

## The Figure of the Abducted Woman

*The Citizen as Sexed*

WRITING IN 1994, THE WELL-KNOWN HISTORIAN of the subaltern Gyanendra Pandey took the neglect of the Partition in the social sciences and in Indian public culture as a symptom of a deep malaise. Historical writing in India, he argued, was singularly uninterested in the popular construction of the Partition, the trauma it produced, and the sharp division between Hindus, Muslims, and Sikhs it left behind. He attributed this blindness to the fact that the historian's craft has never been particularly comfortable with such matters as "the horror of the Partition, the anguish and sorrow, pain and brutality of the 'riots' of 1946-47." The analytical move in Indian historiography, Pandey further argued, was to assimilate the Partition as an event in the intersecting histories of the British Empire and Indian nation, which left little place for recounting the experience of the event for ordinary people.<sup>1</sup>

In recent years, many writers, including Pandey, have produced impressive testimonial literature on the Partition in an attempt to bring ordinary people's experiences into the story of this event.<sup>2</sup> Corresponding to this development is the scholarly effort to show how anxiety about Hindu-Muslim relations, especially about sexuality and purity of women, circulated in the public domain in the late nineteenth and early twentieth centuries in the popular forms of cartoons, comic strips, posters, and vernacular tracts. Part of the burden of this chapter is to try to understand how public

anxieties around sexuality and purity might have created the grounds on which the figure of the violated woman became an important mobilizing point for reinstating the nation as a "pure" and masculine space.<sup>3</sup> At stake, then, is not simply the question of "silence" but also that of the genres that enabled speech and gave it the forms it took. It is instructive that there has been no attempt to memorialize the Partition in the form of national monuments or museums. No attempt was made, for that matter, to use the legal instruments of trials or public hearings to allow stories of mass rape and murder to be made public or to offer a promise of justice to the violated persons.<sup>4</sup> There was no dramatic enactment of "putting history on trial" that Shoshana Felman sees as the particular feature of twentieth-century collective traumas.<sup>5</sup> In fact, the trope of horror was deployed to open up the space for speech in the formal setting of the Constituent Assembly debates and in popular culture, and it gave the recounting of the event a tonality of rumor.

Consider first the numbers and magnitudes as these are cited in official reports. As Pandey argues, numbers are not offered here in the sober register of a judicial tribunal or a bureaucratic report based upon careful collection of data—rather, these function as gestures toward the enormity of the violence. I might add that this mode of reporting was not peculiar to the Partition. It was part of a wider bureaucratic genre that used numbers and magnitudes to attribute all kinds of "passions" such as panic, incredulity, or barbarity to the populace when faced with a crisis such as an epidemic or a riot—thus constructing the state as a rational guarantor of order. We shall see how the figure of the abducted woman allowed the state to construct "order" as essentially an attribute of the masculine nation so that the counterpart of the social contract becomes the sexual contract in which women as sexual and reproductive beings are placed within the domestic, under the control of the "right" kinds of men.

### THE ABDUCTED WOMAN IN THE IMAGINARY OF THE MASCULINE NATION

How did the gendering of suffering allow a discourse of the nation to emerge at the time of the Partition? What precise work does the figure of the abducted woman and her recovery do in instituting the relation between the social contract and the sexual contract at the advent of the nation? While I am sympathetic to the question of repression of women's voices in the accounts of the Partition that has animated the work of

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than that of trauma. Instead of deploying the notion of trauma, I ask what kind of protocols for telling their story might have been imported into the task of making visible (or audible) the suffering of women in the nationalist discourse? I take the figure of the abducted woman as it circulated in the political debates soon after the Partition of the country and ask how this was anchored to the earlier figures that were available through myth, story, and forms of print culture in the early-twentieth-century discourse on this figure. How was the figure of the abducted woman transfigured to institute a social contract that created the nation as a masculine nation?

One of the earliest accounts of the violence of the Partition rendered the story in the following terms:

The great upheaval that shook India from one end to the other during a period of about fifteen months commencing with August 16, 1946 was an event of unprecedented magnitude and horror. History has not known a fratricidal war of such dimensions in which human hatred and bestial passions were degraded to the levels witnessed during the dark epoch when religious frenzy, taking the shape of a hideous monster, stalked through the cities, towns and countryside, taking a toll of half a million innocent lives. Decrepit old men, defenseless women, helpless young children, infants in arms, by the thousand were brutally done to death by Muslim, Hindu and Sikh fanatics. Destruction and looting of property, kidnapping and ravishing of women, unspeakable atrocities, and indescribable inhumanities, were perpetrated in the name of religion and patriotism.<sup>6</sup>

The government of India set up a Fact Finding Organization on the communal violence. Although the files containing these reports were never made public, G. D. Khosla, who was a justice of the Punjab High Court and was in charge of producing this report, interviewed liaison officers of the Military Evacuation Organization in charge of the large-scale evacuation of the minorities from one dominion to another. Based on this information, Khosla put the figure of loss of life in both warring communities between 200,000 and 250,000 and the number of women who were raped and abducted on both sides as close to 100,000. Some support for this is provided in information given to the House in the context of legislative debates of the Constituent Assembly, where it was stated on December 15, 1949, that 33,000 Hindu or Sikh women had been abducted by Muslims

and that the Pakistan government had claimed that 50,000 Muslim women had been abducted by Hindu or Sikh men.

