

Rukhmabai and Her Case

Rukhmabai was the daughter of Jayantibai from her first husband, Janardan Pandurang. When she was two and a half and her mother merely seventeen, Janardan died. He left behind some property and willed it to his young widow. After six years of her husband's demise, Jayantibai married Dr Sakharam Arjun, a widower. Remarriage of widows was permitted among the *suthars*—carpenters—the caste to which the couple belonged. Before marrying Sakharam, Jayantibai transferred her property to Rukhmabai, then a minor of eight and a half.

Two and a half years later, when she was eleven,¹ Rukhmabai was married to Dadaji Bhikaji, a poor cousin of Sakharam Arjun. It was agreed that, deviating from the patriarchal norm, Dadaji would stay as a *gharjawai* with Rukhmabai's family and be fully provided for by them. It was hoped, Rukhmabai tells us about the arrangement, that he would in due course acquire education and 'become a good man'.²

Within seven months of the marriage, Rukhmabai reached puberty. The event, customarily, heralded *garbhadhan*, the ritual consummation of marriage. But Dr Sakharam Arjun, an eminent medical man known for his reformist predisposition, would not permit early consummation.³ The denial did not please Dadaji who, at twenty, was keen to partake in the pleasures of marriage. He also resented the regimen prescribed by the family to make him a 'good man'. What particularly distressed him, with his proven aversion for education, was the compulsion to go to the sixth standard of school at an age when he should have been at the university.

Meanwhile Dadaji lost his mother who, to ensure her none too

promising son a decent life, had along with Sakharam Arjun agreed to this particular marital arrangement. In the absence of her restraining influence Dadaji's waywardness became inexorable. He left school, fell into bad company, began defying Sakharam Arjun, and started living with his maternal uncle, Narayan Dhurmaji. This uncle, a man of some means, had internalized the ethos which permitted men to treat women, especially their wives, as simply means of domestic labour and carnal pleasure. He kept a mistress—a *Kamatee* labourer named Chinamma whom he had picked up from a lime factory. This, at this time, was socially accepted, male behaviour. But Narayan Dhurmaji did worse. He brought the mistress to live in the same house as the rest of his family, an arrangement that once drove his harassed wife to attempt suicide by jumping into a well.⁴

The change in Narayan Dhurmaji's surroundings suited Dadaji. With this commenced a phase of life that, in Rukhmabai's description, carried Dadaji 'through every course of dissipation' into 'ways which a woman's lips cannot utter'. He—we only know what the woman could mention—was 'attacked with consumption, confined to his bed for three years, in such a state that he was not expected to live another season'. 'But', Rukhmabai's account continues, 'by God's grace he recovered a little day by day'.⁵

The recovery was confined to bodily ailments alone. Dadaji continued to slide deeper into indolence and an irresponsible existence, dependence on others, and consequent loss of self-respect. He began to accumulate debts and received most of his loans from Narayan Dhurmaji. With his sight trained on the property that would accompany Rukhmabai into his house, the uncle encouraged the nephew's dependence and indebtedness so as to be able to manipulate him later. He was the prime instigator of the suit against Rukhmabai.⁶

In contrast to Dadaji's waywardness, Rukhmabai evolved during the same years into an intelligent and cultured young woman. Sakharam Arjun, her stepfather, had contacts with social and religious reformers, including Vishnu Shastri Pandit, perhaps the most committed supporter, in his day, of women's cause in western India. These contacts along with association with Europeans, both men and women, exposed young Rukhmabai to liberal reformism. Sakharam Arjun, in fact, rejoiced that there was, among the middle and higher classes, hardly a family that did not 'gladly avail itself of the girls' school'.⁷

Even among such families, however, a girl's marriage resulted in, almost automatically, the termination of her schooling. Even if she was young enough to continue to stay on in her natal home after marriage, she needed the permission of her in-laws or, when he was mature and independent, of her husband to continue with her school. Only rarely was the permission forthcoming. It was unlikely to come from Dadaji and Narayan Dhurmaji, both of whom had their reasons to desire an early commencement of this marriage. If anything, Rukhmabai's continued schooling was likely to provoke them to demand that she be sent to live with Dadaji. The prudent way to avoid an early consummation of Rukhmabai's marriage was not to precipitate matters.

That, however, did not make the denial of education bearable for young Rukhmabai.⁸ Eleven years after her 'great liking for study' was abruptly interrupted in her nuptial year, she wrote:⁹

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

This anguished cry constituted the only confessional moment in a long pseudonymous letter Rukhmabai sent to the *Times of India* on the ills of infant marriage. The letter was not an exercise in cold, controlled reasoning. It was written with a passion which, if at all, was restrained by a melancholy born of the writer's own tragic situation which she could translate to the lot of women in general. That she broke into the autobiographic only on this point shows how acutely she felt about the correlation between early marriage and denial of education to women.

Rukhmabai, however, did not give up. She began a process of self-learning. But in her day, as she soon realized, it was 'very hard for women to study at home'. The realization was rendered all the more piquant by the refusal of her pro-female-education stepfather to support her efforts.¹⁰ Slow and painful, at times overtaxing even those she turned to for help, her education, as she described it, proceeded as follows: 'I used to ask a number of pronunciations and meanings of English words at a time whenever my European lady friends happened to call.' Cloistered in a home at once liberating and claustrophobic, young Rukhmabai moved

18 *Enslaved Daughters*

from one word to the next—intonating it, dwelling on their meanings, making sense of them in the light of her own experience and vice versa—on to a widening perspective:¹¹

Day by day my love for education and social reform increased... I began seriously to consider the former and present condition of our Hindu women, and wished to do something, if in my power, to ameliorate our present sufferings.

She even began writing on the subject of social reform.¹² Alive to the injustice of her suffering, the future rebel was able to discern in personal tragedy the predicament of her sisterhood. Self-suffering was leading to an awareness of a cheerless womanhood: Hindu/Indian womanhood. (Later, in England, she would discover a yet larger cross-cultural feminist identity.)¹³ This saved her from consuming self-pity. She could see fellow-victims all around. The personal and the general—the existential and the political—coalesced.¹⁴ She talked of the 'daughters of India'. This was not merely a rhetorical expression for her. It was a tragic reality. Her sufferings were also 'our' sufferings, and her fight was a larger fight.

It was this girl who saw her spouse go from bad to worse. Over a period of five or six years, as Dadaji sank deeper into his 'wild reckless life style', Rukhmabai's 'aversion for him became firmly settled'. So was her 'natural distaste for married life' which—she rationalized—she had felt from childhood. Finally, realizing that he was 'irreclaimably lost', she decided to wash her 'hands of him for ever'.

The decision was, in some measure, strengthened by the sinister figure of Narayan Dhurmaji. After the first year of her marriage, when she occasionally visited Narayan's house, Rukhmabai never went there again. Then aged twelve (fourteen according to Dadaji), she must have grasped, with a vague sense of fear, the bizarre goings-on in that household. But a vague sense of fear alone could hardly have occasioned a resolve so drastic as to never set foot in that house. Something more traumatizing, it appears, transpired.

The resolve, perhaps, resulted from a sexual advance made upon young Rukhmabai by the concupiscent uncle. Sexual abuse of their young wards' wives by guardians was not an uncommon phenomenon. This even, at times, prompted marriages of very young boys with older girls so that the boys' guardians could have at hand objects for their own illicit gratification. The evil was sufficiently widespread to induce reformers like Malabari to

campaign against it. Even Rukhmabai insisted that 'under no circumstances' should a girl be married to a boy younger than her.¹⁵ Narayan Dhurmaji was unlikely to be above such a failing. True, Dadaji was not a child. But in deepening Dadaji's dependence on himself, the scheming uncle may well have desired the attractive niece-in-law, in addition to her property.¹⁶

Eleven years thus elapsed and the couple was yet to cohabit. At twenty-two Rukhmabai was no longer too young for conjugal relations; her husband had touched thirty. For far too long had Sakharam Arjun warded off, on one pretext or another, the attempts made by, and on behalf of, Dadaji to have his wife with him. Unless the husband was inclined to write off this relationship and chance another marriage, he was unlikely to leave matters as they were.

Dadaji was anything but so inclined, especially since Rukhmabai owned property worth twenty-five thousand rupees. Substantial for those times, the property must have lured Dadaji irresistibly, living as he was on favours from relatives and friends. As 'her lawful husband' he believed, characteristically enough, that the custody of his wife's person and property was his 'as a right'.¹⁷ So, after years of informal initiatives had yielded mere evasion, Dadaji embarked in March 1884 on a course that led to litigation.

On 19 March he sent through his solicitors—Messrs Chalk and Walker—a letter to Sakharam Arjun, asking that 'my wife might be allowed to come and live with me, as I thought the probation period had lasted long enough'. To compound the threat of legal action with pressure from the community, a number of anonymous letters were sent to Sakharam, chastising him for 'harbouring' Rukhmabai against her husband's wishes. Despite his protestations to the contrary, presumptive evidence points towards Dadaji and his close associates in directing this epistolary orchestration.

Sakharam had been Dadaji's benefactor. Besides treating him during several prolonged illnesses, one of which had been near fatal, he had offered the security of his roof to Dadaji and his brothers. Consequently, even when litigation loomed as a certainty, Sakharam hoped he could shame Dadaji into submission. He sent for his son-in-law and old ward, and asked him to sign a letter to the effect that there was no truth in the anonymous epistles. The meeting ended in frayed tempers.

