A Just Measure of Death?

Hindu Ritual and Colonial Law in the Sphere of Widow Immolations

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The Hindu ritual of *Satipratha*, or the immolation of living widows on the funeral pyres of their husbands, was criminalized under colonial regulations as late as 1829–30.[1] The pre-abolition phase lasted for nearly sixty years when the state supervised the ritual performance according to scriptural norms. It covered about a fourth of the total life span of British rule in India: not at all an insignificant slice of time. Yet historians seldom reflect on its distinctiveness as an integral, indeed, necessary feature of early colonial state formation and its self-understanding.[2] Along with judicial-legal experiments and revenue settlements that happened in the same time span, the administration of immolations forged important instruments of colonial sovereignty. Unlike others, however, this one was forged with active Hindu investments. A significant fusion between modern Hindu norms and modern state law—both invoking ancient traditions—characterized the practice of coloniality in this sphere.

Sati is a Sanskrit word that denotes three quite distinct things: the virtuous woman, the chaste wife, and the immolated widow. In British usage, the ritual act, too, was denoted by the same name: *suttee*.[3] The connotations form equivalents, but they also form an ascending chain: the good woman is above all a chaste wife, and the ultimate proof of her chastity is her consent to self-immolation. Like the two bodies of the king in early modern England—one, his human body, and the other a flawless perfection that symbolizes his realm and is passed on to his successor when the mortal body dies—the *Sati* embodies two entities at once: the first an individual body, worshipped at the time of burning, and a second, soterial body, ascending from flames to heaven, which encapsulates and reenacts a collective history of immolations. The second body is the common inheritance of all *Sati*s, past, present, and future.

Well after the abolition of immolations, an interesting change occurred in the meaning of the ritual with the emergence of late nineteenth-century cultural nationalism. *Satipratha*—now a remembered rather than an active practice—came to signify a heritage for all Hindus: a badge of supreme courage unique to these people alone. A religious ritual thus morphed into political martyrdom. Rather

1. Regulation XVII of 1829: A Regulation Declaring the Practice of Suttee or Burning/Burying Alive of Hindoo Widows Illegal and Punishable by Criminal Courts: The Bengal Code, 4 December 1829, National Archives of India, Delhi. Next year, very similar regulations were enacted for Madras and Bombay presidencies. On an average, about 500 to 800 widows were burned alive in Bengal presidency alone, from all castes, especially brahmans and upwardly mobile Shudras. Their ages ranged from four to one hundred, but the largest cluster came, I found, from middle-aged widows.

2. Many illustrious historians have worked on this. Among them are Datta, *Sati*; Yang, "Whose Sati?"; Mani, *Contentious Traditions*; Major, *Burning Women*; Rajan, *Real or Imagined Women*; and Sangari and Vaid, "Institutions, Beliefs, Ideologies." These texts explore various aspects of modern histories of immolations.

3. See Yule and Burnell, *Hobson-Jobson*, 878–82.

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than saving her family and lineage from all sins, the widow became the savior of the Hindu nation.[4] In the same measure, the imagined nation of the future was founded on the willed pain and death of past women.

There was yet another transformation in its recollected use in modernity. The rite bestows heaven on the widow, her husband, and her several lineages for millions of years.[5] The British, however, often misrecognized it as an act of spontaneous love that cannot abide the absence of the beloved.[6] In later times, the celebrated art historian Ananda Coomaraswamy returned to this Western explanation, counterposing oriental female love to a Western language of rights: one an overpowering emotion and the other a dry, abstract legal notion.[7] The semantic shift occurred despite the fact that widows themselves explained that their will to immolation came from a desire for heaven for the lineage of their affinal family.[8]

A remarkable instance of this shift from ritual to love can be found in a poem written by William Ewart Gladstone, several times Liberal British prime minister in the late nineteenth century. He wrote the poem for the Newdigate Prize competition when he was a twenty-two-year-old student at Oxford. The draft is preserved among his papers and has been used in an unpublished essay by Sarvepalli Gopal:

> She sate resolved—in death
> Sealed with a spouse's blood, a spouse's death
> And strove, nor vainly strove, her soul to prove
> Tho' strong was torture, stronger yet was love.

Mercifully, he did not win the prize.[9]

The widow's assent, however, was central to both arguments: of love and of heaven. Immolation was, theoretically, a voluntary act, even if early colonial history provides many cases of force and fraud. It was meant to be an exceptional, not a mandatory or even a widespread, practice. If we think of it as performative language—a language that makes things happen rather than one that describes happenings—then what does the ritual as speech act say?[10] I argue that it was actually a message for wives and living widows to abide by gender norms, however severe, rather than a command for widows to die by burning. Clifford Geertz has said that rituals endow meaning on social suffering.[11] I suggest that immolations filled sufferings inflicted by the norms of Hindu gender on women with positive meaning: with their heavenly promise, burnings transvalued her lived experience of gendered pain. We thus have a third body of the *Sati*: she symbolizes the ideality of Hindu gender. Significantly, when the liberal reformer Rammohun Roy translated immolations as injustice in his *Second Tract*, he inverted this logic: infliction of a horribly painful death, he said, was the predictable culmination point of an existence marked by exploitation.[12]

The inclusion of her consent in the regulatory regime of scripture is interesting on two counts. First, this is the only sphere of her existence where the woman exerts her own will. In all others, she is mandated to be led by men—as enunciated by the great ancient sage and eponymous lawgiver, Manu: by her father, by her husband, and by her son, in different phases of her life.[13] Second, her consent does not indicate autonomy of selfhood as she assents to a regulation that is not of her own making. At the same time, the decision to obey an external regulation creates a will to engage in a particular action.[14] Such a singular expression of consent, will, and action con-

4. See Chattopadhyay, "Kamalakanter Daptar," 79–81.

5. Parliamentary Papers (henceforward PP), House of Commons: East India Affairs, 1821, 18:116. Pandits compiled accounts from early scripture and from the sixteenth-century lawgiver from Bengal, Raghunandan. For a description of some local variations in Bengal see Ward, *The Hindoos*.

