Secretary to the Government of Bengal, dated the 1st February 1891, Government of Bengal, Judicial Department, O.C. No. 134, October 1891.

cases' being brought before them. Bayley believed that it was not 'desirable that numerous cases be brought before the Courts'. Legislation was not the best means for change, but, 'if the enforcement of the husband's rights upon a girl below 12 years of age were stigmatized by the law as rape, the hands of the reformers would be strengthened and it would be publicly recognized that anyone abetting such assaults was committing a crime'.¹¹⁵ A new standard of crime was to be established. 'Civilized' law and a system of protection and guardianship superior to that provided by the traditional authorities of family, caste and community were to characterize colonial government. The Consent Act was to rebuild and reinforce this image.

UNDERSTANDING RELIGION AND CUSTOM

The attempts to reconcile intervention with non-interference were marked by shifting understandings of religion and custom. The early Orientalist notion of the Hindu religion as being vested in the Sastras returned to the colonial discourse. Custom, located in the present, was seen to have moved away from the text; this custom, then, was no longer valid religion. On the other hand, legitimacy vested in the present allowed custom to be a legitimate substitute to religion. At other times, custom was not separated from religion, the Hindu religion being the religion that was practised: the text and custom, it was said, were both 'as important' as each other in 'governing the religious life of the Hindus'. Both the past and the present thus became the repositories of the 'Hindu religion', the text and custom were its twin sources.

Yet, what was legitimate custom was necessarily located in the immediate present. Brahminical custom was of 'long standing', yet, if the *garbhadhan* ceremony was not found to be practised by the Hindus of the present day, it was not the custom of the

¹¹⁵ From C.C. Stevens, Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, dated Darjeeling, the 8th November 1890, Government of Bengal, Judicial Department, O.C. No. 117, October 1891.

'Hindus' at all; the *garbhadhan* ceremony was thus restricted to the 'brahmins'. Custom derived its legitimacy not from its 'immemorial' character, but from its prevalence in the present.

In this determination of religion and custom, the brahmins were marginalized. In interpreting texts, they were seen to 'dogmatically' support principles that suited them; their readings were unreliable and misleading. The colonial state was the arbiter of Sastric principles. The voice which determined what constituted legitimate custom and the 'Hindu religion' it contained, belonged to the western-educated 'natives'. It was their present which was beamed across the expanse of the 'Hindu community' in the process of constructing 'Hindu custom'. 'Public opinion' constituted largely of the opinions of the western-educated Indians. In arguing for intervention, western-educated 'natives' became prominent as the 'leaders' of the 'native' population.

The early Orientalist notion of the decline of the 'Orient' was important to the understanding of, and in the mediation between religion and custom. The 'Hindus' were found to have fallen into decadence; priests were seen to be its perpetrators. The authority of priests and 'caste leaders' over the 'community' was 'indubitable'. Yet, their influence was diminishing in the confrontation with education; the western-educated were rapidly becoming an important parallel source of authority within the 'community'. The transformation of the 'Orient' under British rule provided an important justification for Empire.

The policy of non-interference was reconstituted in the Consent controversy. On the one hand, non-interference in religion continued to be argued in terms of non-interference in the 'true' Hindu religion vested in the past. But, on the other hand, the policy of non-interference was also being increasingly defined in terms of the present. This present, resting on custom and public opinion, was not one that had been constructed by the 'Hindus', but one that had been bequeathed to them by colonial rule.

The civilizational role of colonial rule was now argued not merely in terms of the restoration of a 'civilized' 'Hindu past', but also in terms of the imposition of a superior western civilization.

CONCLUSION

It has been argued that the policy of non-interference in 'native' law and custom entailed the retreat of the colonial state from the 'private' arena of 'Hindu' 'personal law'. The realm of Hindu domesticity became, under the circumstances, an 'uncolonized' space. A further point that has been made is that this realm was 'given up' to the western-educated elite as a domain in which to locate its authority. Displaced by the 'traditional elite' who became the new allies of colonial rule, the western-educated 'Babus' were no longer seen to be the 'vital links' between the colonial state and the people; their marginalization in the 'public sphere' was paralleled by their movement into the 'private'. The colonial state, it is argued, was reluctant to intervene in the domestic arrangements of the Hindus, both in keeping with its policy of non-interference and because it had entered into a 'pact' with the western-educated 'natives' by which it had bequeathed this arena to them.¹¹⁶

The colonial state's undertaking to administer indigenous law and custom to the 'natives' had committed it to upholding the laws and practices determined by the traditional agencies of authority in 'native' society; yet, this concern often clashed with the image of the colonial government as a 'civilized' government. Again, the state attempted to define its status as a distinct body of authority, distinguished from the traditional agencies that operated in a shared domain of 'Hindu' 'personal law'. The rationalization of custom that had been provided by officials responding to the 'Notes', had helped to maintain that the British government was not upholding 'barbarity';

¹¹⁶ Sarkar, 'Resisting colonial reason', and Sinha, *Colonial Masculinity*.

legislative interference could, thus, be kept at bay. Intervention by a 'civilized' government was to be masked in the spread of western education and in a 'native movement' for reform. The highly publicized death of Phulmonee disturbed this compromise between the contradictory policies of the colonial government. The colonial state's implication in the continuation of a 'barbaric' custom called for a reiteration of its 'civilized' character. Legislation was imperative, but it was to be concealed in the logic of non-intervention. In this establishment of a superior 'moral standard' distinct from a 'native' one, the 'western-educated classes' played a vital role. Pitted against the 'orthodox' forces in 'Hindu society', often privileged over the latter as the representatives of the people, prided as 'civilized natives' who had so emerged under British tutelage, western-educated Indians continued to be important for colonial concerns.

CHAPTER II

CONVERTING THE 'HINDU' 'HEATHEN': EVANGELICAL LABOUR IN BENGAL

The circulation of thousands of copies of the Scriptures, Christian tracts and books, and the preaching of the Gospel in bazars, in market-places, and the fields, have deposited a large amount of evangelic truth in the general heart of the community. The noble Missionary institutions...have, in various ways, shed salutary influence on society in Bengal. Secular education is making marked progress, and refining the sentiments and humanizing the manners of the people...Hinduism, though mighty even in its decline, is tottering on its basis. The system of caste is daily relaxing its fetters. The priesthood are evidently losing their dreaded authority. Some of the most horrid customs of the country, like *Sati*, infanticide, and human sacrifices, have been put down by the strong hand of British authority, and others are awaiting its interference. Female education is making silent progress. The prohibition of Hindu widows to marry again and other kindred institutions, are rousing the indignation of the thoughtful and the educated. Ten thousand prejudices are being dissipated. And the religion of Jesus with its tri-coloured banner of glory to God in the highest, on earth peace, and good-will to the children of men is attracting the attention of the millions of Bengal.¹

The contest between the missionaries and the 'Hindus' in Bengal that had begun from the first quarter of the nineteenth century was, then, not a 'hopeless' one for the Fathers.² The 'Hindu' was not 'unconvertible' (sic), the missionaries were proud to profess; 'there has been joy in the heaven over many a repentant and believing Hindu.'³ The last fifty years of missionary labour in Bengal were seen to have produced great changes.

It was with a certainty in the superiority of the Christian faith and a confidence in the eventual success of their evangelizing mission that the Christian missionaries had arrived in Bengal. Bengal, the seat of the British empire, and inhabited by peoples

¹ 'Bengal as a Field of Missions', *Calcutta Review*, July-December, 1855, p. 355.

² *Ibid.*, p. 355.

³ *Ibid.*

seeped in idolatry and 'darkness', would provide an ideal field for missionary expansion. And yet, despite the confidence displayed by the Fathers, and their repeated endeavours at conversion, the 'educated Bengali natives', the principal targets of missionary conversion, would not yield to the gospel. In terms of numbers, conversion yielded abysmal results; fund-donors from England questioned missionary initiative; and the colonial state attempted to distance itself from missionary proposals. Fathers in the field had now to be defended, and missionary efforts be rationalized and vindicated. In this process of justification, evolved the missionary constructs of the 'Hindu', his religion and the 'Bengali Hindu community'. These constructs were to determine the nature of the policy of intervention advocated by the missionaries.

This chapter will discuss the participation of the Christian Fathers in the arena of social legislation; it will specifically focus on the Baptist Mission and the Anglican Church of Bengal -- both Protestant -- which were the most active in Bengal since the early decades of the nineteenth century. There were of course differences between missions and missionaries; moreover, the policies followed by missionary institutions also differed over time. I emphasize however the overlaps in missionary discourse and practice; I study the organizing principles that structured missionary ideas. Section I of this chapter will analyze the overlaps and differences between the policies of the missionaries and the colonial administrators; it will trace the constructs of the 'Hindu', 'Hindu religion' and 'Hindu society' that emerged out of the observation of the 'natives' by the missionaries. Section II will survey the missionary logic of intervention in religious and social issues. Section III will look at the methods of intervention that the missionaries contemplated.

THE HINDU, HIS RELIGION AND SOCIETY

Evangelicalism arose as a convincing moral force from the last decades of the eighteenth century; from the early decades of the nineteenth, it had begun to associate itself with the colonial enterprise. The missionaries believed that the miraculous subjection of India by a handful of Englishmen had been possible because God had willed so. Power, however, had been accorded to the European to fulfil a responsibility: the 'heathen' millions who were the worshippers of 'false Gods' were to be redeemed through the preaching of the Word. Western education was its means. Without it, the Bible could not be read or understood, and the 'heathen' could not be freed from ignorance and superstition.

The interests of the colonial state and those of the missionaries were closely linked. The administrator was already exposed to evangelical influences in England; moreover, the importance accorded to education in the evangelical agenda fitted with the colonial state's attempts to introduce rational principles in indigenous society. In its exercise of ideological hegemony, the colonial state often appreciated the attempts of the missionaries to reform the Indian peoples. Moreover, the readily available missionary appellation of 'heathen', used to describe the 'natives', justified the White Man's burden and his civilizing zeal.

Yet, the relationship between the colonial authorities and the missionary was not always one of complementarity. While it was imperative for the colonial state to adhere to a policy of non-intervention in religious matters, intervention was the plank on which missionary enterprise rested. The religion of the 'heathens' was not to be protected and restored as colonial officials argued; it was to be replaced by the Christian faith. The colonial state, by expressing its 'neutrality' towards the prevalent

religions of India, and thereby, upholding these, was committing 'spiritual treason'⁴, it was alleged:

I tell you ... that it has been from the very first, our English policy in India, to conceal this Bible, and, if possible, hide its light. We have taken up at the very beginning, with that devil-fearing, God-dishonoring policy of neutrality in religion. Our Government has endeavored ... to keep the very name of Christianity from the native⁵

It was the moral responsibility of the colonial state, the missionaries pointed out, to work towards the improvement of the 'natives'. And this could be done only by furthering the cause of Christianity:

How can British Christians give up the spiritual conquest of Bengal? How can they see millions of their fellow subjects grovel in the mire of sin and superstition, without helping them to get out of it? How can they, as honest men, leave unliquidated that immense debt of obligation which they owe to a country whose fields they have ravaged, and with whose spoils they have garnished the fabric of their greatness? How can they - how dare they, be unfaithful to the cause which God has put into their hands?⁶

In keeping with their evangelical agenda, the Fathers eulogized their contributions, particularly, in the area of education. India owed her educational advancement to the Christian missionaries, they argued. They had been the first to throw open the 'fields' to educational influences; they had constituted the principal voice that impressed upon the Government the importance of educating the people; they had assumed the leading role in discussing and implementing the educational policy finally adopted.⁷ The 'preaching of the Christian doctrine, the exercise of Christian and moral influence, and

⁴ 'The Government of India charged with Spiritual Treason: Or, Idolatry and Muhammadanism patronized in the Resumption Laws', by J. Macdonald (1845), Pamphlets relating to East Indies and China.

⁵ *Ibid.*, p. 23.

⁶ 'Bengal as a Field of Missions', *Calcutta Review*, July-December, 1855, p. 355.

⁷ 'Protestant Missions in India', *Calcutta Review*, p. 86.

the spread of secular knowledge', it was pointed out, had widely influenced the 'intelligent classes of the Indian people'.⁸

Yet, at the annual Missionary Conference held at Calcutta in 1886, the missionaries were unable to furnish tangible proof of the success of their efforts at conversion.⁹

It is, we believe, a fact that the educated natives of Bengal, whilst they have ceased to be the followers of Hinduism, have not yet become Christians. Still halting between two opinions, they show no disposition to embrace the religion of Jesus. On the contrary, the principal newspapers, published by them in the English language, though displaying remarkable ability, a great knowledge of the English language, a profound reverence for the arts and sciences of the West, show generally a contempt, often even a hatred, for the religion of the European fellow-subjects of the writers....¹⁰

It was necessary, however, to exonerate the apostles of the Cross, and to shift the onus of the failure of conversion onto the shoulders of the 'heathens'. And in this exercise of exonerating themselves, arose the missionaries' admiration for, and condemnation of the 'Hindu' and his faith, his religion and his social institutions.

The Christian Fathers saw 'Hinduism', with its 'endless rites and ceremonies',¹¹ as a 'rival system' that could boast of a 'philosophy'.wp The scriptures, the missionaries pointed out, were 'metaphysical texts' that contained glimpses of the 'sublime truths' and contained 'terms and ideas expressive of high moral elevation'.¹² This 'Hindu religion' was interwoven with 'social and domestic acts', 'so blended and mixed up

⁸ *Ibid.*

⁹ *Conference on Missions at Liverpool Including the Papers Read, the Deliberations and Conclusions Reached*, London, 1860.

¹⁰ 'Bishop Cotton', *Calcutta Review*, June 1866, p. 250.

¹¹ 'Bengal as a Field of Missions', *Calcutta Review*, July-December, 1855, p. 349.

¹² 'Vedantism and Christianity', *Calcutta Review*, 1852, p. 281.

together that they properly form but one'¹³. Authentic 'social and domestic acts',¹⁴ the missionaries reasoned, were also vested in texts and textual interpretations. The answers to missionary queries regarding 'Hindu practices' were, thus, always sought in the scriptures. The 'Hindus', the missionaries argued, were 'guided by explicit and the most minute regulations, laid down in their sacred books.'¹⁵ Their tradition and philosophy, literate and fixed in contrast to oral and flexible ones, thus, became difficult to counter:

If the Hindu religion, like that of the Karens in Burmah, of the Hottentots, the Bechuanas, the South Sea Islanders, the Esquimaux and other rude nations, was founded merely on oral tradition, it would (as experience has shown) be comparatively easy to contend with it; seeing that the constant change and variations to which tradition is liable, from the absence of a permanent and fixed standard of reference, render it but a feeble basis for a religious system.¹⁶

Writing on the merits of 'Hindu philosophy' and the consequent difficulties faced by the Fathers in their attempts at conversion, Dr. Norman Macleod wrote:

When I remember what hold Hindooism has on the natural mind, and know that its weapons are wielded by most subtle men, and backed by such ancient theology; and when I think what it has done, and is, I hesitate not to say there never was such a work given to the Christian Church in the time of the apostles, or in the earlier ages, as to attack that stronghold of Satan, and to overturn that system. I think the work given us to do is the last great battle of Christianity. It seems to me as if it required all the experience of the Christian Church in the nineteenth century to go and attack this stronghold.¹⁷

The point was reiterated as missionaries pointed to the power that 'Hindu philosophy' exercised on its adherents:

¹³ 'General Conference of Bengal Missionaries', *Conference on Missions at Liverpool*, p. 27.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 28.

¹⁷ 'Christian Missions in India', *Calcutta Review*, June 1869, p. 134.

The strength of Hindooism consists not in the numbers of its adherents, nor in the charm of its idolatries as such, but in its power to paralyse the intellect and moral sense of the people. Until its hold on thought and conscience is relaxed, Christianity is as far off from her victory as ever.¹⁸

There were, however, others who pointed to the 'impure' character of the Sastras and of the histories that they contained, these being seen to be marked by the 'most absurd and extravagant statements'.¹⁹ Such statements, they suggested, were impediments to the spread of the gospel. It was observed that 'Hindus' invariably compared the declarations of the missionaries with those found in their Sastras; if the assertions of the missionaries were found to be opposed to the latter, they were dismissed as 'unworthy of credit'.²⁰

So much violence has been done to their natural good sense and reason, by forcing upon them a belief in the preposterous declarations, in the impossible events, and the monstrous doings of the gods and holy sages, recorded in the Shastras, that their perception in regard to the *realities* (emphasis original) of religion has become blunted ... Nothing short of divine power is needed, to prepare the heart ... among a people, whose imagination has been so long polluted by the filthy sentiments and abominable stories recorded in the shastras, principally the Puranas; stories which are everywhere shamelessly promulgated and rehearsed in the presence of persons of both sexes and of all ages (emphasis original).²¹

For the 'multitude' of Indians, however, the Fathers argued, 'a religion, so obscure can have no charms, and people might well prefer, as they have done, rather to bow to stocks and stones, and images created by themselves, than approach the pale of its mysteries'.²²

¹⁸ *Ibid.*

¹⁹ 'General Conference of Bengal Missionaries', *Conference on Missions at Liverpool*, p. 29.

²⁰ *Ibid.*, p. 29.

²¹ *Ibid.*, p. 28.

²² 'Vedantism and Christianity', *Calcutta Review*, 1852, p. 274.

Indeed, if the 'Hindu religion' was the 'religion of the majority'²³ in India, it was possible for all to find a place. And it was in its unique capacity to accommodate all that the flexibility and the acceptability of the 'Hindu religion' lay.

...no form of false religion ever exercised so powerful an influence on its adherents, - no religion ever made such ample provision for all classes of men. For the vulgar it has gorgeous rites and imposing ceremonies; for the philosophical and the cultivated it has a system of absolute monotheism; for the sentimental and poetical it has a transcendental pantheism. For the sensual and the worldly it has the carnal delight of Indra's heaven, and to the contemplative it holds out the prospect of absorption into the essence of the Supreme Divinity. Potent, or rather omnipotent, is the magical influence which it exercises upon the Hindu. It haunts him by day and by night; it regulates his every practice, modifies his every thought, and moulds his every feeling. It is no small achievement to disentangle a Hindu from the folds of his hydra of a superstition.²⁴

The 'Hindu community', comprising, as it did, a multitude of people, was divided into two groups. On the one hand were the 'high-caste Hindus' who possessed a 'comparatively large share of intelligence' over their community brethren, and who were seeped in 'traditional love' for their 'country.' Proud of their position in society, distinguished by 'many social distinctions and social restrictions', they were reluctant to adopt an alien religion that would deprive them of their privileged social position. At the other end of society were the 'low-caste people' who belonged to 'races much lower in the scale of human progress' than the former. Inferior to the 'high-castes' in 'physique', 'intelligence' and 'education', their 'moral customs' too were of a 'much simpler and more primitive kind'. Even their superstitions were 'of a more degrading kind' when compared with those of the 'high-castes'.²⁵

²³ 'Bengal as a Field of Missions, *Calcutta Review*, July - December 1855, p. 349.

²⁴ *Ibid.*, p. 354.

²⁵ 'Protestant Missions in India', *Calcutta Review*, p. 92.

It was, then, the institution of caste 'with its absurd restrictions and its pernicious consequences' that lay behind the division of society²⁶; it was looked upon by every Bengal missionary to be 'the greatest obstacle to his benevolent exertions'.²⁷ 'No other country ... in the "wide-wide world"' exhibited 'so deadly an antagonism to the progress of Christianity' as India did, the missionaries argued. Monier Williams' views expressed in his work, *Modern India and the Indians* (1879), were cited by missionaries as they pointed to the peculiarities of caste.

...it is difficult for Europeans to conceive how pride in caste, as a divine institution, permeates the whole nature of a Hindu; he regards his caste as really his god; even the rules of caste which we regard as the chief hindrance to his accepting the true religion, are to him the essence of all religion, for they determine his whole life and conduct.²⁸

In this hierarchical structure of society, it was the brahmins who comprised the dominant section. Numerically however, this group formed 'only a fraction of the general population'. While in 'poor districts' they were not at all numerous, in 'rich districts' they constituted perhaps one-tenth of the population; only occasionally did 'the traveller meet with villages and towns which are principally inhabited by Brahmins'. The missionaries considered the brahmins to be possessed of 'natural talent': their minds were 'of a superior order to those of the Sudras', it was observed. Some of them were scholars and enjoyed 'considerable esteem'; many of them were 'very gentlemanly in their manners'. Further, a 'Brahmin of a virtuous character and possessed of learning is unquestionably regarded with greater veneration than a Sudra who in these respects may be his equal'. As a class, it was these brahmins who were 'the most

²⁶ *Ibid.*

²⁷ 'Christian Missions in India', *Calcutta Review*, June 1869, p. 138.

²⁸ Dr. Th. Christlieb, *Protestant Missions to the Heathen: A General Survey of Their Recent Progress and Present State throughout the World*, translated from German with additions and appendices by W. Hastie, Principal of the General Assembly's Institution, Calcutta, Calcutta, 1882, p. 52.

uncompromising part of the Hindu population' in their attitudes towards Christianity. Even worse for the cause of Christianity was the fact that brahmins wielded a great power over other castes. This was the 'power of fear':

They are dreaded by inferior castes, partly from superstitious motives, and partly from pecuniary consideration. Their curses are looked upon as fraught with evil; and their character as petty landlords is usually far from amiable. Brahmins are not now venerated, generally speaking, on account of their superior attainment in *vir* and knowledge. Their virtues are not so conspicuous as to be easily discerned by the vulgar; and they have long ceased in Bengal, to possess a monopoly of knowledge. Few of them (159) are rich, and those who are, generally pass for men of a hard hearted character. For these reasons they are feared and hated by the lower classes, rather than loved and venerated.