Realizing that a legal showdown was in the offing, and obliged

to respond to Dadaji's solicitors before there was time to devise a definitive strategy, Sakharam wrote back on 22 March:¹⁸

Gentlemen,—In reply to yours of the 19th instant, I have to inform you that Rukhmabai, mentioned therein, has not been detained at my house against the wishes or demands of your client, Mr Dadaji Bhikaji. Her stay at my house hitherto has been by the consent of the relatives on both sides, because of the unfortunate circumstances of your client. I have not the slightest wish to detain her even now, and I shall be rather glad if your client provides her with a suitable house and takes her away, which is however his own look out. He is at liberty, so far as I am concerned, to take her away at any time.

The ambiguity of the reply was both a preparation for the imminent legal battle and an attempt to avert it. On the face of it, the letter conveyed a simple message to Dadaji. If he did not want his wife to stay on with her parents he could take her away at any time. There was, for all they knew, a half chance of Dadaji being induced to try informal negotiations yet again. Also, if the family decided to avoid a legal tangle, Sakharam could send Rukhmabai to her husband without much loss of face. Should it, however, be necessary to take up the gauntlet, the message was qualified enough not to be annulled. At the very least, the decision was postponed.

Dadaji's side, conveniently, read the reply as an offer to send back Rukhmabai. A day later, on 25 March, a party was sent to bring her to Dadaji. Besides Narayan Dhurmaji, the party included Damodar Bhikaji, an elder brother of Dadaji, and, significantly, Ganpatrao Raoji, a clerk from the firm of Dadaji's solicitors. Rukhmabai refused to accompany them on the ground that Dadaji was not in a position to provide her with a suitable house and maintenance. A letter was sent the following day on behalf of Dadaji. It asked Rukhmabai 'to join him forthwith' and assured her, with cool ambiguity, that he would 'give her suitable maintenance and lodging *according to his rank and position*'. (Italics added.)

The stage was set for litigation. The middlemen of colonial law had taken charge of affairs on both sides. Acting through her solicitors—Messrs Payne, Gilbert, and Sayani—Rukhmabai now introduced a new ground for her refusal to live with Dadaji. Besides reiterating that he was unable 'to provide her lodging, maintenance and clothing'—the last item appearing along with lodging and maintenance as part of a ritualized legal drafting—her reply added

that Dadaji was 'in such a state of health' that she could not 'safely live with him'.

This was the beginning of escalating of charges and counter-charges that frequently mark legal proceedings. Dadaji, while filing the actual suit, similarly extended the range of charges by implicating Rukhmabai's mother and maternal grandfather as well. 'The true reason' why Rukhmabai 'refused to live with him', he now alleged, was the pressure exerted upon her 'by her mother, Jaentibai, and her mother's father, Harichand Yadowji'. The two feared that once Rukhmabai started living with her husband, she would 'assert her right to the property of her deceased father, Janardhan Pandoorang'.¹⁹

This was said in the plaint to the High Court. Later, offering the public his view of the case in April 1887, Dadaji was more forthright. Estimating the property's value to be 'upwards of Rs. 25,000', he maintained: 'In this little history of property lies the whole secret of the world-wide case of Dadaji vs. Rukhmabai.' Or, apropos of Harichand Yadowji—this time making him the sole covetous villain and omitting the name of Jayantibai: 'If the name Harichand is substituted for the name Rukhmabai in this case, its realities will be better understood but its poetry will be gone'.²⁰

Dadaji's charge was not implausible. Rukhmabai, however, dismissed it as 'entirely false' and as an attempt 'to divert the public mind from the real issues in the matter'. She contended that the property was 'not worth half the sum' suggested by Dadaji; that, far from being covetous, her mother had transferred the property 'purely due to her affection for me'; that although Harichand Yadowji collected the rents 'for a long time... he submitted the accounts to me, and I checked them myself'; and that since 1882, 'long before Mr Dadaji filed his present suit', she had operated an account with the Bank of Bombay in her own name. She also accused Dadaji of having 'conveniently' omitted a few words from the text of her father's will so as to mislead the public about its contents.²¹

Charges relating to property usually make messy business, rendering it difficult to sift the contradictory evidence of rival litigants. But, considering that the Hindu Widows' Remarriage Act (1856) had damaged a remarrying widow's entitlement to the property of her deceased husband—even where customary law permitted unprejudiced inheritance²²—Rukhmabai possibly over

stated the role of maternal affection in the transfer of Janardan Pandurang's property to her.²³

Indeed, her very marriage with Dadaji was influenced by considerations of property. True, the arrangement was justified by the hope that living under Sakharam's roof and supervision would make Dadaji a 'good man'. But the hope also camouflaged a design to control Rukhmabai's property. As he heard the appeal against the first judgment in the Rukhmabai case—the only one in her favour—Sargent, the Chief Justice, wondered how 'this very attractive lady' came to get 'married to this man'.

Latham, Rukhmabai's counsel, explained how Sakharam Arjun had 'hoped to educate the boy' who 'turned out to be a blockhead with whom you could do nothing'; and how this had made Sakharam 'very averse to the marriage before he died'. However, even Latham felt that Sakharam had 'acted rather in the interests of his own family than that of the girl'.²⁴ No wonder that Dr K.R. Kirtikar, a hostile witness who had once been a protégé of Rukhmabai's stepfather, insisted that the young lady's ruin was achieved by 'her new father... in order to retain her property in his house'.²⁵

In fact, Rukhmabai's own account confirms, more than it removes, the suspicion that her guardians' conduct was not quite above board. It combined petty material calculations with affection and solicitude for their hapless ward. They may have liked to control her finances, but without unduly compromising themselves. They may even have believed that control to be vital for her welfare. But they did not conspire to keep the couple apart for the sake of property.

There is no necessary correlation between covetousness and material circumstances. Yet, their relative prosperity seems to have shielded Rukhmabai's guardians from obtrusive scheming. Harichand Yadowji was a well-to-do man whom the government had, following years of service, rewarded with a title and a personal allowance in addition to his pension. Dr Sakharam Arjun was a self-made man who had earned enough by the time of his death in April 1885 to leave Jayantibai and his children from her better provided than Rukhmabai was.

It is Dadaji's own conduct, and his uncle's, that made property central to the suit he had filed to obtain his conjugal rights. We may situate this in the context of Sir J. Hannen's generalization that suits for restitution of conjugal rights are 'far from being in

truth and in fact what theoretically they purport to be', i.e. proceedings 'for the purpose of insisting on the fulfilment of the obligation of married persons to live together.' Delivering an important judgment in *Marshall v. Marshall* (1879), the eminent Victorian authority on matrimonial causes remarked: 'I have never known an instance in which it has appeared that the suit was instituted for any other purpose than to enforce a money demand.'²⁶

Hannen, of course, generalised about motives behind the filing of restitution suits, not about defence therein. Rukhmabai made sure that what Dadaji called 'poetry' was not blotted out by property from the heart of the matter. Her defense, and resolve to be a martyr for the principles enunciated therein, converted the suit into a historic fight for a new conception of and deal for Indian women. Such was her sense of mission that, while she could afford it, she refused public funds to prosecute her case. When in 1886 the *Bombay Gazette* opened a subscription list to defray her legal expenses, she had it closed at once.

The first intimations of high principles, relating to the general condition of women, appeared in Rukhmabai's written statement before the High Court in answer to Dadaji's plaint. Earlier, when Dadaji's men had gone to bring her, her mundane reply had been that 'she would not live with him unless he rented another place, and took her there'.²⁷ To this was added the ground of his unsafe health. These were contingent objections which, if removed, implied readiness for cohabitation.

But Rukhmabai introduced a radical repudiation in her answer to Dadaji's plaint. Because, she averred, she had not 'arrived at years of discretion' at the time of her marriage, she could not be bound to it. This entailed a fundamental proposition. A marriage—even a Hindu marriage—ought not to be binding on a spouse who had not consented to it. The proposition would become central to the case and be hotly debated within as well as outside the court. As the case progressed, Rukhmabai's defence came to rest exclusively on general principles of this nature.

Moving from the basic principle to specific merits, Rukhmabai's statement explicated what Sakharam, in his letter to Dadaji's solicitors, had vaguely referred to as 'the unfortunate circumstances' owing to which Rukhmabai had not joined Dadaji. These related to 'the character of the persons, under whose protection' he lived and 'expected her to join him'. At stake here was the larger question of the right of a Hindu woman to choose not to live in a joint

family of which, by virtue of being her husband's wife, she compulsorily became an inseparable part. This implied a challenge to the sanctity and integrity of the joint family as an essential unit of Hindu social organization. More immediately, however, the dark hint at Narayan Dhurmaji's liaison with Chinamma, his *Kamasee* mistress, to be partially uncovered during evidence in the case, posed greater peril to Dadaji.

These circumstances, Rukhmabai submitted at the end of her statement, constituted 'the only true reasons for her refusing to live with the plaintiff'. She prayed that the suit be 'dismissed, and that her costs be provided for'.²⁸

II

Rukhmabai and Sakharam had finally decided to fight the legal battle. As she recalled the events—in a private letter of 17 February 1887 and in her public 'Reply', four months later, to Dadaji's public 'Exposition' of the case—Rukhmabai claimed to have resolved, on her own and long before Dadaji precipitated matters, 'to wash my hands of him for ever'. She also claimed to have felt from early childhood 'a great disgust for married life'.

Rukhmabai's recall carries the impress of its circumstances. Her 'truth of the narrated past' was coloured by an exceptionally charged 'narrative instant'.²⁹ This was the instant of her martyrdom when, in a glorious gesture of defiance, she had told the judge that rather than accept his verdict and go to her husband, she would submit herself to the maximum penalty admissible under the law. She believed herself to have been destined for sacrifice to a higher cause. Her misogamy, reserved disposition and love of study seemed to constitute a 'natural' justification for, and lead inexorably to, her defiance.