6. H. T. Colebrooke put these words in to her mouth even as he was translating from scripture: "My life is nought, my lord and master to me was all." The sentence is absent in the text that he translated from. It was an insertion and addition of his own desire to a Hindu text. Colebrooke, "On the Duties," 275.

7. See Coomaraswamy, "The Status of Indian Women," 82–102.

8. See, i.e., an eyewitness account in Sleeman, *Rambles and Recollections*, 20–23.

9. A collection of Gopal's unpublished essays is forthcoming from Permanent Black, Ranikhet. I am extremely grateful to Rukun Advani for passing on this excerpt to me.

10. See Austin, introduction to *How to Do Things with Words*.

11. See Geertz, *Interpretation of Culture*, 113.

12. See Rammohun Roy, *Second Conference*, 3:99–128.

13. See Samajpati, *Smritishastre Bangali*, 36–201.

14. Paul Ricouer connects consent, will, and movement in an ascending chain. See *Freedom and Nature*, 7.

tains a paradoxical possibility: a self-construction that can only happen through a violent destruction of the self. I argue that this ironic latency was enormously expanded under colonial administration—once again, unwittingly. Now the *Sati*'s consent was no longer dissolved into the ritual sequence but was publicized, problematized, and became the occasion for legal adjudication. Even the orthodoxy, insisting on deregulated immolations without any scriptural or bureaucratic restrictions, claimed that the rite was founded on a woman's "own accord and pleasure."[15] It is this subtle transition from the performance to the more literal interpretation of consent as the effect of rational action, or the turn from the religio-ritual to the legal performative, that forms the underexplored substrate of the scandal of *Sati*. It is also here that an opening was created for the anxious management of subaltern consent.

The Uncertain Itineraries of Consent

In Gramscian terms, organization of subaltern consent is an essential part of ideological leadership that aspires to hegemonic authority rather than to coercive power alone.[16] The transformation of the subordinated wife and widow into a savior figure by extracting her consent to her own burning is, perhaps, the most spectacular instance of mobilizing consent, of ensuring hegemony. Yet, when leaders of Hindu orthodoxy have to solicit the consent of the subaltern, instead of being able to assume it, a crucial shift has already occurred in the practice of hegemony. Ultimately, it weakens the hegemonic reign. I argue that once colonial governance took the scriptural norm of consent seriously enough to put in place an apparatus of verification, every immolation became fraught with anxiety. Indian reformers, moreover, offered transgressive explanations of the widow's consent: they substituted her own will with priestly scheming and distortion of real scripture, which has been withheld from her. All this produced a small but important disturbance in hegemonic practices.

There was no linear progress in counter-hegemony. Colonial rulers often backtracked, offering complete sway to orthodox coercion rather than to textual norms or to their own regulations. The potential challenge of reformers to hegemonic brahmanical norms, too, eventually shrank to benign reinterpretations of brahmanical scripture. It did not develop into a radical interlocution of brahmanical Hinduism, which "low-caste" protest movements were able to offer. Low-caste leaders read scripture against the grain as texts of power that sanctified injustice as religion.[17] In contrast, reformers' enforced dependence on scriptural citations redoubled the pervasiveness of brahmanical injunctions. At the same time, the way in which they read the texts partly inverted textual intentions. The entire history of early colonial immolations thus constitutes a highly contradictory and convoluted situation rather than a teleology of unflinching progress.

My discussion connects two distinct themes. The first is a brief history of colonial governance of immolations, which dwells especially on the years between 1780 and 1817. This was the period when most administrative props for a full-fledged governance of immolations were gradually put in place to enable the remaking of Hindu female consent.

In 1770, the new colonial state in Bengal defined a domain of personal laws, which was distinct—though with a few overlaps—from civil and criminal laws. These related to caste, belief and usage, marriage, divorce, succession, adoption, dower, and inheritance, which would now be governed by Hindu and Islamic scripture for their respective communities. Both Hindus and Muslims were granted immunity from state interference, unless a specific practice proved to be a violation of scripture and custom. In 1797, an edict of George III confirmed that "laws of their fathers" would be sacrosanct for Indian subjects.[18] On the whole, the principle remained constant throughout the colonial period, creating an area of sovereignty for colonized Indians, a space for self-fashioning within

15. "A Petition of the Hindoos against the Abolition," letter 168, 19 December 1829; cited in Philips, *Correspondence*, 1:367–69.

16. See Gramsci, *Selections*, 238–46.

17. In the middle of the nineteenth century, Jotirao Phule imagined a pre-brahmanical realm of King Bali whose egalitarianism was lost to a conspiracy of brahmanical gods. In the twentieth century, Dalit leader B. R. Ambedkar spoke in a recognizably liberal language of rights, with the crucial difference that he framed it within a critique of caste. See Ambedkar, *Annihilation*, 263–305.

18. Cited in Marshman, *Life and Times*, 143.

colonial subjection—an immensely significant and contentious field, therefore, where different social imaginaries emerged and clashed.

A domain of the private was thus defined and enclosed: this, itself, was a departure from tradition even when it invoked traditional norms. It was to be self-governing and immune from state controls unless it violated its own norms. An interesting parallel can be drawn with a later, different order of the private: that of the factory owner under laissez-faire capitalism. It is interesting that in both regimes, the question of age and infancy—conjoined to that of consent—forced through a contentious space for the entry of the state.

In the case of *Sati* debates, we find four quite distinct phases in colonial governance.[19] Until 1789, apart from considerable missionary agitation in Parliament, there was no official intervention, or even interest in the matter. After 1789, some local officials began to ask for a firm policy guideline and, somewhat reluctantly, Orientalist scholar officials like H. T. Colebrooke searched scripture to see if the practice was truly a sacred one. From 1805, goaded by officials who wanted to intervene and stop or restrict *Sati*, pandits were asked to specify what would constitute a fully authenticated immolation. By 1812–13, series of circulars that defined the form of legal immolations had been prepared on the basis of the pandits' verdict, and in 1815 magistrates and police were told to act according to them. From 1818–19, Indian orthodox and reformist circles began to argue about the matter and provide scriptural interpretations and counterinterpretations, which finally led to abolition.