For most missionaries, caste as an institution was an integral part of 'Hindu religion'; 'Hinduism' had derived 'its terrible coherency'²⁹ from this institution. The social distinctions of caste were seen to be of 'religious origin', and could not be separated from the 'religious element'.

The social dignity of the Brahmin arises from the religious doctrine that he is of a race of beings different from the rest of the human family. It is this fact, or rather fiction, that is asserted in the refusal of the Brahmin convert to receive the sacrament of the Lord's Supper in common with men of lower castes.³⁰

Others argued that caste as an institution, though an integral part of 'Hinduism', was distinct from the 'Hindu religion'.³¹ While the latter was becoming 'more and more a relic of the past' and was 'daily losing its influence even upon the popular mind', even 'the most advanced thinkers' rarely had the courage to break with the 'rules of caste'.³²

The power that holds Hinduism together, is now no longer the religious system with its manifold internal variations, its vast ancient literature, its

²⁹ 'Christian Missions in India', *Calcutta Review*, June 1869, p. 136.

³⁰ *Ibid.*, p.138.

³¹ Dr. Th. Christlieb, *Protestant Missions to the Heathen*, p. 51.

³² *Ibid.*

modern combinations of old prayers and phantastic speculations, and its often absurd mixtures of pantheistic, polytheistic and, occasionally, theistic elements, with practical prescriptions which are sometimes terribly oppressive. It is in short *Caste*, and no longer the power of heathenism, and reflection that keeps Hinduism alive.³³

'Hinduism', then, in the second case, was distinct from the 'Hindu religion'. Indeed so amorphous was the term 'Hindu' that for some it indicated only religion, others included within its orbit social institutions. For still others, the term indicated racial characteristics, while some equated it with nationalism. What this debate established once and for all, however, was the difference between the religion of the 'Oriental' and the 'Occidental'. 'The native is constituted altogether differently from us: Whether he is a Hindoo or a Mahommedan, religion is to the Asiatic the very beginning and the end, the Alpha and the Omega, of his existence. Its fibres run through every act of his life...'. On the influence of religion on the 'Hindu', the missionaries wrote: 'It haunts him by day and by night; it regulates his every practice, modifies his every thought, and moulds his every feeling. It is no small achievement to disentangle a Hindu from the folds of his hydra of a superstition.'³⁴

Caste, as an institution, in earlier times had served as a 'protection against unlimited lawlessness', the missionaries pointed out. Yet, this good was 'more than counterbalanced by the irreparable injury' that was caused 'to the physical, moral and spiritual life of the Hindus'.³⁵ Caste in the present times, had become 'the natural source of the weakness and childishness of Hindu life and character': the practice of 'infant marriage', the 'bondage of endogamy or marriage within certain social limits',

³³ *Ibid.*

³⁴ 'General Conference of Bengal Missionaries', *Conference on Missions at Liverpool*, p. 27.

³⁵ *Ibid.*

the seclusion of women and the segregation of family life from the public sphere were the 'evils' that were identified to be arising from it.³⁶

...this evil cannot be remedied except by an entirely new ideal of womanhood, by the complete renovation of the whole family life, and by the liberation of the females generally from their domestic prisons. What is required is a thorough-going reorganisation of the whole social structure from its foundation.³⁷

The missionaries would have to labour not merely to uproot the system of Hindu idolatry, but to 'overthrow ... the whole fabric of social and domestic usages'.³⁸ In other words, they were to '*denationalise* the Hindus', a task that was formidable, given 'how obstinately *all nations* adhere to their respective domestic and social customs, -- how strenuously they oppose, and how keenly they resent every attempt on the part of foreigners to interfere with them (emphasis original).³⁹

II

THE LOGIC OF INTERVENTION

The institution of caste and the degraded position of women were identified as the chief 'evils' of 'Hindu society'. These 'evils' were to be expelled through the spread of Christian education, and through the implementation of legislative measures. Missionaries legitimized their proposed interventionism on several grounds.

While India had possessed a 'great historical past to be proud of', the missionaries pointed out, 'the degrading superstitions of modern Hinduism' appeared 'to indicate a lamentable degeneration from the condition of the ancient Vedic times'. This degeneration of the 'Hindu religion' was evident in the deteriorated condition of

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

women. In the ancient world, before 'the dissipation of great capitals had marred the purity of Hindu society, and Moslem domination and tyranny had caused its complete *bouleversement*,⁴⁰ 'Hindu women' had enjoyed a position of much esteem, the missionaries argued:

... there was unrestrained social intercourse between men and women as now in England and America... *Gandharba*, allowed ample latitude to both the sexes in forming matrimonial alliances of their own accord... the *Swayambara* form invested the females with the power of choosing their future lords... the kind and chivalrous treatment of women is everywhere inculcated in the *Shastras*... in the Vedic age they appeared in public... the Mahabharat, Ramayan, Vishnu Puran, Malati Madhava, Ratnavali, and Vicramorbashi describe them as appearing openly in public in religious festivals....⁴¹

From the time of Manu, however, there was a 'marked deterioration'⁴² in their position. This process had in fact begun even earlier, it was noted, for his 'Code' was 'evidently founded to a large degree on pre-existing usages and opinions.'⁴³ In the perception of the missionaries, the dictates of Manu had not 'materially altered'.⁴⁴ The code of the ancient law giver is still recognized as sacred and authoritative throughout purely native society.⁴⁵ In Missionary opinion, Hindu society was static: 'For 2500 years, the position of 'one half of the population of this densely inhabited and enormous peninsula'⁴⁶ had remained unaltered. 'No shaster and scarce a Hindu

⁴⁰ 'Hindoo Women', *Calcutta Review*, January - September 1864, p. 85.

⁴¹ *Ibid.*, pp. 85-87.

⁴² 'The Women of India', *Calcutta Review*, June 1861, p. 318.

⁴³ *Ibid.*, p. 319.

⁴⁴ *Ibid.*, p. 320.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

sect, or even a solitary individual, ever recorded a protest or uttered a expostulation against these enormous wrongs.⁴⁷

The 'Hindu religion', the missionaries were relieved to note, was, however, 'although very slowly', 'giving way'⁴⁸. It was observed that contact with Western civilization and the spread of Christianity were already bringing about 'positive changes' in the degenerated 'Hindu religion' and society. 'Native advocates of reform' were working towards the removal of the abominations in 'Hindu' practice; the question of child marriage had become a subject of public controversy in India.⁴⁹ Malabari's 'Note on Enforced Widowhood', which had emphasized the 'dark' and 'lamentable features of Indian widowhood', was declared by the missionaries to be a 'courageous' and 'memorable crusade'⁵⁰ that had sought to create 'a change of sentiment'⁵¹ in Indian society. Intervention by the missionaries was only the abetment of a process that had already begun.

In missionary perception, the subordination of women was one of the primary factors that proved the essential unworthiness and inferiority of the 'Hindu' men of Bengal. They were seen to be of inferior 'natural character' and were marked by 'unimpressibility', 'obsequiousness', and 'timidity'; they were deficient in nearly all those qualities that constituted 'manliness'; and their religious and social institutions by means of which they sought to protect their own superiority were 'preposterous' and 'monstrous'. The unkindness they exhibited towards women, or their lack of chivalry'

⁴⁷ *Ibid.*, p. 317.

⁴⁸ Dr. Th. Christlieb, *Protestant Missions to the Heathen*, p. 53.

⁴⁹ *Ibid.*, p. 52.

⁵⁰ Rev. James S. Dennis, *Christian Missions and Social Progress - A Sociological Study of Foreign Missions*, New York, Chicago and Toronto, 1899, p. 240.

⁵¹ *Ibid.*, p. 242.

was the mark of the 'unmanly' conduct of 'Hindus', and specifically, of Bengalis: 'That there is a great want of gallantry and of external attention to females in India, especially in Bengal, (where the men being, even for India, proverbially destitute of manliness, are notorious for their harsh treatment of women) there can be no doubt...'.⁵²

One of the institutions that missionaries discussed in this context was the *zenana*. The whole system, it was argued, was a 'stronghold of ignorance and degradation'; moreover, it was an 'impenetrable screen for almost every possible kind of inequity and cruelty' perpetrated on women.⁵³ 'As the southern breeze and free ventilation are essential in a European residence, so seclusion is the great thing to be secured in a native one.'⁵⁴ The 'jealous' Bengali, in order to exonerate himself, had traced the 'seclusion of women' to the 'influence and example of the Mahomedans'⁵⁵; the missionaries however found its antecedents in the 'earliest ages'⁵⁶ - from the time of Manu. It was only with this belief could the Fathers prove the essential unworthiness of the 'Hindu' faith and denigrate Bengali manliness. The Bengali husband, rather than abolishing this system on realizing its 'evils', exonerated his own role in upholding the *zenana* by attributing its faults

not to the tyranny and selfish folly of his own sex, but to women's "mutable temper, their want of settled affection, and their perverse nature;" "their love of their bed, of their seat, and of ornaments, impure appetites, wrath, weak flexibility, desire of mischief and bad conduct," and therefore he thinks it hopeless to reason with such beings, and makes up his mind that the evil cannot be helped, only that he will repress it with a strong hand when it troubles his own repose.⁵⁷

⁵² 'The Women of India', *Calcutta Review*, June 1861, p. 335.

⁵³ Dennis, *Christian Missions and Social Progress*, p. 253.

⁵⁴ 'The Women of India', *Calcutta Review*, June 1861, p. 330.

⁵⁵ *Ibid.*, p. 331.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, p. 333.

The intermeshing of different strands of reasoning - sociological and racial - underlay the condemnation of the *zenana* by the Fathers. One missionary observed:

From a sociological point of view, it is plain that a system which perpetuates limitations already far too heavy in the East, imposed upon the normal development of half the race, and a corresponding class of sentiments which make rather for the lowering than the raising of the type in the other half, stands as condemned.⁵⁸

Comparisons made between an 'Englishwoman' and a 'Hindu woman' indicated the superiority of the 'Occident' over the 'Orient', and confirmed the racial categories that structured missionary logic.

How much strife and illfeeling are avoided in an English home by our freer usages. Many a domestic storm blows over, because a woman when she sees it gathering, puts on her bonnet and takes an agreeable walk, or makes a call or two, which wonderfully restores her own good nature, and gives time to the antagonistic element at home also to cool down.... The Hindu woman has literally no antidote and no means of escape. She must bear the full force of whatever adverse circumstances fall to her lot, and the only way of escape is through the dreary gate of death.⁵⁹

Christian missions would seek to mitigate this 'enforced seclusion of woman' by introducing among the 'Hindu' 'the spirit of manly and womanly virtue', by establishing 'relations of purity, honor and mutual confidence between the sexes', and by introducing 'wholesome simplicity, moral chivalry, and refined freedom into the home life of the East'.⁶⁰ The 'sacred halo of domestic virtue' and the 'moral tone of Oriental society' would be safeguarded; yet the 'petty slavery', to which the women were subjected would be done away with.⁶¹

In their concern for women, the position of widows in 'Hindu society' assumed importance in missionary circles. Even as the missionaries were critical of 'Hindu

⁵⁸ Dennis, *Christian Missions and Social Progress*, p. 253.

⁵⁹ 'The Women of India', *Calcutta Review*, June 1861, p. 333.

⁶⁰ Dennis, *Christian Missions and Social Progress*, p. 253.

⁶¹ *Ibid.*

widowhood', like the 'educated Indian reformers' whose support they had sought, a distinction was posited between the status of widowhood when it was voluntarily maintained, and when it was found to subscribe to the law of 'Hindu society' that 'enforced perpetual widowhood under the ban of contumely'.⁶² The second occupied an important place in the missionary agenda. At the second provincial conference of the missionaries held at Madras in 1897, a resolution was moved as follows:

While readily acknowledging that a life of voluntary abnegation is worthy of respect in man and woman alike, this conference considers it unjust and inhuman to force upon women, especially young girls, a life of celibacy, accompanied, as it is, with circumstances of painful humiliation. It therefore urges on the communities in which widow marriage is prohibited the justice and desirability of abolishing the existing restriction on the remarriage of widows.⁶³

'Enforced widowhood', a purely 'Hindu' institution that found its mention in the Sastras, did not find its parallel in the West. Its presence proved the essential inferiority and irrationality of the 'Orient', its religion and its practices. It indicated how 'uncivilized' the 'Oriental' was despite his 'tall claims':

...how dreary, desolate, hopeless and intensely wretched, must be the lot of all those myriads who are doomed to such a fate, by one of the most heartless and despotic series of laws and customs, which the wickedness and stupidity of man ever devised. We maintain that there is not a more unnecessary, and pitiless evil in the whole world than this, nor until it is swept away, can the men of India lay any claim to be considered a great and civilized people.⁶⁴

'Enforced widowhood, a 'hopeless, heart-crushing existence' that was endured by 'millions of women'⁶⁵ was a 'strange and cruel ostracism' that affected the 'tender years of innocent girlhood'⁶⁶. 'Nearly every fifth woman in India is a widow', it was

⁶² Dennis, *Christian Missions and Social Progress*, p. 241.

⁶³ *Ibid.*, p.243.

⁶⁴ 'The Women of India', *Calcutta Review*, June 1861, p. 342.

⁶⁵ *Ibid.*, p. 341.

⁶⁶ Dennis, *Christian Missions and Social Progress*, p. 240.

pointed out; the total number of 'these unfortunates' was estimated to be not less than twenty-five million.⁶⁷ The number of widows in 'Hindu society' was proportionately much larger than found in England. The missionaries found an explanation for this phenomenon: every Hindu girl was married before the age of eleven, and 'unmarried, adult women' were not to be found among the Hindus. Every widower, whatever was his age, was, thus, forced to marry a child under eleven years of age, whatever might be his own. Such 'incongruous, inauspicious marriages' would inevitably lead to an increase in the number of widows. 'Thus does one folly lead on to another, and nature, violated and despised, avenges herself by the inconveniences and suffering she allows to fall upon her unthinking and unrighteous contemners.'⁶⁸

The sorrow and the 'crimes' that arose out of 'enforced widowhood' were 'far beyond conception'⁶⁹, the missionaries pointed out. There was, first of all, 'the humiliation and self-denial inherently associated with the state.'⁷⁰ The 'terrible helplessness of a widow's lot, and the perilous temptations which crowd around her' were discussed in detail in missionary accounts. Doomed to 'loveless and lonely isolation', and bereft of the 'safeguards of self-respect and protection', the widow was consigned to a life of 'unnatural deprivation'.⁷¹

Immediately on the death of her husband, though she be a child of eight years of age, she is divested of all her ornaments...no garment of fine, coloured, or embroidered texture must be worn, but only such as are coarse. It is meritorious for her to be slovenly...She must never have more than one meal a day. Two days in the month she must maintain a strict fast...She must not

⁶⁷ *Ibid.*

⁶⁸ 'The Women of India', *Calcutta Review*, June 1861, p. 342.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Dennis, *Christian Missions and Social Progress*, pp. 240-242.

appear at any scene of festivity or gladness...From all this neither age, decrepitude nor delicacy of frame exempts her....⁷²

Moreover, as an 'easy victim' and 'a species of social outcast', she was the 'destined prey of wanton passion'.⁷³

Familiarised, as the latter (the widows) are from childhood, with matrimonial associations; left without any moral discipline calculated to control the passions and guide the feelings; with a religion whose most popular legends delight in stories like that of Krishna and the milk maids of Brindabun; with no immediate protector to receive the lawful love of a heart, which is the more disposed to love because it has none on whom to lavish its affections, or by whom its emotions and sympathies may be observed or directed, we may well believe that they are often drawn aside from the path of integrity and honour.⁷⁴

The 'chaotic state of Hindu sentiment' was evident in its irrational treatment towards widows.

Even the name widow is a reproach, and few curses are so deep as the one - 'may you become a widow'. Such a lot is not regarded so much in the light of a misfortune, as in that of a curse, inflicted by some angry god for heavy guilt contracted by its victim in this life or in some previous birth. She is therefore condemned rather than pitied, shunned as a loathed and evil thing, rather than sympathized with. Nay such is the frantic spirit of Hinduism, that he who helps to make her suffer, and who infuses additional sorrow into her cup, supposes that he is furthering the purposes of heaven, and working out meritoriously the designs of inexorable fate.⁷⁵

The degradation of women in 'Hindu society' was further evident in the contrast between the 'inflexible attitude towards young widows' and the 'sanction' that was given to the remarriage of a widower. What resulted often was 'the union of old men with young girls hardly in their teens'.⁷⁶

⁷² 'The Women of India', *Calcutta Review*, June 1861, pp. 340-341.

⁷³ Dennis, *Christian Missions and Social Progress*, p. 240.

⁷⁴ 'The Women of India', *Calcutta Review*, June 1861, p. 343.

⁷⁵ 'The Women of India', *Calcutta Review*, June 1861, p. 340.

⁷⁶ Dennis, *Christian Missions and Social Progress*, p. 240.

But, the importance accorded to the task of improving the condition of women stemmed from one other crucial consideration. If Christianity was to progress, it was imperative to rescue women from their degraded state: this was because they were 'generally among the first who were impressed with the truth, and afterwards through their silent, though powerful influence contributed in an eminent degree to the establishment of Christianity in various parts of the world'.⁷⁷ Women, who occupied a central position in the family and among their kindred, were, in India, confined to their homes, and were, therefore, precluded from hearing the gospel. The men, whose 'hearts' were 'hardened and whose minds are generally less impressible' could rarely be won over to the missionary cause. If missionary endeavour could bestow to 'Hindu women' 'equal opportunities with the men of being acquainted with the word of God',⁷⁸ and turn them away from their path of propagating 'evil', the Christian Fathers would be its beneficiaries.

The interference of the missionaries in 'Hindu religion' was legitimized with the help of another powerful argument: the missionaries asserted that in advocating the abolition of certain practices, they were only upholding the interests of the 'Hindus'. 'Infant marriage' was one such practice, the prevention of which would serve the aspirations of 'Hindus'. Their 'love' for India had prompted them to act 'towards the removal of one of the greatest curses that had ever afflicted a nation.'⁷⁹ Among

⁷⁷ 'General Conference of Bengal Missionaries', *Conference on Missions at Liverpool*, p. 32.

⁷⁸ *Ibid.*, p. 33.

⁷⁹ 'The Calcutta Missionary Conference and Infant Marriages', Government of India, Home Department, Judicial Branch, File No. 73-78, March, 1888.

'Hindus', the birth of a son was considered a boon, it was observed; yet, child-marriage interfered with the 'fulfillment of this desire'.⁸⁰ As one missionary wrote:

Hindus look forward to their having a son as one of the greatest blessings which it is possible for them to enjoy on earth. They owe it to their ancestors as well as to themselves that they should have a son who will offer up *pindas* to their own spirits as well as to those of their ancestors. But not satisfied with one son they naturally look forward to having a quiver full of them, with a sprinkling of daughters...child-marriage...tends to make females absolutely or comparatively sterile, barren or childless.⁸¹

But, even as the missionaries sought to uphold peculiarly 'Hindu' sentiments, scientificity and factuality, based on universal standards, were the planks on which their logic was premised. From the Gulstonian lectures on sterility, published in the *Lancet*, was chosen Dr. Matthew Duncan's paper. Its contents were to substantiate the claims of the missionaries. Duncan's conclusions were accorded importance since these were based on 'facts', on data collected at Edinburgh and Glasgow in 1855, and upon statistical tables collated for analysis. The 'degree or amount of relative sterility of the average individual', Duncan claimed, varied 'according to the age of marriage'.⁸² There were 'many stages in a woman's life', Duncan wrote: 'the age of puberty or of commencing menstruation, the age of commencing child-bearing, the age of nubility or marriageable age and the age of the cessation of child-bearing'. Yet, Hindus failed to distinguish between the age of puberty and that of child-bearing, and this was not to the 'greatest advantage to mother and progeny'.⁸³ Moreover, sterility in women, it was contended, varied with the age of marriage. Duncan observed:

There can be no doubt of the conclusion as to the age which is derivable from the table - that women married under 20 years of age have much more

⁸⁰ 'Childlessness and Child-marriage', Reprinted from the *Indian Christian Herald*, Government of India, Home Department, Judicial Branch, File No. 73-78, March, 1888.

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ *Ibid.*

sterility than women married from 20 to 24 inclusive...Only one in 2.3 of wives married between 15 and 19 was the mother of a living child within two years after her marriage, while one in every 1.1, i.e., nearly every one of them, was a mother of a living child, of the wives who married between 20 and 24. Those married below 20 years of age were longer in the married state before becoming mothers than those married between 20 and 24 inclusive. These latter showed the highest fecundity and quickness to commence bearing children. Those again married after 24 were slower than their predecessors, and the slowness increased with every additional quinquennial after that of 20 to 24...Only one in ten, of wives married at 16, was a mother within two years after marrying; while one in four of those married at 17 and one in 2.3 of those married at 18, and one in 1.8 of those married at 19 were mother within the two years.⁸⁴

Premature marriage, Duncan thus proved, was the cause of sterility; by 'premature marriage' Duncan indicated marriage 'before twenty years of age'.⁸⁵ Abortions and ill-formed children were the other results of early marriages, he argued. Further, the children of such marriages were reared with greater difficulty and susceptible, therefore, to greater mortality; again, a large proportion of them were likely to be 'idiots'. Most importantly, Duncan warned that young mothers were prone to produce daughters, and not sons.