However, misogamy does not seem to have turned Rukhmabai against Dadaji. Her resolve to be done with him 'once for all' took shape over the years as she realized the irreversibility of his degeneration. This turned into a revulsion for married life; and the revulsion acquired a higher justification as she pondered over the inequity that marriage entailed for women in India. Once the resolve was made and the battle waged, the recall of events from childhood to the great drama of 1887 turned teleological.

It is difficult to document the development of Rukhmabai's thought process and to know when they began to acquire their

subversive edge. But these reflections could not possibly have been as focussed, or acquired as early, as she retrospectively suggested. The desire to stay away from her husband, and the realization that she could act accordingly, must have come from a prolonged and painful 'internal polylogue',³⁰ of which only traces are available in her *Times of India* letters and some other scanty personal testimony. Beyond the suggestion of a lonely and unhappy childhood, there are no details to substantiate possible speculations regarding her fears and reveries as she oscillated between the melancholy of her reality and wondrous dreams of escape and freedom.³¹ She must have struggled endlessly with the thought that she could leave her husband before it acquired in her mind the visage of a practical possibility.

However, irrespective of when she reached it, Rukhmabai's resolve not to go to Dadaji was her own. She had little interaction with her stepfather,³² the only guardian who would not have dismissed as insane the thought of not fulfilling her marital obligations. It is doubtful, though, if she alone could have alone carried through the explosive resolve to the bitter end. She was lucky that her stepfather realized the enormity of sending her to the man he had chosen as her husband.³³ She recalled with gratitude—in contrast to her discreet silence about him in the context of her self-cultivation—that on his own her 'father', 'considering his [Dadaji's] constitution, habits, and unfitness for any work, resolved not to send me to his house to live as his wife'.³⁴

It was not an easy decision for Sakharam. He had to face the hostility of his wife and father-in-law who were determined to send Rukhmabai to Dadaji. They pressed him for a whole year after the suit had been filed, until his death in April 1885, to settle the matter out of court. He also worried that his refusal to send Rukhmabai to her husband could confirm suspicions that he had designs on her property. Indeed, the suit itself was intended to be a neat little operation to blackmail Sakharam into submission because, as Rukhmabai wrote, 'to have a suit of this kind in a Court is considered a [sic] greatest disgrace among us Hindoos'. That he risked the disgrace was some penitence for his original lapse.

Once litigation had begun, Rukhmabai set about neutralizing the conception her mother and grandfather had of their *dharmā* and family honour which required that she be sent to Dadaji:

This proved a difficult and arduous task. In the event, they were converted less by her pleadings than by the way Dadaji repulsed the overtures made by Sakharam on their insistence. There could be no trusting a man so ungrateful—albeit instigated by ‘evil counsellors’—as could spurn a beneficiary like Sakharam who, as Rukhmabai put it, ‘had heartily fed and clothed him and his brothers for years’. Their conversion came in time for Rukhmabai not to feel stranded when Sakharam died months before the case came up for hearing.

That she would not be without powerful support was also ensured by the espousal of her cause by Behramji M. Malabari (1853–1912). Wise beyond his years, and compassionate, he had dedicated himself to the service of his country and the regeneration of his society. A consummate publicist, he used his English weekly, the *Indian Spectator*, to promote causes that as a patriot and social reformer he considered important.

Malabari was an extraordinary man. What was, perhaps, most unique about him deserves special mention in the context of his interest in Rukhmabai’s case. Sensitive in his own life to the need for convergence between precept and practice, and between ends and means, he was among the first in colonial India to propose personal sacrifice—martyrdom—as an instrument of social action. He shared and projected Rukhmabai’s vision of her case that sublimated it far above her personal matrimonial dispute. When the expensive expedient of an appeal to the Privy Council seemed necessary, Malabari proposed the formation of a fund to defend Rukhmabai. Though not rich, he was among the first and highest contributors to the fund.³⁵

Around the time Dadaji filed the suit, Malabari was working on his historic ‘Notes’ on ‘Infant Marriage in India’ and ‘Enforced Widowhood’. He visited Simla in the summer of 1884 and discussed the ‘Notes’ with the highest officials, including Viceroy Ripon and his Law Member, Ilbert. Satisfied of ‘their readiness to do everything in their power, on proper representation’, he sent out the ‘Notes’ to a large number of government officials and a cross section of Indians. This was intended to initiate a public discussion that might facilitate governmental action.³⁶

Malabari soon received a letter from Auckland Colvin, the Finance Member, suggesting the advisability of ‘obtaining test decisions’ from the law courts on matters taken up in the ‘Notes’. A similar suggestion was made by G.E. Ward, the collector of

Jhansi.³⁷ It made sense to test the limits of existing laws to know if legislation was needed to improve women’s position. The Rukhmabai case, with its unmistakable social significance, offered just that chance.³⁸

Rukhmabai saw Malabari’s ‘Notes’ when she was ‘almost giving way to despair’. Sakharam Arjun was dead. The moral boost she would receive from the transformation of the suit into a *cause celebre* lay in the future. For the present was only the terror of judicial uncertainty. The ‘Notes’ lifted her spirits up: ‘I felt that fortune was about to smile on the unhappy daughters of India.’³⁹

Another influential person to support Rukhmabai during those difficult days of anonymity was Henry Curwen (1845–92), the editor of the *Times of India*. A grandson of Wordsworth, Curwen had made some name as a novelist before coming out to India in 1876. Quick to grasp the personal and public dimensions of her case, he decided to promote the young woman’s cause. Lest the orthodoxy be prematurely stirred into organized action, it seemed prudent to him not to push Rukhmabai into the limelight at this stage. Instead, in an inspired tactical move, she was projected as a mysterious figure. Her mystique even travelled to England and, through coverage in the London *Times*, engaged the attention of such English women and men as were interested in Indian affairs or cared for the cause of women.

Under the pseudonym ‘A Hindu Lady’, Rukhmabai contributed two letters to the *Times of India*. At a time when middle and upper class Hindu women were but little visible, the pseudonym alone could be trusted to exercise a spell; and the effect was facilitated by the power and pathos of the letters, and by the illusion of a personal *rapport* with the author that the epistolary genre tended to create. There was an air of expectancy about the identity of the mysterious ‘Lady’, though there also were insinuations that the pseudonym hid behind it a man. The insinuations obliged the *Times of India*, while carrying the second letter, to admonish the sceptics: ‘this letter is exactly what it professes to be, the genuine and spontaneous production of a “Hindu Lady”.’⁴⁰ In any case, a space was created in the public mind for the mysterious lady. Whenever necessary, the pseudonym could be unveiled and the space utilized to promote Rukhmabai’s cause.

The appearance of the two letters was brilliantly timed. Published on 26 June 1885 as a preparation for the controversy the suit was

bound to occasion, the first letter lent a feminist perspective to 'the question of the social status of Hindu women'.⁴¹ The second letter was published on 19 September 1885, the day Rukhmabai's case first came up for hearing before Justice Pinhey. The judge, must have read the letter over his morning tea or breakfast—the daily routine of Anglo-Indian officials making it a reliable conjecture—and hours later the proceedings in the case would have confirmed the impression made by the morning's reading. No wonder Hindu orthodoxy looked back upon the letters of 'A Hindu Lady' as a conspiracy to bring pressure on the High Court.⁴²

The effect of the letters, including their readership, was maximized by the *Times of India* through an uncommon move. It carried an editorial on each occasion to strongly recommend the letters to its readers. They provided, according to the 26 June editorial, a 'feminine emphasis' to the discussion that had begun with Malabari's 'Notes' about the status of Hindu women and their relations with the other sex. The editorial exhorted Indians to carry to its fruition the 'genuine and unprompted' protest of 'A Hindu Lady' against men's unjust laws for women.⁴³

In its editorial on the day of the hearing, the *Times of India* impressed upon its readers the exceptional qualifications of 'A Hindu Lady', qualifications that would soon be used to present a contrast between Rukhmabai, the supremely accomplished woman, and Dadaji, her good-for-nothing husband. A 'high-spirited woman of refinement, culture and intellectual superiority', she was 'well versed in Western as well as Eastern literature, and intimately acquainted with the position of her sisters in Europe'. She had disposed of 'the stock arguments of the Shastris' that had for centuries kept Indian women in servitude.⁴⁴

In her pseudonymous letters, which were on the theme of Malabari's 'Notes'—infant marriage and enforced widowhood—Rukhmabai acknowledged the 'debt of gratitude' that 'all Indian women' owed him. Moreover, with disarming modesty she admitted that, not 'being much accustomed to write in English', she had her letters corrected by a friend who felt 'genuine sympathy... for our condition'. It was just as well. The admission sustained her credibility later when, during the controversy that raged around her case, imputations were made about her literary competence.

Indicting Hindu social customs for victimizing women the most, Rukhmabai showed that the 'wicked institutions' of infant marriage

and enforced widowhood did not 'entail on men half the difficulties which they entail upon women':

Marriage does not interpose any insuperable obstacle in the course of their [men's] studies. They can marry not only a second wife, on the death of the first, but have the right of marrying any number of wives at one and the same time, or any time they please. If married early they are not called upon to go to the house and to submit to the tender mercies of a mother-in-law; nor is any restraint put upon their action because of their marriage.

The reverse happened in the case of women. If a girl was married at eight (as most girls were), and lucky to have enlightened parents, she could go to school till she was ten. Her schooling thereafter depended on 'the express permission' of her mother-in-law. But not even in Bombay, 'the chief centre of civilization', did many mothers-in-law allow their daughters-in-law to continue their education. Girls, thus, were taken out of school just when they were 'beginning to appreciate education'. Even those given an exceptional reprieve did not enjoy it long. Early maternity (usually around fourteen, the age when Jayantibai gave birth to Rukhmabai) obliged them to 'give up the dream of mental cultivation and face the hard realities of life'. Higher female education was not possible while 'infant or rather early marriage' persisted.