Joint efforts made by the governments of India and Pakistan to recover abducted women and restore them to their relatives led to the recovery of a large number of women from both territories. It was stated on behalf of the government in the Constituent Assembly on December 15, 1949, that 12,000 women had been recovered in India and 6,000 in Pakistan. The figures given by Khosla on the basis of the Fact Finding Organization were that 12,000 Hindu or Sikh women were "recovered" from the Punjab and the frontier regions in Pakistan and 8,000 Muslim women from the provinces of Indian Punjab.

As I said earlier, Pandey makes the subtle point that numbers function here not as forms of reporting in which we can read bureaucratic logic but rather as elements of rumor in which the very magnitudes serve to signal both excess and specificity. He argues that in the official reports as well as in reports by prominent political leaders, the circulation of such stories served to transform hearsay into "truth."<sup>7</sup> What Pandey misses in his analysis, it seems to me, is that the magnitudes established that violence was taking place in a state of exception, which, in turn, opened the way to authorize the state to undertake extraordinary measures by appeals to the state of exception. I argue that the circulation of the figure of the abducted woman, with its associated imagery of social disorder as sexual disorder, created the conditions of possibility in which the state could be instituted as essentially a social contract between men charged with keeping male violence against women in abeyance. Thus, the story about abduction and recovery acts as a foundational story that authorizes a particular relation between social contract and sexual contract—the former being a contract between men to institute the political and the latter the agreement to place women within the home under the authority of the husband/father figure.<sup>8</sup> The "foundational" event of inaugurating the nation then is itself anchored to the already circulating imaginary of abduction of women that signaled a state of disorder since it dismantled the orderly exchange of women. The state of war, akin to the Hobbesian state of nature, comes to be defined as one in which Hindus and Muslims are engaged in mutual warfare over the control of sexually and reproductively active women. The origin of the state is then located in the rightful reinstating of proper kinship by recovering women from the other side. If one prefers to put it in the terminology of Lévi-Strauss, one could say that the state reinstates the correct matrimonial dialogue of men. The foundational event of the

imagery on the state brings something new into existence, but the event does not come from nowhere—it is anchored to imageries that already haunt Hindu-Muslim relations.

#### THE DISCOURSE OF THE STATE

A conscious policy with regard to abducted women and children born of sexual and reproductive violence was first initiated in the session of the Indian National Congress on November 23 and 24, 1946, when delegates expressed grave concern about the fate of women who were violated during the communal riots. Dr. Rajendra Prasad, who was later to become the first president of independent India, moved a resolution that received wide support from prominent leaders of the Congress Party, including Jawaharlal Nehru:

The Congress views with pain, horror and anxiety the tragedies of Calcutta, in East Bengal, in Bihar and in some parts of Meerut district. The acts of brutality committed on men, women and children fill every decent person with shame and humiliation. These new developments on communal strife are different from any previous disturbances and have involved murders on a mass scale as also mass conversions enforced at the point of a dagger, abduction and violation of women and forcible marriage.

The operative part of the resolution then stated the obligation of the Congress Party toward such women:

The immediate problem is to produce a sense of security and rehabilitate homes and villages, which have been broken up and destroyed. Women, who have been abducted and forcibly married, must be restored to their homes. Mass conversions, which have taken place forcibly, have no significance or validity and the people affected by them should be given every opportunity to return to their homes and the life of their choice.<sup>9</sup>

This resolution was adopted in November 1946. The situation, however, worsened from March 1947, so that three weeks after India and Pakistan achieved their independence as separate states, the representatives of both dominions met on September 3, 1947, and agreed that steps should be taken to recover and restore abducted persons. Both sides pronounced themselves against recognition of forced marriages.

The All India Congress Committee met in the middle of November and reiterated that "during these disorders large numbers of women have been abducted on either side and there have been forcible conversions on a large scale. No civilized people can recognize such conversions and there is nothing more heinous than abduction of women. Every effort, therefore, must be made to restore women to their original homes, with the co-operation of the Governments concerned."<sup>10</sup>

An interdominion conference followed the Congress session, at which the two dominions agreed to the steps to be taken to recover abducted women and children. The implementation of these decisions led to a recovery of large number of women from both sides—between December 1947 and July 1948, 9,362 women were reported to have been recovered in India and 5,510 in Pakistan. At this time both governments worked toward the creation of a legal instrument for the work of recovery. As a result, appropriate ordinances were issued in India on January 31, 1948, and in Pakistan in May 1948. The ordinance in India was renewed in June 1949. In December 1949 the Constituent Assembly passed the Abducted Persons (Recovery and Restoration) Act of 1949, which remained in force until October 31, 1951.

