



RAKHMABAI CASE (1884-1888) AND SHAPING OF THE AGE OF CONSENT ACT OF 1891

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Abstract:

19th century social reform movement in India is a remarkable theme to study for the students of History. Society as orthodox with several age old and outdated practices. Women and depressed classes were the victims of the same. This was also the age of new education system, new law codes and new administrative introduced by the British government. Therefore, reformers like Jyotirao Phule, Gopal Ganesh Agarkar and many others in Pune and reformers like Naoroji Furdunji, Behramji Malabari, Jagannath Shankar Shet, Atmaram Tarkhadkar in Bombay worked for spread of education and reforms related to women. Passing of Age of Consent Act was one of the reforms.

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Objectives:

This paper intends to study the reform introduced by the Age of Consent Act passes in 1891 by the efforts of Mr. Behramji Malabari and Rakhmabai Case which was instrumental in passing of this act that led to rise in the age of marriage of the girls in the late 19th century India.

Research Methodology:

This is a descriptive research based on the primary and secondary sources. After reading of contemporary sources and work of well-known historians based on them this paper is prepared.

Introduction:

In the late 19th century, a breakthrough legal case stirred the foundations of orthodox Hindu society and challenged the deep-deep-seated practice of child

marriage. The case of Dadaji Bhikaji vs Rakhmabai became a critical instant in the struggle for women's rights and individual sovereignty in colonial India¹.

Rakhmabai was the daughter of Mrs. Jayantibai and Mr. Janardan Pandurang Save of Bombay. Mr. Janardan Save passed away (1866) when Rakhmabai was two years old. After six years Jayantibai, who belonged to the pachkalshi Kshatriya family, customarily permitted widow remarriage, remarried to Dr. Sakharam Arjun Raut who was a leading surgeon and social reformer of Bombay.²

In 1875 Rakhmabai married to Dadaji Bhikaji, the poor cousin of Sakharam Arjun, with an understanding that Dadaji would educate himself and 'become a good man' and Sakharam Arjun had to take care of his expenses.³ Dadaji's marriage was not yet

¹ <https://advocatetanwar.com/dadaji-bhikaji-vs-rukhmabai-a-case-overview/> Contributed by-Saachi Minocha, National Law University, Jodhpur (2023-28)

² Chakravarty, Uma, 'Rewriting History: The Life and Times of Pandita Ramabai 'Kali for women in association with The Book Review Literary Trust, New Delhi 1998 p. 138

³ Rao Parimala V., 'Nationalism and the Visibility of women in public space: Tilak's criticism of Rakhmabai and Ramabai, The Indian Historical Review, Vol. XXXV No.2, July 2008, p. 161



consummated. Dadaji disliked the disciplined life required for practicing education and started living with his maternal uncle, Narayan Dharmaji, who lived a dissipated life and influenced Dadaji to slide into lassitude and reckless subsistence⁴

In the meantime, Rakhmabai attained education, and upon realising the senselessness of living with Dadaji, refused to join him.⁵ Dadaji sent his uncle Naryan Dharmaji and his brother to take her home to stay with Dadaji but she was not ready on the basis of incapability of Dadaji to provide her with proper residence and safeguarding. At the same time, Dadaji's health was also not good. Her distinctive argument was she had been married without her consent at a young age. Mr. Naryan Dharmaji was a man of low character who had one mistress at home so the overall atmosphere at his home was not safe for Rakhmabai, and thus she refused to stay with him. Dadaji went to Court to obtain restitution of Conjugal Rights in March 1884.⁶

Recently in 1882 the government made refusal of conjugal rights punishable by imprisonment.⁷ The case came up before Justice Pinhey who decided on 21st September 1885 in favour of Rakhmabai. He has given a judgement on the written submission of Rakhmabai for her indisposition to stay as Dadaji's wife.⁸ He awarded costs to the defendant, held that the suit was not maintainable and the counsel for defense was not called upon.⁹ Since Dadaji and Rakhmabai had never cohabited Justice Pinhey was not willing to do something so 'barbarous, cruel and revolting as to force a young lady to go to a man whom she dislikes, so that, he may cohabit-habit with her against her

will'.¹⁰ He declined to permit Rakhmabai to be treated as if she were a 'horse or bullock'.¹¹ But with this decision the Hindu law was breached where no question of conjugal right arose. It was forced cohabitation and no provision of conjugal rights in Hindu law made Justice Pinhey give this judgment.