Hindu scripture specified the widow's consent as an essential condition for immolations, but it provided no prescriptive measures for its verification. When colonial bureaucrats began their inquiries into the ritual in the early years of the nineteenth century, they asked brahman ritual specialists to advise them on scriptural norms. Pandits took some time to excavate the condition of consent. The delay showed that even if it existed, the condition was neither widely known nor necessarily obeyed. Nor did pandits describe a mechanism for ascertaining consent or even penalties for forced immolations. It was left to colonial officials, therefore, to fill in these gaps. Given its modern bureaucratic framework, state recognition of the legitimacy of the practice involved delineating a range of illegal immolations, prohibited by scripture. It also involved the formation of administrative measures to control them. A bureaucratic dimension was thus added to a religious norm. The cohabitation, between the Hindu and the Western, the scriptural and the legal, reconfigured the element of consent substantially.

Connected to and enabling the administrative remaking of consent was a further synthesis that emerged out of a marriage between an English contractual notion and a Hindu ritual and normative regime. The ritual had to be inaugurated by a *sankalp*, or a pledge to burn, which the would-be *Sati* uttered. It was widely believed that once pronounced, the pledge could not be rescinded without great dishonor to family, lineage, and ancestors and without polluting the widow who had cancelled her promise. Surprisingly, even after Mrityunjoy Vidyalankar, chief pandit of Fort William College, Calcutta, provided a scriptural counter opinion in 1817, which allowed the widow to right to change her mind without grave penalties,[20] families would sometimes force her to burn. English judges did not punish them even when they strongly condemned the ritual.[21] This amounted to a juridical violation of both state law and Hindu scripture, at which pandits and officials connived. There was, I think, a reason behind this. The pledge possibly provided an analogue to the English notion of free consent, at the entry point of a contractual agreement that makes the contract unbreakable thereafter.[22] For English laborers and, later, for Indian coolies in tea gardens, such a contract, based on an initial mutual consent, was legally absolute. British judges, trained in English jurisprudence, could have considered the

19. See Sarkar, "Something Like Rights?"

20. See Bandyopadhyay, *Pandit Mrityunjoy*, 72.

21. The most infamous of these trials was the case of Houmoulia, which was first brought to the Sadr Nizamat Adalat in 1822. See McNaughten to Bayley, 21 November 1823, PP, House of Commons, 1830.

22. This was long practiced in the Court of Chancery. See Stokes, *Sir Henry Maine*.

Sati's ritual pledge as equivalent to contract, consensually initiated in a similar fashion. They gave it the same legal weight. Consent now derived its force from doubled sources.

The notion, however, repeatedly stumbled against a resistance that was set up especially by the question of age or, rather, of infancy. In the last part, I will present a problematic case study of a widow whose age was never certain and whose consent to immolation came to be known to the local European magistrate only by hearsay. I will leave aside the history of the eventual abolition of the rite, apart from saying a few words about its implications here. Several British officials and Christian missionaries had tried hard, from the late eighteenth century, to convince colonial rulers and British Parliament to abolish the rite. But they failed to move the rulers. The state was persuaded about the wisdom of abolition only after it had ascertained that it would not lead to civil or military rebellion, and especially after an upper-caste Hindu reformer provided them with scriptural arguments for the change.[23] Thus abolition really followed upon the enunciation of a new moral and ritual discourse by a brahman reformer with a great reputation for scriptural learning: Rammohun Roy. He eventually homed in on the customary form of immolations rather than on the validity of the ritual and claimed that it diverged from the scriptural form. According to the Hindu belief system, in any clash between scriptural and customary injunctions, scripture is accorded priority.[24] Lord William Bentinck, governor general of India, in his Minute on Suttee, could now claim that he had the support of "enlightened Hindus," and that abolition was not an offense against faith.[25]

In the interstices of scriptural scholasticism, Rammohun Roy developed an acute and penetrating description of the everyday life of the Hindu woman as one of relentless exploitation crowned by immolation. It was an interesting polemic. He did not use the argument that minimizing pain was a basic and natural human instinct. Nor did he try to depict an original state of nature where women reigned free and independent. Instead, by putting immolation as the culmination of a life of suffering, Roy hoped to mobilize a moral impulse, which once aware of despotic exploitation would translate it as injustice. His description of what the woman is deprived of, moreover, was a covert but strong plea for what should be offered to her instead: recognition, mobility, knowledge, inheritance rights. It was a counter-hegemonic exercise that drew out aspects of a contradictory consciousness: in this case, the woman's pain, in life and in death, was the grounds for rights. His was thus a distinctively modern Indian idiom.

To the state, Roy was not important as a modern liberal but as a brahman pandit whose interpretation of scripture entirely delegitimized the customary form of the rite. In practice, the widow does not walk free into the flames as scripture prescribes; instead she is tied to the pyre, covered with logs of wood and bales of stout jute, and held down with stout bamboo poles until the burning is fully accomplished. His opponent could neither deny the discrepancy between scripture and custom nor assure colonial officials that henceforward widows would walk freely into the fire.[26]

The shared ground of a discourse of consent allowed the state to begin to focus closely on the widow: whether she had consented willingly, whether she upheld consent until the end, whether she was in a state to offer true consent. Her guardians' words were not always enough in disputed cases. The bureaucratic procedure—tested in court—set up an implicit division between the family's words and hers, and in so doing it prized her out of her embedded status and made her stand forth as a separate agent, speaking for herself. It also created a nebulous potential for an oppositional female self for women who did not want to burn.