Analogies drawn from the plant and animal kingdoms confirmed the scientificity of Duncan's claims. He wrote:

A young fruit tree bears no fruit, or very little, and that little imperfect, and the careful gardener does not permit it to bear much or even a little, believing that fruit-bearing injures growth and diminishes future fertility...It is a well known belief among breeders which may be historically traced to ancient times, that when the female of any kind is made to breed when very young, she does so at the expense of permanently retarding her own growth to perfection and she will likely produce offspring that is not of the best quality....⁸⁶

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

The violation of natural law' caused several 'physical problems' associated with 'infant marriage', it was observed. The children born out of the early marriage of their parents, it was pointed out, were

incapable of much exertion, or fatigue. Their want of stamina predisposes them to disease, and render them incapable of sustaining its attacks. They have a large number of children, few of them arrive at maturity, and the average duration of native life is less than twenty years, or only two thirds of what it is in England. To the same cause we are inclined to attribute that intellectual subtlety combined with a great want of mental robustness, which is one of their most marked psychological characteristics.⁸⁷

The 'most learned scientists of the age' had regarded 'infant marriages' as 'unnatural atrocities'.⁸⁸ The missionaries enumerated some of these 'atrocities': 'excessive families, twins, trains etc., abortion, idiocy, monstrosities, etc.'.⁸⁹

These standards established by western science helped to reiterate the superiority of the 'Occident' over the 'Orient'. While in the case of the 'Hindus', the age of puberty was not distinguished from the age of child-bearing, 'British women' were 'fortunately, married within the limits of nubility or the marriageable age...'.⁹⁰ There were also no marriages in Britain under the age of fifteen, it was pointed out.

Paradoxically, a knowledge of science, from which the missionaries had derived their 'facts', was not merely the preserve of the West. 'From time immemorial', the 'Hindus' 'had known some of these facts'.⁹¹ Written in 'original Sanskrit', the 'medical Sastras of ancient India' composed by Susruta had discussed the ill-effects of 'infant marriage'. As Shushruta wrote: 'if a man under twenty-five have a child by a woman younger than sixteen, it will most likely be still-born. Even if it be born alive,

⁸⁷ 'The Women of India', *Calcutta Review*, June 1861, p. 329.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ *Ibid.*

it will either die soon, or it will be imbecile and weak so long as it lives'.⁹² The missionaries, then, were only restoring the past, they argued. The present was tainted with unscientific practices that were now rampant, particularly, among the Bengalis. Statements of Dr. Madusoodon Gupta, 'the first Hindu anatomist in British India', who explained 'the seeming precocity of some Bengali girls by accusing his countrymen of practices which cannot bear to be here mentioned'⁹³ were quoted by the missionaries in order to uphold their logic of intervention. The missionaries also denied the uniqueness of the 'Orient' and the 'Orientals' by universalizing the applicability of scientific knowledge. They wrote: 'The idea is very common, but wholly unfounded that here in India and indeed in all tropical countries, woman is more precocious, and that therefore marriage may here be hurried on.'⁹⁴

In their critique of the practice of 'infant marriage', the missionaries pointed to the 'psychological' and 'physical' consequences of 'premature unions' on 'Hindu' women.⁹⁵ The childhood of a 'Hindu' girl' the Fathers lamented, was made far too short by early marriage: 'its infantile associations' were 'injured and disfigured by a premature acquaintance with the contingencies of connubial life.'⁹⁶ The missionaries outlined the cruelties of the practice.

For a girl of five or six years of age to be taught that she is to be married before she is ten; for her to be taught hardly any thing but what relates to her nuptials; for her to be introduced to the cares and responsibilities of maternity before she is fifteen; is of itself sufficient to check all mental culture and to

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ 'The Calcutta Missionary Conference and Infant Marriages', Government of India, Home Department, Judicial Branch, File No. 73-78, March, 1888.

⁹⁵ 'The Women of India, *Calcutta Review*, June 1861, p. 328.

⁹⁶ *Ibid.*, p. 325.

impair beyond hope of restoration the moral purity and innocence of women.⁹⁷

Moreover, as a result of 'infant marriage', a 'Hindu' girl was either united to a 'mere boy', or 'bound to a man much older than herself'.⁹⁸ In both cases, the contracting parties were mutually ignorant of each other. She was deprived even of her 'personal liberty'⁹⁹, so secluded was her existence.

Hardly ever having conversation with strangers of her own sex, and never with men; circumscribed not only in her ability to move from place to place but even in her power of vision; hardly ever quitting her own dwelling, and when she does, travelling in a covered conveyance through the chinks of which alone she can peer; she leads a life which is dull, monotonous and uninteresting in the extreme.¹⁰⁰

Uneducated as she was, and 'with all means of mental improvement and growth' being denied to her, 'a Hindu mother of fifteen is no fit guardian of her infant's welfare, nor does she become better qualified to guide its steps as it advances toward maturity.'¹⁰¹

Moreover, the 'charms' of Hindu women were 'prematurely injured by early marriage': 'the litheness of their frames, the natural elegance of their movements ... the beautiful symmetry of their small hands and feet, the clearness of their complexion, and the great regularity, if not exceedingly delicate chiselling of their features was lost' because of a 'premature decay.'¹⁰² Indeed, Hindu women enjoyed 'no summer tide of glorious beauty, such as is accorded to their western sisters, who dwell, we will not

⁹⁷ *Ibid.*, p.327.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*, p. 331.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*, p. 329.

¹⁰² *Ibid.*, p. 328.

say in a happier clime, for the climate is not the cause, but in the midst of more genial influences'.¹⁰³

III

EMANCIPATING 'NATIVE' WOMEN

Against 'infant marriage', and the Indian Penal Code of 1860 that had fixed the age of consent at ten, the missionaries despatched several memorials and petitions to the Government of India. In September, 1887, J.E. Scott, a missionary, wrote to colonial officials in this regard. 'So-called infant marriages' that lacked 'the essential element of intelligent consent' were not 'marriages at all', Scott pointed out. As a 'physical, mental and moral evil' that was similar to *sati*, it was injurious to the individual and the state and was, therefore, to be abolished.¹⁰⁴ Further, in September, 1887, the Ladies' Committee of the Calcutta Missionary Conference for the Protection of Young Girls submitted a memorial signed by Christian women urging that the limit of ten years was 'too low'. They appealed that the Government of India protect females under the age of sixteen, or such other age as might after consideration of all the facts seem proper.¹⁰⁵ In December, 1887, the Calcutta Missionary Conference urged that 'certain changes' be made in the law 'in the interests of those married in infancy, more especially of members of the female sex'. Their appeal was that the age of consent be increased to sixteen. Moreover, sexual intercourse between a man and his wife was to

¹⁰³ *Ibid.*

¹⁰⁴ From J.E. Scott, Missionary, to Colonel Currie, dated the 7th September 1887, Government of India, Home Department, Judicial Branch, File No.410-715, May 1890.

¹⁰⁵ Government of India, Home Department, Judicial Branch, File No.1-42, January 1891.

be permissible only after the bride turned thirteen.¹⁰⁶ In January, 1888, a memorial that pleaded on identical terms was submitted by the Baptist Missionary Society to the Bengal Government; the memorialists who claimed to be 'deeply interested' in all that concerned 'the social, moral and spiritual welfare of the people of India' had found 'infant marriage' to be destructive to the 'life health, happiness and rightful liberty of the female sex, and to a smaller extent of the other sex'.¹⁰⁷ Their memorial was followed in March, 1888 by a similar one from the Lucknow United Missionary Conference.¹⁰⁸

In May, 1888, the Committee of the Ladies' Branch of the Calcutta Missionary Conference reiterated its demand for 'the protection of young girls'. Appealing for a reconsideration of their memorial, they urged that 'in as much as the extradition Treaty between England and Russia authorized the extradition of a person who had carnal knowledge of a girl under sixteen years of age', the age of consent in the Indian context should be raised. The memorial, it was argued, did not suggest any interference with the marriage laws of the country; it only urged that 'some barrier' should be thrown up against the seduction of children by the raising of the age of consent from ten to sixteen. Rather than interfering with the non-Christian subjects of the Empire, their proposal, they said, was aimed at 'preventing intrusion into and thus fortifying the sanctity of their homes'. While 'almost all Hindu and many

¹⁰⁶ From Reverend K.S. Macdonald, Dated the 2nd December 1887, 'Memorial from the Calcutta Missionary Conference praying for certain changes in the law in the interest of persons married in infancy', Government of India, Home Department, Judicial Branch, File No. 73-78, March 1888.

¹⁰⁷ From P. Spurgeon, Chairman of the Baptist Missionary Conference, and twenty-six others to His Excellency the Viceroy and Governor General of India-in-Council, 'Memorial from the Baptist Missionary Society praying for certain changes in the Indian Marriage Law as regards infant marriages', Government of Bengal, Judicial Department, Judicial Proceeding No.80 (A), March 1888.

¹⁰⁸ Government of India, Home Department, Judicial Branch, File No.1-42, January 1891.

Muhammadan females over ten years of age were married, and therefore protected by the existing law relating to adultery', the missionaries expressed their concern over the 'protection of unmarried females between ten and sixteen years of age - a comparatively small, but an ever increasing class, whose protection would entail no interference with existing social customs and habits'.¹⁰⁹ In the following year, the President of the Calcutta Branch of the World's Women's Christian Temperance Union sent a memorial along similar lines which stated that while 'young women if and when married' were 'amply protected', it was

their unmarried sisters who were...wholly unprotected, and may become victims of cruel, selfish and designing men, who, if they injured the cattle or other property of the fathers of these girls, would be severely punished by the law, but who are permitted with impunity, and for no higher object than a degrading self-indulgence, to bring ruin on girls of tender years, and shame and sorrow on unoffending homes.¹¹⁰

Further, in June, 1889, the Calcutta Missionary Conference forwarded a memorial in which the same argument was adopted.¹¹¹

Closely linked to the issue of 'infant marriage' was the controversy surrounding non-consensual marriages. Public opinion on this issue had concentrated on whether a decree for restitution or institution of conjugal rights should be enforced by the colonial state; the missionaries participated in this debate. J.E. Scott was among the first to respond; Scott wrote to the administration, appealing for a law that would fix a legal age for marriage, and allow for only those marriages which involved the consent of both parties entering into it. However, keeping in view the difficulties involved in the enactment of the above resolution, Scott offered a modification. Persons whose betrothals or marriages took place in infancy, or without their consent,

109 *Ibid.*

110 *Ibid.*

111 *Ibid.*

so long as they had not lived together, could petition any High Court in India to declare their marriage null and void. The refusal of such parties to live together was not to be punishable with imprisonment or otherwise. Further, their marriage to another would not be regarded as bigamy.¹¹² In December 1887, the Calcutta Missionary Conference prayed that a law be passed that would provide that 'in the case of all persons whose betrothal or so-called marriage had taken place in infancy or childhood, so long as such persons had not lived together, the refusal of either of the parties to live with the others as husband and wife' would not be punishable with imprisonment. Moreover, if either of them should, from any cause, ignore or renounce their marriage contract 'to which they had not given their intelligent consent' and marry another, such a person was not to be regarded as guilty of bigamy or any other offence punishable under section 494 of the Indian Penal Code. All provisions of existing law that empowered the courts to enforce by civil penalties conjugal rights and relations between non-consenting parties were thus to be repealed.¹¹³ What both the petitions sought was the repeal of all provisions of the existing law that empowered the courts to enforce by civil penalties conjugal rights and relations between non-consenting parties. In January 1888, the Baptist Missionary Society sent a similar memorial to the Bengal Government.¹¹⁴ The colonial state, however, refused to interfere in the existing social customs and habits of the 'Hindus'; intervention on social

¹¹² From J.E. Scott, Missionary, to Colonel Currie, dated the 7th September 1887, Government of India, Home Department, Judicial Branch, File No.410-715, May 1890.

¹¹³ From Reverend K.S. Macdonald, Dated the 2nd December 1887, 'Memorial from the Calcutta Missionary Conference praying for certain changes in the law in the interest of persons married in infancy', Government of India, Home Department, Judicial Branch, File No. 73-78, March, 1888.

¹¹⁴ From P. Spurgeon, Chairman of the Baptist Missionary Conference, and twenty-six others to His Excellency the Viceroy and Governor General of India-in-Council, 'Memorial from the Baptist Missionary Society praying for certain changes in the Indian Marriage Law as regards infant marriages', Government of Bengal, Judicial Department, Judicial Proceeding No.80 (A), March 1888.

grounds, it was argued, was open to objection in the existing circumstances of Indian society. The suggestion that related to the abolition of imprisonment in the execution of a decree for the restitution of conjugal rights would, however, be considered.

In missionary opinion, such statements revealed the colonial state's betrayal of the woman's cause; government policy was considered to be akin to 'tyranny and oppression' since it was not 'consistent with the woman's freedom'. Moreover, a woman was 'being punished for doing or omitting to do that for which a man is not punished'.¹¹⁵ The Editor of the Indian Evangelical Review wrote:

... I disapprove in the strongest manner of Government punishing innocent, loyal subjects for doing that which is not morally, socially, or politically wrong. I hold there is nothing morally, socially or politically wrong in a woman refusing absolutely to regard herself as married to a man whom she does not like, and to whom she never gave an intelligent promise, nor intelligently consented to be his wife.¹¹⁶

Charges against such women arose out of 'private malice' or 'sectarian bigotry', the missionaries argued.

It is only the husband who can prosecute, and as he can marry any other woman, he prosecutes the first wife only from malice, or to secure the woman's property, or because she has become a Muhammadan or a Christian; never for joining a low caste man or a Bhaistab or Vaishnava.¹¹⁷

The good faith and intention of parties was the principal test of a marriage's validity, it was pointed out. Yet, the 'Hindu' 'infant marriage', unless 'consent was given in word or deed', was a 'purely religious institution, a 'Hindu sacrament' which the government could not 'aid' or 'abet', 'abolish' or 'proscribe'. By acknowledging Hindu marriage as a religious institution, the Government was, moreover, accepting 'idolatrous polytheistic rites' as 'the one only evidence of Hindu marriage'. The colonial state's avowed policy

¹¹⁵ 'The Calcutta Missionary Conference and Infant Marriages', Government of India, Home Department, Judicial Branch, File No. 73-78, March 1888.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

of non-interference in 'purely religious' matters would be uncompromised, the missionaries argued, if marriage was treated as a 'civil contract'. English law would then not be regarded as 'disreputable'; 'the hands of English judges' would 'be washed once for all of such iniquities as make English law disreputable'.¹¹⁸ Max Muller was quoted by the Fathers in order to authenticate their opinion. 'What concerns Englishmen and English lawyers and more than all English women is that the strong arm of English law should not be rendered infamous in aiding and abetting unnatural atrocities.'¹¹⁹

Missionaries, then, were often aware that their views were in contravention of the 'present *prevailing view*' (emphasis original) that was determined according to the teachings of the Sastras. 'I think the consensus of Hindu opinion would be in favour of imprisonment for refusal to cohabit', Scott wrote. In accordance with the teachings of the Sastras, 'marriage was a *religious rite* (emphasis original); its disregard by either party was considered to be punishable in both worlds.' While among certain lower castes divorce was prevalent, among higher castes it was unknown. A wife could never remarry; she could only be 'put away'.¹²⁰

But legislation apart, the missionaries sought to bring about a 'complete revolution in Indian thinking'¹²¹ by adopting another method. 'The Hindoo mind', it was pointed out, 'is enslaved by a system which is the outgrowth of ages of superstition and carnality, and there is no hope for the people except in its destruction.'¹²² The

118 *Ibid.*

119 *Ibid.*

120 *Ibid.*

121 Dennis, *Christian Missions and Social Progress*, p. 240.

122 'Christian Missions in India', *Calcutta Review*, June 1869, p. 131.

missionaries were to bring about this 'destruction' by 'emancipating'¹²³ the mind of the 'Hindu' by introducing him to the tenets of Christianity. Yet, 'the march of religious truth' required 'some preparation, mental and moral, social or political'.¹²⁴ The introduction of western education was one way in which change was sought to be introduced. The 'enlightening influence of education' would greatly contribute not only to the 'general discrediting of idolatry but also to the undermining of caste'.¹²⁵

Perverse habits of thought are the fruit of mental slavery; emancipate the mind, and you raise it to a position in which it may be acted on by truth. This is precisely the preparation that the educational system contemplates.¹²⁶

But, the missionaries were skeptical of the 'godless education of the Government colleges'.¹²⁷ The communication of secular knowledge - the imparting of a knowledge of the laws of nature, of the principle of science, of art and of literature - destroyed the superstitious beliefs of the people, it was admitted. Yet, people 'enlightened' as a result of the 'destructive tendencies of secular knowledge',¹²⁸ rarely converted to Christianity. While secular knowledge destroyed a belief in the 'superstitions of Hinduism',¹²⁹ it also created, paradoxically, a prejudice against religion, the Fathers noted. And thus, where instruction on the Christian religion was given in combination with secular knowledge, as in missionary schools and colleges, Christian doctrines had invariably failed to find favour.

¹²³ *Ibid.*, p. 135.

¹²⁴ *Ibid.*

¹²⁵ Dr. Th. Christlieb, *Protestant Missions to the Heathen*, p. 53.

¹²⁶ 'Christian Missions in India', *Calcutta Review*, June 1869, p. 131.

¹²⁷ *Ibid.*, p. 131.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

The educational system of the missions, on the other hand, was found to be more acceptable: it not only introduced the 'native' to new ideas, but more importantly, it transformed his very being. The Fathers referred to Dr. Norman Macleod in this context: It was important, he wrote

to saturate the whole Hindoo mind with the truth... It is not to take one pore of the sponge but to take the whole sponge itself and fill it with the pure water of life. It would not do to take two or three bricks from the top of the wall and count the number of bricks you take down, but it is to strike out the foundation and bring down the whole wall at once.¹³⁰

In missionary opinion, what India needed was not expensive secular colleges, but Christian schools, for the education of the masses.¹³¹ Christian education, by introducing 'benevolent and remedial influences', would 'improve and elevate' the 'deplorable and unsatisfactory' state of Indian society. Most importantly, by reordering societal and familial relationships, it would help the 'women of India to assume their rightful place of grace, dignity and importance in society'.¹³²

...let the education of boys and young men be largely impregnated with just and rational instruction respecting the true relations of their mothers, wives and sisters to themselves; let every opportunity be sought of drawing the native mind, not violently, but gradually, toward better customs, and a nobler and more confiding treatment of the weaker sex; and let every opportunity be judiciously and zealously embraced, of pushing forward the great, but difficult and delicate work, of female education, with the ultimate if not the immediate object in view of winning them over to the Gospel of Jesus Christ.¹³³

The intervention of the missionaries through education was to be reinforced by the establishment of associations and societies. These societies were primarily organized for improving the condition of women. For example, societies for reform, mostly under the title of 'Widow Remarriage Association', were to be set up under missionary and

¹³⁰ *Ibid.*, p. 132.

¹³¹ Dr. Th. Christlieb, *Protestant Missions to the Heathen*, p. 54.

¹³² 'The Women of India', *Calcutta Review*, June 1861, p. 343.

¹³³ *Ibid.*

'native' auspices; the object of these were pronounced to be the encouragement and facilitation of the marriage of widows by 'moral and social support'.¹³⁴ The Indian Widows' Union, auxiliary to the Church of England Zenana Mission Society, worked especially for the aid of widows.¹³⁵ The Zenana Mission, 'a department of service appointed by Providence to Christian women'¹³⁶ was considered to be an essential institution for the regeneration of Indian women.

CONCLUSION

The Fathers were neither able to convince the colonial officials, nor the 'natives', of the importance of their mission. Administrators, even as they invoked the opinion of the missionaries on social and religious issues, were reluctant to implement the suggestion of unqualified intervention put forward by the latter. At the same time, 'natives' were sharply critical of missionary interference in the indigenous domain comprising religion, family and society. The Fathers were denounced as collaborators of the colonial state towards whom undue favours had been extended by the administrators¹³⁷; *zenana* missionaries were equated with 'kidnappers' who were 'flying away with Hindu widows and girls and sometimes even with married women with children.' 'No one would have objected to the visits of the lady missionaries' had their 'objective' been confined to imparting education to 'Hindu women'. It was, however, evident that missionaries, 'finding it impossible to convert the male Hindus, have employed these lady missionaries for the purpose of breaking the Hindu society'.

¹³⁴ Rev. James S. Dennis, *Christian Missions and Social Progress - A Sociological Study of Foreign Missions*, p. 242.

¹³⁵ *Ibid.*, p. 241.

¹³⁶ *Ibid.*

¹³⁷ Report on the Native Press for Bengal [henceforth RNP(B)] for the week ending the 24th May, 1884.

Countering the missionary denunciation of the Bengalis as 'immoral', the *Sadharani* in turn questioned the morals of the Fathers by reporting scandals involving missionaries. Indeed, it was concluded, 'no gentleman should allow these missionaries to enter his house'.¹³⁸ Critical of both the colonial state and the 'natives', faced with censure and antagonism, the missionaries failed to achieve their goals. Their dream of evangelizing the Bengali with the help of their colonial partners remained a distant one.

¹³⁸ RNP(B) for the week ending the 7th June, 1884.

CHAPTER III

JUDICIOUS TRANSFORMATION

The emergence of a well developed public opinion in the second half of the nineteenth century brought with it the vociferous participation of the 'natives' in debates on colonial policy. The sphere of social and religious affairs, proclaimed, by generations of British administrators, to be one beyond the realm of state action, attracted particular attention from public opinion when colonial gaze was seen to fall upon it. It is two such moments of ferment in indigenous quarters to the proposed reformation of social institutions that I seek to study. This chapter and the next will take up some of the discussions that surrounded B.M. Malabari's 'Notes' on 'infant marriage' and 'enforced widowhood', and the Age of Consent Bill.