The events outlined above point to the manner in which the state took cognizance of the sexual and reproductive violence directed against women. To some extent this obligation was generated by the expectations of the affected population. The devastated refugees who had lost their homes, their families, and their possessions in the bloody riots and were housed in refugee camps in Delhi thought it appropriate to address the leaders of independent India as appropriate recipients of their laments. In this manner, they were not only creating a framework for the state to legitimately take up the task of recovery of abducted women but also learning that claiming entitlements over women of one's own community could be seen as a legitimate affair of the state.

Khosla reported that refugees in distress made loud and frantic appeals to all departments of government. Pandit Nehru received letters in the months of August, September, and October seeking his personal intervention to save a relative left behind or to recover a piece of property or a precious possession abandoned in Pakistan. People wrote to him, accusing him of enjoying a victory that had been won at the expense of the Hindus of the west Punjab. Khosla quoted a letter by a retired schoolmaster addressed to Pandit Nehru: "What has compelled me to write this to you is the fact that in casting about my eyes I fail to find anyone in the world

except you who can help me in my calamity."<sup>11</sup> How was the nation to respond to such investment of both despair and hope in its leaders?

#### THE QUESTION OF NATIONAL HONOR

For the new nation state of India, the question of the recovery of abducted women and children then became a matter of national honor. There was a repeated demand, publicly enunciated, that the state must take the responsibility of the recovery of women and children upon itself. The new government in India tried to reassure the people of its intention in this regard through several press releases. For instance, Rajashree Ghosh cites a press release published in *The Statesman* of November 4, 1947, that "forced conversions and forced marriages will not be recognized and that women and girls who have been abducted must be restored to their families."<sup>12</sup> Various administrative mechanisms for the recovery of women were operative in the early stages of the recovery operations including the Office of the Deputy High Commissioner, the Military Evacuation Organization, the Chief Liaison Officer, and the Organization for Recovering Abducted Women, consisting of social workers and other officials. All these efforts culminated in an interdominion agreement signed on September 3, 1947, and finally the Abducted Persons (Recovery and Restoration) Act of 1949. Through these legal instruments, each country provided facilities to the other for conducting search and rescue operations. Both agreed that the exchange of women should be equal in number. Wide powers were given to the police to conduct the work of recovery, and arrangements were made for housing the recovered women in transitory camps. Disputed cases were to be referred to a joint tribunal for final settlement.

In terms of procedure, the Indian government set up Search and Service Bureaus in different cities in the Punjab where missing women were reported. This information was then passed on to the relevant authorities, and a search for these women and children was mounted. The Indian government accepted the help of several women volunteers, especially those with a Gandhian background, to help in the recovery process. Prominent among these women were Mridula Sarabhai, Rameshwari Nehru, and Kamlabehn Patel. In her memoirs of this period Kamlabehn Patel reports that "in those days it wasn't prudent to trust any male, not even policemen as far as the safety of women was concerned."<sup>13</sup> Several transit camps were set up, such as the Gangaram Hospital Camp in Lahore and Gandhi Vanita Ashram in Amritsar. Kamlabehn herself was in charge of the transit camp

in Lahore to which recovered women and children were brought. They were then transferred to India or Pakistan, as the case might be, under police escort. A woman or child who was claimed by a close relative in the case of an Indian citizen could be handed over to the relative only at Jullundur in the presence of a magistrate.

Taken at face value it would appear that the norms of honor in the order of the family and the order of the state were mutually supportive. The families with whom I worked related stories of a generalized nature in which the heroic sacrifices made by women were lauded, but to speak in the first person on the facts of abduction and rape was not easy. Later chapters will show the specific ways in which stories were framed in the first person, and especially the place of silence in the "telling." Here I am interested in the logic of the state of exception with regard to the way that law was instituted to shape the nation as a *masculine* nation, so that the social contract became a contract between men conceived as heads of households. As so many statements that I have quoted show, normality was seen as restoration of women "to their families." Men appear here as heads of households rather than as individuals sprung from the earth, as in the famous mushroom analogy favored by Hobbes in conceptualizing the makers of the social contract.

It is my contention that once the problem of abducted women moved from the order of the family to the order of the state (as in the demand for legislation), it sanctified a sexual contract as the counterpart of the social contract by creating a new legal category of "abducted person" (applicable, however, only to women and children) who came within the regulatory power of the state. There was an alliance between social work as a profession and the state as *parens patriae*, which made the official kinship norms of purity and honor much more rigid by transforming them into the law of the state.