Consent was not an easy matter to define, however, as it lacked a comprehensive scriptural definition. Was it a one-time decision, embodied

23. See Majumdar, *Rammohun Roy*, 96–106.

24. See Kane, *History of Dharmasastra*, 825–55.

25. See Bentinck's Minute on Suttee, 8 November 1829; cited in Philips, 354–55.

26. It is interesting that Rammohun tried to argue that the ritual itself was not fully scriptural in his first tract. Finding that difficult to uphold, he transits to a more precise criticism in the second tract that related to the customary form of burning. See Rammohun Roy, *Conference between an Advocate*; and *Second Conference*. His opponent, Kashinath Tarkabagish, wrote a tract in reply to Rammohun's first essay; see Tarkabagish, *Bidhayak-Nishedhak Sambad*. He had no reply for the second tract. See Ghosh, *Rammohun Rachanabali*, 469–640.

in a ritual pledge (*sankalp*) that, once taken, became written in stone like the brahmanical marriage sacrament, unconditionally indissoluble? Or was the widow, as sole possessor of consent, free to retract it? Was her consent her absolute private property or was it conditional, born and dead with the pledge? Should it be regarded as a ritual correlate to bourgeois property rights, which belong to the owner without qualifications? Or should it be seen as a capitalist contract: once the widow agrees upon certain terms, she forfeits her consent? If her ownership was indeed time bound, and lost to her after the pledge, at which precise point in the ritual sequence would she forfeit it?

The questions matched profound ambiguities about the identity of the *Sati*. When exactly does the woman become a widow? After she has taken the pledge, or after she had burned to death? Is she ever a material, corporeal presence, or is she a spectral being, actualized by death alone? Does the *Sati* live only in death? While describing congealed, invisible labor that is hidden inside each commodity, Karl Marx famously called it "a phantom-like objectivity." There can be no better term for the *Sati*, already a phantom in her last living moments.

Her uncertain identity and the overlaps among the states of wife, widow, and wife-in-eternity make the *Sati* a classically uncanny being who inhabits her unhomeliness in all possible states. The uncanny is captured in one of Tagore's short stories in which the widow escapes from the pyre and elopes with her lover, only to find that the couple is doomed to hide in a strange world of half shadows, banished from a full life.[27] The presence of the *Sati* chills the world of the living.

The Spectacle of Consent

From about 1812–13, colonial authorities began to actively supervise the funerals. Cases of violation of scriptural norms—especially of the consent clause—were investigated and judged. Even if penalties were light or nonexistent, the incorporation of immolations within a police and judicial frame heightened anxieties about the widow's will and determination. Journalistic investigations, missionary lobbying in India and in Parliament, and reformist tracts and debates in the public sphere from 1818 further exacerbated them. An older suspense about whether the ritual would be carried through now strengthened considerably as each unfinished burning left a deposit of judicial and public-sphere controversies.

Immolations had always been a moment of liminal excess beyond the structures of the everyday. The *Sati* acquired a brief, though spectacular, identity since the ritual was always an open event, watched by large crowds. Astonishingly, however, the widow was soon forgotten after the ritual. Bengal possessed few monumental relics to celebrate her as an actual individual: she merged into a faceless collective of sacrificators with her act. The new state began to record detailed descriptions of her last moments, providing permanence to memory of, and lasting publicity to, a fleetingly public event. Encouraged by growing debates within state circles about what to do with the ritual, and enabled by the developing public sphere of early print and press, missionaries, reformers, and orthodox newspapers also began to record, report, and comment on local immolations. A large category of eyewitness accounts of these events provided the foundations of modern investigative journalism.[28] As debates on the ritual expanded, their terms exceeded the specific condition of the *Sati* and came to encompass the general condition of Hindu women. I have argued elsewhere that, in the process, the meaning of her consent also began to expand: by the mid-nineteenth century women's writings shifted the discursive terrain from the widow's consent to death to a demand for a life of comparative freedom.

What, then, was the function of the ritualized spectacle of *Sati*? The ritual is a strangely stand-alone event, without an exact mythological annexure. It does not reenact divine activity even though that is often taken to be the rationale for rituals. It does, however, perform a standard and important ritual function: that of community affirmation.[29] As the village or the entire neighbor-

27. See Tagore, "Mahamaya," 126–246.

28. See Derrett, *Religion*, 254; and Ghosh, "The Press in India," 227.

29. See Turner, *Ritual Process*, 97.

hood pours out to watch the sacred spectacle and gather merit for themselves thereby, it experiences a festive communitas and a sense of mutual bonding that, for the duration of the act, transcends barriers of kinship and caste. It is quite likely that even local non-Hindus believed that watching would give them some merit. At least in one case, a Muslim spectator was ordered to behead a *Sati* who tried to escape.[30]

The *Sati* passes through the three-stage sequence of a life cycle rite that Arnold van Gennep has suggested.[31] First she is ritually isolated as a special kind of person of uncertain status, as neither a widow nor a wife. Then the burning initiates her transition from the living woman to the dead, after which she reemerges as *Sati*, a heavenly figure, surrounded by husband, ancestors, and the gods. This is the invisible but significant final stage of incorporation when she joins the community of other *Sati*s.

The liminal stage in a life cycle rite—when a person transits from one phase to another—is always an ambiguous and risky one, specially guarded with ritual safeguards.[32] In this case, the ritual is particularly at risk. The widow's capacity for suffering can never be known beforehand, as immolation tests a mortal body by not just leaving a symbolic wound[33] but also leading to a final extinction under unimaginable pain. Yet, unlike animal sacrifices where the animal expresses its dissent with all the force at its disposal, the *Sati* has to be seen to suffer without displaying any sign of suffering. The proper facial and bodily disposition as she burns is part of the ritual requirement, a theater avidly watched by all.

Custom—as Rammohun pointed out—added a strategic spin to the scripturally prescribed form of walking free into the fire. It devised a mode of burning where the social drama of ritual unfolded like a shadow play, masking layers of obstructions that hid the human body from the actual gaze of spectators: with logs and bamboo poles, with jute bales and smoke, with loud music. Unless something went desperately awry, the woman's actual gestures in the terminal stage would be unseen and only imagined. Colonial officials, missionaries, and reformers noted a further refinement: the widow's body was placed under the husband's corpse and was then securely tied to it. The ruse or tactical distortion of the authentic ritual form signifies a failure of conviction in the possibility of a truly willing *Sati*.[34] So, the ritual drama, as it is actually enacted, expresses a social dilemma. People whom society wounds must be seen as consenting subjects of a successful hegemonic order: the pressure for the staging of consent mounts in the same proportion as society doubts the consent of the governed. The living widow's myriad disciplinary mortifications, too, must be seen to emerge from spontaneous improvisations of grief even when they are meticulously enjoined in sacred texts and severely monitored by social guardians. The dialectical play among consent, desire, and force, among appearances, presumptions, and threatening possibilities, produced a peculiarly tension-ridden, and eventually fragile, regime of power.