Rukhmabai's attack on early as well as infant marriage was radical for the time. The contemporary debate on social reform invested considerable passion in the distinction between infant and early marriage. There were many who condemned infant marriage, but considered early marriage shastric and essential to the Hindu domestic economy. Even Malabari was constrained to propose twelve as the minimum age of consent for girls.⁴⁵ Rukhmabai, in contrast, wanted no marriage to be 'legal unless the bride is fifteen and the bridegroom is twenty years old'. Even fifteen did not ensure women a decent schooling. But twelve was absurd. She stuck to fifteen as a reasonable compromise.⁴⁶ This she did while making a few suggestions to alleviate the sufferings of her sisterhood, although she realized the difficulty of outlining 'a law calculated to affect the whole of this vast country'.

Rukhmabai, then, described the young bride's domestication within her husband's family. Subjected to 'inhuman treatment' and worse off than the servants (who, at least, had 'the option of refusing to work'), she was deprived of 'mental and physical freedom'. A 'torrent of abuse, often followed by direct or indirect

corporal chastisement', made the girl 'as docile as a beast'. If, perchance, it did not, the mother-in-law could employ 'her last weapon' and 'turn the girl out of [the] door'. No wise girl could ever wish for this. After marriage she could not expect refuge in her natal home, which she was told—as she still is—ceased to be *her* home after marriage. Nor could she turn for support to her husband:

The poor fellow, hardly out of his teens, is saddled with a wife and a family of two or three children. He is entirely dependent on his parents for his barest necessities, and, by taking the side of his wife it would be hard for him to keep his body and soul together... if he has the will he has not the power to help his wife out of misery... Even in the case of an educated boy husband there is not much happiness in store for the girl wife... If he dislikes his parents for their harsh treatment of his wife, he despises his wife for her ignorance.

Women, Rukhmabai's penetrating description continued, became 'timid, languid, melancholy, sickly, devoid of cheerfulness and therefore incapable of communicating to others'. Their subordination was sealed by the life long indoctrination that they were innately inferior to men, so that 'we have naturally come to look down upon ourselves'. Women were handed over their gloomy destiny by the shastric law-givers who:

being men have painted themselves... noble and pure, and have laid every conceivable sin and impurity at our door. If these worthies are to be trusted, we are a set of unclean animals, created by god for the special service and gratification of man who by divine right can treat or maltreat us at his sweet will.

Rukhmabai stayed awhile with men's incomprehension of women's suffering. Quoting a Marathi proverb to the effect that 'we can philosophically (i.e. coolly) bear the misfortunes of our neighbours', she commented: 'Men cannot, in the least, understand the wretchedness which we Hindu women have to endure'. But this did not belie women's desires: 'Because you cannot enter our feelings, do not think that we are satisfied with the life of drudgery that we live, and that we have no taste for and aspiration after a higher life'.

This identity of women *as* women rested on men's injustice towards them. It brought Rukhmabai to the point of sounding a warning—'do not think'—but left her uncertain about what to do if the warning went unheeded. However strong its will to defiance, in the existing state of women's consciousness and organization, the identity belonged in the region of aspiration

and could at best lead to symbolic resistance. The 'bitterness of (her) heart', in having to acquiesce in men's injustice, encapsulated the predicament of Rukhmabai and the mute sisterhood for whom 'A Hindu Lady' spoke:

I entreat my countrymen to judge the miseries of widows by transferring the same penalties to men... I ask would my countrymen not have long since revolted against such inhuman treatment?... however unhappy a widow's lot might be, it would have been capable of defence had it been based on any principle of equity or justice. But in the eyes of our law-makers men and women belonged to quite different species of humanity...

A familiar mode of entreaty by the weak, this hypothesized revolt of men against gendered injustice was also an intimation, somewhat wistful, of similar behaviour by women some day. The present offered little hope. The progress made 'in the direction of reform' following 'the advent of the English' had affected individuals and not transformed families. This created stress within the domestic world, estranging educated husbands from their 'illiterate and superstitious' wives.

Coming from Rukhmabai, this perceptive observation carried an ironic poignancy. As a woman she had experienced, from the position of superiority, usual for men, the disruption of conjugality by disparity in the couple's upbringing. But it had not brought her the strength that accrued to men in similar circumstances. The prevailing socio-legal mores rendered her vulnerable nonetheless. Her superiority was viewed, generally, as if it was something she ought to feel guilty about; or else as an aberration for which her guardians were answerable. No less than the Chief Justice of the Bombay High Court blamed those 'well-meaning but ill-advised people' who 'not only educated but impregnated' Rukhmabai, *after she had been married*, 'with English ideas on the subject of matrimony so as to render her entirely unfit to discharge the duties of marriage'. No more girls, His Lordship hoped, would be so handicapped by education.⁴⁷

Rukhmabai's own ironic vulnerability confirmed her remark that progress required the schooling of families (and indeed of communities), as socially operating units, and not of just so many individuals. It epitomized her prime indictment that, even if it scarred men, the prevailing system crushed women far more.

Taught by experience to be wary of the beneficiaries of English education, Rukhmabai rather turned to legislation to do away with women's 'grinding thralldom'. If educated men, she asked:

who fully admit the existence of the evils, have neither the pluck nor the strong sense of duty to fight them, need we wonder at the indifference of the uneducated masses? In a state of society where the educated, or the 'upper ten', are indifferent and the uneducated ignorant, is it rash to invoke government aid for the redress of these crying grievances?

Rukhmabai regretted that opinion in the country, as reflected in the 'specious' objections to Malabari's 'Notes', was opposed to legislation. She, however, hoped that the English—governing India by God's grace—would not flinch.⁴⁸ Her faith in the providentiality of British rule was not the political naïvety of a cloistered girl. The myth of divine dispensation was part of social consciousness in later nineteenth century India.⁴⁹ Similarly, faith in legislation as an instrument of social reform, besides having respectable political philosophical antecedents, was subscribed to by some of Rukhmabai's illustrious contemporaries as well.⁵⁰

What is more, she did not let the indefensibility of social injustice close her mind. For example, as 'A Hindu Lady' she had accused shastric law of making the widow 'a leper of society', 'unbeloved of God and despised of man—a social pariah and domestic drudge'.⁵¹ But when some supporters faulted her understanding of shastric law, she was not inattentive to their criticism.

Among these supporters were some radical exponents of Hindu orthodoxy, persons steeped in the *shastras* and not innocent of western learning. Thus, not knowing that they were but one person, Dewan Bahadur Raghunath Rao lent in quick succession the weight of his impassioned erudition to both 'A Hindu Lady' and Rukhmabai. But he appealed to 'A Hindu Lady':⁵²

to find out whether our Rishies were really as cruel as they have been made to appear... they fully sympathised with you and shared all your views. They say that the family in which the softer sex is not happy brings ruin upon itself. This saying has been fulfilled.

A similar stance of critical sympathy was assumed by some 'progressive' reformers as well. The *Indu Prakash*, an Anglo-Marathi weekly from Bombay, could appreciate why 'A Hindu Lady' should have given expression to 'vituperation and sarcastic abuse directed against the devoted heads of the poor old Rishis'. After all, the oppressive system was all too often justified 'on the authority of those old law-givers'. Yet, the weekly protested, the rishis were 'no more to blame for the hard lot of the modern Hindu widow than the poor widow herself'.⁵³

Rukhmabai subsequently modified her position. Less than three years later, in a letter that recapitulated much of what she had said as 'A Hindu Lady', she wrote about shastric law: '...these good laws have ceased to be observed and other pernicious customs have taken their place, the results of which lie before us in many horrible forms...'⁵⁴

The force of what 'A Hindu Lady' wrote flowed from an understanding born of personal suffering. On the question of enforced widowhood, however, she, perhaps carried away by her enthusiasm for Malabari, treated compulsory widowhood as a universal Hindu custom. This led the *Bombay Gazette*, an Anglo-Indian daily that would later support Rukhmabai to the hilt, to accuse 'A Hindu Lady' of exaggeration. Did she, it asked, 'ever look into the vernacular papers?' The question bore reference to the advertisements—'by no means few and far between'—that harassed wives issued through these papers, warning their 'absent or erring husbands' that 'if they did not, by a given date, signify their resolve to turn a new leaf, the marriage would stand dissolved, and the wives would marry again'.⁵⁵ True, these notices possessed 'no legal validity whatever'. But they were accepted 'by the lower castes, that is, by the bulk of the community in the mofussil'. 'The Panchayets', the *Gazette* continued, 'acquiesce in the repudiation of the husbands, when they are considered to be unworthy of their position, and what is still more remarkable, marriage with another man is regarded as valid'.⁵⁶

Women of 'this stamp' were unlikely to 'readily resign themselves to the role of the weeping widow'. It was, therefore, 'a great mistake to represent the average woman of India as a mild, spiritless creature, totally unequal to the duty of protecting her own rights and interests'. Having accused 'A Hindu Lady' of exaggeration, the *Bombay Gazette* concluded with a dash of hyperbole: 'In the great masses of the people a practical recognition of woman's rights has been obtained by the force of circumstances, helped out by feminine self-assertion, which on some points might make an American lady of the newer and freer States die of envy'.⁵⁷ Had it known the identity of 'A Hindu Lady', the *Gazette* would have relished reminding her of her own mother's remarriage.