The discussion on the Abducted Persons (Recovery and Restoration) Act of 1949 in the Constituent Assembly focused on three issues.<sup>14</sup> The first was the definition of a civilized government and especially the responsibility of the state to women on whom violence had been unleashed. The second was the definition of an abducted person, and the rights of women abducted by men. The third issue was the rights of children born of "wrong" sexual unions and the obligations of the state toward them. The connecting thread between these three issues is the notion of national honor and preservation of purity of the population through which the sexual contract is made the grounds for a social contract that institutes the nation as a masculine nation.

In introducing the bill, Shri N. Gopalaswami Ayyangar, the then Minister of Transport and a distinguished lawyer, stated that there were experiences associated with the partition of the country in regard to which "most of us will have to hang our heads down in shame." He went on to say that "among the many brutalities and outrages which vitiated the atmosphere . . . none touched so low a depth of moral depravity as these mass abductions of women on both sides. . . . Those of us who think of civilized government and want to conduct the government on civilized lines should feel ashamed."

As is clear from this statement, the state distanced itself from the "depths of moral depravity" that the population had shown and took upon itself the task of establishing a civilized government. Part of the definition of this civilized government was to not only recover women defined by the new nation as "our" women but also to restore to the opposite side "their" women. The interest in women, however, was not premised upon their definition as citizens but as sexual and reproductive beings. As far as recovery of women held by the "other" side was concerned, what was at stake was the honor of the nation because women as sexual and reproductive beings were being forcibly held. This was explicit in the demands made by several members that not only should the recovery of women on both sides be more or less equal but also that women in their reproductive years should be "recovered." Shri Gopalaswami Ayyangar especially referred to this criticism, saying that several critics alleged that "while in India we have recovered women of all ages and so forth, in Pakistan they had recovered for us only old women or little children." He went on to counter this criticism by citing figures to show that the distribution by age of recovered women from both dominions was, in fact, roughly equal. Of the total women recovered, he said, girls below the age of twelve from Pakistan and India were 45 and 35 percent, respectively. In the age group 12 to 35 years old, the recovery was 49 percent in Pakistan and 59 percent in India, while the percentage dropped to about 10 percent for women older than 35. This discussion clearly shows that national honor was tied to the regaining of control over the sexual and reproductive functions of women. The social contract that would legitimate both nations was seen as one instituted by men in which they were capable of recovering their own place as heads of households by placing the sexuality and reproductive powers of women firmly within the family.

Thus the figure of the abducted woman signals the impossibility of the social contract because the sexual contract that would place men as heads

of households (not as a matter of kinship but as matter *for the state*) was in jeopardy. Pandit Thakur Das Bhargava explicitly drew on this figure when he stated during the debates, "You will remember, Sir, how when one Ellis was kidnapped by some Pathans the whole of Britain shook with anger and indignation and until she was returned Englishmen did not come to their senses. And we all know our own history, of what happened at the time of Shri Ram when Sita was abducted. Here, where thousands of girls are concerned, we cannot forget this. We can forget all the properties, we can forget every other thing but this cannot be forgotten."<sup>15</sup>

Then there was the question of whether Muslim women needed to be returned to their own families. It is interesting to note the particular tonality that crept into Pandit Thakur Das Bhargava's statement that "I don't suggest for a moment that the abducted Muslim girls should be kept here because I believe that not only would it be good for them to be sent away but it is equally good for us to be rid of them. I don't want immorality to prosper in my country."

It is important to note here that to be a citizen as a head of the household demands that men's own sexuality be disciplined, oriented to the women who have been placed "correctly" within the family, and that children who would claim citizenship are born of the right kind of union of men and women. Elsewhere I have analyzed courtroom talk in the cases of rape in Indian courts of law to argue that "male desire" is construed as a natural need in the judicial discourse on rape, so that whenever the cultural and social constraints are removed, men are seen as falling into a state of nature in which they cannot control their appetite for sex. I quote here from an earlier paper, where I argued that

it is male desire which is considered as "natural," hence "normal," and the female body as the natural site on which this desire is to be enacted. Women are not seen as desiring subjects in the rape law—as wives they do not have the right to withhold consent from their husbands, although the state invests its resources in protecting them from the desires of other men. Paradoxically, women defined in opposition to the wife or the chaste daughter, i.e. women of easy virtue, as the courts put it, also turn out to have no right to withhold consent. . . . A reading of female desire as interpreted by the courts demonstrates, that while men are seen to be acting out their "natural" urges when engaging in "illicit" sex, women who show any kind of desire outside the confines of marriage are immediately considered "loose." By escaping the confines of male-centered discourses of sexuality and alliance, these women are

then castigated by becoming the objects of any kind of male desire. Rape is not a crime but is reduced to an act that she herself deserves or seeks.<sup>16</sup>

Clearly, the deeply rooted assumptions about the husband/father figure continue in the juridical unconscious even when the figure of the abducted or raped woman appears in the singular in post-Independence India.