Not all widows burned alive. Since Jugis, as a caste, buried their dead, their *Satis* were buried alive. Some Englishmen reported that at Konnagore, they saw a hole that had been dug and a corpse and a living widow were stood up inside. The son scattered earth three times into the mouth of the hole and then the mouth was filled up and sealed.[35] The defecting widow could do worse than trying to escape. A pandit narrated the tale of a brahman widow who struggled to escape from the flames and was eventually saved by an untouchable mat maker. Now an outcast herself, she later married a Muslim.[36]

Even when the *Sati* honored her pledge, there were moments of discomfiture. Immolation was not merely an exceptional time when her consent was asked for and was counted. It made the woman, for the first and last time in her life, the central protagonist in a public performance. Some of the eyewitness accounts reported that she would then

30. McNaughten, Nizamut Adawlutt to Bayley, chief secretary, Government of Bengal, 21 November 1823, PP, House of Commons, 1823.

31. See Van Gennep, *Rites of Passage*.

32. See Turner, *Ritual Process*, 95.

33. See Hubert and Mauss, *Sacrifice*, 9, 98.

34. Agent R. C. Plowden, 1 June 1824, to C. H. Hoppur, Magistrate, 24 Parganas, PP, House of Commons, 1824.

35. *Samachar Darpan*, 11 July 1818, in Bandyopadhyay, *Sambadpatre*, 237.

36. See Ward, *The Hindoos*.

do some very unconventional things: dance on the pyre, or embrace her husband or call out his name, which she was otherwise forbidden to pronounce. So, whether she was the wicked widow unwilling to die, or the virtuous consenting widow, in the last moments of the staging of *Sati*, she usually wrote a script that was out of sync with her prescribed role: that gave the lie to her mandated life.[37]

Age and the Elision of Agency

We have argued that as soon as the condition of consent was dug up and legally instituted, the problem of the authentic consenting subject became acute. Who is the proper carrier of consent? Who is the licit *Sati*? The question could be posed on a variety of registers: her physical state, her caste, her age, and the age of her orphans. Elsewhere, I have taken up the question of caste and of different kinds of scripturally inappropriate immolations.[38] In 1805, pandits had pronounced that the *Sati* must not be forced, intoxicated, drugged, or be in an "unclean state": that is, menstruating or in an immediately postpuerperal condition.[39]

In actual practice, however, pandits and European judges quite often joined hands to waive the requirements. A Muslim widow, a woman whose husband's death has not been reported and whose widowhood had not been established, a sister, a concubine, a woman not in her right mind: all were allowed to immolate themselves.[40] Even though widows of "Brahman, Khetry, Bues, and Soodur castes" alone were allowed to burn, and only burning was allowed—with the rite of postcremation reserved for the brahman widow—we find that castes designated as " impure" or "mixed" were allowed the entitlement as soon as it was solicited. Jugis were allowed to bury their widows. Judges agreed with pandits that the desire to burn showed such a commendable "excess of chastity" that had to be honored, even if scripture said otherwise. A large number of upwardly mobile Shudra or untouchable castes quite certainly used this as a route to upward mobility.[41] There were cases, however, where such desire was manifestly absent and brutal force was used. In 1822, the case of Houmulia, a girl of fourteen, came up at the Gorruckpore Court. She had tried thrice to escape from the pyre, half-burned and begging for mercy, but had been tricked back onto the pyre by her family. In her last bid for escape she was beheaded by a Muslim, at her uncle's order. The European judge was lenient to the uncle, saying that the girl had sworn the pledge and that the uncle therefore had no other option. The burning had defied all ritual conditions: she was underage, she had been defiled by a Muslim's touch, and she did not consent. Already, in 1817, a new circular, advised by chief pandit Mrityunjoy Vidyalankar, had laid down that a widow could rescind her pledge without major ritual pollution. None of this mattered in court proceedings where the widow's age was not verified and her presumed consent was equated with oath taking.

In this section, we will look at how, in most cases, consent was made into a function of age. Many widows were either too young or too old to offer true consent. Child widows were especially problematic: there were a large number of widows because child marriage was rampant among Bengalis, and the age difference between husband and wife was often considerable. Scripture did prohibit the immolation of child widows and of widows with infants, but it did not specify the exact age for infancy or childhood. At first, colonial circulars based on pandit Ghuneshyam Surmunu's verdict of 1805 noted that the *Sati* should not be prepubertal. Puberty, however, could not be verified except with the help of family memory, which was often unreliable, and which was tapped only after the family had already agreed to the immolation in expectation of extraordinary ritual benefits in the afterlife. Also, the age-related prohibition was so little known that it continued even after colonial circulars had been issued. Even the police

37. See Drewery, *William Carey*, 104–5.

38. See Sarkar, *Rebels, Wives and Saints*, chap. 1.

39. Extract from the Bengal Judicial Commissions, 7 February 1805; no. 6 (Criminal), PP, House of Commons, 1821.

40. "Illegal Suttees: Cases under Nizamut Adawlutt, Fort William, between 1821–27," PP, House of Commons, 1830.