Yet the truth in Rukhmabai's complaint of injustice against her sex shone through her exaggerations. Indeed, as Malabari argued, the exaggerations emanated from the selfsame injustice.⁵⁸

It is a sin to talk of exaggeration in the case of a woman who has become

frenzied by the cruel injustice which has blighted her life. She writes strongly because she feels strongly. Here is a language of exaggeration only so far as it is the language of acute suffering.

The letters of 'A Hindu Lady' were embellished with an appropriate Victorian flourish by the 'friend' to whom they were submitted for 'correction'. Even Malabari admitted that there was 'something palpably artificial throughout the epistles'. But the artificiality related only to 'the outward form'; their spirit was 'quite genuine, all too convincing'.⁵⁹ That spirit was Rukhmabai's own—and, through her, of women's struggle for their rights.

Such was the person Dadaji expected to overwhelm into capitulation. Modest but inquisitive, determined to rise above the vulnerability of her person and her kind, she had awakened to a sense of mission as she grasped the relationship between the personal and the social/political. What she stood for brought to her, early enough, supporters like Malabari and Curwen, and their numbers kept mounting.

She was represented, for the same reason, by three eminent lawyers—F.L. Latham, K.T. Telang and J.D. Inverarity—who were alive to the larger purpose and principles of law. A liberal in his politics, Latham was then Advocate-General of Bombay. D.E. Wacha, the nationalist leader, said of him: 'No counsel was more conscientious.' About Inverarity, 'the prince of counsel', Wacha remarked: 'But it would be gilding refined gold to say aught about Mr Inverarity who is to-day head and shoulders above the generality of counsel of the day.'⁶⁰

Telang (1850–93), as a nationalist, social reformer and admirer of George Eliot's fiction, had a greater stake in defending Rukhmabai. Familiar with English jurisprudence, he was, along with his senior and rival interpreter, V.N. Mandlik (1833–89), the leading authority in western India on Hindu law. As a lawyer and, later, as a judge of the Bombay High Court, Telang sought to develop the dynamic potential of shastric and customary law without neglecting its conservative role. Taking his cue from the traditional law-givers themselves, he believed that what custom had made, custom could also ameliorate.⁶¹ Interpretation for him was an instrument for making Hindu law responsive to the complexities and needs of modern life. An English judge of the Bombay High Court observed about Telang:⁶²

... it was refreshing sometimes to hear him arguing for 'modernisation', while on the other side an English advocate, to whom the whole Hindu

system must have seemed more or less grotesque, contended for the most rigorous construction of some antique rule.

Rukhmabai's counsel decided, therefore, that Telang argue the part of her defence that involved an exegesis of the Hindu law on the question of conjugal rights. Outside the court room as well, his intervention in the controversy over the Rukhmabai case was marked by sophistication and responsiveness to the politico-cultural complexities of an old and now colonized society.

For the defence counsel, then, this was not just another brief. They had grasped its wider import. Consequently, they stuck to the principles of the case even after it became clear that the decision in the British Indian courts would be on its merits. They hoped, eventually, to have the principles settled in appeal to the Privy Council. This, as we shall see, did not happen. But before that we must turn to Pinhey's 'revolutionary judgment'.

III

In keeping with their reliance on basic principles, the first of the three issues raised by Rukhmabai's counsel, when the case came up for hearing on 19 September 1885, was: 'Whether the plaintiff was entitled to maintain the suit?' The issue arose from the submission in her written statement of July 1884 that she had not arrived at years of discretion at the time of her marriage. In July 1884, it may be noted, the fact was stated but the issue was not framed. The second issue—'Whether the plaintiff was in a position to provide for the lodging and maintenance of the defendant?'—related to the merits of the case. Latham declined to raise any issue on the allegations relating to Dadaji's health and to the character of the person under whose protection he was living. But he expressed his intention to avail of these allegations—if proved—under the general issue. From these issues a third one arose: 'Whether the plaintiff was entitled to the relief claimed, or any part thereof?'

Dadaji's counsel—Vicaji and Mankar—challenged the veracity of the allegations against him. More important, they raised the counter-issue whether—even if true—these allegations constituted, in Hindu law, sufficient justification to refuse conjugal rights. They then argued that since marriage between the two parties had been admitted, 'the onus is on the defendant to prove that she is legally

justified in resisting the husband's suit for enforcing his marital rights'. As for consent, they contended on the strength of Mayne's *Hindu Law* that want of consent due to infancy was immaterial. Marriage among Hindus was 'not a contract strictly so called, but a religious duty'.

Anticipating, rightly, a possible difficulty about the meaning of 'restitution', they made a pre-emptive move, and asked, 'in the alternative, for a restitution or institution of conjugal rights'. If, taking a rigorous view, emphasis was laid on the question of cohabitation or the consummation of the marriage—Rukhmabai and Dadaji, we may remind ourselves, had never lived together—the 'suit would, strictly speaking, be one for the institution of conjugal rights'. But if it was seen that the defendant, after attaining her maturity, was staying with her stepfather only because her husband had permitted the arrangement, the suit would be 'one for the restitution of his conjugal rights'. These rights, Dadaji's counsel stressed, had never been 'disputed since the marriage until within a month before the suit'. Still relying on Mayne, they argued:

From the moment of marriage the Hindu husband is his wife's legal guardian, even though she be an infant, and has an immediate right to require her to live with him in the same house as soon as she has attained puberty; her home is necessarily her husband's home... Dr Sakharam's house, where the plaintiff frequently visited her, was constructively the husband's place of abode, or, at least, it was a place appointed by him for the purpose of her residence.

In taking care of the distinction between restitution and institution, Dadaji's counsel dealt with more than the ground—marriage before the age of discretion—on which maintainability of the suit had been challenged. They apprehended, again rightly, that the issue could be further enlarged to question the very admissibility by a law court of suits for restitution of conjugal rights wherein the parties involved were Hindus. They, therefore, contended that there was 'the authority of law texts and the decisions of Courts for holding that a suit for restitution of conjugal rights does lie among the Hindus'. They also drew the court's attention to the fact that the issue of maintainability was not raised in the statement originally filed by the defendant.

Besides pleading that the onus of proof rested on the defendant, Dadaji's counsel disposed, in principle, of the issue of the husband's means to provide for his wife:

The poverty of the husband does not constitute a matrimonial offence so as to operate as a legal bar to the husband's right to seek his wife's society and assistance.

Pinhey, accepting neither their plea nor the authority cited by them, ruled:

I don't agree with Mr Mayne's position,⁶³ which seems to me to be too broadly laid down by him, and to go much beyond the decisions of the Courts... the plaintiff must prove his case, and is, therefore, bound to begin.

Evidence for the plaintiff then followed. The witnesses included Dadaji himself, his brother, his uncle Narayan, and two doctors. The doctors testified that they had found no symptoms of asthma or consumption in Dadaji. The other evidence disclosed that Dadaji, with his uncle's aid, made from thirty to forty rupees a month, though there were months when he earned nothing. To allay suspicions arising from the Chinamma connection, it was stressed that Narayan Durmaji had his wife and daughters living with him.

Latham got up at this stage. It was Monday and the proceedings had been resumed after adjournment on Saturday. Before Latham could utter a word, the judge said:

Mr Advocate-General, unless you are particularly anxious to make some remarks for the assistance of the Court, I think I need not trouble you as I am prepared to dispose of the case at once.

This was an unorthodox move, the more astonishing for coming from someone known to be a weak judge. Due to retire in three weeks, Robert Hill Pinhey had found the occasion for his swansong. A memorable judgment would be his farewell to the city of his birth.⁶⁴ Having read the letter of 'A Hindu Lady' on Saturday morning and, later in his court room, seen the character of the men who claimed Rukhmabai among their midst, he had spent an agonizing Sunday. The whole case was clear. The plaintiff had done himself in. The real anxiety was to find a legal way out of what, if done, would be reprehensible. So powerful was the case's impact on Pinhey that even from his retirement in England, where he espoused the lost cause of pacifism, he manfully defended Rukhmabai and his own decision in her favour when the High Court ordered her to go to her husband.

The Advocate-General, naturally, evincing no anxiety to assist the court, the judge began with his verdict. Ever since the case came up before him on Saturday, he had been thinking about it

and 'looking into the authorities'. He had 'arrived at the opinion that the plaintiff cannot maintain this action'. The verdict given straightaway, he proceeded to elaborate the grounds thereof.

It was 'a misnomer', Pinhey explicated, 'to call this a suit for the restitution of conjugal rights'. According to the practice in England and British India, a suit for restitution of conjugal rights was one that, in the event of separation and living apart after cohabitation, either spouse could bring against the other. The suit filed by Dadaji was not of that character. In a narrative reflective of his axiomatics, Pinhey observed:

The parties to the present suit went through the religious ceremony of marriage eleven years ago when the defendant was a child of eleven years of age. They have never cohabited. And now that the defendant is a woman of twenty-two, the plaintiff asks the Court to compel her to go to his house, that he may complete his contract with her by consummating the marriage. The defendant, being now of full age, objects to allowing him to consummate the marriage, objects to ratifying and completing the contract entered into on her behalf by her guardians while she was yet of tender age.

Having shown his sympathies, Pinhey unburdened his shocked sensibility in a morally charged diction:

It seems to me that it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will...

It was, however, on legal grounds that Pinhey avoided what seemed to him barbarous, cruel, and revolting. Going over the case law he was persuaded that no court had ever ordered 'a woman, who had gone through the religious ceremony of marriage with a man, to allow that man to consummate the marriage against her will'. Neither the law nor the practice of the courts in England and India would, therefore, justify him in 'making such an order', or Dadaji in 'maintaining the present suit'.