As the case developed, Rakhmabai found surprising friends in the form of prominent figures in colonial Bombay. Henry Curwen, the editor of the *Times of India*, conceived a brilliant strategy to gain public empathy for Rakhmabai cause. He persuaded her to write a series of anonymous letters under the pseudonym "A Hindu Lady," which were published in his newspaper. These letters, emotional and intense, gave voice to the troubles of child brides and exposed the brutalities of the practice.¹² Rakhmabai stated 'It seems hopeless to any progression in the higher female education when the custom of infant or rather early marriage continues as life as ever. Unless the state of affairs is changed all the efforts at higher female education seem like putting the cart before the horse.'¹³ She also explained the helpless condition of the boy husband after early marriage. She further wrote in anguish 'I am one of those unfortunate Hindu women whose hard lot it is to suffer the unnamable sufferings necessitated by the custom of early marriage. This sinful practice has ruined the pleasure of my life. It comes between me and the thing that I prize above all others and mental cultivation.'¹⁴

Rakhmabai presented questions like the Government has abolished Suttee and Female Infanticide by passing a law, was it proper to wait till the enlightenment of our society? If the reformers realised

⁴ Ibid

⁵ Chandra Sudhir, *Enslaved Daughters: Colonialism Law and Women's Rights*, OUP New Delhi, 1998., pp.14-16

⁶ Chakravarty, Uma, p.139

⁷ Ibid., p.139

⁸ Ibid., p.139

⁹ The Indian Law Reports, *Dadaji Bhikaji vs Rakhmabai case*, Bombay series, Vol. IX, 1885, p.532

¹⁰ Ibid, p.534

¹¹ Ibid

¹² <https://advocatetanwar.com/dadaji-bhikaji-vs-rukhmabai-a-case-overview/> Contributed by-Saachi Minocha, National Law University, Jodhpur (2023-28)

¹³ *Times Of India* 26th June 1885 and in *Indian Spectator*

¹⁴ *Times Of India* 26th June 1885 and in *Indian Spectator*



this sin, why did none of them come forward to eliminate it by a strong action? She also asked if educated people are apathetic towards such problems and the uneducated are unaware. Is it not proper that the Government should initiate the change?¹⁵ We can view this opinion as representative on behalf of the women in society. These questions were thought-provocative and legitimate. Two important ideas Rakhmabai proposed, firstly that no marriage should be considered legal unless the bride is fifteen years of age and the bridegroom of twenty years old. Secondly, keep the register for the record of the Age of marriage and if any underage marriage is found then the parents are liable for the punishment.¹⁶ Rakhmabai intensely appeals to the readers in particular and society in general to understand the extent of the problem and the urgency of reform.

Rakhmabai wrote another letter to the *Times of India* on 19th September and shared her opinions on 'enforced widowhood' 'The widow is an object of contempt'. If the same situation is envisioned for a man who lost his wife, then only the misery can be sensed. She categorized widows into three categories based on age. First, widows from class one from 5-15, class two from 15-25, and class three from 25-35 out of these three, class ones are the most miserable.¹⁷ Her anguish and agony are infinite which has got no remedy to recover in this life at least. Her helpless parents assume it as fate and the society and faith as a practice, nobody has got a thought to look into the trivial life of a Hindu widow.

Behramji Malabari, a social reformer, also lent his support to Rakhmabai case, valuing it as a crucial test

case for his campaign against child marriage and enforced widowhood. Malabari's "*Notes on Infant Marriage and Enforced Widowhood*" had already ignited a national debate, and Rakhmabai case added fuel to the fire.¹⁸

In *The Indian Spectator* dated 5th July 1885 Malabari published a letter by 'A Hindu Lady' he notified that the lady is right in condemning the general indifference of the Hindus in social matters. She has also rightly written about the 'mother-in-law' and offered rational ideas to improve the quality of life of Hindu women, Malabari remarked "We cannot get better propositions for relief than from the sufferer themselves."¹⁹ At this time nobody knew who "A Hindu Lady" was. Regarding the second letter published in the *TOI*, Malabari wrote, it is a cry of a fully-grown woman. Between the lines you may recognize how bitterly 'A Hindu Lady' resents, because she now realised this systematic starvation. She is writing in misery of gloom and is, therefore, more violent than it seems.²⁰ *The Indian Spectator* dated 26th July 1885 published a Letter of "An English Lady" in which the lady published the life story of an English woman which was quite distinct to that of Indian ladies. *The Indian Spectator* dated 2nd August 1885 published the article 'Hints to Hindu Husbands' written by Sir T. Madhav Rao suggests what Hindu Husbands can do to enhance the status of Hindu women.²¹

Rakhmabai values Malabari's effort in publishing his Notes, for her, 'fortune was about to smile on the unhappy daughters of India'.²² She was certain when she said, 'Unless the Government puts a stop to the

¹⁵ Ibid., p.196

¹⁶ Ibid., p.197

¹⁷ The Times of India 19th September 1885 cited in Varde p 203, Dr. Swati Karve, Striyanchi Shtapatre (edited) (Marathi) 1850-1950 Pratima publication Pune 2009 pp. 392-93