Existing historiography has tended to divide public opinion according to the support or opposition offered to specific colonial proposals for the reform of the 'private domain'. The division thus drawn forms the basis of categorizing 'native' opinion as 'reformist' or 'orthodox'.¹ This understanding does not take into account the variety of responses that determined the stands for or against a measure. For, the resistance offered to a particular measure did not always imply resistance to the spirit of reform that it advocated. Again, the acceptance of the need for transformation was not necessarily expressive of the unambiguous denigration of social norms and institutions, such as, for example, the colonial authorities displayed. Similarly, opposition to any change of custom was not always the demonstration of an unalloyed admiration for social institutions. Instead of studying responses to schemes for reform in terms of a straightforward acceptance or rejection, I will identify the two currents

¹ Refer to Sinha, *Colonial Masculinity*.

in public opinion according to their respective assessments of the legitimacy of change.

Consequently, this chapter will examine the position of those who recognized the pernicious nature of the customs under scrutiny, and saw the necessity for abolishing or transforming them. Section I and II of this chapter will study respectively the responses to Malabari's 'Notes' and the Age of Consent Bill. The following chapter will analyze the assertions of those who argued for the preservation of the practices denounced as 'evil'.

I

THE 'ENLIGHTENED SONS'

A great problem, the greatest that has confronted and baffled reformers for centuries, appears now to be in the process of solution...Mr. B. M. Malabari of Bombay has now published his two "Notes for Consideration" respectively on Infant Marriage and Enforced Widowhood...We appeal to all enlightened sons of India to study the papers, and put themselves in correspondence with the author...It is the paramount duty of our Associations to co-operate with Mr. Malabari. Government, too, has a duty to do by [sic.] the intrepid reformer...Of Mr. Malabari's many important movements, this is most so.²

There existed, then, a deep concern about the 'great problem' of early marriage and its attendant consequences. The most important consequence was believed to be the practice of 'enforced widowhood'. The identified 'pernicious customs' called for 'reform', it was pointed out. This was a matter that 'deserves the strongest support of the state and the public alike'. The 'reformers' set about to assess the customs under discussion, to account for their existence, and to indicate the directions of change.

SURVEYING CUSTOM

The 'evils' associated with 'infant marriage' were found to be many. The chief ills were identified as physical suffering to young wives and their children, and the

² *Indian Mirror*, August 6, 1890.

deterioration of the race. 'Sickly children', produced as a result of early marriage, caused anxiety and misery' to their parents. Ruinous expenditure on 'medical treatment' and on other 'family matters' was the consequence of giving birth to 'sickly children' and too many offsprings.³ Closely linked to 'infant marriage' was the despicable action' of the 'sale of girls' to 'old men'.⁴ There was also the growth of the 'barbarous' custom of dowry, associated with both 'infant marriage' and Kulinism in Bengal. As a result of this, fathers of bridegrooms practised 'deception and fraud' on 'unfortunate' fathers of brides, reducing the latter to pauperism. Moreover, the custom encouraged young grooms to be 'indolent' and 'luxurious at the expense of others'.⁵

The system of early marriage also gave rise to a large number of widows. 'Unchastity', the 'crimes' of 'abortion' and 'murder', and the 'sufferings of widows' were the vices found to be attached to the institution of widowhood. It was observed that deliberate miscarriages, infanticide and the abandonment of children were 'entirely committed by, or in connection with, widows'. Such 'great social offences', it was pointed out, were the consequence of the widow's 'dread' of the 'shame of being detected'.⁶ Further, many recognized that in 'the present state of society', widows were unprotected from connivance and fraud:

Oftentimes, the relations of their deceased husbands annoy them in various ways, turn out bitter enemies, and drive them to commit immoral acts. Their purse and *stridhan*, which ought to be held sacred, are robbed by means, fair

³ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884, *Papers*, p. 246.

⁴ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 243.

⁵ *Ibid.*, 246.

⁶ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 220.

or foul...They are objects of panegyric and adulation, so long as they have the strength to attend domestic duties and command of their wealth. They are turned out of [the] family as beggars when the purse is emptied and their strength fails. Even maintenance, which...humanity ordains, is denied to them.⁷

'Life-long imprisonment' in the *zenana* was another 'evil' that was identified with the practice of 'enforced widowhood'.⁸

It was pointed out that the customs of 'infant marriage' and 'enforced widowhood' were prevalent in society. 'Petty persecutions and annoyances from society' were found to be 'an important obstacle in the path of remarriage'.⁹ The Raja of Naldangah observed that 'rich men of the upper classes', who were the 'social leaders of the people', opposed widow marriage; 'the mass of the people' followed 'in their wake'. *Pandits* and priests, who depended on the 'social leaders' for their 'subsistence', simply 'grant immunity to these leaders' in 'gross violation of the Sastras'.¹⁰ *Pandits* and priests were themselves often seen to be 'bitterly opposed' to remarriage. The 'orthodox', it was observed, were 'by no means inconsiderable in their influence and position', and offered 'vehement opposition' to reform.¹¹ But, custom could 'cow down even the "educated and the enlightened", not to speak of the vast illiterate

⁷ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 248.

⁸ *Ibid.*

⁹ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 221.

¹⁰ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.* p. 243.

¹¹ From the Secretary to the People's Association, Bogra, to the Under-Secretary to the Government of Bengal, General Department, dated Bogra, the 7th March, 1885. *Ibid.*, p. 235.

masses'.¹² It was acknowledged that except for 'the majority' of the 'educated section', 'infant marriage' and 'enforced widowhood' were practised by all.¹³ Women, uneducated and 'well nigh where they were centuries back', were particularly susceptible to observing these customs, it was reported; it was they who wielded 'great power' in 'domestic relations', and who were largely responsible for the 'paralysis of the social organism in India'.¹⁴

'Infant marriage' and 'enforced widowhood', along with some related customs, were found to be no part of religion. This religion was understood to be contained in the ancient texts; textual references would deny these practices of any religious bearing. The Raja of Naldangah, Jessore, who was soon to be honoured by the government for furthering the cause of widow-marriage, also argued against 'infant marriage'. This practice, he pointed out, did not exist 'during the palmy days of the Hindu empire'. This fact, the Raja said, could be 'gleaned' from the Vedas and the Epics. Thus, 'of all the female characters delineated in the great Epics, none appears to have entered into matrimonial bond before she had entered the age of discretion'.¹⁵ The practice of *swayamvara* was also referred to.¹⁶ The first symptom of the deviation from this 'most healthy social practice' of marrying at maturity was found in the Manu Sanhita.

¹² From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.* p. 242.

¹³ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 220.

¹⁴ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 246.

¹⁵ *Ibid.*, p. 241

¹⁶ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 246.

This text ruled that unless girls were married before the age of puberty, fathers became 'censurable'. This, however, the Raja of Naldangah believed was 'not a religious ordinance', the 'non-observance of which should interfere with the spiritual welfare of the girl or her guardians. But 'later or earlier, no Shastra attaches religious blame to the party marrying after puberty'.¹⁷ On the other hand, many discovered that their position was vindicated by Manu : 'a damsel, though marriageable, may stay at home till her death if a suitable bridegroom cannot be found'. Again, those families which were unable to meet the demands of the bridegroom's parents or guardians could allow their girls to choose for themselves bridegrooms of 'equal rank', three years after they had turned marriageable.¹⁸ Further, that 'infant marriage' led to 'the deterioration of the race' and to 'physical suffering to the young wives and their children' was 'admitted in the ancient Medical Science of the Hindus, the *Ayurvedas*'.¹⁹

It was similarly argued that compulsory widowhood was not to be found in the Sastras. It was pointed out that the 'sacred scriptures of Hindus' ordained three courses, any one of which could be followed by a widow: these were remarriage, 'leading a virtuous life for great spiritual benefits held out in after-life', and *sati*. Since, for 'unascertainable reasons', widow marriage had 'become obsolete in the higher castes since many centuries', and since *sati* had been abolished by the British, 'the only course now left to the widow is self-immolation, whether she will or not'. The 'Hindu world' had 'long forgotten that the Sastras sanctioned widow marriage', and had been startled

¹⁷ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.* pp. 241-242.

¹⁸ *Ibid.*, p. 241.

¹⁹ *Ibid.*, p. 242.

when Vidyasagar had 'discovered and published the ordinances'.²⁰ What was sought to be proved was that the 'Aryans' in ancient times practised remarriage.

The Orientalist construct of a glorious 'Hindu past', and their identification of the text as the repository of 'true' 'Hindu religion', appeared in many of the arguments that were put forward. Thus, rational and 'just' institutions were to be found in the 'Hindu religion' contained in the text. When 'infant marriage' was found mentioned in the works of Manu, its context was limited to a particular time in history, and its existence justified.²¹ Thus, Manu had advocated 'infant marriage' at a time when the 'Hindu population' had been decimated in war, and was in need of growth. The text, thus, was exemplary, and always beyond censure. It was maintained that 'only custom' had 'girdled infant marriage with a halo of sanctity'.²² Custom, distinguished from religion, was sometimes seen to be 'time honoured'; and in such cases, the past was absolved of the charge of barbarity. The sanctity of the past was a notion borrowed from the Orientalists; yet, the past referred to was not necessarily always the Vedic or Sastric past that had been glorified by Orientalist scholars. Remarriage, it was accepted, had been abolished in the past, but it was only in the present that its absence had resulted in a variety of social ills. It was not exactly known at which point remarriage was 'abolished', it was said, but it was 'highly probable' that this event was accompanied by the introduction of the custom of *sati*; the latter was imposed to 'suppress those crimes which would be the natural result of having too many widows in the community'. *Sati* was believed to have had the 'effect of putting down the crimes of abortion, infanticide and desertion of children' now committed by widows.²³ The

²⁰ *Ibid.*, p. 243.

²¹ *Ibid.*, pp. 242-243.

²² *Ibid.*, p. 242.

²³ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra,

'evils of widowhood' did not, therefore, exist in the past. Similarly, it was argued that Kulins of the past had been possessed of the characteristics of 'ritualistic purity, humility, knowledge, reputation, pilgrimage, truthfulness, wealth, meditation and charity'; the existence of these 'excellent qualities' would have justified gift-taking in earlier times.²⁴ The past, the more distant as well as the nearer, was vindicated and upheld; the text and custom followed in earlier times were both approved of. In the Orientalist tradition, however, it was the text that was sought to be restored.

RESISTING BARBARITY

But, even as the perceptions of those who argued against 'infant marriage' and 'enforced widowhood' were structured by the early Orientalist understanding of a glorious past and a degenerated present, there emerged a resistance to the colonial denigration of the 'Hindu' present. There were two forms that this resistance assumed. On the one hand, 'fall' was perceived to have been brought about by the British: the present, thus, was detached from a history that was peculiarly 'Hindu', and affixed to that of colonial misrule. On the other hand, there was an attempt to prove that the 'Hindu' present was not entirely degraded. Hence, 'Hindu society' was seen to be moving towards the achievement of those universalized standards of civilization by virtue of which the West claimed its superiority. Again, the specificities of 'Hindu society' were themselves rationalized on the basis of principles acceptable to western sensibilities.

Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 220.

²⁴ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 246.

A serious accusation levelled against the colonial government was that it had let loose many of the 'evils' found to exist in indigenous society. The British were held responsible for both the large number of widows in society, as well as for the 'crimes' associated with widowhood. It was pointed out that since *sati* was abolished, a widow was left with no option but to lead a life akin to 'self-immolation'.²⁵ Act XV of 1856, which had removed 'legal obstacles' to widow marriage, was regarded as ineffective: an 'infinitesimally small' number of remarriages 'within the last 30 years' had proved 'unquestionably' that 'the object of that law has not been attained'.²⁶ One reason for widows opting out of remarriage was that the Act itself discouraged the marriage of widows by denying them their customary right of inheriting the property of their late husbands, it was pointed out.²⁷ The consequences of 'too many widows in society' were then described. Since the custom of widow-burning was abolished, 'there has been an undoubted increase in the crimes of causing miscarriage, injuries to unborn children, exposure of infants, and concealment of births ...'. It was concluded that 'these crimes...and the large number of widows in Hindu society *are to a great extent*, in the words of Mr. Malabari, "the result of the abolition of *sati* by the British Government"' [emphasis original]. The government, it was alleged, had 'provided the people with no means which would practically prevent the evils for which *sati* was in a manner a "necessary evil" in our society'. The penal provisions 'intended to prevent the crimes mentioned' had 'failed' to achieve that end.²⁸

²⁵ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 243.

²⁶ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 220.

²⁷ *Ibid.*, p. 222.

²⁸ *Ibid.*, p. 220.

Further, the government was upholding the disappearing custom of dowry. 'Kulinism in Bengal is about to pass into the domain of history ...', it was observed. Even 'the few surviving Kulins' 'equally complain of the inconvenience which attends the disposal of their daughters and sisters in marriage'. Kulinism was a legitimate practice in the past, it was argued, but had rightly died out in the present. 'Already cases are coming to Courts for adjudication as to the legality of *pon*, or price for the promised marriage, and such like matters', it was pointed out. Yet, 'the highest Court in the country entertained doubts in decreeing a restoration of the *pon* even where the marriage broke off...In the absence of a prohibitory law, the Judges summarily regarded the custom of the country and enforced a contract in every respect opposed to public policy'. By upholding the custom of *pon*, a custom found only among the 'relics of the families of Kulins', and discredited even by them, the government was forcing the 'whole community' to 'suffer'. That contracts of dowry were 'opposed to public policy and mischievous to the general bulk of society' was 'admitted by all the members of the community, and by the jurists of civilized countries'. The British government was not only refusing to recognize public opinion, but was also defying the dictates of the Sastras which 'decried' the custom of dowry 'in the strongest terms'.²⁹ It was concluded that by upholding *pon*, the government had taken to the 'indirect' 'encouragement' of the 'barbarous custom of the sale of boys and girls'. Thus, the degradation of the 'Hindu' present was explained in terms of its despoilment by the British.

What was sought to be established was that present society was not a completely degenerated one. The contestation of the stereotype of the 'evil' 'Orient' was, however,

²⁹ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 246.

itself structured by colonial reason. The 'barbarity' of social institutions observed to exist in 'Hindu society' was first acknowledged; it was then argued that 'Hindu society' was becoming 'civilized'. Malabari appeared to have taken 'a somewhat unnecessarily gloomy view of the social outlook'.³⁰ It was observed that 'infant marriages' were decreasing in Bengal and that 'people' were 'becoming alive to the evils thereof'.³¹ It was being realized, particularly by the 'majority of the educated section of the community', that 'infant marriage' was no part of religion. Ardent efforts were now directed at suppressing 'evil' 'social usages'. 'Students of Calcutta', by pledging not to be married under a certain age, had 'set on foot' a movement against 'infant marriage'. The Brahmo Samaj, 'earnest workers', and 'reforming bodies' were working in the direction of reform, 'and not without success'.³² With the 'advance of education', the 'evils' and 'disadvantages' arising from 'early marriage', especially from those marriages involving infant males, were being increasingly felt; 'consequently, marriages (of males) are frequently deferred to a later period than was customary formerly ...'. It was not known whether change was due to the 'salutary influence of English education', or due to 'any latent social factor not yet so powerful as to assert itself'; but, what was evident was that 'society was moving by force from within'.³³

³⁰ From the Secretary to the People's Association, Bogra, to the Under-Secretary to the Government of Bengal, General Department, dated Bogra, the 7th March, 1885. *Ibid.*, p. 235.

³¹ From Babu Srikantha Sen, Honorary Secretary to the Mymensingh Association, to the Secretary to the Government of Bengal, General Department, dated the 17th April 1885. *Ibid.*, p. 237.

³² From the Secretary to the People's Association, Bogra, to the Under-Secretary to the Government of Bengal, General Department, dated Bogra, the 7th March, 1885. *Ibid.*, p. 235.

³³ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 242.

With regard to the marriage of widows, it was observed that with the organization of Associations 'for this purpose, 'the aspect of things has changed during the last three or four years'. Pamphlets and appeals had 'partially awakened' the 'popular mind' to the 'importance of reform'. The Vernacular Press, it was said, had 'taken up the question in right earnest'. Those who would, 'a few years before', 'regard it a pollution to hear the subject discussed in their presence, now read the pamphlets with earnestness, and the rigors of their prejudice have much relaxed'. 'People', it was asserted, had 'no faith' in 'enforced widowhood', 'which is regarded by Hindu parents, especially of girls and young widows, as a misfortune'; they only followed the practice because they believed it to be ordained by their religion. As no 'alternative' was 'forthcoming', they 'put up with it' with much 'inward groans'; 'their eyes were now being opened' on learning that the Sastras favoured the marriage of widows. 'People', 'generally', it was said, were not unreasonable: if one could 'explain to them' that their Sastras 'fully countenance' widow marriages, that the consequences of 'enforced widowhood' were 'generally unfortunate' and that 'young widows are made to suffer wrongs and privations for no faults of their own', the 'average Hindus prejudices will thaw'. *Pandits*, who at the behest of 'orthodox' 'social leaders', disseminated a false religion, had now lost the 'confidence of the people' and 'all power to dictate and be obeyed'. 'People' as yet 'dreaded' 'action' only because they feared that their relatives 'living in another Somaj', which had not yet been awakened, would 'cut off matrimonial or other connections' with them. 'Give him a Somaj in which he can marry his daughters and sons, and the orthodox Bengali (many at any rate) will marry his widowed daughter', it was observed.³⁴

THE UTILITY OF CUSTOM

³⁴ *Ibid.*, p. 244.

At the same time, the defence of 'Hindu society' was organized around a glorification of its particular customs. The social institutions of the 'Hindus' were seen to perform some useful functions; the service they rendered legitimized their existence. 'Infant marriage' sometimes benefitted 'indigent' infant boys, 'the cost of whose education is in some cases borne by their father-in-law', it was pointed out. The marriage settlement, it was suggested, should contain an 'appropriate clause' providing for the 'mental culture of infant bridegrooms' 'according to the means of the father-in-law'.³⁵ Again, with all its evils, 'infant marriage' was said to 'ensure an amount of happiness to the married couple, which the system of marriages prevalent in other civilized countries is not quite successful in achieving'.³⁶ Not only was the happiness of families and humanitarianism achieved by means of 'infant marriage'; it achieved these universally desirable principles more fully than did the social institutions of 'civilized countries'. The recognition of the 'evilness' of 'Hindu society' was accompanied by the assertion of its superiority.

But, justifications put forward for the existence of social practices were not always separable from the notion of 'Oriental' decline. Present practices were rationalized when they were found to perform the task of improving a decadent present. Dowry, for example, was not an 'unmixed evil', it was argued, for it arrested the tendency of 'infant marriage' by 'forcing' many 'to keep their daughters unmarried till a later

³⁵ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 247.

³⁶ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 242.

age'.³⁷ Again, 'infant marriage' was resorted to in order to avoid 'exorbitant demands on the part of the father or other guardian [sic] of bridegrooms'.³⁸

REPAIRING THE PRESENT

Linked to the assessments of social institutions and practices were specific conceptions regarding the reform of indigenous society. The separation of religion and 'social usage' and the understanding of religion being vested in irrefutable ancient texts, placed religion beyond the purview of vilification and reformation. 'Infant marriage', 'enforced widowhood', and other 'pernicious customs' relating to marriage were identified as 'social usage', and distinguished from religion. Social practices, such as these, which were found to be unsupported by the Sastras did not qualify as religious practices, and could be interfered with. That 'infant marriage' was 'social usage' and not religion, was evident also from the practice of Kulin brahmins. Kulins, it was pointed out, married their daughters much after the latter had attained puberty, or, sometimes, not at all, 'but notwithstanding this marked departure from all but universal custom, the Kulins are regarded as the most respectable of Brahmins'. Hence, it was 'quite evident' that the marriage of infant girls was 'not regarded by the Hindus to form any part of their religious institutions', and no 'social persecution' fell upon those 'departing from' the custom.³⁹ Again, it was admitted that measures to restrict 'infant marriage' would be a 'direct interference with the law of marriage', but it was pointed

³⁷ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 217.

³⁸ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 245.

³⁹ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 242.

out that 'it will not interfere with the religious aspect of marriage'.⁴⁰ Custom was, then, distinguished from religion. Custom was followed but not insisted upon; religion received greater social sanction. Thus, 'social usage' was to be reformed; religion was not to be touched.

The indigenous nature of this transformation was stressed upon by arguing that reform was merely the return to religion. The abolition of 'infant marriage' was seen to be 'consistent' with the principles contained in the 'religious books of the Hindus'. Examples from the works of 'the savants of old India' would 'teach degenerated Hindus of the present day that the statutory prohibition of early marriage will be no encroachment upon the established religion of the country'.⁴¹ It was pointed out: 'that the remarriage of widows has the sanction of our religion, that it was in force in our society in ancient times and it should be reintroduced in the present age for the very purpose of preventing the suffering of widows and unchastity and crimes of abortion, & c., have all been clearly proved by quotations from our "Shastras" by Pundit Iswar Chundra Vidyasagar'.⁴² The restoration of the Sastras which had suffered 'gross violation' in the hands of 'selfish' *pandits* provided the grounds for reform. Again, the practice of dowry, forbidden by the text and no part of religion, was to be done away with. Reform derived its legitimacy from scripture; a change of the present was sanctioned only if it should entail the restoration of the text.