Pinhey realized the futility of expecting an English precedent that would be 'on all fours' with the suit before him. For, unlike infant and early marriages in India, marriages in England were generally between persons of mature age; the marriage and consummation were not normally separated much in time. He regretted the transplantation into India of 'the practice of allowing suits for the restitution of conjugal rights' which had 'originated in England under peculiar circumstances'. It had 'no foundation in Hindu law—the religious law of the parties to the suit'. 'Under

the Hindu law', he emphasized, 'such a suit would not be cognizable by a Civil Court'. Indeed, for 'many years' after he came to India—in 1851—the courts did not admit such suits. They began doing so only in the wake of the post-1857 judicial and legal reconstruction that brought about the amalgamation of the Supreme and Sadar Courts into the High Courts.

Pinhey's regret regarding the transplantation in India of the English practice was heightened by the fact that it had been discredited in England. Crystallized in Sir James Hannen's judgment in *Weldon vs. Weldon*,⁶⁵ English opinion against the practice had resulted in the Matrimonial Causes Act—Stat. 47 & 48 Vic., cap. 68—of August 1884. The Act removed the penal provisions of the law which subjected to imprisonment a spouse and/or attachment of property of a spouse who disregarded the court's directive to resume cohabitation.⁶⁶ The Act had, in fact, rendered 'almost inoperative' the practice of allowing such suits.⁶⁷

However, whatever his regrets, Pinhey was bound by the unregenerated English law that still obtained in India. All he could do was to refuse to enlarge its application to include *institution* within the meaning of *restitution*. Legally not incumbent, such an enlargement would be morally outrageous. In his impassioned words, he was not bound:

to carry the practice further than I find support for in the English authorities, especially when the granting of the relief prayed would produce consequences revolting not only to civilized persons, but even to untutored human beings possessed of ordinary delicacy of feeling... I am certainly not disposed to make a precedent, or to extend the practice of the Court in respect of suits of this nature beyond the point for which I find authority.

Obliged by 'neither precedent nor authority' to subsume *institution* within *restitution*, Pinhey rejected the interpretation attempted by Dadaji's counsel while asking 'in the alternative, for a restitution or institution of conjugal rights'. Secure in the belief that he had devised a legal way out of a moral dilemma, he was 'glad' that:

in the view of the law which I take, I am not obliged to grant the plaintiff the relief which he seeks, and to compel this young lady of twenty-two to go to the house of the plaintiff in order that he may consummate the marriage arranged for her during her helpless infancy.

The moral exuberance of Pinhey's oration belonged in the tradition of those trenchant judicial pronouncements—a classic example being Justice Maule's speech in *Regina vs. Hall* (1845), exposing

the iniquitousness of English matrimonial laws⁶⁸—which stirred the conscience of Victorian England and facilitated many an

the 'why' but also the 'why not' of his verdict. Worried lest his sympathy for the 'enlightened and cultivated' lady be misunderstood, he took pains to clarify that he had not accepted her entire defence. For example, he was in no doubt that Dadaji was very poor and had given 'much false evidence' about his pecuniary position; and that his uncle had on the same point given, 'if possible, evidence less credible still'. But poverty was 'not one of the reasons' for the rejection of Dadaji's claim. 'A poor man,' Pinhey reassured, 'has as much right to claim his wife as a rich man to claim his'.⁶⁹

If his cautious concluding remarks were meant to offset the flamboyance of his judgment, the effect was neutralized by an outburst from Pinhey moments after the conclusion of his judgment. The sheer force of that outburst made it inseparable from the morally charged judgment, of which formally it was not a part. Sticking longer in popular remembrance than the judgment proper, the outburst was sparked off when Dadaji's counsel, Vicaji, took exception to the award of costs to Rukhmabai. Referring to Pinhey's ruling that in Dadaji's case a suit did not lie for the restitution of conjugal rights, Vicaji pleaded:

I submit to your lordship that this is not a case in which the plaintiff should be ordered to pay costs. He has been acting under advice of counsel who considered the suit would lie.

Pinhey saw this as the last straw after the inconsistencies and lies in the evidence for Dadaji. He had done well, in the judgment, to limit his displeasure about the plaintiff and his collaborators to their false evidence. But he was ill-prepared for an appeal in the name of the plaintiff's innocence. It brought forth the wrath that had been welling up since the week-end.⁷⁰

When the plaintiff found that the young lady was unwilling to share his home, he should not have tried to recover her person, as if she had been a horse or a bullock.

The outburst was used to support the charge that Pinhey was moved by sentiment rather than law. The charge came from a variety of quarters, from Pinhey's peers sitting in judgment on his verdict to reactionary elements within the Hindu society.⁷¹

Compared, for example, to Maule's *exposé* in *Regina vs. Hall*,

which paved the way for judicial divorce in England, or to Hannen's judgment in *Weldon vs. Weldon*, which resulted in the Matrimonial Causes Act of 1884. Pinhey's criticism of the law he was obliged to

with it also reit an alternative and less aggressive conception of colonial law and legal procedure, a conception which was pregnant with profound politico-cultural possibilities.

However, Pinhey succeeded in drawing attention to the vexed question of the relationship between morality and law, and in embedding the case within a broader legal-humanitarian framework. In doing this, and in refusing to be bothered about its details, Pinhey imparted a more compelling moral dimension to the case than had been envisaged even by Rukhmabai's own counsel. His verdict made the case inseparable from the women's cause. There was now no chance for those who sought to make it a private matrimonial dispute.

NOTES

1. Dadaji, however, maintained that Rukhmabai was thirteen at the time of their marriage. This may well have been intended to weaken the effect of Rukhmabai's contention that, married at eleven, she was incapable of giving intelligent consent to the arrangement. Thirteen during those days, it may be noted, was not considered very young. Early in the following decade even Malabari would agree to have the age of consent fixed at twelve for girls. Rukhmabai, however, maintained that they were eleven and nineteen at the time of their marriage. See Dadaji Bhikaji, *An Exposition of Some of the Facts of the Case Dadaji vs. Rukhmabai*, Bombay, 1887, p.1 (hereafter referred to as *Exposition*, it is reproduced as Appendix C); 'Rukhmabai's Reply to Dadaji's Exposition', *Bombay Gazette*, 29 June 1887. (Hereafter referred to as 'Rukhmabai's Reply'. See Appendix D for the text of this reply.) Earlier also, in her letter of 17 Feb. 1887, which found its way through the Bishop of Carlisle in the *London Times* of 9 April 1887, Rukhmabai mentioned the same ages. So also in her reply to Dadaji's plaint in the Bombay High Court. See *The Indian Law Reports*, Bombay Series, vol. IX, p. 529. Dadaji's counsel maintained that she was thirteen. *Ibid.*, p.530. In the *Times* letter Rukhmabai says that she was married in 1876. This could not have been true because she had been married for ten or eleven years when the case was filed in 1884.
2. Rukhmabai's letter of 17 Feb. 1887, *Times*, 9 Apr. 1887.
3. Dadaji's own description of this says: 'The marriage was not at once consummated because Dr Sakharam Arjun volunteered the opinion that an early consummation would result in the issue of a weak progeny,

42 Enslaved Daughters

- and he told me this in a friendly way, while I accepted his advice in the same friendly spirit.' Dadaji Bhikaji, *An Exposition of Some of the Facts of the Case of Dadaji vs. Rukhmabai*, Bombay, 1887, p. 2. Here after referred to as *Exposition*.
4. The suicide bid made by his wife was the subject of a detailed discussion and cross-examination in the libel suit filed by Narayan Dhurmaji against Rukhmabai, her maternal grandfather and Grattan Geary, editor of the *Bombay Gazette*. For the bizarre details of this aspect of the case, see *Bombay Gazette*, 20, 30 July 1887.
 5. *Times*, 9 Apr. 1887.
 6. *Times of India*, 4 Mar. 1887. Rukhmabai had Narayan Dhurmaji uppermost in her mind when she told the High Court that 'certain evil-minded persons' had instigated Dadaji into litigation 'for their own sinister purposes'. He had filed the suit, she asserted, 'not because he was really desirous that she should live with him'. The others Rukhmabai had in mind were some caste leaders whom Sakharam Arjun had annoyed.
 7. *Ibid.*, 14 Aug. 1884.
 8. People like Dr K.R. Kirtikar, who knew him and his family well, accused Sakharam Arjun of indifference towards Rukhmabai. But these accusations were brushed aside by Rukhmabai. Mentioning, in her letter of 17 Feb. 1887, the marriage of her mother to 'a celebrated doctor in Bombay', she said that he 'proved an unusually kind stepfather to me', and 'protected and loved me as his own child throughout his life'. *Times*, 9 Apr. 1887. See also Rukhmabai's 'Reply' for a bristling attack on Kirtikar. Kirtikar appeared for Narayan Dhurmaji in the libel case that the latter filed in July 1887 against Rukhmabai and her grandfather. Kirtikar's evidence in this case, and the angry contempt shown towards him by Rukhmabai's lawyer, Jardine, would make interesting reading. *Bombay Gazette*, 8 Sep. 1887.
 9. *Ibid.*, 26 June 1885.
 10. The few letters in which Rukhmabai discussed her predicament are discreetly silent about the role of Sakharam Arjun in relation to her efforts at self-education. Yet, the inference seems hard to resist that she had him, too, in mind while complaining, in her pseudonymous letters to the *Times of India*, that her educational endeavours were uncharitably misconstrued. Considering her warm acknowledgment of his support during the decision to resist Dadaji's claims, this silence is suggestive. See her 'Reply' to Dadaji's 'Exposition', Appendix D. There is also the direct evidence of Dr K.R. Kirtikar. A hostile witness, Kirtikar seemed to be telling the truth, for once, when he accused Sakharam of neglecting his stepdaughter's education.
 11. *Times*, 9 Apr. 1887. There is but one lukewarm mention by Rukhmabai of her stepfather in the context of her education. See Appendix D.
 12. Rukhmabai claimed that she had begun writing on the question of social reform 'long before' Malabai did. Taking her 'long before' with a pinch of salt, we may assume that she had started writing about social reform