41. The caste composition of immolated widows in annual police lists shows a predominance of such castes. See PP, House of Commons, 1821.

recorded burnings of underage girls—even four-year-olds—without comment in the early years of the new circular regime: obviously, they had not intervened to stop them. There are several cases of girls of four who were immolated. Sometimes, little girls were deinfantilized: their words of consent were taken seriously to countermand colonial as well as scriptural injunctions. In a strange episode, an eight-year-old, scolded by her aunt for playing too long, threatened to become a *Sati*. The news of her husband's death arrived and *Sati* she was made, moments after her playtime, since she had herself spoken the words.[42]

At the other end of the pole, police reports show a very large number of extremely old *Satis*: women in their seventies, eighties, and nineties, a few even described as one hundred or more. Of course, there could be no exact age count as births were not registered and female births were not even remembered clearly.[43] A ninety-two-year-old brahman had been cremated at Baranagore in 1807. Three wives burned with him, one of them so old that she had to be carried to the pyre. Their age would have been mere guesses, approximations based on the evidence of their extreme senility. Consent becomes a particularly dubious concept in these cases. Somehow, the death of very old widows did not bother officialdom overmuch. With little girls, however, there was, sometimes, a distinct unease. In fact, the regulatory regime, foregrounding scriptural restrictions, was first formalized with some contentious cases of child immolations.

The idea of the widow's consent and its relationship with age reappeared long after the ban on immolations: in Bengal by Regulation XVII of 1829 of the Bengal Code; in Madras under Regulation I of 1830; and in Bombay under Regulation XVI of 1830. The regulations were almost identical in all cases, except in Bombay where abettors were punishable by fine or imprisonment with a limitation up to ten years, whereas in Bengal and Madras the prison term was left to the court's discretion. In all regulations, the offense was defined as culpable homicide rather than as murder.

The draft of the Penal Code of 1837, Article 298 specified that in cases of immolations, abettors would be considered guilty of outright murder if the widow were under twelve years old, however "ripe" she might be "in body and mind." The draft came under review in 1846 among the law commissioners, one of the aims of the scrutiny being a narrowing of judicial discretion. The instructions also advised that the new legal notions should not be "inapplicable to the Natives of India."[44]

The penalty now seemed too harsh and unfair to some commissioners. A. D. Campbell observed that women reach puberty very early in India. The overwriting of consent for a girl under the age of twelve, he wrote, "appears to me a mistake." The code confounds "a person under 12 years of age with incapacitated infancy." Two points are involved here. The first is that the young woman's consent to her death should be sovereign, no matter her age, and this in a context where her consent was not sought on any other matter, including her marriage. Second, the onset of her puberty, again irrespective of her other physical developments, was taken to signify a non-"incapacitated" adulthood.[45]

The draft of the code had given somewhat conflicting definitions. Clause 31 specified that "intelligent consent" alone should count legally: "a consent given by a person who is . . . [able] to understand the nature and consequences of that to which he gives consent." Clause 70 further amplified the meaning of "intelligent consent" with illustrative material. If a child under twelve has a guardian, a surgeon cannot perform a life-threatening operation unless the child "is capable of giving an intelligent consent." The difference between this example and immolations is that, in the example, a dangerous risk is taken in a desperate bid to save a child's life. In case of immolations, the child under twelve consents to her certain death. At the same time, clause 69 gave a precise definition of consent: it could not be expected before the person is twelve.[46] The age threshold functions like a magical operation, investing a person with intelligence and meaningful will overnight.

42. See Ward, *The Hindoos*.

43. See comment by Lt. R. G. Wallace; cited in Nair, *Calcutta*, 320.

44. Indian Law Commission, "From Law Commissioners," 6–8.

45. Ibid.

46. PP, House of Commons, 1821, 48.

Given all these conflicting considerations around consent, the state confronted an acute predicament. Clause 298, drafted shortly after the abolition, had been confident enough to define infant immolations as murder. Ten years later, many more doubts had set in. The willingness to punish immolations with maximal severity in the case of infant widows had given way to an acknowledgment of the twelve-year-old's mature intelligence, inferred from the presumption that she menstruates very early and, therefore, becomes, at a very early age, capable of consenting intelligently to death by burning.

Both puberty and an age count of twelve, however, created a new boundary: after a certain age, the girl becomes a legal person, subjected to state law rather than to community governance. Paradoxically, the implications of legal personhood were contracted as soon as they were elaborated. Law was sutured into scripture.

The Governmentalization of *Sati*

On 17 May 1797, the acting magistrate of Midnapore, James Battray, wrote to Governor General Sir John Shore: "A child by name Kumly, intended to sacrificing herself with her husband, I thought it my duty to endeavour to prevent its taking place. She is scarcely nine." This was the first instance when age and consent were invoked simultaneously to prevent an immolation and placed in such a way that age canceled out consent. Shore would not hear of prevention: "The . . . Governor General in Council desires he will use every means of persuasion in his power . . . so that he will also endeavour to persuade her family to exert their influence. . . . But nothing more should be done to prohibit the burning of an infant."[47]

On 4 January 1805 J. R. Elphinstone, acting magistrate of Zillah Bihar, wrote to George Dowdeswell, secretary of the judicial department, that the police *darogah* of Gya had reported an imminent immolation of a widow of the "bunya caste" of traders. She was twelve years old. Some of her "friends" secretly reported to the police officer that her father and her husband's friends were "persuading her to it" and that they themselves could not interfere with the family decision. The magistrate then ordered the officer to visit the immolation site. "She appeared to be in a perfect state of stupefaction or intoxication." He forbade it. "The girl and her friends are extremely grateful for my interposition."[48] He asked for instruction on further action.

The girl's age and her intoxicated state proved that she had been coerced by her family, and her friends' striking initiative made it imperative to inquire into the actual status of the rite instead of allowing unrestricted killings of unwilling little girls. Dowdeswell took this up with S. T. Goad, registrar of Nizamat Adawlutt, on 5 February 1805:

> The Nizamat Adawlut is aware that it is one of the fundamental maxims of the British. Government is to consult the religious opinions, customs, prejudices of the natives. On adverting, however, to the circumstances related . . . by the Acting Magistrate . . . the Governor General in Council considers it to be an indispensable duty to ascertain whether this unnatural and inhuman custom can be abolished altogether. . . . The Nizamut Adawlut is requested to ascertain . . . by means of a reference to the pundits, how far the practice . . . is founded in the religious opinions of the Hindoos.[49]

On 5 June 1805, acting registrar of the Sadr Nizamat Adawlut, W. Bayley, forwarded the pandits' reply to Dowedeswell: "Suttee is founded on the religious notions of the Hindoos . . . and is expressly stated, with approbation, in their law." At the same time, it should be entirely voluntary for the *Sati* to earn great merit in the other world. "Hindoo law" institutes some qualifications according to scriptural directions. The use of drugs to procure her consent was entirely "illegal." The woman reneging on the pledge should not be outcast. However, if she reneges after the ceremonies have started, she will be cast out and subjected to "severe penance."[50]

47. Battray to Shore, 17 May 1797, Bengal Judicial Consultations, 19 May 1797, no. 1 (Criminal), PP, House of Commons, 1821.