It was because many of Malabari's proposals were not found to be in keeping with the Sastras that they were objected to. These proposals were opposed to religion, it was

⁴⁰ From Babu Menulall Chatterjee, Subordinate Judge of Beerbhoom, to the Secretary to the Government of Bengal, General Department, dated Soory, the 29th December 1884. *Ibid.*, p. 247.

⁴¹ *Ibid.*

⁴² Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 217.

said, and to the 'Hindu social fabric' that was perceived to be based on religion. Malabari's suggestion that widow marriages be encouraged by making the marriage ceremony 'as inexpensive as possible by ruling that two or three declarations before the Registrar may constitute marriage' was 'quite against the Hindu Shastras'. 'Marriage is not only a civil contract, but a religious sacrament with us. "Two or three declarations before the Registrar" cannot constitute Hindu marriage.' 'Prescribed forms and sacrifices' had to be 'gone through' before a marriage was considered to be a 'Hindu' one.⁴³ Any remedy for 'enforced widowhood' that was so 'diametrically opposed to the fundamental principles of Hinduism' could not be accepted. Again, the proposal that those 'betrothed early may be given, on coming to years of discretion, the opportunity of ratifying the contract previously entered into without their assent' was 'against the positive matrimonial laws of the Hindus'. 'Hindu marriage' entailed that a bride be 'given away', 'the only form of marriage prevalent in the present *Kali Yuga* being *Brahmo Marriage*, in which gift of the bride is essential'.⁴⁴ Reform that was perceived to be inconsistent with the specificities of 'Hindu' religious customs was not to be entertained.

At the same time, the perception of an improving present provided the justification for 'social reformation'. Reform was merely the affirmation or reinforcement of the change that had been effected in social practice. The present was to be upheld; reform was the 'change from within'. 'Orthodox leaders' would not be able to 'long hold out', it was predicted :

The amount of agitation that has been 'raised' in Bengal, the enthusiasm with which it is received everywhere, by the young and the old, the daily increasing demands for books, pamphlets and appeals; the distrust of the

⁴³ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 244.

⁴⁴ *Ibid.*, p. 245.

people generally to the *vyavastha* of the pandits who have all lost the power to dictate and be obeyed; the manner in which pandits are being challenged to prove their position; and the manner in which pandits are shrinking in the mew – all this unmistakably point to a time, not far distant when the leaders would come around and give up their exalted position.⁴⁵

'Public opinion' comprising the 'majority of the educated portion of the community' was desirous of reform, it was reported. The impetus for reform, thus, lay in the logic of a changing present.

Closely linked to the indigenous roots of reform was another argument for intervention in custom. This was the one that pertained to the accusation of the despoilment of indigenous society by colonial policies pursued in contravention to religion and ancient custom. What was upheld was a past which had been free of the pernicious effects of colonial policies, and in which had existed none of the 'evils' found in the present. But, not just the past, the present itself was being marred by the colonial rulers, it was observed. The 'mischief' unleashed by colonial rule was now to be purged through reform. Reform was to be the reconstruction of the 'Hindu' order.

APPOINTING THE DISCIPLINARIAN

The role to be assumed by the colonial state in bringing about reform was variously perceived. The notion of the debasement of the present invoked the interference of an 'enlightened' government in 'barbarous custom'. Religion, vested in the past, remained beyond the realm of state action; but, 'social usage', which characterized the degenerated present, was to be 'civilized'. As the 'guardian of the people' and the 'protector of society', the government was to suppress those practices which were an 'outrage to humanity' and opposed to 'sound reason' and 'morality'.⁴⁶

⁴⁵ *Ibid.*, p. 244.

⁴⁶ Note on Infant Marriage and Enforced Widowhood, by Baby Hori Mohun Chandra, Personal Assistant to the Commissioner, Rajshahye Division, dated the 31st January 1885. *Ibid.*, p. 217.

Yet, the perception of a degenerated present itself provided the context for contesting the civilizing claims of colonial rule. The accusation that the colonial state had unleashed many of the 'evils' found in the present was the means of discrediting the 'civilized' nature of colonial rule while seeking its intervention. It was demanded, thus, that the colonial state only restore the social well-being that it had impaired. The indigenous character of reform was also stressed upon by arguing colonial intervention in terms of the restoration of the religion of the 'Hindus'; the role of the colonial state was restricted to upholding religion. At the same time, the perception of an improving present defined colonial intervention in terms of a ratification of the change 'from within': executive or legislative action was merely an act of reiterating or, at best, catalyzing transformation.

However, the conception of a changing present also provided the basis for arguing for the withdrawal of the colonial state from the realm of social practice. 'Society', it was argued, was 'moving' on its own accord, and any 'extraneous force' thrust upon it would provoke 'orthodox reaction' against reform. Instead of producing any 'salutary effect', colonial interference would 'tend' to 'disrupt' the 'normal motion' of 'society'. 'Genuine' reform had to be 'slow and indigenous'.⁴⁷

Yet, transformation was always seen to have been brought about by the 'educated sections of the community'. Faith in the spread of education as the means of transformation was often expressed:

the root of all these social evils (of 'infant marriage' and 'enforced widowhood') has, by the spread of western education and ideas, been completely sapped, and it is confidently hoped that the time-honoured fabric of caste and priestcraft with all its attendant evils, will entirely collapse in the course of two more decades, when Mr. Malabari will see the consummation

⁴⁷ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 242.

of the noble objects so dear to his heart, steadily but quietly brought about without the adoption of any such artificial rules which he proposes....⁴⁸

The education of women was declared to be of particular importance. It was suggested that schools for girls be set up 'wherever there are schools for the education of males', and further, that schools be established in large towns 'for training mistresses who would be well qualified to teach *zenana* ladies'. It was 'by these and similar other educational measures' that one could 'hope to dispel the ignorance and superstition of the vast myriads who form the body of the society', and thus, 'pave the way to the time when the inequity and injuriousness' of marrying 'little girls' would be 'brought home to the minds of mothers and fathers'.⁴⁹ Implicit in the acceptance of the improving role of western education was the recognition of the 'civilized' and 'civilizing' character of colonial rule.

THE 'HINDU' AND HIS 'COMMUNITY'

The assessment of custom and the arguments put forward in favour of reform were indicative too of the self-perception of the 'Hindu'. The Orientalist notion of a degenerated present and a glorious past was important in the structuration of a 'Hindu' identity. Distinguished by its 'barbarous' institutions and practices, 'Hindu society' was the 'Other' of the 'civilized' western one. But, paradoxically, Orientalist logic itself presented the potential to blur the differences between the 'Oriental' and the 'Occidental'. The identification of the text as a source of a 'Hindu religion' that conformed to western standards of civilization provided the grounds for fashioning a 'Hindu' identity on the basis of 'civilized' religion. The present, in contrast, was the

⁴⁸ *Ibid.*, p. 242.

⁴⁹ From Babu Srikantha Sen, Honorary Secretary to the Mymensingh Association, to the Secretary to the Government of Bengal, General Department, dated the 17th April 1885. *Ibid.*, p. 238.

repository of many 'unHindu' practices. But, the 'community' as a whole was often exonerated from the guilt of bringing upon itself that 'barbarity' which was said to characterize it: the colonial state, a manipulative 'orthodoxy', comprising 'social leaders' and priests, and ignorant women participated to perpetrate 'evil', and to misguide the 'community'. It was a small, but increasing, group of educated men who were to guide an 'orthodox community' in its path to reform. Yet, this path was one charted out by the Sastras; change could be accepted only if it was perceived to be supported by the text.

II

'GENUINE HINDUS'

The question of child marriage, reopened most dramatically in 1890 by the case of Phulmonee Dasi, became one of vital importance in 'native' circles. Reform, the Governor General-in-Council noted, had become 'a question of political expediency based upon public opinion; and so far as we can judge from the utterances of the Native Press, that opinion is ripe for the change'.⁵⁰ One strain of public opinion recognized the custom of child marriage as the chief cause of the practice of consummating marriages with immature girls. This practice was seen to be universal in almost all parts of Bengal. The custom of child marriage, and particularly, the practice of premature cohabitation, were found to be 'prejudicial to the best interests of the nation - to their health and to their development of those moral qualities which are dependent upon physical stamina'.⁵¹ Further, it was also evident that the unhappy

⁵⁰ From Kumar Pramatha Bhushana Deva Raya of Naldangah in Jessore, to the Officiating Chief Secretary to the Government of Bengal, General Department, dated the 24th January 1885. *Ibid.*, p. 243.

⁵¹ Note by C.J. Lansdowne, August 14, 1890, Government of India, Home Department, Judicial Branch, File No. 210-213, October 1890.

cases of injury to child-wives were the results of these customs. It was pointed out that husbands had no right to exercise their marital rights 'except in accordance with the law of nature'; early marriage and early consummation were pronounced to be 'unscientific' customs, and 'civil society' was condemned for repudiating the immutable laws of nature.

RANKING SCRIPTURES

The 'pernicious customs' of the present were not found in the legitimate texts of the 'Hindus'. Indeed, the 'great Hindu sages' would not have deserved the 'honour' given to them for their 'wisdom' and 'insight' 'if they did not point out and provide against the evils of premature maternity' that arose out of child marriage. Their teachings had been 'fully threshed out both here and in Bombay', and 'though these somewhat conflict', the 'fact remains' that 'if a passage here and there may be construed as against the present measure' (of raising the age of consent to twelve), a dozen others could be cited not only in favour of the measure, but 'far in advance' of it.⁵² The Hindu religion 'can be compared to an ocean'; 'dive into it and you will find anything you want', it was observed. 'Inconsistent and contradictory texts' could 'easily be cited' and there was 'scarcely anyone living amongst the learned' who could 'reasonably reconcile' 'all the contradictory and inconsistent dicta'.⁵³ When evidence of the existence of the *garbhadhan* ceremony or of child marriage was found in the text, it was pointed out that it was only natural that 'different men' of 'diverse times' would propound

⁵² Note by P.C. Mozoomdar, undated, Government of Bengal, Judicial Department, O.C. No. 206, October 1891.

⁵³ From Rai Nalinaksha Basu Bahadur, Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

varying view-points.⁵⁴ These institutions were then observed to be restricted to particular contexts in time. But, if texts could not be 'reconciled', they could be hierarchized. What was to be established was the 'highest Hindu authorities'.⁵⁵ There was an attempt at determining which were more 'authentic' texts and which were less 'authentic' ones. The antiquity of a text became the proof of its authenticity. The fact that marriages should be consummated much after the appearance of puberty came from 'the oldest and most revered writings'.⁵⁶ 'Every Hindu' 'must admit' that the 'Hindu religion' was 'founded on the Vedas', and 'the authority derived from them are far more weighty' than the opinion of any of the 'Rishis'. It was then noticed that there was 'nothing' in the Vedas which made cohabitation compulsory on the appearance of puberty in wives.⁵⁷ This was often identified as the Sastras. The ancient texts were often distinguished from commentaries. It was by 'twisting and torturing doubtful texts' and 'by ignoring the more authentic texts of our Shastras' that girls were declared fit for motherhood as soon as they attained the first signs of maturity.⁵⁸ Contradictions observed in Hindu religious law were the result of 'interpolations' and 'omissions' by commentators; it was necessary, then, to go back to the 'originals'.⁵⁹ Raghunandan,

⁵⁴ Note by P.C. Mozoomdar, undated, Government of Bengal, Judicial Department, O.C. No.206, October 1891.

⁵⁵ *Ibid.*

⁵⁶ Note by P.C. Mozoomdar, undated, Government of Bengal, Judicial Department, O.C.No.206, October 1891.

⁵⁷ *Ibid.*

⁵⁸ From Dr. Mahendra Lal Sirkar, to the Chief Secretary to the Government of Bengal, dated Baidyanath, the 4th March 1891, Government of Bengal, Judicial Department, O.C. No. 213, October 1891.

⁵⁹ From Rai Nalinaksha Basu Bahadur, Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

cited by the opponents of the Bill as the 'special authority' for Bengal, was dismissed as a 'modern authority' who lived as late as in the sixteenth century.⁶⁰ Raghunandan was only an 'interpreter', it was pointed out, and it would be 'contrary to all sense of justice and equity to follow the interpreter and not the lawgiver'.⁶¹

But, even if the commentaries of Raghunandan were examined and medical works gleaned, they did not support the position put forward by the detractors of reform. The fundamental principle of Hindu religion on which the whole law of marriage is based, viz., that a man marries to beget children for the purpose of obtaining funeral cakes from them and to save himself from the torments of the hell *put*, implicitly accepted the proposition that 'we must have such children as are likely to survive us'. Charak had laid down that 'a child begotten by a man of 30 and a woman of 16 would be one who is likely to live long' to be 'virtuous' and 'capable of offering funeral oblations to his father and his ancestors'.⁶² The early consummation of marriage would, then, lead to weak offsprings; it was, thus, a practice that was not sanctioned by the text. Raghunandan, interpreting 'Hindu law', was found to echo these views on parenthood.⁶³

It was, then, the norms adhered to in the most ancient past that the 'civilized' and 'true' 'Hindu' was to follow. The custom of Bengal, believed to have emanated from

⁶⁰ *Ibid.*

⁶¹ From Babu Dwaraka Nath Ganguly, Asst. Secretary to the Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No.169, October 1891.

⁶² From Rai Nalinaksha Basu Bahadur Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

⁶³ From Rajendra Narayan Roy Bahadur of Bhowal, Dacca, to the Chief Secretary to the Government of Bengal, dated Joydebpur, the 8th February 1891, Government of Bengal, Judicial Department, O.C. No. 190, October 1891.

Raghunandan's commentaries, was not admitted. Thus, at times, Raghunandan was found to only repeat the views put down in the 'oldest texts'. At some moments, Raghunandan was confined to his own times. Raghunandan's dictates on the performance of the *garbhadhan* ceremony on the appearance of puberty had to be viewed in the context of 'Muhammadan' rule. 'History shows that during the reign of the Muhammadans, immature young Hindu girls were often violated by the Muhammadans', and it was in order to protect them from the 'lustful desires of the reigning race' that Raghunandan had defined puberty in terms of the attainment of its first signs, and had laid down that 'on the happening of which event' husbands should claim their wives; this was because he 'thought' a husband would be 'better able to protect' than a father or brother.⁶⁴ Often however, Raghunandan was convicted of misdoings. 'A common pundit of Nuddea', Raghunandan had introduced the most 'abominable practices' into 'Bengali society'.⁶⁵ A well-known judge was quoted to have referred to Raghunandan as 'the dacoit Raghu'.⁶⁶ The repudiation of Raghunandan's authority was one way of conceptualizing a homogenized 'Hindu community' that could transcend the barriers of provincial custom.

AN UNPOPULAR CUSTOM

At the same time, custom was given, an importance alongside the text. Custom or 'authoritative usage' was seen to be another source of religion, it was now proved that the performance of the *garbhadhan* ceremony was not a part of the prevailing religious beliefs of the 'Hindus'. It was noticed that 'in ninety-eight percent of

⁶⁴ From Rai Nalinaksha Basu Bahadur, Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

⁶⁵ *Sanjivani*, January 24th, 1891, RNP(B) for the week ending the January 24th, 1891.

⁶⁶ *Samay*, January 30th, 1891, RNP(B) for the week ending the January 31, 1891.

respectable Hindu households in Calcutta and outside, this boasted *garbhadhan* is never performed because it [is] not known, and among the masses it was never heard of.⁶⁷ *Garbhadhan*, therefore, occupied no place in 'practical religion', so that even in those cases in which puberty occurred before the age of twelve, the Bill would be no interference in religion.

Again, the proposed legislation was not even opposed to custom that was of a non-religious nature. Here, custom was distinguished from the text or religion; what was enquired into was how far the custom of *garbhadhan* entailing the consummation of marriage upon the attainment of puberty was prevalent. It was found that the ceremony was not a universal practice in India and 'exists nowhere else except in lower Bengal'. '...The feeling which inspires the present agitation against the Bill in Bengal, if not strictly derived from the teachings of the Hindu religion, is [,] at any rate [,] based upon custom which is "transcendal law" according to Manu', it was observed.⁶⁸ The custom of Bengal was, thus, to be assessed. Because of the paucity of grooms and the practice of dowry, Kulin girls were often unmarried until much after they had attained puberty, it was pointed out; yet, even as Kulins violated *garbhadhan*, they occupied the 'highest position in Hindu society', and 'the Brahmans of lower grades consider it their proud privilege and high honour to be able to secure matrimonial alliances with them'.⁶⁹ Again, when husbands were away, *garbhadhan*

⁶⁷ Note by P.C. Mozoomdar, undated Government of Bengal, Judicial Department, O.C. No. 206, October 1891.

⁶⁸ From Surendra Nath Banerjea, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 12th February 1891, Government of Bengal, Judicial Department, O.C. No. 200, October 1891.

⁶⁹ *Ibid.*

was postponed for 'months and years'.⁷⁰ Further, custom itself had provided for the omission of cohabitation as an essential part of *garbhadhan* when it was so required. It was reported that where the consummation of marriage on the appearance of puberty was impossible, a simple purificatory rite could take its place. Even this purificatory rite was 'nominally observed' or 'dispensed with' altogether. There were, then, indications of 'how flexible the custom is, how the public sentiment of the community has provided for infractions of it, and how the growing feeling of the educated class is steadily declaring itself against it'.⁷¹ Whatever may be the injunctions of the Shastras, 'prevailing practice has made the ceremony not at all obligatory' on the 'Hindu'.⁷² It was observed that only the 'orthodox class' practised the *garbhadhan* ceremony. The arguments that *garbhadhan* was not a compulsory custom, and that it was followed by few both exonerated the 'Hindus of Bengal' from practising an 'unscientific' custom, and integrated them into a perceived 'Hindu community'.

A POLICY OF PROTECTION

But, even as the need for the reform of indigenous practice was reiterated, and the aid of the colonial state sought, responses to the Consent Bill were critical of the mode of intervention charted out by the government. Paradoxically, the objections put forward against the Bill displayed an ambivalence towards that very interference that had been invoked. While the government was invited to interfere in domestic

⁷⁰ From Babu Dwaraka Nath Ganguly, Asst. Secretary to the Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 169, October 1891.

⁷¹ From Surendra Nath Banerjea, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 12th February 1891, Government of Bengal, Judicial Department, O.C.No. 200, October 1891.

⁷² From Babu Dwaraka Nath Ganguly, Asst. Secretary to the Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 169, October 1891.

arrangements 'in the interests of its oppressed subjects', the ability of colonial law to penetrate into the household and effectively pursue its concern was seriously doubted. Indigenous domestic arrangements were themselves often found to provide protection to women, and were, therefore, not to be disturbed, it was argued. Again, if social practice was to be 'civilized', the extent of this 'civilization' was itself bound by the existing 'social fabric'. Further, colonial law was compared unfavourably to the Sastras which were seen to provide a better system of protection to child-wives; yet, the restoration of the Sastras, when undertaken by the state, was often viewed as being opposed to established religious principles as contained in the text and as followed in practice. The appeal to a 'civilized' government to put an end to the 'evil' of premature consummation in 'native society' was, then, accompanied by an anxiety about the possible subversion of an indigenous social order. The men who had so carefully moulded a 'Hindu' identity on that of the 'civilized' Westerner, and who had argued so rigorously for the reform of the present, were also taken up with justifying a 'Hindu' present.

An argument often advanced against the Consent Bill was that it would not only prove to be ineffective, but would also unleash much disorder in society. It appeared 'extremely doubtful' 'how the evil (of immature consummation) can be checked by raising the age of consent in the Penal Code'. Except in the case of fatal accidents, the law would prove 'utterly powerless' to detect offence committed in the strict privacy of the *zenana*, it was pointed out.⁷³ This was particularly evident from the failure of the Penal Code of 1860 that had fixed the age of consent at ten: despite the prevalence of this 'disgusting practice' of 'attempting to have carnal knowledge of a wife even below ten years of age', few cases had come before the courts. It was noted

⁷³ From Babu Nobin Chunder Sen, Deputy Magistrate, to the Commissioner of the Chittagong Division, dated Feni, the 20th September 1890, Government of Bengal, Judicial Department, O.C. No. 112, October 1891.

that 'people' were disinclined to 'expose their domestic life'. Again, when charges had been brought, they failed on account of the unavailability of sufficient proof of age.⁷⁴ But, not only was it likely that the proposed law would remain a 'dead letter', it would also be open to misuse. The difficulty of establishing the age of child-wives would be taken advantage of by rival 'factions' in the family or by political opponents who would register 'false cases' against innocent parties. The Raja of Burdwan entertained 'serious apprehensions' that the law 'will be abused to the foulest purposes, and will be productive of much misery and terror to respectable families, and a large harvest of profit to the vilest pests of society.'⁷⁵ The inability of colonial law to make its way into 'Hindu' domestic life for the purpose of reform, its inefficacy, and its susceptibility to manipulation were stressed upon.

The unpopularity of colonial legislation was pegged to its unsuitability for the 'Hindu'. One reason for the inappropriateness of the Consent Bill was that it displayed a callousness to the particular racial characteristics of 'Hindus'. The Bill, it was pointed out, did not take into account that 'Hindu girls' were capable of becoming mothers earlier than were Western ones, the negligence of this fact could produce serious consequences. Thus, the provisions of the Bill, the Raja of Burdwan observed, may lead to the commission of the offence of abortion:

[If] the age of consent be fixed at 12, it is not unlikely that the commission of such an offence would occur. It is a fact that cannot be gainsaid that a girl of this country may be a mother at twelve supposing that, notwithstanding the passing of the present Bill, a girl become *enceinte* before she has completed her 12th year her position would be most critical. She will either have to cause abortion or to see her husband transported for life. Out of the two evils, she must choose one, and it may be that in order to avoid bringing an

⁷⁴ From Manmohan Ghose, Barrister and Advocate of the High Court, to the Chief Secretary to the Government of Bengal, dated 4, Theatre Road, Calcutta, the 6th February 1891 Government of Bengal, Judicial Department, O.C. No. 179, October 1891.