Rukhmabai and Her Case 43

- quite early. *Bombay Gazette*, 29 June 1887.
13. For the 'assertion of women's common sisterhood in oppression' in the development of feminism, see Caroline Ramazanoglu, *Feminism and the Contradictions of Oppression*, London, 1989.
 14. For a discussion of the relationship between what they call the experiential and the ideological, see the editors' 'Introduction' to Kumkum Sangari and Sudesh Vaid, (eds.), *Recasting Women: Essays in Colonial History*, New Delhi, 1989, p. 20.
 15. The speculation about Rukhmabai having been subjected to a sexual advance was first suggested to me by my sociologist friend, Paramjit Singh. His academic training and the experience of growing up in rural Punjab suggested this as the only plausible reason why after the first year of her marriage, Rukhmabai never went to Narayan Dhurmaji's house. Later I found this described as an actual occurrence in a fictional account of Rukhmabai's life. See Sarojini Sharangapani, *Male Ha Lagna Manyu Nahi* (Marathi), Pune, 1983, pp. 33 ff.
 16. When litigation seemed imminent, it may be noted, the last-minute condition proposed by Sakharam was that Dadaji should arrange to live with Rukhmabai in a house other than Narayan Dhurmaji's. Considering that Sakharam was as yet undecided about getting embroiled in a legal tangle, and that there could be a chance of Dadaji accepting the proffered arrangement, it is important that Sakharam laid such stress on ensuring that Rukhmabai did not have to live in Narayan's house.
 17. *Exposition*, p. 11.
 18. *Ibid.*, p. 3.
 19. History of the case as recapitulated by Dadaji's counsel before Mr Justice Farran on 3 Mar. 1887. *Times of India*, 4 Mar. 1887; *Madras Mail*, 8 Mar. 1887.
 20. *Exposition*, pp. 2, 8.
 21. 'Rukhmabai's Reply', *Bombay Gazette*, 29 June 1887.
 22. Lucy Carroll, 'Law, Custom, and Statutory Social Reform: The Hindu Widows' Remarriage Act of 1856', in J. Krishnamurthy, ed., *Women in Colonial India: Essays on Survival, Work and the State*, Delhi, 1989, pp. 1-26, has dealt with the conflicting judicial interpretations in British India of section 2 of the Act. She argues that the conservative and, for the remarrying widows, harsh view of this section, viz., that taken by the Bombay High Court, constricted the rights of even those widows whose caste, tribe or sect customarily sanctioned their remarriage. The constriction, to the extent it actually occurred, was marginal. For, given the hold of patriarchy even in social groups that permitted a degree of latitude to their women, it was 'generally' found, as Gooroo Dass Banerjee pointed out, that 'wherever remarriage of widows is allowed by custom, their rights to the estate of their deceased husbands are taken away by the same custom'. *The Hindu Law of Marriage and Stridhan*, p. 269. For a comprehensive listing of the conflicting decisions given on this question by various high and chief courts in British India, and for the draft of the Hindu Widows' Re-

44 *Enslaved Daughters*

- marriage Act (1856), see S.V. Gupte and G.M. Divekar, *Hindu Law of Marriage*, Bombay, 1976, pp. 67–73.
23. Rukhmabai argued, with some strain on the readers' credulity, that her mother, before marrying Sakharam Arjun, could have, if she so wished, disposed of the way she liked the property that she had been willed by her first husband and Rukhmabai's natural father. 'Rukhmabai's Reply', *Bombay Gazette*, 29 June 1887.
 24. This was on the first day of the hearing before the Appellate Bench on 12 March. Sargent came back to the point during the second hearing a week later. See *Times of India*, 13 and 19 Mar. 1886. When Marpherson, Dadaji's lawyer, tried to object that nothing had been proved about his client's poverty, the Chief Justice pre-emptively referred to Dadaji's own evidence earlier when the case was heard by Justice Pinhey. It may be recalled that in his judgment Pinhey had observed about this portion of Dadaji's and Narayann Dhurmaji's evidence: 'The plaintiff gave much false evidence as to his pecuniary position; and his uncle, who was examined on plaintiff's behalf on the same point, gave, if possible, evidence less credible still.' *The Indian Law Reports*, Bombay Series, vol. IX, p. 535.
 25. Kirtikar said this in a public lecture, a detailed report of which was published in *Kesari*, 19 Apr. 1887.
 26. *Probate Division*, vol. V, p. 23. For a demonstration of the validity of Hannen's generalization, see J.D.M. Derrett, *Religion, Law and the State in India*, London, 1968, pp. 352–99.
 27. Narayan Dhurmaji's evidence in the libel case. *Bombay Gazette*, 29 July 1887.
 28. *Times of India*, 4 Mar. 1887.
 29. For a short discussion of the 'narrative instant' and the 'screen between the truth of the narrated past and the present of the narrative situation', see Jean Starobinski, 'The Style of Autobiography', in Seymour Chatman (ed.), *Literary Style: A Symposium*, Oxford, 1971, pp.74 ff.
 30. I borrow this phrase from Jacques Derrida, *Acts of Literature*, London, 1992, p. 34.
 31. Of relevance, in this context, is the pattern of simultaneously experienced enclosure and escape on which Sandra M. Gilbert and Susan Gubar have founded their pioneering work, *The Madwoman in the Attic: The Woman Writer and the Nineteenth-Century Literary Imagination*, London, 1984.
 32. A close reading of Rukhmabai's own testimony confirms the assertion made by Dr Kirtikar, that he never saw Sakharam Arjun talk to Rukhmabai.
 33. Pique at Dadaji's ingratitude may also have contributed to Sakharam's decision. It is difficult to isolate such considerations from anxiety about letter written by Rukhmabai to Miss Goodwin whose father, Bishop Carlisle, passed it on to the *Times*. See Appendix A.
 35. It is tempting to recall Malabari's wry humour as he wrote about young Sayajirao assuming charge of his kingdom after years of tutelage: 'I do not envy Maharaja Sijirao, though I should like to have a fraction of his pocket money, now and then, for a hundred deserving objects.' *Gujarat and the Gujaratis*, Delhi, 1983 (reprint), p. 62.
 36. See *Infants Marriage and Enforced Widowhood in India: Being a Collection of Opinions For and Against, Recorded by Mr. Behramji M. Malabari from Representative Hindu Gentlemen and Official and Other Authorities*, Bombay, 1887.
 37. *Ibid.*, pp. 17, 62.
 38. Telling his critics that he had 'nothing to do with the case personally' and that Dadaji 'is as much a brother to me as Rukhmabai is a sister', Malabari wrote: 'It is a mere accident that has thrust the case upon my notice. I find it to be a test case, and am anxious to make the most of it in what I take to be the general interests of the public. I have also to guide myself by the result of this suit at law.' *Indian Spectator*, 20 Mar. 1887.
 39. *Times of India*, 26 June 1885.
 40. *Ibid.*, 19 Sep. 1885.
 41. *Ibid.*, 26 June 1885; *Times*, 6 July, 28 Sep. 1885.
 42. See N.C. Kelkar, *Lo 'Tilak Yanche Charithra*, Pune, 1923, vol. I, p.186.
 43. 'We have done what we could,' the editorial wrote, 'in giving unusual prominence to her appeal, to bring it to the notice of the Viceroy and Government. But the social reformers of India must... be Hindu and not English.' *Times of India*, 26 June 1885. The editorial on the second letter began: 'The "Hindu Lady", whose letter to us on "Infant Marriage" went the round of the world and evoked a very unusual amount of sympathy, sends us another contribution to-day upon "Enforced Widowhood". Again she writes out of the fulness and bitterness of her heart. Countless generations of silent sufferers have found an eloquent exponent at last; and it is impossible to read her letter without being struck with the really lofty tone of her invective, with the virility of her arguments, and, above all, with the indignant scorn she showers upon those who hold that Hindu women have no reason for complaint.' *Ibid.*, 19 Sep. 1885.
 44. *Ibid.*
 45. When the *Westminster Review* reported Malabari as favouring sixteen as the minimum marriageable age for girls, the great reformer disclaimed: 'I have not been able to see my way beyond 12.' Adding: 'And even that I would not see enforced on the people.' *Indian Spectator*, 17 July 1887.
 46. After sympathy for her was built in England, the only practical step Rukhmabai wished the English people to support was the insertion of the following 'mere sentence into our law books': 'Marriages performed

Times, 9 Apr. 1887.