Let us consider the next question—Who is an abducted person? According to the bill, “An ‘abducted person’ means a male child under the age of sixteen years or a female of whatever age, who is, or immediately before the 1st day of March 1947 was, a Muslim and who, on or after that day, has become separated from his or her family and is found to be living with or under the control of a non-Muslim individual or family, and in the latter case includes a child born to any such female after the said date.”<sup>17</sup>

We shall take up the question of children defined as “abducted” under the provisions of the bill later. As for the women, it was clear that the bill failed to make any provision for ascertaining whether a woman wished to return to her original family or not. This question was raised by several members. The sharpest criticism came from Thakur Das Bhargava, who stated, “You want to take away the rights of a major woman who has remained here after the partition. . . . My submission is that the law of nations is clear, the law of humanity is clear, the Indian Penal Code is clear, the Constitution we have passed is clear, that you cannot force a woman who is above 18 to go back to Pakistan. This Bill offends against such a rule.”

In addition to the manner in which the rights of a woman to decide her future course of action were taken away by the state to protect the honor and purity of the nation, there was also the question that the bill gave wide powers to the police to remove a woman forcibly if she came under the definition of an abducted woman under its clauses. This, as Shri Bhargava pointed out, took away the rights of habeas corpus from a person who was treated as an abducted person even if she were mistakenly so labeled.

When several members of the House pointed to the increasing evidence that many women were refusing to go back to their original families and were practically coerced by social workers to return, Shrimati G. Durgabai, speaking on behalf of both the social workers and the women’s movement, defended the social workers on the grounds that they knew best what the women’s true preferences were. Durgabai’s statement is worth quoting in detail:

Questions are also asked: Since these women are married and settled here and have adjusted themselves to the new environment and to their new relatives here, is it desirable that we should force them to go back? It is also argued: These women who have been able to adjust themselves to their new surroundings are refusing to go back, and when they are settled, is it desirable that we should force them to go back? . . . These are the questions we have to answer. May I ask: Are they really happy? Is the reconciliation true? Can there be a permanent reconciliation in such cases? Is it not out of helplessness, there being no alternative that the woman consents or is forced to enter into that sort of alliance with a person who is no more than the person who is a murderer of her very husband, her very father, or her very brother? Can she be really happy with that man? Even if there is reconciliation, is it permanent? Is this woman welcomed in the family of the abductor?

Paradoxically the authority of the woman social worker was used to silence the voice of the woman as subject and to put upon her an obligation to *remember* that the abductor to whom she was now married was the murderer of her husband or her father. The disciplining of sentiment according to the demands of the state collapsed the duty to the family with duty to the state. The women themselves seem to have been caught in the impossible situation where the obligation to maintain a narrative continuity with the past contradicted the ability to live in the present. Durgabai herself testified to the apprehensions of the women at the prospects of returning to their original homes: “Sir, we the social workers who are closely associated with the work are confronted with many questions when we approach a woman. The women say, ‘You have come to save us; you say you have come to take us back to our relatives. You tell us that our relatives are eagerly waiting to receive us. You do not know our society. It is hell. They will kill us. Therefore, do not send us back.’”

Yet at the same moment that these apprehensions were expressed, the authority of the social worker was established by the statement that “the social workers associated with this work know the psychology of these abducted recovered women fully well. They can testify to it that such a woman only welcomes an opportunity to get back to her own house.” The refusal of many women to go back and the resistance that the social workers were encountering in the field was explained away by an attribution of false consciousness or a kind of misrecognition to the women. The appropriate sentiment in all such cases was coercively established as a desire for the original home that allowed men on both sides of the border

to be instituting the social contract as *heads of households* in which women were "in their proper place."

#### CHILDREN AND REPRODUCTIVE FUTURES

We come now to the category of children defined as abducted. As stated earlier, the bill defined any child born to a woman after March 1, 1947, as an abducted person if its mother came under the definition of an abducted person. These, in short, were children born through "wrong" sexual unions. The discussion in the Constituent Assembly focused on several issues. First, how were rights over a child to be distributed between the male and the female in terms of their relative contributions to the process of procreation? Second, what legal recognition was to be given to children whose parents were not considered to be legally married since the bill held all forcible marriages to be null and void? Third, was there a contradiction between the legality established by the state and the customary norms of a community regarding the whole question of determining the legitimacy of a child? Finally, if only one parent was entitled in these cases to transmit filiation as a basis for establishing citizenship, was it the relationship with the mother or the father that was to be considered relevant for creating the necessary credentials for citizenship?