⁷⁵ From Rai Nalinaksha Basu Bahadur, Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

disgrace to her family and the punishment of her husband, she may be induced by her relations to commit the dreaded offence.⁷⁶

Not only was the Consent Bill found to be unsuitable for the 'Hindu race', it was said to clash with the 'sentiments of the people'. The 'arbitrary' fixing of the age of consent at twelve, with the declaration that cohabitation below that age was an offence punishable by law, 'is a matter (which) in every way is a most serious one'.⁷⁷ As a result of the provisions of the Bill, 'the female members of a family may be dragged into court, and the injured girl may be subjected to medical examination, which according to Hindu feelings is a dishonour of such a serious character that a Hindu would gladly prefer death to it'.⁷⁸ Again, no 'Hindu wife' would ever complain against her husband even if he should happen to commit offence. The Consent Bill, thus, interfered with being 'Hindu'.

What was sought to be established, thus, was the 'otherness' of the 'Hindus'; laws made by the British were, then, inappropriate for them. It was highly doubtful, therefore, whether prosecutions would ever be brought under the Consent law, for the working of the Act would militate against 'Hindu feelings'. It was precisely because the Bill was repugnant to 'Hindu sentiments' that, far from achieving its objective of reforming indigenous society, it could only be put to use for unscrupulous purposes.

But, if colonial law conflicted with the 'sentiments of the people', the cure for the ills that afflicted 'Hindu society' could be provided only by uniquely 'Hindu' authorities.

The remedies they offered were found to be superior to the fault-ridden ones proposed

⁷⁶ *Ibid.*

⁷⁷ From Babu Nobin Chunder Sen, Deputy Magistrate, to the Commissioner of the Chittagong Division, dated Feni, the 20th September 1890, Government of Bengal, Judicial Department, O.C. No. 112, October 1891.

⁷⁸ From Rai Nalinaksha Basu Bahadur, Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

by the colonial state. The raising of the age of consent from ten to twelve was pronounced to be inadequate for the protection of child-wives. Not all of them, it was pointed out, attained puberty before the age of twelve: the Consent law would leave 'unprotected' an 'entire class of immature wives' above that age. The Sastras, in contrast, it was pointed out, had forbidden cohabitation below the age of puberty; the age of consent should be 'fixed at puberty', it was widely advocated. What was to be adopted was the 'Bihar plan', by which betrothed boys and girls continued to live with their respective parents until the performance of 'a second marriage' or consummatory ceremony on the attainment of puberty by girls.⁷⁹ The 'orthodox practice' of consummation upon the appearance of puberty in wives became, for many, an acceptable custom. Still others believed that the 'evil' could be effectively destroyed at its 'roots' only by reintroducing the Sastric practice of adult marriage. A civil law of marriage founded on sound principles contained in the text was preferable to the 'arbitrariness' and inadequacy of the present Consent Bill.

Yet, because the colonial state was not to trespass on 'Hindu religion' and custom, it was declared unfit to implement the desirable reform of abolishing child marriage. The introduction of a marriage law declaring marriages under a certain age was 'a serious interference' with 'Hindu marriage':

The Hindu marriage is a sacrament, irrespective of the civil law, and enduring till the death of either of the parties married. To say that a marriage solemnized according to the rules of the Hindu religion would be null and void in the eye of the law unless the parties were of a certain age would, so far as one could judge, involve a serious disturbance of the existing marriage law.⁸⁰

⁷⁹ From Babu Nobin Chunder Sen, Deputy Magistrate, to the Commissioner of the Chittagong Division, dated Feni, the 20th September 1890, Government of Bengal, Judicial Department, O.C. No. 112, October 1891.

⁸⁰ From Surendra Nath Banerjea, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 12th February 1891, Government of Bengal, Judicial Department, O.C. No. 200, October 1891.

Indeed, a marriage law would encounter opposition 'all over Hindustan' 'because it will really mean a direct interference with Hindu usage, Hindu law and Hindu religious sanction almost universally respected'.⁸¹ Marriage, it was said, was 'interwoven with the whole texture of our Society, specifically the Hindu, society' 'outsiders' who knew little about the 'inner workings' of 'Hindu society' would disturb its whole 'fabric' by 'altering the marriage system'.⁸² Not only was the colonial state denied of the right to interfere in 'Hindu marriage', it was doubted the government ought to be allowed to curb the 'claims of the minority' in the community'. It was suggested that the 'orthodox sections' be allowed to pursue their religious customs: in their case, the age of consent was to be fixed at puberty.⁸³ Thus, both the ability and the right of the colonial authorities to bring about reform were contested.

It was the controversy over the 'marital rape clause' that, perhaps, revealed better than any other discussion on the Consent Bill, the ambivalence in those who argued for the protection of child-wives. It was almost unanimously agreed upon that if husbands were punished with imprisonment or transportation for ten years (as the Bill proposed), it would be the wives who would be the real sufferers. This theory was premised on an understanding of the family, and particularly, of marriage, as a

⁸¹ Note by P.C. Mozoomdar, undated, Government of Bengal, Judicial Department, O.C. No. 206, October 1891.

⁸² From Babu Nobin Chunder Sen, Deputy Magistrate, to the Commissioner of the Chittagong Division, dated Feni, the 20th September 1890, Government of Bengal, Judicial Department, O.C. No. 112, October 1891.

⁸³ From Surendra Nath Banerjea, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 12th February 1891, Government of Bengal, Judicial Department, O.C. No. 200, October 1891.

protective system for women. It was observed that 'marital relations' should not be so 'embittered' as to demolish all hopes of 'future relationship'.⁸⁴

'...If in any case the husband be prosecuted and the wife sides against him, then, whether the latter be convicted or not, there would thenceforth, be a complete separation between the husband and the wife for ever; and as the Hindu marriage laws do not allow of any kind of divorce, the wife's position would inevitably become worse than that of a widow. In no case of the breach of the law, the girl-wife can be benefitted in any way. On the contrary, her fate would be doomed from the very moment.'⁸⁵

Not only would a 'young wife' be 'condemned to eternal unhappiness' if her husband be 'transported for life',⁸⁶ but, 'if she becomes a mother before she is thirteen', it would be 'extremely undesirable to send her husband to prison on a charge of rape'. In such an event, 'the girl and her child' would be 'left without any protection'.⁸⁷ The husband himself was sometimes exonerated from the charge of perpetrating premature cohabitation. It was explained that this practice existed because a young boy was often 'tempted' into it by 'members of the family', particularly its 'female members'.⁸⁸ The institution of marriage entailing a 'sacred relationship' between husband and wife was to be upheld: it was suggested that the 'odious term' of 'rape' be abandoned in

⁸⁴ From Dr. Mahendra Lal Sirkar, to the Chief Secretary to the Government of Bengal dated Baidyanath, the 4th March 1891, Government of Bengal, Judicial Department, O.C. No. 213, October 1891.

⁸⁵ From J.Ghosal, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 28th February 1891, Government of Bengal, Judicial Department, O.C. No. 210, October 1891.

⁸⁶ From Babu Upendra Chandra Roy, Zamindar, Narail, Jessore, to the Chief Secretary to the Government of Bengal, dated Cossipore, the 7th February 1891, Government of Bengal, Judicial Department, O.C. No. 187, October 1891.

⁸⁷ From Manomohan Ghose, Barrister and Advocate of the High Court, to the Chief Secretary to the Government of Bengal, dated 4, Theatre Road, Calcutta the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 179, October 1891.

⁸⁸ From Rai Nalinaksha Basu Bahadur, Burdwan, to the Chief Secretary to the Government of Bengal, dated Burdwan, the 18th February 1891, Government of Bengal, Judicial Department, O.C. No. 191, October 1891.

describing offence committed by a husband. Again, although it was observed that 'guardians', and often mothers, encouraged premature consummation, it was proposed that no complaint be entertained against a husband unless it be filed by his wife or her 'natural guardians'. Even as the government was urged to 'protect' child-wives against the 'cruel outrage' to which they were subjected by their husbands and guardians, the very institutions of marriage and family which were condemned continued to be viewed as protective agencies for women.

The responsibility of purging 'Hindu society' of its 'evils' ultimately rested on the 'Hindu community' alone. A representative legislature was the primary condition for reform, several were quick to point out. The contradiction in the position of the men who sought reform of some sort, and who solicited the aid of the colonial rulers for their mission were expressed well by P.C. Mozoomdar as he extended his support to the Consent Bill:

I would not certainly like to see the law "a dead-letter", but I devoutly hope to see it inoperative, not because of the weakness of the authorities, or the inutility of their measure, but I hope my countrymen will yet combine to make it perfectly useless and superfluous by themselves protecting their girls up to the age of twelve, or better still by not marrying them till then. It is often said girls are now-a-days practically kept unmarried till the age of twelve...Let all the people meet at a great social meeting, and unanimously take such a determination. There is all the greater reason for this as it will effectually, and for ever, save them from the exposure and oppression which they fear, not without reason, from the passing of the Bill. It will be honourable and safe for our society, while it will be loyal and manly in strengthening the hands of the Government.⁸⁹

CONCLUSION

In the mid 1880s, the 'reformers' had defined the 'Hindu' as one who followed his religion as seen to be contained in the text; religion was distinguished from 'social usage', a term used interchangeably with custom. Those who practised custom in

⁸⁹ Note by P.C. Mozoomdar, undated, Government of Bengal, Judicial Department, O.C. No. 206, October 1891.

contravention of religion were not 'Hindus' at all. Custom could be interfered with, for this was no interference with 'Hinduness'. At the time of the Consent controversy, the textual source of religion continued to be recognized; thus, it was sought to be proved that early consummation was not found in the text. The 'Hindu' remained one who adhered to the Sastras. On the other hand, custom gained importance, sometimes, as a parallel source of religion, at other times, as 'transcendal religion'. The 'Hindu' was, then, also conceived by means of the custom he followed. This was important in the forging of provincial identities. But, above all, it restricted intervention in practice and social institutions as being an interference with 'Hindu society' and 'Hindu custom'. Even as interference in practice was sought, the autonomy of the 'Hindu community' was increasingly asserted.

CHAPTER IV

PRESERVING CUSTOM

Unlike the 'enlightened sons' and the 'genuine Hindus' who, though often critical of the colonial state's interventionist urges, were not opposed to the reform of certain customs, there existed in public opinion another section that differed from the first. Their voice was one that upheld 'Hindu custom' in the face of condemnation, and that thundered against the intervention of 'intrepid reformers' and the colonial state in the social institutions of the 'Hindus'. This chapter is a discussion of the various constructs of 'Hindu' identities that emerged in the course of the resistance offered to the proposed reform of custom in the context of Malabari's 'Notes' and the Age of Consent Bill.

I

THE 'ORTHODOX HINDU'

THE CASE FOR NON-INTERVENTION

One argument against the adoption of Malabari's proposals was that they interfered with 'ancestral religion'. 'A girl at the age of eight years is considered by the Hindu *Shastras* as marriageable, when the act of making her over to the bridegroom is thought as attended with virtues to her parents similar to those which had attended the making over of *Gouri* (Doorga) by her father Siva, and the age of the twelfth year of a girl is considered the age of puberty, before which she must marry, or perdition shall befall her parents or ancestors', it was believed.¹ It was reported that the 'Hindus' regarded

¹ From Babu Kedaressur Roy, Judge of Small Cause Court, Dacca, to the Commissioner of the Dacca Division, dated Dacca, the 27th December 1884, *Papers*, p. 205.

widowhood as 'enjoined by the Shastras under the sanction of religion'.² Hindu women, thus, underwent this state as a 'duty' in the same way as they observed 'other religious rites'. Thus, the British government was not to violate its pledge of non-interference in the religious affairs of its subjects.

What was asserted too was that the 'exceptional circumstances' that could justify interference did not exist in 'Hindu society'. It was argued, for instance, that the identified 'evils' were isolated occurrences. It was advised that 'before any attempt be made for a change', 'the real state of affairs should be enquired into' so that 'exceptional instances' were 'not allowed to occupy the place of universal practice'.³ It was observed that the age of marriage 'for both boys and girls' had risen 'to a marked extent' as 'enlightened popular opinion' had 'begun to assert itself'.⁴ 'Infant marriage', defined variously as being marriage below five to ten years of age, was found to have become rare; there was 'every reason to believe' that with the progress of education, the custom of entering into such marriages would 'die a natural death'.⁵

But, early marriage was also justified on the grounds of western science, morality, and sociological principles of change. It was asserted that early marriage is not 'the sole or the most important cause of the degeneracy of the native race'. 'Climate, food, hereditary predisposition to disease, injudicious selection in marriage, and other causes of arrested growth are potent factors in the case', and it was 'illogical to overlook them'. Any attempt to repress 'infant marriage' would be a 'violation' of 'established

² *Ibid.*

³ *Ibid.*, p. 204.

⁴ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 188.

⁵ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

mental and physiological laws', accepted even by modern biologists.⁶ Again, when it was admitted that early marriage weakened the race, it was argued that the institution should not be 'considered' 'physically only': by neglecting its 'moral effects', its 'other and brighter side had been overlooked'. Thus, the 'continuous association from their early years' offered married parties with 'opportunities' to 'be acquainted with each others' traits of character and thoughts', to 'smoothen' their differences, and 'enhance' their 'reciprocity' so that they could live 'joint and peaceful lives'. Again, 'infant marriage' was 'the most powerful check against our youths deviating in wantonness and vice'.⁷ The existence of 'evils' in marriage systems was also universalized. It was quite 'impossible to suggest a mode of marriage in which there should be no evils at all', it was observed.⁸ Again, spinsterhood in England, a result of late marriages, was productive of as much vice as widowhood in 'Hindu society'.⁹ Further, it was pointed out that 'in every progressive society changes of social customs are from time to time necessary'.¹⁰ But, at the same time, there was an assertion of the superiority of 'Hindu marriage' in promoting greater domestic bliss, and in checking social vices. Indeed, 'the Hindus are the only nation among whom the

⁶ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 188.

⁷ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

⁸ From Babu Kedaressur Roy, Judge of Small Cause Court, Dacca, to the Commissioner of the Dacca Division, dated Dacca, the 27th December 1884. *Ibid.*, p. 205.

⁹ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 191.

¹⁰ *Ibid.*, p. 188.

matrimonial scandals and disgraceful breaches between the husbands and wives are rarely heard of.¹¹

What was also argued was that the specificity of 'Hindu society' necessitated the existence of its own peculiar institutions. Infant marriage' was one of these. There was, for example, an important 'consideration' which 'cannot be overlooked by the advocates of adult marriage', it was observed. The point to be regarded was 'whether we can do away with the institution of early marriage in the existing state of the Hindu society'. It was concluded that 'early marriage is a necessary incident of Hindu society as it now exists', and unless the society assumed 'some other shape' and underwent 'complete re-organization', 'early marriages' could not be 'indiscriminately stopped'. One reason for this was that

the Hindu Law of Succession does not allow the daughter to inherit her paternal estate when she has her brother. She has to live entirely on the mercy of her brother for her support, and if she incurs his displeasure, her position is extremely miserable. This anxiety always broods in the mind of her father who, therefore, considers it his prime duty to unite her to a deserving husband in his own lifetime.¹²

Again, the absence of 'choice' by parties, infants or adults, entering into marriage was due to the existence of 'caste and sub-caste'.¹³

So far as widowhood was concerned, it was said that the option of remarriage was restricted by the 'Hindu' 'social fabric'.

Young girls under 13 or 14 years of age can be easily given away in marriage without consulting their wishes, because they are not in a mental condition to judge for themselves; but [,] the case is different when widows of 18 years

¹¹ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

¹² *Ibid.*

¹³ From Babu Dwarka Nath Chatterjee, Honorary Secretary Utterparah People's Association, to the Under Secretary to the Government of Bengal, General Department, dated Utterparah, the 23rd January 1885. *Ibid.*, p. 231.

or more have to be dealt with who cannot but assert their will. In such cases [,] courtship is the only means of influencing their minds, and courtship implies a change of dress, manners, habits and customs of Hindu Society -- in short [,] a complete bouleversement of the Hindu social fabric, which cannot readily be accomplished.¹⁴

In the 'present state of society', Hindu women, unlike her 'sisters' elsewhere, preferred widowhood to remarriage, it was observed.

The reason why our widows prefer life-long widowhood lies deep in the inmost recesses of their hearts in their peculiar notions of chastity. They disdain the idea of taking a second husband upon the death of the first which they cannot reconcile with their peculiar sentiments of honour and chastity they entertain. They believe that their connections with their husbands is of moral and spiritual nature, not terminating in this world alone, that by adopting perpetual widowhood they merely pay their tribute of love and respect to their deceased lords.¹⁵

It was suggested too that women preferred widowhood because they were influenced, just as much as men were, by 'current ideas about social propriety'; together with men, women constituted the 'public opinion' which disfavoured widow marriage. Even if widows of the upper caste were allowed the option to remarry, only an insignificant proportion of them would choose to remarry, it was observed. The notions of 'honour' and 'chastity' that were unique to 'Hindus', particularly to women, were responsible for the limited number of widow marriages entered into.¹⁶ Social practices were, then, specific to a social formation; their suitability for the 'society' in which they were prevalent justified their existence.

Yet, the justification of social practice as being suited to a uniquely 'Hindu' 'social fabric' was itself underlined by the attempt to establish in 'Hindu society' precisely

¹⁴ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 191.

¹⁵ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

¹⁶ *Ibid.*

those principles which were seen to have marked the 'civilized' West with superiority. Western reason and liberalism, humanitarian principles and established notions of parental affection and marital harmony framed many of the arguments put forward in support of 'infant marriage' and 'perpetual widowhood'. It was argued, for instance, that since a woman received no share of her paternal property, she was required to be quickly settled: paternal affection, then, not debasement, was responsible for the arrangement of early marriages; the security provided by marriage furnished its rationale. Again, 'the absence of choice and discretion in the Hindu husbands and wives is more than compensated by the interest which their guardians take in uniting them to suitable matches'. This was because 'selection by the youths eager for marriage may be influenced by several transitory considerations, while the sober judgement of their guardians is above them'. Far from organizing 'ill assorted' matches, 'guardians arranged happy ones.¹⁷

In so far as 'perpetual widowhood' was concerned, it was asserted that this was not a 'state' forced upon widows, but one that they themselves preferred. It was, then, quite a 'misnomer' that there existed in 'Hindu society' 'such a thing as enforced widowhood'. The notion that there existed the force of oppressive tradition, implemented by indigenous agencies of control, was resisted; the existence of 'free will', 'choice' and individual rights characterized the 'Hindu' social order. It was pointed out that few widows had taken advantage of the Act 'authorizing and recognizing the remarriage of Hindu widows'. This clearly revealed that 'social customs, habits and feelings of the country' had 'operated against' the legislation; 'if so, the term "enforced" is inapplicable to it (the institution of widowhood), as it is

¹⁷ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

calculated to produce a false impression'.¹⁸ The expression 'enforced widowhood' 'must be objected to' because it 'implies that fathers or other guardians of widows do actually compel them against their will to remain widows to the end of their lives'.¹⁹ The charge against caste, that it abetted 'enforced widowhood', was found to be equally unjust. The life-long widowhood of the Hindu widow is not the result of social oppression nor of the tyrannizing influence of the caste system'. Caste, it was said, had 'relaxed' much of its 'vigour' 'over the minds of the educated class'. The 'instances', thus, 'are very few when the simple fear of losing one's caste acts upon his determination and incapacitates him in the free exercise of his beliefs and sentiments'. In fact, the 'educated youth' were 'now everyday doing acts' 'which orthodox members view with horror'; 'yet, they are permitted to fare on in society as if they have done nothing in contravention to the Shastras'.²⁰ Similarly, those widows who wished to remarry 'should no doubt be allowed to act in the manner they choose, and we have no right to oppose them in the exercise of their freedom'. The Jessore Indian Association clarified that its members were neither 'enemies to the remarriage of widows', nor of the opinion that every widow should live in 'perpetual widowhood' 'against her will'.²¹

The exercise of justifying the existence of the specificities of 'Hindu society' on the basis of 'civilized' western norms was accompanied by a contrasting trend. 'Hindu'

¹⁸ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 190.

¹⁹ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 188.

²⁰ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 229.

²¹ *Ibid.*, p. 230.

institutions were upheld on the authority of uniquely 'Hindu' principles that were sharply distinguished from western norms. It was evident that Malabari 'was under a notion quite different from that in which widowhood is regarded by the Hindu community at large'. A 'Hindu widow' 'sunk in the abyss of her unfathomable seclusion and mortification for her deceased lord, is an ideal of moral sublimity and divine purity'.²² The Rajshahye Association observed that the widow who 'lives a life of "sanctified sorrow", the guardian angel of the family she lives in, and a saintly being working for others' happiness, should continue to enjoy the esteem and the admiration of the society'.²³ 'We do not take the remarriage of widows', commented the Jessore Indian Association, 'to be indicative of moral excellence or of any other virtue, so as to deserve the esteemed approbation of the public'. It was only those who, 'bereft of their husbands', found it 'difficult' 'to live a life of purity', who 'should be allowed to remarry'. These were widows who 'have not the firmness and determination to devote their bodies and souls for their husbands' and who lack in courage and strength to withstand the temptations of 'luxury and pleasures'. Remarried widows betrayed 'moral weakness' and could not be placed on the 'same moral elevation with widows who refrain from such weakness'. 'To preach such equality [between widows who did not remarry, and those who did] and to hold the remarriage of widows as a meritorious thing deserving encouragement for its spread, is simply teaching and

²² 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 230.