¹⁸ <https://advocatanwar.com/dadaji-bhikaji-vs-rukhamabai-a-case-overview/> Contributed by-Saachi Minocha, National Law University, Jodhpur (2023-28)

¹⁹ The Indian Spectator, 5th July 1885, 'A Hindu Lady: and her Woes', p.532

²⁰ Gidumal, p.117

²¹ The Indian Spectator, 2nd August 1885 p. 615

²² Ibid.



custom of early marriage our people are not likely to be for centuries together to eradicate it'.²³

After Dadaji's appeal over the previous judgment, the case came up for admission before Justice Sargent and Bayley in 1887. Dadaji's case was taken over by Macpherson, Vicaji, and Mankar. This court conveyed the view that the defendants had acknowledged the marriage which was complete when the marriage ceremony was performed. Thereafter the wife became a member of the husband's family and ought to reside with him, Consummation was not necessary to effect the marriage.²⁴ The Law they quoted was section 260 of the Civil Procedure Code XIV of 1882. Dadaji used provisions of both Hindu and English law.²⁵ The defendant's case was presented by Mr. Latham (Advocate general) and Mr. Telang who argued that Rakhmabai should not be forced to live with her husband and that no English authority can impose 'commencement of cohabitation' and Hindu law on this subject is not clear.²⁶ The case did not come to any valid judgment and came up in the High Court in early March 1887 before Chief Justice Farran who gave his decision in favour of Dadaji. Rakhmabai was ordered to live in her husband's house within a month or be ready for the imprisonment of six months and also pay the cost of court proceedings to Dadaji.²⁷ The determined stand of Rakhmabai, the clause of imprisonment, and the attitude of the Government towards the case are the important aspects of the case. Rakhmabai decided to face imprisonment instead of living with Dadaji.

This case of Restitution of Conjugal Rights was not the first of its kind, but it was the publication and circulation of 'Notes' of Malabari and the resolve of

Rakhmabai to fight made it sensitive. *The Indian Spectator* dated 12th September 1886 wrote an all-embracing article, 'The situation reviewed' in which he reviewed the entire case of Rakhmabai and voiced that only time and education will help to bring change but at the same time, passing of legislation is also important to upgrade the condition of women. It was after the judgment against Rakhmabai that Malabari wrote for the first time against the proceedings of the English court.²⁸

In an article titled 'Brief Analysis' Malabari has taken a review of the case published by various newspapers of the country. Six weeks after the High Court judgment on 14 April 1887, Dadaji wrote a pamphlet entitled 'An Exposition of some of the facts of their case'.²⁹ He explained his side and put forth a new issue to the case that is of property. Rakhmabai replied swiftly to this pamphlet and abandoned all the accusations put over her by Dadaji. But her replies led to one more case, a defamation case filed by Narayan Dharmajee against Rakhmabai and her grandfather Mr. Harshchandra Yadavji and the editor of Bombay Gazette. But the Magistrate released them. Realising the withdrawal of Rakhmabai was impossible, the dispute ended by a compromise by settlement in July 1888. Rakhmabai agreed to pay him two thousand rupees as a legal expense and Dadaji released his claim over her. In 1889 Dadaji remarried and Rakhmabai went to study medicine in England.

Rakhmabai boldness and the public support she garnered played a key role in shaping the Age of Consent Act of 1891, which raised the minimum age of marriage for girls from 10 to 12 years – a small step, but a substantial one in the fight against child

²³ Ibid., also see Varde Mohini, *Rakhmabai ek Art* (Marathi) Popular Prakashan, Mumbai, 1982 pp. 195-96

²⁴ Chakravarty op cit p. 144

²⁵ Ibid

²⁶ The Indian Law Reports, Bombay series, *Dadaji Bhikaji vs Rakhmabai case*, op. cit p 303 (pp 301-313)

²⁷ Varde, Mohini. 'Rakhmabai ek Art' Biography, (Marathi) (Second Edition) Popular Prakashan, Mumbai, 1990, p. 53

²⁸ Gidumal, p. 224

²⁹ In *Indian Spectator* and Appendix C of Dr. Sudhir Chandra

marriage. The Rakhmabai case remains a pivotal moment in the history of India's social reform movements and the struggle for gender equality. It subjected the tensions between colonial modernity and Hindu orthodoxy and discovered the power of an educated woman's voice to challenge deeply embedded patriarchal norms. Rakhmabai legacy continues to encourage those fighting for the rights of women and children, reminding us that even against dreadful odds, the courage of individuals can stir up deep social change.³⁰

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³⁰ <https://advocatetanwar.com/dadaji-bhikaji-vs-rukhamabai-a-case-overview/> Contributed by-Saachi Minocha, National Law University, Jodhpur (2023-28)