48. Elphinstone to Dowdeswell, 4 January 1805, PP, House of Commons, 1821.

49. Dowdeswell to Goad, 5 February 1805, Extract from Bengal Judicial Consultations, 7 February 1805, no. 6 (Criminal), PP, House of Commons, 1821.

50. Bayley to Dowdeswell, 5 June 1805, Bengal Judicial Consultations, 5 December 1812, no. 6 (Criminal), PP, House of Commons, 1821.

The court had wanted a prohibition of the rite since widows were often deranged by "the greatest sorrow," or were sometimes persuaded by relatives. Pandits disagreed with their proposal and their objection prevailed. The phase of bureaucratization had set in. Allowing himself to be guided by pandits at each and every step, the governor general planned measures to prevent "illegal practice." In other words, he sought to legally institute the "true *Sati*," scripturally authorized to die by burning.

Nothing happened in this phase, however, apart from information gathering. The Vellore Mutiny of 1806 possibly made the state extra cautious about Indian religious sensibilities. In 1812–13, after the panic of the mutiny subsided, earlier instructions were formalized in circulars: not exactly laws or regulations, as they were then called, but advisories. "A Draft of Directions to Be Issued by Magistrates to Police Darogahs" was simultaneously published. This cautioned police about violations of "religious institutes of Hindoos" that occurred when immolations were performed by pregnant women, "girls not yet arrived at their full age," and those coerced through intoxication or physical force. These were "contrary to the shaster and perfectly inconsistent with every principle of humanity."[51] The instructions were conveyed to magistrates. In all places of impending *suttee*, police officers were mandated to go themselves or "send their mohurree or jumahdar [*muharrī* or *jam'dār*, various categories of police officials] accompanied by a burkunday [?] of Hindoo Religion" to explain the new regulations.[52] Bodies of Hindu widows had entered colonial governmentality.[53]

A colonial police force had recently been set up under Cornwallis and the task of institutionalization was not yet complete.[54] Control of immolations was one of their earliest major responsibilities. At local levels, the force was entirely filled up by Hindus and Muslims, most *darogahs* or senior station officers who were often Muslims. Therefore, the "institutes" of Hindu religion regarding immolations were explained carefully, and care was taken to ensure the presence of Hindu *burkandazes* so that the regulation of a sacred ritual was not entirely in Muslim hands.

In 1815, a further order was issued to the police with all conditions laid out clearly in Persian. A form was drawn up with separate columns for noting the widow's place of burning, her caste, her age and the age of the orphans, her husband's name, and the circumstances of her immolation. Later, we find detailed inventories of the husband's occupation, property, and belongings. These were to be sent up to the House of Commons every year. As Linda Colley has observed, empire vastly expanded the reach of parliamentary powers.[55] The intimate domain of its Indian subjects came under its gaze with the *Sati* lists.

Dying Women and Neglected Infants

In earlier instructions to the police, the exact age of the *Sati* had not been defined. A coy reference was made to her "full age," which signified puberty and, again, was equated with menarche. A further set of instructions issued on 17 April 1813 stipulated that *Satis* needed to be at least sixteen years of age. Before this issue could be fully sorted out, the question of age came to plague the authorities in a different context. According to the ruling of pandits, the widow could not abandon an infant. Who could be classified as an infant? Sir George Nugent, vice president in Council, sent a letter from the magistrate of Burdwan to Nizamut Adawlut that had been written on 18 December 1813.[56] The letter reported an immolation where the orphan was two and a half years old. The police failed to dissuade the mother, though the magistrate had already prevented five cases of immolation on the grounds of the child's infancy. Now Nugent wanted to be on firmer ground. That could only be done if pandits defined exactly what infancy meant. The magistrate enclosed a translation of their reply. Under Hindoo law, "a woman having a child under three years of age and whose nurture

51. Signed by J. C. Sutherland, Bengal Judicial Consultations, no. 10, PP, House of Commons, 1821.

52. Ibid.

53. On the relationship between state and subjects' bodies, see Foucault, *Foucault Effect*, 84–104.

54. See Chattopadhyay, *Crime and Law*, 36.

55. See Colley, *Britons*, 31.

56. Nugent to Nizamut Adawlut, 18 December 1813, Bengal Judicial Consultations, no. 6 (Criminal), 4 October 1814, PP, House of Commons, 1821.

by another person cannot be provided for is inhibited from becoming a Suttee."[57] Pandits cited the ancient sage, Brihaspati, who also does not specify an exact age. But such an age, said pandits, can be inferred from his words since he says a woman with *bala* cannot burn, *balas* being approximately below three years of age. They then cited Jagannath's commentary on Brihaspati, which stated that a promise of guardianship of the infant had to be elicited before *suttee* would be allowed. Also, *suttee* could not be performed immediately after childbirth or within twenty days of a woman bearing a son and a month after bearing a daughter. Immolations, therefore, initiated discussions and a tentative formalization of a category of infancy that was put together by pandits from a bricolage of scriptural fragments and interpretations.