²³ From Babu Kedaressur Acharya, Secretary to the Rajshahye Association, to the Secretary to the Government of Bengal, General Department, Dated Rajshahye, the 25th February 1885. *Ibid.*, p. 235.

disseminating sentiments of immorality', it was said.²⁴ The Rajshaye Association did not believe it 'wise to disturb the happiness of the Hindu home by putting before the widow a temptation': the adoption of Malabari's recommendations, it was said would result in the desertion of the 'paternal roof where her (the widow's) position is not one of special disadvantage to her, to seek to be happy with a new partner in life'.²⁵ The State, it was pointed out, had already provided the widow, by enacting the Act of 1856, the means of exercising her right to remarry, and should now refrain from taking any further steps on the question of widow marriage.²⁶ The very institution that had formed the basis for the denigration of 'Hindu society' was celebrated; the attempt to establish the uniqueness of 'Hindu society' on grounds of its own distinctive notions of 'social propriety' was also that of establishing its superiority viz a viz an 'other' system of morality and domestic organization.

A RESTRICTED INTERFERENCE

But, even as 'Hindu society' was exonerated of allegations of 'barbarity', there was both a recognition of the 'civilizing' role of western education in shaping the present, and an acceptance of the need to further 'civilize' 'Hindu society'. 'English education', it was said, had brought to light some of the 'evils' that had underlain 'Hindu' social institutions; these 'evils' which had been 'tolerated' as 'exceptional instances', had now

²⁴ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 230.

²⁵ From Babu Kedaressur Acharya, Secretary to the Rajshahye Association, to the Secretary to the Government of Bengal, General Department, Dated Rajshahye, the 25th February 1885. *Ibid.*, p. 235.

²⁶ 'Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood"', appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, pp. 229-230.

disappeared.²⁷ The British Indian Association was 'well aware' of the fact that 'progressing societies' required 'changes of social customs from time to time'.²⁸ 'If people were ignorant', it was important to 'raise them' through the light of education, 'if they do not understand their wants, teach them what they are and how they can be satisfied', it was advised. It was recognized that there were several ills associated with social customs; these 'maladies' could be removed by the 'action of time', 'the surest renovator of everything'; 'time' was to ensure the triumph of reformatory education over 'old beliefs and superstitions'.²⁹

It was clarified that only the 'evils' attached to social institutions were to be removed; the institutions themselves, 'long adored by the people' were not to be touched.³⁰ Further, any 'positive interference' on the part of the colonial state was unacceptable. 'To invoke Government aid in our social and domestic concerns is a shocking idea', it was declared.³¹ The British Indian Association, while recognizing the need to bring about changes in society, insisted that these were to be brought about

²⁷ From Babu Kedaressur Roy, Judge of Small Cause Court, Dacca, to the Commissioner of the Dacca Division, dated Dacca, the 27th December 1884, *Papers*, p. 205.

²⁸ From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 188.

²⁹ Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood", appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

³⁰ From Babu Kedaressur Roy, Judge of Small Cause Court, Dacca, to the Commissioner of the Dacca Division, dated Dacca, the 27th December 1884, *Papers*, p. 205.

³¹ Remarks by the Jessore Indian Association on the paper of Mr. Malabari on "Infant Marriage and Enforced Widowhood", appended to the letter from Babu Chand Mohun Bandyapadya, Secretary to the Jessore Indian Association, to the Secretary to the Government of Bengal, General Department, dated Jessore, the 10th June 1885. *Ibid.*, p. 228.

by the 'desire and request of the people', and not by an 'alien' government. Only representatives of the 'Hindu nation' were allowed to contemplate reform.³²

IDENTIFYING THE 'HINDU'

The 'Hindu' was distinguished from the Western 'Other' by his own specific institutions. Yet, specificities were often justified only if they were found to subscribe to norms derived from Western civilization. The acknowledgement that improvement was necessary in society meant that the 'Hindu' often accepted the identity that had been carved out for him by classical colonial logic: the 'Hindu' was differentiated from the colonial 'Other' by virtue of the inferior position he occupied in the scale of civilization. At other times, the 'Hindu' was seen to be as 'civilized' as the Westerner. Less often, differentiation began to be conceived on the basis of superiority: the 'Hindu' fulfilled his 'civilized' functions more completely than did the 'Occidental', a section of public opinion had started to argue. At the same time, the 'Hindu' sought to define himself on the lines of his own unique theories that needed no ratification from the West. These contradictions that marked the creation of a 'Hindu' identity were manifested in understandings of the importance of the various components of the 'community'. On the one hand, the 'Hindu' was one who practised the religion contained in the Sastras; yet, 'western educated youths' who 'openly' violated the Sastras were allowed to 'fare on in society'. Again, it was asserted that 'the views of the few who have received western education' could not be 'imposed' upon 'the entire orthodox community'; yet, the western educated were to lead the 'Hindu' on his path to 'civilization'. Priests were seen to be both just 'another class' in the 'community', as

³² From Babu Peary Mohun Mukarjee, Honorary Secy., British Indian Association, to the Secretary to the Government of Bengal, dated Calcutta, the 26th January 1885. *Ibid.*, p. 188.

well as the interpreters of the Sastras and the guides of the 'community'. It was, however, the 'community' which was said to have the right to excommunicate.

II

THE 'TRUE HINDU'

The death of Phulmonee and its aftermath of the introduction of the Age of Consent Bill in the Imperial Legislative Council brought discredit and ignominy upon 'Hindu society'. As 'Babu reformers' and the colonial state convicted the 'modern Hindu' on the charge of 'barbarity', there came to be organized a strong defence that denied the legitimacy of that indictment. Its effect was to transform the almost hesitant appreciation of 'Hindu custom' that characterized the 1880s, to a celebration of 'Hindu' institutions and practices on the authority of religion.

THE 'CIVILIZED' 'HINDU' AND THE 'BARBARIC' 'OCCIDENTAL'

The first task that was undertaken was to dispense with the accusation that premature consummation was rampant among the 'Hindus'. Western scientific methods were to prove the 'speciousness' of such claims. 'Two or three doubtful cases' were all that could be cited by the 'advocates of reform'.³³ The government had, thus, lately taken to publishing 'guess-work', it was observed.³⁴ The Committee of the British Indian Association was unable to discover 'well authenticated statistics' that would

³³ From Babu Rajkumar Sarvidhikari, Secretary, British Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

³⁴ From Raja Rajendralal Mitra, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 7th February 1891, Government of Bengal, Judicial Department, O.C. No. 188, October 1891.

'support the view that the evil complained of is of frequent occurrence'.³⁵ Given the paucity of 'professional statistics', 'we may be entirely wrong in our calculations and deductions'.³⁶ 'As for ratio, the most important element in most statistical arguments, no heed is paid anywhere.' Even if one accepted, 'for the sake of argument only', the assertion of the Health Society that, in the year 1868-69, there had occurred forty-eight cases of rape, half of them on victims below ten years of age, 'may we ask what relation does that number bear to the gross total of 250 million (people)?'³⁷ The government was charged with generalizing on the basis of stray cases for 'no inquiry upon this point (of premature consummation) worth the name was made'. The unavailability of statistical proof clearly revealed that there was 'no necessity for the proposed law'.³⁸ The impossibility of acquiring scientific evidence of pre-pubertal cohabitation pointed to the non-existence of this custom among the 'Hindus'.

Yet, medical science alleged that the early appearance of puberty in 'Hindu girls' was 'artificially' brought about by 'immature cohabitation'; premature 'maturity' was, then, itself the evidence of 'immature cohabitation'. Medical authority was now brought in to contradict its own claims. British medical journals were cited to demonstrate that the appearance of puberty was contingent on a host of factors such as 'race, climate,

³⁵ From Babu Rajkumar Sarvidhikari, Secretary, British Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

³⁶ From Raja Rajendralal Mitra, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 7th February 1891, Government of Bengal, Judicial Department, O.C. No. 188, October 1891.

³⁷ *Hindu Patriot*, September 22, 1890.

³⁸ From Babu Rajkumar Sarvidhikari, Secretary, British Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

mode of living and heredity';³⁹ the distinctiveness of the 'Orientals', established on the basis of these factors, explained the early 'maturity' of 'Hindu girls'. It was alleged that Charak, Susruth and Agnibes who had forbidden consummation before the age of twelve had done so only in the case of 'upcountry girls'; they had no experience of Bengali girls.⁴⁰

Two consequences of early cohabitation enumerated by western medical authorities -- the physical degeneration of the 'Hindu' 'race' and particularly, of the Bengalis, and the injury of child-wives -- were also contradicted by invoking the aid of medical knowledge. 'Medical testimony', it was said, had been unable to establish 'beyond the shadow of a doubt' that early maternity caused racial degeneration.⁴¹ On the other hand, it was established that 'improper nourishment', 'mental labor' and the 'lack of physical exercise' were the causes of 'physical deterioration'.⁴²

The accusation that custom perpetrated injury on wives was not only contested, but hurled back on Europe. It was stated that the appearance of the first signs of puberty was synonymous with the ability to bear children⁴³; thus 'Hindu mothers' were young because they had attained maturity faster than had European ones. Early motherhood arising from early marriage was, not injurious to the health of 'Oriental'

³⁹ From Babu Juggobundhu Bose, M.D., to the Secretary, British Indian Association, dated Calcutta, the 9th March 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

⁴⁰ *Dainik-O-Samachar Chandrika* (henceforth *DOSC*), January 15th, 1891, RNP(B) for the week ending the 17th January, 1891.

⁴¹ From Babu Rajkumar Sarvidhikari, Secretary, British Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

⁴² From Babu Juggobundhu Bose, M.D., to the Secretary, British Indian Association, dated Calcutta, the 9th March 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

⁴³ *Ibid.*

women. It was discovered that 'connection' between adults was likely to cause more harm to women, than that between young children. 'Hindu girls', it was observed, 'generally have boys and not full grown and able-bodied adults for husbands'. Again, the 'absurd social custom of honeymoon, prevalent in Europe, was the cause of disastrous injury to wives. The lack of 'restraint' between married couples that this custom encouraged caused 'miseries' to women by way of injury. On the contrary, 'Hindu husbands', 'living as they do under the very eyes...of their guardians' were aware that 'rashness' would 'lead to exposure in more ways than one'.⁴⁴ The customs of early marriage and early cohabitation, and the protection offered by the 'Hindu household' were vindicated by Western science. Even further Western science itself pointed to the 'unscientificity' of Western customs in sharp contrast to 'Hindu' ones.

But, not only was 'Hindu custom' scientific, it was also conducive to domestic felicity and to the welfare of women. The allegation that the women of the house favoured 'premature cohabitation' was strongly denied. Indeed, 'what you call cohabitation is not called cohabitation by the Hindus', and 'no Hindu matron', it was said, 'ever urges a girl to subject herself to cohabitation as is understood by Europeans'. What mothers and aunts of married 'Hindu girls' wished to see was that 'there should grow up a feeling of love and affection between the latter and their husbands'. It was explained that since in a 'Hindu family', the daughter and son-in-law were not permitted to 'come together in day time', they were allowed to do so at night: 'surely such association and acquaintance cannot be called cohabitation' in the sense of Hari Maiti's offence.⁴⁵ Again, 'Hindu husbands' always looked after their wives. Thus:

The idea that a Hindu husband can be guilty of rape on his own wife is, notwithstanding its promulgation in the Penal Code, still unintelligible to 15 annas among the Hindus. According to them, the husband is the protector and

⁴⁴ *Ibid.*

⁴⁵ *DOSC*, January 20th, 1891, RNP(B) for the week ending the 24th January, 1891.

supporter of the wife. The Hindu husband is always solicitous for the welfare of his wife, not only in this world, but also in the next. And he is not a Hindu who knowingly commits oppression on his girl wife.⁴⁶

Further, 'religious ordinances' were 'wholesome checks' on 'abuse'.⁴⁷ Offence was an 'accident' and 'rape' ought not to be its name. Hari Maiti's case was explained away as an aberration: Hari Maiti was an *asur* (demon), and 'it can hardly be proper to hold the whole Hindu community, consisting of 20 crores of men, responsible for the misdeed of a single *asur*'.⁴⁸ The *Hindu Patriot* dismissed him as a 'low caste Uriya': presumably then, it was because of his 'low' birth that Maiti had not cared to follow the dictates of religion.

But, if the oppression of women was an instance of exception in 'Hindu society', it was the rule in 'English society'. 'The English and their law' would permit cohabitation with a girl, even if she had not attained puberty, simply because she was above the age of twelve; but, according to 'the Hindu and his Shashtra', 'she is a child, and a child that [sic.] is unfit for cohabitation'.⁴⁹ The *Hindu Patriot* noted that 'English society has not yet done enough to protect women from habitual drunkards and the hobnailed boots'.⁵⁰ The *Dainik-O-Samachar Chandrika* exclaimed at the fact that such an offence as rape by a husband could be contemplated by the English.⁵¹

Family life in England was unfavourably contrasted with the 'Hindu' home. Marriages contracted after the age of puberty resulted in a family life that could take

⁴⁶ *DOSC*, January 26th, 1891, RNP(B) for the week ending the 31st January, 1891.

⁴⁷ *Hindu Patriot*, August 4, 1890.

⁴⁸ *DOSC*, January 26th, 1891, RNP(B) for the week ending the 31st January, 1891.

⁴⁹ *DOSC*, January 14th, 1891, RNP(B) for the week ending the 17th of January, 1891.

⁵⁰ *Hindu Patriot*, August 25, 1890.

⁵¹ *DOSC*, January 26th, 1891, RNP(B) for the week ending the 31st January, 1891.

'the form of merry-making and voluptuousness'; it was a family life that was 'full of discontent and discord' and 'in no case a life of peace and serenity'.⁵²

'European society' itself was found to be barbaric and degraded. It was discovered that in England, 'there is a certain class of men whose regular business it is to kill children'.⁵³ It was also observed that for, the sake of the 'stability of society', English bishops were of the opinion that marriage vows exchanged after midnight should be declared null and void 'to avoid the risk of men coming in and making declarations under the influence of wine'.⁵⁴ Further, Europeans were found to pour over disgraceful literature; their girls were seen to indulge in immoral activities. Because many girls married when their 'youth was over', or when they had attained 'the fullness of youth', they lived 'unchaste lives': it was explained that since the opportunity of cohabitation was denied, Western women were forced to 'satisfy their passion' with the aid of 'unnatural means and artifices'. It was predicted that the proposed amendment of the Penal Code would 'have the effect of importing among Hindu women the gross sexual vices of Europe'.⁵⁵ 'Hindu society is purer than European society, and Hindu women are morally superior to European women', it was asserted.⁵⁶

Thus, not only were the 'civilized' conceptions of masculine protection, domestic harmony and a moral way of life discovered to be served by 'Hindu religion and usage', these norms were found to be absent in 'western society'.

⁵² *Education Gazette*, February 20th, 1891, RNP(B) for the week ending the 28th February, 1891.

⁵³ *Bengal Exchange Gazette*, January 18th, 1891, RNP(B) for the week ending the 24th January, 1891.

⁵⁴ *Hindu Patriot*, August 25, 1890.

⁵⁵ *DOSC*, January 20th, 1891, RNP(B) for the week ending the January 24th, 1891.

⁵⁶ *DOSC*, January 22nd, 1891, RNP(B) for the week ending the 24th January, 1891.

The function of upholding universally recognized principles was a task that was to be performed by 'Hindu religion' and 'Hindu society'. 'Our religious ordinances', it was pointed out, 'provide a thousand fold stronger checks of abuse than any amount of consideration from the Penal Code point of view'. When Hari Maitis appeared, they were punished by the 'Hindus' for 'disgracing custom': the six Hindus that [sic] had sat on the Jury' had performed 'their duty' of convicting the accused.⁵⁷ The 'good sense of the society has been strong enough hitherto to protect us', it was asserted. To replace the 'threat of religion' by a Penal law would amount to the height of mischievousness [sic]. The 'Hindu' 'worked under the fear of religion', and 'it is a matter of rejoicing to us that the ten year law has brought on no scandal'. In contrast, punishment, such as fines, meted out under the Penal Code, were likely to be 'ineffectual' and easy to evade.⁵⁸ The superiority of the check imposed by religious conviction was evident from the fact that even in England, where 'the law...about rape was changed only five years ago', 'it remains to be shown that change has served the cause of morality'.⁵⁹ The proposed law, far from aiding child-wives, would lead to their 'ruin'. If husbands were punished by transportation, 'what should become of wives' bereft of protection and forced to live the life of widows?⁶⁰ English law could only cause police harassment, encourage false cases, and disgrace women by dragging them for medical examinations and to law courts.

The 'Hindu' was defined by his religion as derived from the Sastras. Within the purview of religion was included the social institutions and practices by virtue of

⁵⁷ *Hindu Patriot*, August 4, 1890.

⁵⁸ *Hindu Patriot*, August 25, 1890.

⁵⁹ *Hindu Patriot*, September 22, 1890.

⁶⁰ From Babu Rajkumar Sarvidhikari, Secretary, British Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

which the 'Hindu' distinguished himself from the adherents of those prevalent in the West. Yet, even as the 'Hindu' sought to demarcate himself from the Western 'Other', his institutions were rationalized on the basis of the very principles that had been claimed exclusively by the latter. The justification of the Sastras on the authority of western science and morals was also an exercise of defining the 'Hindu' according to parameters derived from the West. Yet, it was now 'Hindu society' alone that was found to uphold the norms that characterized a 'civilized society'; 'English society' was indicted as 'uncivilized'. The colonial divide was reestablished, but, the respective places so far occupied by the 'Occident' and the 'Orient' were reversed: the 'Hindu' appropriated for himself the distinction of being the civilized 'Other' viz a viz the 'barbaric' West.

CELEBRATING DIFFERENCE

On the other hand, the 'Hindu' 'Other' was constructed along lines that were drawn in stark contrast to western science, reason and humanitarian principles. The assertion of the spirituality of the 'Hindu *vivaha*' was one way of establishing difference. In contrast to western marriage, 'thickly set with the carnal idea',⁶¹ the 'Hindu *vivaha*' was a spiritual tie:

The central idea in Hindu marriages is that a girl is to be brought over from one family and completely assimilated into another. The nature of Hindu marriage is pre-eminently spiritual (*sattwik*); the notion of marriage, as it obtains in other communities, is pre-eminently non-spiritual (*tamasik*). Hence, late marriages of young women are allowed in other communities.

Thus:

In other communities, the married woman finds it impossible to establish that close and sympathetic relations with the members of her husband's family - the relation, that is, which knows no distinction between self and not-self, which the wife in 'Hindu households is known to establish.

⁶¹ *Hindu Patriot*, August 25, 1890.

This 'holy rule', it was said, was unique to the 'Hindus'. The close relationship of the Hindu wife to 'even a distant agnatic relation of her husband' was stressed upon.⁶² The spirituality of *vivaha* was typified in the departure from 'one set of kith and kin to another'⁶³. Further, western marriage demanded only 'the purity of the body' which it saw as the mark of chastity; but, 'spiritually disposed' people understood that 'she alone is truly pure and chaste who has never even thought of one who is not her husband'. The confinement of women in the *zenana* was justified on this ground. A rejection of the western notion of individuality formed the basis of the definition of the 'Hindu' marriage.

Religion, that defined a 'Hindu' identity, was also counterpoised to scientific knowledge; the 'Hindu', then, became one who practised his religion in repudiation of the dictates of science. Medical testimony, it was observed, 'should not be relied upon'; for, the Dharmasastras, the repository of custom 'have no connection with the science of medicine'.⁶⁴ It was the 'Sastric custom' of *garbhadhan*, discredited on the authority of western medical science, that was upheld, its performance declared to be obligatory upon 'all Hindus'. Even though 'Babu scientists' had ruled that cohabitation should be postponed until after the age of twelve, 'for otherwise, the children that [sic.] will be born will be weak, and their mothers will be sickly and short-lived', 'every Hindu' was bound to 'implicitly obey' the Sastras'. It was the injunction of the Hindu Sastras that all married girls 'must' cohabit with their husband on the first appearance of puberty; and 'he is not a true Hindu who does not obey it'. Again, 'fasting on the 11th day of the moon (*ekadasi*) to the extent of taking not even a drop of water is a cruel custom, and many weak-bodied widows very nearly die through observing it', but, *ekadasi*,

⁶² *DOSC*, January 20th, 1891, RNP(B) for the week ending the 24th January 1891.

⁶³ *Hindu Patriot*, August 25, 1890.

⁶⁴ *DOSC*, January 11th, 1891, RNP(B) for the week ending the 17th January 1891.

prescribed 'in a small Tatva of Raghunandan', was necessarily to be followed. Similarly, only 'unHindus' would consider it a 'great crime' 'to go on a pilgrimage to the shrine of Jagannath in the hot weather for those who go on a pilgrimage may, and as a matter of fact do, die of cholera and sunstroke'. Religious injunctions were to gain precedence over scientific theories.