Although there was no explicit enunciation of a theory of procreation and the relative contributions of the male and the female to the procreative process, analogies drawn from nature were sometimes used. For instance, Pandit Thakur Das Bhargava stated at one point in the discussion that he did not understand how a general rule could be formulated by which the child was to be handed over to the mother rather than the father: "It takes only nine to ten months gestation during which the child has to remain in the mother's womb. . . . It should not be made a rule that in every case the child is to be given over as a matter of rule. It is something like the rule that when you plant a tree it grows on the ground; therefore the tree goes with the land and the fruit of the tree goes with the tree. A child is the fruit of the labour of two persons. There is no reason why the father should be deprived in each case. Why should we make this rule?"

Analogies from nature, especially from the activities of agriculture or horticulture to conceptualize procreation, are part of the repertoire of ideas contained in Hindu texts and in the popular ideas regarding procreation.<sup>18</sup> What is important here is that a theory about the "labor" of reproduction enters into the state's repertoire of ideas even as it is articulated in

opposition to the provisions of the bill. Although Durgabai did not pose the question in these terms, she questioned the rights of the male on the grounds that he was an abductor. Men who had forcibly abducted women, sold them, and used them for commercial purposes, she argued, could not claim rights over the children born to these women. In contrast to the earlier argument, Durgabai's interpretation would be that it was not the joint labor of a man and a woman that had created such a child but the plunder by men of women's bodies. Hence, "What right has the abductor to keep the child? The child has to go with the mother."

Another member, Shri Brajeshwar Prasad, also evoked the notion that in nature there was no question of illegitimacy or legitimacy of a child, and that it was only the conventions of society that made children legitimate or illegitimate. In his words, "Sir, I do not know how a child born of a man and a woman can ever become illegitimate. This is a notion I have not been able to grasp, but still knowing full well the attitude of the present Government, knowing full well the attitude of the Hindu society, we have to take the facts as they are and the illegitimate children if they are to live in India, they will remain as dogs, as beasts."

In the above discussion it was clear that the question of the legitimacy or illegitimacy of the children was related to the fact that it was the provisions of the bill that had made all unions that may have started with abduction and ended with marriage illegal and thus the children born to such unions illegitimate. As one member, Shri Brajeshwar Prasad, put it, even if a natural attachment had developed between the abductor and the abducted woman, the law did not recognize such marriages. Therefore, a woman could continue to stay with her abductor "only as a prostitute and a concubine," while her children could only remain in the country as illegitimate children who would be a "standing blot on Hindu society."<sup>19</sup>

A contradiction between state-defined legality and community-based legality was pointed out by Chaudhari Ranbir Singh, at least as he saw the matter, for he thought it would be a mockery to the country if children born to Muslim women were sent away on the grounds that they would be mistreated as illegitimate children here. "There is a general custom in our Punjab," he stated, "particularly in the community to which I and Sardar Bhupinder Singh Man belong, that, regardless of religion or community of the woman one marries, the offspring is not regarded as illegitimate, and we give him an equal share." Clearly a wide variety of customary norms regarding children born to women through proscribed sexual

unions existed that were now standardized into one single law by which illegitimacy was defined.

How are we to understand this moment as foundational in terms of the relation between the social contract and the sexual contract in defining the nation-state? I suggested earlier that the figure of the abducted woman had circulated in the late nineteenth and early twentieth centuries as the site of anxiety for defining the place of men as heads of households.<sup>20</sup> It is important to note that the question of a father's rights over his children after his conversion to another religion was not a new question—it had legal precedents. For instance, whether a man who had converted to Christianity could continue to claim conjugal rights over his wife had been debated before the colonial courts as well as the issue of whether a man's "natural" rights over his child overrode the dissolution of marriage after conversion. I have argued elsewhere that although the courts were reluctant to apply English common law to these cases, arguing that the legal imagination must contend with people of one faith living under a political sovereign who owes allegiance to another faith, the general consensus was that the father's right could not be denied.<sup>21</sup> It now became possible to set aside the legal precedents on these questions and to take away custody from the father in the case of children born to women who had been forcibly possessed, precisely because the foundational event was located within an imagination of a state of emergency when normal rules were set aside. In the next section I discuss these issues briefly and then conclude with the question: Why is the state interested in women as sexual and reproductive beings?