47. Two years after he had given a verdict that was adverse to Rukhmabai, the Chief Justice wrote in response to the official query about the need to change the existing law on restitution of conjugal rights following the embarrassment caused by the Rukhmabai case: 'The circumstances of that case are very peculiar and are a good illustration of the folly of putting new wine in old bottles. We may hope that it will not happen again that a Hindu girl should be brought up as Hindu maidens usually are and married when 11 or 12 years of age as prescribed by the Hindu law and custom should then straightaway and before she has joined her husband be taken in hand by well-meaning but ill-advised people and not only educated but impregnated with English ideas on the subject of matrimony so as to render her entirely unfit to discharge the duties of the marriage she has already contracted; but in any case I presume that the law should be determined with regard to the interests and wishes of the general community and not so as to meet the special circumstances of a particular case.' *Home Department, Judicial Proceedings, May 1890, nos. 410-715* (National Archives of India).
48. The whole of this discussion is based on A Hindu Lady's letter in *The Times of India*, 26 June 1885. This and her second letter are reproduced in Mohini Varde, *Dr Rukhmabai: Ek Aarta* (in Marathi), Bombay, 1982, pp. 190-208.
49. I have discussed this in *The Oppressive Present: Literature and Social Consciousness in Colonial India*, New Delhi, 1992.
50. See *Infant Marriage and Enforced Widowhood in India*.
51. *Times of India*, 19 Sep. 1887.
52. *Ibid.*, 3 Oct. 1885.
53. *Indu Prakash*, 21 Sep. 1885.
54. These 'good laws', as now explicated by Rukhmabai, included the command that girls 'should be allowed to marry when they become of age and with their own liking'. *Times*, 9 Apr. 1887. She took a similar position in her 'Indian Child Marriages: An Appeal to the British Government', *The New Review*, No. 16, Sep. 1890, pp. 263-9. Launched in the preceding year by Archibald Grove, a liberal, as a sixpence monthly, the *Review* was conceived as a counter to the older and more expensive journals like the *Edinburgh Review*, *Quarterly Review* and *Westminster Review*. Covering a wide variety of subjects, and offering an open platform veering slightly to the left, *The New Review* occasionally carried articles and stories by stalwarts like Henry James, Cardinal Manning, Max Mueller, Tolstoy, Walter Pater and Saintsbury.
55. Here is one of the specimens given by the *Bombay Gazette*.

NOTICE

To Sakharam *bin* Bapu Chambhar, residing at Mouje Varvod, Taluka Bhimthud, District Poona.

I, the undersigned, hereby give notice that I am your lawful wife, having

- been married to you about seventeen or eighteen years since. During this period I lived with you altogether for about a year, sometimes for a month, and sometimes for a fortnight. A portion of this total period of one year was passed when I was under age, while the remaining was passed after I had attained the age of puberty. In this latter portion, however, you slighted me, owing to your having in the meantime entered into a second matrimonial alliance with a widow; you treated me as though you were not my husband. Accordingly I returned to the house of my parents, and have by this time incurred a debt of Rs. 350 for maintaining myself. I now hereby require you, within a period of eight days from the date of this notice, to come to my parents' house, and to take me to your house, after having paid me the amount of the debt incurred by me, and after having assured me of your regard for me, and after having given security that I should be well treated in future. Should you fail to do this within the prescribed period, I shall marry another person.
- Be this known to you.
(Sd.) Bhagu *kom* Sakharam Chambhar.
September 2nd 1885.
- The care taken in these notices to affect the phrasology of colonial law and the use made of the print media indicate the utilization of precisely the forces that were also corrosive of traditional ways of life for buttressing custom.
56. *Bombay Gazette*, 24 and 29 Sep., 7 Oct. 1885. It is indicative of the recognition of the *Gazette* as a supporter of reform that, even while joining issue with it on the question of 'enforced widowhood', the *Indian Spectator* described it as 'our best friend'. 1 Nov. 1885.
57. *Ibid.*, 24 Sep. 1885. The *Bombay Gazette* realized the legal invalidity of the customary provisions that gave the 'average Indian woman' her freedom. But, significantly enough, it failed to mark the erosion of that freedom by the rigid moralism of colonial judicial mediation. That process had already struck Gooroo Dass Banerjee: 'And even where there is a custom among the lower castes for a wife to contract a second marriage, called a *natra* or *pat*, during the lifetime of the husband, on permission obtained from a *punchayat* of her own caste, the Courts of British India have refused to recognize such custom, on account of its being immoral and opposed to the spirit of the Hindu law, and have held the parties to such marriage liable to punishment under the Indian Penal Code, as guilty of offences relating to marriage.' *The Hindu Law of Marriage and Stridhan*, p. 134. See also pp. 185-6, 244.
58. *Indian Spectator*, 1 Nov. 1885. Malabari added with characteristic sarcasm: "A Hindu Lady" does not belong to that class of reformers who plume themselves upon their scientific accuracy and exactitude, entering upon the decimal fractions of social diseases, with a philosophic calm which can never lead to action.' Reverting to a serious tone, he further remarked: 'It is these virtuous, these moderate reformers who are the greatest obstruction in the path of progress. They are so plausible

- that the stranger is sure to be taken by their airs of impartiality. But it is to this warmth of expression (exaggeration, if you like) and not the trick of concealing one half and explaining away the other half that we owe all important reforms.'
59. *Ibid.*, 4 Oct. 1885. Ascribing the 'cry' of 'A Hindu Lady' to 'a weary heart yearning after that perfect womanhood which is her natural heritage and of which she has been despoiled by selfish man—the maker and enforcer of law', Malabari wrote: 'She is writhing in the agony of despair, and is, therefore, more violent than is seemly... It is a hopeful sign, this daughter of India rising to plead for her sex, to plead for the motherhood of the nation. May her appeal move the (un)natural leaders of society.'
60. D.E. Wacha. *Shells from the Sands of Bombay: Being My Recollections and Reminiscences*, 1860–1875, Bombay, 1920, pp. 736–7, 739.
61. 'Indeed he went so far as to say and maintain that British rule had stopped the natural and progressive development of Hindu civilization and had fossilized the law, which but for that would have developed naturally.' *Kashinath Trimbak Telang 1850–1893*, Bombay, 1951, p. 49.
62. Sir Raymond West, 'K.T. Telang', in V.N. Naik, ed., *Select Writings and Speeches* [of K.T. Telang], Bombay, n.d., vol. II, Appendix 'A', p. 536. Calling Telang the 'facile princeps of the Bombay Bar', West wrote: 'He was, when not retained as Counsel, on several occasions consulted by the Judges as to the right interpretation of those enigmatic texts which having been framed under archaic influences lend themselves with almost equal inexactness to antagonistic applications in the affairs of modern life.' Telang succeeded in creating an influential following around him. For example, N.G. Chandavarkar (1855–1923) who, as editor of the *Indu Prakash* at the time of the Rukhmabai case controversy, wrote week after week in favour of the young lady, believed as a result of Telang's influence: 'But our very shastras have given us a free hand in changing with the times, by agreeing upon one point more than upon anything else—that is, by pronouncing without any hesitation that custom or usage can supersede the injunctions of the shastras... The shastras have been more liberal than we care to be, by giving us a free hand to deviate from them when necessary.' L.V. Kaikini (ed.), *The Speeches and Writings of Sir Narayan G. Chandavarkar, Kt. Judge of the Bombay High Court and Vice Chancellor of the Bombay University*, Bombay, 1911, p. 65.
63. Mayne's position was as follows: 'When the marriage is once completed, if either party refuses to live with the other, the cause is no longer one for specific performance of a contract, but for restitution of conjugal rights. It has long since been settled that such a suit would lie between Hindus, but there was much conflict of authority as to the mode in which the decree was to be enforced. The point has now been settled by s. 260 of the Civil Procedure Code (1877)... *Prima facie* the husband is the legal guardian of his wife, and is entitled to require her to live in his house, from the moment of the marriage, however young she may be. But this right does not exist where, by custom or agreement the wife is to remain in her parents' home, until puberty is established.' John D. Mayne, *A Treatise on Hindu Law and Usage*, Madras, 1878, p. 80. See also pp. 371–73.
64. Son of Robert Pinhey and Elizabeth Barclay, Robert Hill Pinhey was born on 22 Nov. 1831 in Bombay. His father was a surgeon in the Bombay Medical Service. Pinhey was eighteen when, after five and a half years of schooling at Manor House, Finchley, under Rev. Charles Norsley, he was nominated to the East India College, Haileybury, by an uncle, Sir Charles Jenkins, who was a Director of the East India Company. See J/1/77, India Office Library, London.
65. 57 L.J. 9 P. & D.
66. Douglas M. Ford, *Matrimonial Law and the Guardianship of Infants*, London, 1888, pp. 53–6.
67. Because, in comparison to men, it was more difficult for women in England to obtain divorce under the Divorce Act of 1857, they were tempted to use the Matrimonial Causes Act of 1884 as a less cumbersome route to separation and/or divorce. See Olive M. Stone, *Family Law: An Account of the Law of Domestic Relations in England and Wales*, London, 1977, p. 122.
68. See Lawrence Stone, *Road to Divorce: England 1530–1987*, Oxford, 1992, pp. 366–9.
69. For the judgment and the proceedings in the case, see *The Indian Law Reports*, Bombay Series, vol. IX, pp. 529–35.
70. *Times of India*, 25 Sep. 1885.
71. The metaphor of the horse—the image conveyed was that of an animal—as indicative of the strong disapproval of what coverture implied for women had been in circulation for sometime. In a landmark judgment (1866), one that twenty-eight years later Malabari quoted with some relish to support the proposed amendment of the law relating to restitution of conjugal rights, Justice Jackson gave expression to his puckish humour while refusing to issue a restitution decree: 'A wife cannot be looked upon as property, moveable or immoveable, which passively undergoes transfer from one person to another. If she could be so dealt with, it would have to be determined whether she was moveable or immoveable, and some curious questions of limitation might arise; and if the wife were property, she could not, obviously, be a party to the suit, as she is in this, and always must be in suits of this nature. And further, it seems to be repugnant to the principles of civilized society, whether European or British Indian, that an adult human being, wife or otherwise, should be delivered over as a horse or other brute animal might be.' Quoted in *Indian Spectator*, 23 Dec. 1894. This judgment also figured in the confidential governmental discussion, sparked off by the Rukhmabai case, about the possibility of changing the existing law. See Home, *Judicial Proceedings*, June 1887, nos. 189–92 (National Archives of India).