But, it was not merely the authority of western medical science that was resisted; 'Hindu works' of medical science were rejected as contradictory to religion. Science and religion were separated in this exercise; a 'Hindu' was bound to follow the latter. Thus, in the Charak Samhita, 'a celebrated Hindu medical work', beef has been prescribed as an article of diet, 'but should beef be, on that account, included in the category of food articles for Hindus?'⁶⁵ Irreligious proposals of medical science were not acceptable to 'Hindus': 'the Dharmasastra deal not with Utopian theories, but with actual facts', it was observed. One 'actual fact' was that wives were required to cohabit on the appearance of the signs of puberty, 'and your 'Charak, Susruta, Agnibes and Harit have nothing to do with this injunction'.⁶⁶

The principles upon which religious decrees were seen to rest were sharply distinguished from those put forward by medical science. Custom, thus, was not to be vindicated by denying the allegation of us being 'unscientific', rather, its validity was to be founded on its own unique tenets derived from religion. The *garbhadhan* ceremony was required to be performed for spiritual reasons, it was said. *Garbhadhan* was inextricably associated with the vital religious duty of a son of offering funeral oblations to his ancestors. Sons born of mothers who had not undergone the *garbhadhan* sacrament were declared to be 'impure' and incapable of performing their religious duty. The Consent Bill was to bring about precisely this 'disaster' upon

⁶⁵ DOSC, January 18th, 1891, RNP(B) for the week ending the 24th January, 1891.

⁶⁶ *Ibid.*

'Hindu' homes. For, by fixing the age of cohabitation at twelve, the law would prevent the performance of the *garbhadhan* ceremony in innumerable cases where puberty occurred before that age. This meant that 'the *garbhas* (conception) of thousands of girls will be tainted and impure. And the thousands of children born will become impure and lose their right to offer *pindas*'.⁶⁷ Thus, 'the true Hindu says :- I would rather be satisfied with short lived children than have children who are impure and who have lost their right of performing their father's *sradhi*'. It was the welfare in the next world' with which the 'Hindu' was concerned; colonial administrators, backed by medical authorities, were determined to 'think of your welfare only in this world'.⁶⁸

Rationality and western conceptions of humanitarianism were dispensed with. 'Hindus' were 'not required to find out' whether the performance of *garbhadhan* immediately on the appearance of puberty was productive of children; that this performance was entailed in the Sastras was cause enough for its being 'obligatory for all Hindus'.⁶⁹ Again:

whether...social institutions are good or bad, civilized or uncivilized, is a question which it is unnecessary to enter into. Suffice it to say that these institutions have crystallized into shape by the action of thousands of years, they hold the Hindu Society together in their present form, and to subvert, nay, even to do violence to them, will be to destroy Hindu Society altogether.⁷⁰

The 'Hindu custom' of taking dying men to the bank of the Ganges' prevalent in some parts of Bengal was considered a 'crime' in other parts of India, 'while unHindu people

⁶⁷ DOSC, January 20th 1891, RNP(B) for the week ending the 24th January, 1891.

⁶⁸ DOSC, January 11th, 1891, RNP(B) for the week ending the 17th January, 1891.

⁶⁹ DOSC, January 20th, 1891, RNP(B) for the week ending the 17th January, 1891.

⁷⁰ From Babu Rajkumar Sarvidhikari, Secretary, British Indian Association, to the Chief Secretary to the Government of Bengal, dated Calcutta, the 6th February 1891, Government of Bengal, Judicial Department, O.C. No. 182, October 1891.

place it in the same category of Suttee'; yet, the abolition of this custom was unjustified, it was proclaimed.⁷¹

Similarly, the interpreters of the 'Hindu religion' or texts were not doctors, editors and excise commissioners who had no understanding of either the Sastras or of 'Hindu practice', it was pointed out, but *pandits*:

as regards the Hindu *Sastras*, which regulate the religious affairs of the Hindus, it is only the pundits who study and teach those *Sastras* and make them their profession in life that are competent to pronounce an opinion on any knotty question connected therewith. Like your Advocate-General, Legal Remembrancer, and Standing Counsel, the Hindus too have their Nyayratnas, Churamanis, and Siromanis, whose opinions alone are received by them as authoritative. If you desire to have correct information in this matter, if you really want to ascertain whether or no[t] the proposed law will do violence to the Hindu's religious and social observances, refer to these pundits, and the difficulty will be settled.⁷²

The 'Hindu religion' was interpreted by its own exclusive authorities; the *pandits*, located in 'centres of Sanskrit learning', were demarcated from those who were associated with any form of western knowledge. It was their interpretation of religion that was valid, and followed by all 'true Hindus'.

It was those who had 'no knowledge of Hindu society' who were the advocates of 'reform', it was pointed out. What was harped upon was that 'a Hindu alone knows what his religion is' and that 'the Hindu alone practises that religion'.⁷³ Those who 'advised' the government on the need for remedial legislation were disowned: The 'unHindu' 'Other' was located within the community of those who had been 'born Hindu'. For, it was not merely 'by birth', but by action, that a 'Hindu' was identified. The 'unHindu Babu' was one who, instead of 'admiring' 'his own religion and customs', had fallen to 'Anglicised' ways. Thus:

⁷¹ DOSC, January 11th, 1891, RNP(B) for the week ending the 17th January, 1891.

⁷² *Banganivasi*, January 23rd, 1891, RNP(B) for the week ending the 24th January, 1891.

⁷³ *Banganivasi*, January 23rd, 1891, RNP(B) for the week ending the 24th January.

Mr. Justice Telang is a Hindu, but he is a Hindu of the type of Dewan Raghunath Rao and Pandit Iswarchandra Vidyasagar. He is not a true Hindu, for no true Hindu can advocate widow marriage or oppose early marriage. Anglicised Hindus may consider him a Hindu, but no true Hindu will consider him such. Innumerable Hindus will be wounded if Government acts on the advice of men like Mr. Justice Telang and prohibits *garbhadhan*...The foreign rulers of India are naturally anxious to introduce here the laws and customs of their own country; and they are now helped in their efforts by men like Messrs. Telang, Nalkar, and Vidyasagar, who are very clever hands at misinterpreting the Shastras.⁷⁴

The guilt of creating 'unHindus' was thrust upon western education. It was advised:

If Hindu society is to regain its old moral tone, the Hindus should be made to read the Ramayana, the Mahabharat, the works of Man and the other shastras, and thus imbibe the noble principles of life and conduct inculcate therein. Moral training of this kind will be more effective in restoring to Hindu society its healthy tone than all the declamatory speech-makers, and their study of one such character as Vishma, one of the heroes of the Mahabharat, will be a far better instruction for Hindu boys than all the works of Mill and Comte. Hindus should be made to love their own shastras and follow their precepts.⁷⁵

EDUCATED 'HINDUS'

Yet, there remained a certain ambivalence towards western education. The 'reforming spirits' were 'excommunicated'; but not all western-educated men fell to that fate. For, paradoxically, it was western education that had taught many educated 'natives' to preserve their own ancient institutions and practices. The 'English-knowing Bengali' had been, at first critical of the Sastras, and had become 'Anglicised'; but:

the style and tenor of their thought has been changed by their perusal of Darwin, Comte and Spencer, and they see the necessity of not severing the present from the past, and have realised the fact that like a living physical organism the growth and decay of the social organism is also determined by causes internal to itself; that the several parts of the social organism are dependent on another; that social organism is not a thing that can be constructed or demolished at pleasure. It is for this reason that the reforming zeal is somewhat cooled among English-knowing Bengalis...The English-knowing Bengalis of the present day have ceased reviling the customs of this country, have come to know that customs infinitely worse than theirs still

⁷⁴ *DOSC*, February 4th, 1891, RNP(B) for the week ending the 7th February, 1891.

⁷⁵ *Sakti*, December 30th, 1890, RNP(B) for the week ending the 3rd January, 1891.

prevail in countries which boast of their civilization, and have learnt to realise the truth that the customs of a country have always a sound basis. It is true, they are still fond of the western ideas of "evolution" and "science in all things," but it is perfectly clear that they have nevertheless quitted a great deal of their old sentimentalism, thoughtlessness and passion for imitation.⁷⁶

Even as the 'Hindu' attempted to distinguish himself as the follower of the 'other' set of values, and to disassociate himself from the intellectual currents that had arisen in the West, he could not himself desist from adopting the appellation of the 'educated native'. It was western philosophy and education that had, in the end, taught 'Hindus' the importance of maintaining their 'own civilization': an identity founded on 'otherness' was itself the contribution of the West.

HOMOGENIZING PEOPLES

Many of the arguments put forward to establish a 'Hindu' 'Other' viz a viz western norms were also constitutive of a homogenizing logic that could bind different peoples into a perceived 'Hindu community'. The assertion that brahminical interpretations must be followed by 'all Hindus' provided for a certain universalization of practices into a particular construct of being 'Hindu'.

But, one other way of attempting to universalize the 'Hindu' was to cut across regional lines. The customs of the 'Hindus of Bengal' were to provide the basis for this venture. Raghunandan, considered to be the special authority for Bengal, was cited as a most authoritative commentator for all 'Hindus'. This was because: 'of all the parts of India, Bengal Proper had the latest Sanskrit revival in the Nuddea school. The freshest collection in all India of Hindu ritual and ceremonial law is that of

⁷⁶ *Education Gazette*, February 13th, 1891, RNP(B) for the week ending the 14th february, 1891.

Raghunandan Siromani'.⁷⁷ Raghunandan, in fact, had 'based all his *tattwas* (works on Smriti) on the ancient Sastras', it was pointed out. In decreeing that the *garbhadhan* must be performed on the attainment of puberty, Raghunandan, therefore, 'did not create a new *vyavastha* of his own, but only repeated what Gobhila (the writer of a Grihya Sutra), Devala and other ancient writers had said on the subject in their respective works'. Telang's opinion, that Raghunandan's authority was restricted to Bengal, was contested: 'Mr. Justice Telang says that, through the Pandits of Bengal give their *vyavasthas* according to Raghunandan, still the whole Hindu community of that province do not follow that authority. This is not correct. No true Hindu disobeys Raghunandan', it was contended.⁷⁸ Local variations were admitted, but these were of the most minute nature, and did not as such interfere with religious injunctions followed universally. Again, it was the opinion on 'Hindu customs' held by the 'leaders of the educated in Bengal' which was to be accepted by 'Hindus' everywhere. The influence of western education for a greater length of time in Bengal than in any other province had taught the present generation 'educated Bengalis' of the superiority of the 'Hindu religion' and the practices it entailed. It was explained that 'the educated in Bombay and other provinces were 'still occupying precisely that position' which had been occupied by the 'Anglicised' 'predecessors' of the present day Bengalis; they were, therefore, yet to discover the truth.

CONCLUSION

If the responses to Malabari's 'Notes' had displayed a certain skepticism towards the 'Hindu' present, those to the Consent Bill were unambiguous in declaring the

⁷⁷ From Babu Bhudeb Mookerjee, to the Chief Secretary to the Government of Bengal, Judicial Department, o.c. No. 163, October, 1891.

⁷⁸ *DOSC*, February 4th, 1891, RNP(B) for the week ending the 7th February, 1891.

superiority of the present. The scale of civilization, on which the 'Occidental' and the 'Oriental' had been placed, was now inverted without so much as a shadow of uncertainty. But even further, that measure itself was rejected. The beginnings of these strains, noticed in the discussions on the 'Notes', were brought to maturity in the resistance to the Consent Bill. The construct of the 'Hindu' that was founded admitted no rival conceptualizations of that identity. While in the mid 1880s, contending voices had been accommodated within the 'community', in the early 1890s, 'reformist' traitors were excommunicated.

CONCLUSION

This dissertation has studied the participation of the colonial state, the missionaries and the 'natives' in the enterprise of transforming the 'private domain' of domestic practices.

Chapter I studies colonial policy with regard to 'Hindu' domestic norms in the late nineteenth century. In this context, I have taken up two instances of proposed reform of domestic arrangements: one which saw no executive or legislative intervention, the other which witnessed intervention by way of a legislative measure. The working of colonial policy has been seen with reference to the persisting notion of a pure and untainted 'Hindu' past, the new importance accorded to custom, the authority of traditional agencies of control within the 'native' community and the importance gained by western educated Indians. I have tried to show how in the mid 1880s rationalizations of the customs of 'infant marriage' and 'enforced widowhood' were furnished to prove that the colonial state was not upholding 'barbarity', and thereby, to put forward a case for non-intervention, but, how these justifications themselves provided the space for inferiorizing the 'Orient', and for arguing in favour of colonial intervention in custom. Legislation was undesirable given the avowed policy of non-interference, but intervention through western education, I have argued, could transform the 'conviction' of the people, and, thus, 'bring up' public opinion to the civilized values of the West. A reconciliation between the civilizing mission of the colonial state and its policy of non-interference was effected by commissioning western educated 'natives' who would bring about change 'from within'. This policy was closely tied both to the colonial state's apprehensions about the power of caste, as well as to the necessity of

establishing its independent status as a judicial authority in the field of 'Hindu' 'personal law' that it shared with traditional authorities of control.

The policy followed in the 1880s was dismantled with the death of a child-wife, an event that called for drastic legislative checks on the notorieties attached to the institution of child marriage. In arguing for intervention, every plank upon which had rested the rationalizations of 'native' custom was pulled down; 'Hindu society' was seen to be degraded, and 'Hindu customs productive of the 'evils' of racial degeneration and injury to child-wives. Further, British officials argued that the family and the community had failed to protect women; the colonial state had, therefore, been forced to step in to assume the role of protector. Yet, colonial authorities were always forced to establish that legislation was no interference with religion or practice. The Bill upheld religion by forbidding premature consummation; this was also a reform that was prayed for by public opinion, it was asserted. 'Civilized' law and a system of protection and guardianship superior to that provided by the traditional authorities of family, caste and community were to characterize colonial government. The Consent Act was a vindication of these concerns. The policy of non-interference was reconstituted in the Consent controversy. On the one hand, non-interference in religion continued to be argued in terms of non-interference in the 'true' Hindu religion vested in the past; on the other, non-interference was also being increasingly defined in terms of the present. This present, resting on custom and public opinion, was one that had been bequeathed to the 'Hindus' by colonial rule. The civilizational role of colonial rule was now also argued in terms of the imposition of a superior western civilization. In this exercise, and in the establishment of a superior 'moral standard' distinct from a 'native' one, the 'western-educated classes' were important. Distinguished from the 'orthodoxy' in colonial discourse, the western-educated Indian, I have argued, remained important to the colonial ruler.

Chapter II of this dissertation has focused on the participation of the Christian Fathers in the arena of social legislation in the second half of the nineteenth century. In this context, the overlaps and differences between the policies of the missionaries and the colonial administration, the construct of the 'Hindu' that emerged out of the observation of the 'natives' by the missionaries, missionary logic and the methods of their intervention in religious and social issues, and the attitude of the colonial officials and the 'natives' towards the Fathers are some of the issues that have been discussed. Missionary enterprise, it has been suggested, was based on a policy of intervention; it was by means of appeals in the form of memorials and petitions submitted to the Government of India for legislative interference, and by setting up associations, societies and educational institutions that the missionaries sought to bring about changes in 'Hindu' society and religion, and thereby, to replace the religion of the 'heathens' by the Christian faith. Their attempts in this direction moulded their understanding of the 'Hindu', his religion and his society. The 'Hindu religion', a literate though idolatrous faith, was flexible and accommodating, it was pointed out; the leaders of the caste-ridden 'Hindu community' were the brahmins; the degraded position of women, as reflected in the practices of enforced widowhood, 'infant marriage' and 'non-consensual marriages' and in the institution of the *zenana*, were identified as the chief 'evils' of 'Hindu society'. The missionaries legitimized their proposed interventionism on several grounds: the contact with Western civilization and the spread of Christianity were already bringing about changes in the degenerated 'Hindu religion' and 'Hindu society' and the missionaries were, therefore, only abetting a process that had already begun; again, in advocating the abolition of certain practices, the Fathers were only upholding the interests of the 'Hindus'. Missionary logic was inevitably based on the universalized standards of scientificity and factuality that could

prove the inherent superiority of the 'Occident' over the 'Orient' and confirm the racial categories that structured missionary logic.

Chapters III and IV have analyzed public opinion on Malabari's 'Notes' and on the Consent Bill. While in existing historiography public opinion has been divided as 'reformist' and 'orthodox' on the basis of support and opposition offered to specific colonial proposals, I have identified two currents in public opinion according to their respective assessments of the necessity for change; I have then pointed to the ambivalence that marked each of these strains.

Chapter III has attempted to analyze the position of those who recognized the pernicious character of the customs under discussion, and saw the necessity for abolishing or transforming them. Section I of this chapter studies responses to Malabari's 'Notes'. In this context, I have tried to demonstrate that even as the perceptions of those who argued against 'infant marriage' and 'enforced widowhood' were structured by the early Orientalist understanding of a glorious past and a degenerated present, there had emerged a resistance to the colonial denigration of the 'Hindu' present. On the one hand, degeneration was perceived to have been brought about by the British; on the other, it was argued that the 'Hindu' present was not entirely degraded. Hence, 'Hindu society' was seen to be moving towards the achievement of those universalized standards of civilization by virtue of which the West claimed its superiority. Again, the specificities of 'Hindu society' were themselves rationalized on the basis of those principles. At times, 'Hindu society' was defended on the grounds that it fulfilled more completely 'civilized' functions than did western society. Orientalist notions structured, to a large extent, a 'Hindu' identity: distinguished by its 'barbarous' institutions and practices, 'Hindu society' was the 'Other' of the 'civilized' western one. But, the identification of the text as a source of a 'Hindu religion' that conformed to western standards of civilization also provided the grounds

for imagining a 'Hindu' identity on the basis of 'civilized' religion. At the same time, the 'Hindu present' was often upheld.

The assessment of custom was linked to specific conceptions regarding the reform of indigenous society. The separation of religion and 'social usage', and the understanding of religion being vested in infallible ancient texts, placed religion beyond the purview of vilification and reformation. 'Pernicious custom' was always identified as 'social usage', and distinguished from the text/religion; these, then, could be interfered with. The indigenous nature of transformation was, however, always stressed upon: even as a 'civilized' government was called in to suppress 'barbarous' practices, the role of the colonial state was restricted to upholding religion or reiterating 'the change from within'. The accusation that the colonial state had unleashed many of the 'evils' found in the present was the means of discrediting the 'civilized' nature of colonial rule while seeking its intervention. However, the conception of a changing present also provided the basis for arguing for the withdrawal of the colonial state from the realm of social practice, custom being found to be changing on its own accord.

Section II of the chapter surveys the arguments put forward at the time of the Consent controversy. There was an attempt to prove that reform was in keeping with the text/religion. The notion that only the most antique texts were authentic ones signified the repudiation of Raghunandan's authority, and was one way of conceptualizing a homogenized, 'civilized' 'Hindu community' that could overcome the barriers of provincial custom. At the same time, custom, viewed both as a source of religion, and as 'transcendal religion', was given an importance alongside the text: it was demonstrated that certain practices were no part of 'Hindu custom'. But, even as the need for the reform of indigenous practice was reiterated, and the aid of the colonial state sought, responses to the Consent Bill were critical of the mode of

intervention charted out by the government. What was displayed was an anxiety about the possible subversion of an indigenous social order. The justification of the present was its manifestation. The 'otherness' of the 'Hindus' was to be established; laws made by the British were, then, inappropriate for them. The 'Hindu' remained one who adhered to the Sastras, but, with the importance gained by custom, the 'Hindu' was also conceived on the basis of custom. This meant that interference in custom was often resented. Even as intervention in practice was sought, the autonomy of the 'Hindu community' was increasingly asserted.

Chapter IV surveys the arguments of those who defended 'Hindu customs' and felt the need to preserve them. Section I studies the resistance to the adoption of Malabari's proposals. That the proposals interfered with 'ancestral religion', and that the present was both 'civilized' as well as on the path of improvement were the arguments put forward against intervention. But, early marriage was also justified on the grounds of western science, morality and domestic harmony. These principles were used too to assert the superiority of 'Hindu marriage'. Alongside, a justification for upholding specificity that began to emerge was that 'Hindu' institutions functioned in accordance to their own unique logic that was distinguished from 'civilized' western norms. But, even as 'Hindu society' was exonerated of allegations of 'barbarity', there was both a recognition of the 'civilizing' role of western education in shaping the present, and an acceptance of the need to further 'civilize' 'Hindu society'. Yet, 'positive interference' on the part of the colonial state was unacceptable. Only representatives of the 'Hindu nation' were allowed to bring about the necessary reforms as and when required. The recognition that improvement was necessary implied the acceptance of the identity of the 'barbaric' 'Oriental' that had been imagined by the colonial rulers. At other times, the 'Hindu' was seen to be as 'civilized', or even superior to the Westerner. On the other hand, the 'Hindu' sought to define himself on the lines of his own unique theories

that needed no ratification from the West. Those who were found to discard 'Hindu practices' were, however, as yet admitted to the 'community'.

Section II of the chapter looks into the responses to the Consent Bill. On the one hand, the allegation of the 'uncivilized' character of 'Hindu society' was not only dismissed on the authority of western norms, but, it was now 'Hindu society' alone that was found to uphold the norms that characterized a 'civilized society'. The colonial divide was reestablished, but, it was now the 'Hindu' who appropriated for himself the distinction of being the civilized 'Other' in contrast to a 'barbaric' West. But, more and more, the 'Hindu' 'Other' was constructed along lines that were drawn in stark contrast to western science, reason and humanitarian principles, principles that were declared to be decidedly inferior to uniquely 'Hindu' ones. It was asserted that it was only those who were 'unHindus' who sought change. Brahminical norms and the customs of Bengal were to form the basis for imagining a homogenized 'Hindu' identity. The 'unHindus' were often found to be the western-educated 'Babus', yet, there remained a certain ambivalence towards western education.

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