#### ANCHORING THE FIGURE OF THE ABDUCTED WOMAN

Recent work on the nexus between ideas of sexuality, obscenity, and purity shows that the images of lustful Muslim males and innocent Hindu women proliferated in the propaganda literature generated by reform Hindu movements such as the Arya Samaj and political organizations such as the Hindu Mahasabha and the Rashtriya Sevak Sangh.<sup>22</sup> Charu Gupta has recently marshaled impressive material from the vernacular tracts published in Uttar Pradesh in the late nineteenth and early twentieth centuries to show that mobilization of the Hindu community, especially by new forms of religio-political organizations such as the Arya Samaj and the Hindu Mahasabha, drew upon the image of the lustful Muslim as a threat to Hindu domesticity. Consider the following passage from a

speech delivered by Madan Mohan Malviya in 1923 on the subject of kidnapping, cited by Gupta:

Hardly a day passes without our noticing a case or two of kidnapping of Hindu women and children by not only Muslim *badmashes* and *goondas*, but also by men of standing and means, who are supposed to be very highly connected. The worst feature of this evil is that Hindus do not stir themselves over the daylight robbery of national stock. . . . We are convinced that a regular propaganda is being carried on by the interested party for kidnapping Hindu women and children at different centers throughout the country. It is an open secret that Juma Masjids at Delhi and Lahore are being used as headquarters of these propagandists. . . . We must do away with this mischievous Muslim propaganda of kidnapping women and children.<sup>23</sup>

References to the lustful Muslim and appeals to innocence of Hindu women who could be easily deceived by Muslim men were plentiful. In some cases, harshness of Hindu customs against widows was evoked to explain why Hindu women fell into the traps of seduction laid by wily Muslims. Gupta is surely correct in concluding that evocation of these fears provided an emotive basis for arguments in favor of Hindu "homogeneity and patriarchy."<sup>24</sup> I think we can go further—for the story of abduction has implications for the very staging of sovereignty, such that when this story appears magnified at the time of the Partition, it becomes the foundational story of how the state is instituted and its relation to patriarchy. It invites us to think the story of the imaginary institution of the state in Western theory from this perspective rather than the other way around.

It should be obvious that the line of argument proposed here does not see the family simply as the institution located in the domain of the private but proposes that sovereignty continues to draw life from the family. The involvement of the state in the process of recovery of women shows that if men were to become ineffective in the control they exercise as heads of families, thus producing children from "wrong" sexual unions, then the state itself would come to be deprived of life. The figure of the abducted woman acquires salience because it posits the origin of the state not in the mythic state of nature, but in the "correct" relations between communities. Indeed, the *mise-en-scène* of nature itself is that of heads of households at war with other heads of households over the control of the sexual and reproductive powers of women rather than unattached "natural" men at war with each other. There is an uncanny address here to Lévi-Strauss's



notion of the original state as one in which men are posited as relational beings and exchange of women is the medium through which this relational state is achieved.<sup>25</sup> The disturbance of proper exchange then comes to be construed as a disturbance in the life of the state, robbing it of the sources from which it can draw life. Does this story located at the particular juncture of the inauguration of the nation-state in India tell us something about the nature of sovereignty itself?

In an acute analysis of the relation between fatherly authority and the possibility of a woman citizen, Mary Laura Severance argues that in Hobbes we have a predication of fatherly authority based on consent rather than something that is natural or originary, as claimed by Sir Robert Filmer.<sup>26</sup> But, as she notes, the consent of the family to be ruled by the father is, in effect, a neutralization of his power to kill. By grounding the power of the father in the consent of the family, Hobbes is able to draw a distinction between fatherly and sovereign authority as two distinct but artificial spheres. However, this is done within the framework of the seventeenth-century doctrine that women are unfit for civil business and must be represented (or concluded) by their husbands. The sexual contract and the social contract are then two separate realms. As Severance notes, however, the idea of the state of nature as that in which every man is in a state of war with every other man should be modified to read that every *father*, as the head of the family, is at war against every other *father*. In her words, "the members of each individual family 'consent' not to the sovereign's but to the father's absolute rule; they are not parties to the 'contract' that brings the commonwealth into existence."<sup>27</sup> I would claim that this war of "fathers" is what we witness in the acts of abduction and rape. The state's commitment to the recovery of women is the acknowledgment of the authority of the father as the necessary foundation for the authority of the state. I find it useful to think of Rousseau's analysis of the figure of the woman in the discussion on sovereignty in *Émile* to show that the notion of the sexed individual as the basis of the political has a deep linkage with the idea of the life of the sovereign.<sup>28</sup>

As I have argued elsewhere,<sup>29</sup> the figure of the woman in Rousseau is introduced not so much as the symmetrical opposite of the man but rather as the obligatory passage through whom the man moves along the road of marriage, paternity, and citizenship. While the scene of seduction is necessary for the pupil in *Émile* to be inserted into the social, his capability to be a citizen is proved by learning how to renounce the very lure of the woman who was his passage into sociality. The parable of Sophie, whom

Émile must both learn to love and through whom he must learn to overcome his fear of death, points to the close relation for a man between learning how to inhabit society through the engagement with sex and how to become a good citizen by overcoming the fear of separation and death. It is worth pausing here to reflect on this.

It is from Émile's journey into citizenship that we learn the multiple chains of signification in which the figure of Sophie is inserted. She is the chimera who is inserted into the text—figure of seduction, the future mother of a family, and one through whom Émile learns that to be a good citizen is to overcome his fear of death by giving a law to the desires of his heart. Hence, she is the seductress in the present, the maternal in the future, and the teacher of duty and code of conduct. Without her, he can overcome physical ills, but with her and then despite her, he will become a virtuous citizen: "When you become the head of a family, you are going to become a member of the state, and do you know what it is to be a member of the state? Do you know what government, laws, and fatherland are? *Do you know what the price is of your being permitted to live and for whom you ought to die?*"<sup>30</sup>

There are two thoughts here. The first is that to be a citizen of the state, you must be the head of a household; the second is that you must know for whom you ought to die. For the woman, the duty as a citizen is confounded with her duty to her husband. A woman's comportment must be such that not only her husband but also his neighbors and friends must believe in her fidelity. When she gives her husband children who are not his own, we are told, she is false both to him and to them and her crime is "not infidelity but treason."<sup>31</sup> Thus, woman as seductress holds danger for the man, because she may use her powers of seduction to make the man too attached to life and thus unable to decipher who and what it is worth dying for. In her role as mother, she may deprive him of being a proper head of the household by giving him counterfeit children. That this is treason and not infidelity shows how the mother, who was completely excluded as a figure of thought in Hobbes, comes to be incorporated into the duties of citizenship. For Rousseau the individual on whose consent political community is built is, no doubt, a sexed individual, but the woman has the special role of not only introducing the man to forms of sociality but also teaching him how to renounce his attachment to her in order to give life to the political community.<sup>32</sup>

Within this scheme, women's allegiance to the state is proved by their role as mothers who bear legitimate children (recall the remark about the

...of bringing illegitimate children into the world being not about infidelity but about treason); and men learn to be good citizens by being prepared to die to give life to the sovereign. Once the individual is recognized as social because he is sexed, he is also recognized as mortal. In Rousseau, we saw that man is said to receive life from the sovereign. Political community as population is dependent on reproduction: thus, the citizen's investment of affect in the political community is attested by his desire to reproduce and to give the political community legitimate "natural" children. A corollary is that a woman's infidelity is an offense not only against the family but also against the sovereignty of the state.

We can see now that the *mise-en scène* of abduction and recovery places the state as the medium for reestablishing the authority of the husband/father. It is only under conditions of ordered family life and legitimate reproduction that the sovereign can draw life from the family. Gupta's work allows us to see that the earlier imagination of the Hindu woman as seduced or duped by the Muslim man is complemented by the idea that her attraction to Muslim practices is an offence against the patriarchal authority of the Hindu man, imagined within the scene of colonialism. Thus, for instance, Gupta gives examples from many vernacular tracts in which the practice of Hindu women praying to the Muslim *pirs* (holy men given the status of saints, especially among Shi'a Muslims), a common religious practice of Hindus and Muslims alike, is construed as a betrayal of the Hindu man—a mocking of his potency—that to my ears sounds remarkably akin to the act of treason that Rousseau attributes to women who bring "wrong" children into the world. The following quotation from a vernacular tract offers a particularly telling example:

God believes in the worship of only one husband for women, but they pay service to Ghazi Mian for many years. . . . Where before Hindu women worshipped their husband for a lot of love and produced a child, today they leave their husband and go to the dead Ghazi Mian and at his defunct grave ask for a child. It is not women but men who are to be blamed for this hateful act. Even when they are alive, instead of asking their wife to become a true *pativrata* [a woman devoted exclusively to her husband, regarding him as a god], they allow her to go to the dead grave of a Turk to ask for a child and become an infidel.<sup>33</sup>

In the introduction to this chapter, I juxtaposed the problem of the silence on the Partition with the excess of speech in the mode of rumor—encountered not only in popular imagination but also at the heart of the

official documentation of the event. The analysis offered here takes the legal and administrative discourse on the abducted woman as an important site for understanding how the social contract was grounded in a particular kind of sexual contract. The trope of horror through which this space of (excess) enunciation and action was opened up under the sign of the state not only drowned out the voices of women but also recognized their suffering as relevant only for the inauguration of sovereignty. The repression of voice and what is it to recover it—not through the speech generated in collecting oral history or in the process of psychotherapy, but as part of everyday life in which women give an expression to their violation—this is what the cases presented later will try to show. But before that I turn to the register of the literary in the following chapter, for don't we often look to the poets to give us the gift of language when we are left simultaneously with a loss of voice and its appearance as simulacrum? How else are we to overcome the taint of the official discourses that could see the suffering of women who were abducted and violated, but only for establishing the correct order of the family and the state?