In the case of widows, too, the state now desired absolute certainty: to convert age from a variable and uncertain state of puberty to an exact point when the girl became a fully formed woman, entitled to immolation. This proved to be a difficult task. The texts had indicated an indistinct stage of life—puberty, "of full age"—that would vary from person to person. Nonetheless, the transition from a fuzzy mode of computing to an enumerated one had to be accomplished with the help of scriptural or *shastric* words alone. The state would not provide its own markers of age. Instead, original *Smriti* texts were read with the help of later commentaries, which were in turn interpreted through inference. The matter remained open to the end of the century when the question of age—or, rather, of infancy and maturity—flared up in the Factory Act of 1881 and in the Age of Consent controversies.[58]

The age of the orphan actually created more uncertainties than the prescribed age of the widow. Even after information had been gathered and transmitted to the police, infringements were freely allowed. On 28 October 1813, W. B. Bayley, magistrate of Zillah Burdwan, wrote a letter to Turnbull. The widow of an inhabitant of Khundghose named Ochub Singh, "by cast a Caet," intended to be a *Sati*. "She has three children, one of them aged two and a half." The *darogah* prohibited it and stationed "two Hindoo *burkandazes*" to ensure it. They were foiled by the family that forced it through. It is more than possible that the Hindu policemen did not hinder the attempt unduly. Ten of the family members were then detained by the magistrate, who inquired from the court as to whether they should be sent up for trial at the court of circuit or "whether [he had] sufficient authority to punish them [him]self." He wanted more information regarding "what specific age of child is considered to be a legal objection to the matter of becoming a suttee."[59]

Turnbull replied on 9 December 1813: "It was not intended by instructions circulated on 29 April last, to authorize any interference on the part of the *darogahs* or other officers of police, to prevent the performance of the ceremony of suttee in the ground of . . . having infant children; and you are accordingly desired to issue the strictest injunctions to your police officers, prohibiting their interference on such occasions."[60]

Bayley responded with obvious anger and frustration on 18 December. He referred to the copy of instructions in "Persian and Bengalee language and their translation in English" to be made by court and submitted to government to be circulated among magistrates and police officers, where a widow with a "child of tender years" was "expressly forbidden by shaster" and police officers were asked to interfere if conditions were violated. He asks in trepidation if he would be accused of interference. "I have discharged the prisoners whom I had held to bail . . . but I have taken the liberty of suspending the execution of the orders of the court with regard to the instructions I am directed to issue to police officers. The public and official abrogation of this very material part of the instructions of the court will weaken the hands of the police officers in carrying into effect the remaining part of the instructions."[61]

57. Ibid.

58. On the child worker in the factory and controversies about age in this context, see Sarkar, "The Work of Law."

59. Bayley to Turnbull, 28 October 1813, PP, House of Commons, 1821.

60. Turnbull to Bayley, 9 December 1813, PP, House of Commons, 1821.

61. Bayley to Turnbull, 18 December 1813, PP, House of Commons, 1821.

The exchange is instructive. It clarifies a deep self-division within rules of governance where the government cannot dare to act on its own instructions. The incoherence reveals a contradiction between the magistrate who is on the ground, dealing with concrete cases, and policy makers at higher realms of authority, immune from the material responsibility for individual cases of immolation.

Bayley counted incidents of immolation that were invalid because of the age of the orphan within his district between 1811 and 1812. There had been 114 immolations in that single district, and, he states, "there can be little doubt that many other cases may have occurred which have not come to my knowledge." He mentioned four individual cases. One involved the widow of an opulent man in the town. The rajah and other important town dignitaries urged the magistrate to arrange the immolation, even though the widow had an infant child. It is important to note that social leaders, who were often unrelated to the family, exerted their influence to maximize immolations even when they were neither legal nor scriptural. Following court instructions, Bayley had prevented that even when all arrangements had been made and eager crowds had rallied around. He had also saved three other widows on other grounds. "I confess that I should feel deep regret if the court were to annul an order which has already produced such beneficial effects."[62]

Given Bayley's anger, the question of the child's age prompted more queries. In April 1813, pandits were asked whether their former *vyavastha* prohibits a woman "with a child of tender years" from the performance. Though this had already been definitively established, the government wanted further confirmation. Pandits were to clarify again if only the unweaned child alone constituted the exempted category. Also they were asked to specify "the particular age to which a child must have arrived before its mother becomes a legal subject for a suttee."[63]

Pandits answered in greater detail: "A child is termed *bala* whose age is under that prescribed for the performance of the [*choorakuran*] ceremony of shaving the head, perforating the ear, etc. The third year is fixed, according to all authorities, as the period . . . for this . . . ceremony." They then cite *Nirnay Sindhu* and other authorities who define the *bala* as a child of up to three years of age. They quote Brihaspati, who says the mother of *bala* cannot be a *suttee*, and also quote from Raghunanadan's *Shuddhitattwa*: "A woman having a child whose sustenance can be provided by another person is free to become a suttee."[64] It is somewhat difficult to follow scriptural reasoning on this point. The mother of an infant is granted immunity from burning in order to bring up the child, unless someone else is prepared to undertake the task. But no provision for care is made for the orphan above the age of three. Was a child above three expected to bring herself up?

The Cunning of Consent

Let us now focus on a small story to dramatize the complexities of administering the rules of the widow's age. For three days, between 29 December and 31 December 1816, public roads in three contiguous districts of Bengal saw a bizarre funeral procession, playing hide and seek with government agents across district boundaries. It carried the steadily putrefying corpse of Shiboo Chunder Dutta. Dutta's widow Digumburee walked next to the relatives, who claimed she was determined to be a *Sati*. Allegedly the man had died the day before and the widow had taken the ritual *sankalp* to commit concremation. The pledge was the reason why a young girl could legitimately walk on public roads where no respectable woman should be seen.[65]

Her father, Nemai Churn Ghose, was a writer in the marine paymaster's office, and, interestingly, it was the natal family that organized and insisted on the immolation. The corpse was first brought to Sulkea, in the district of Suburbs of Calcutta, for

62. Ibid.

63. April 1813, PP, House of Commons, 1821.

64. Bengal Judicial Consultations, no. 6 (Criminal), 4 October 1814, PP, House of Commons, 1821.

65. Bengal Judicial Consultations, 21 March 1817, letter signed by W. B. Bailey, Secretary, Government, PP, House of Commons, 1821, 44–46.

cremation. When the family notified the police, it was reported that she was eleven years and eight months in age, definitely an underage widow. Magistrate Eliot, therefore, forbade the immolation on grounds of "her tender age." The funeral procession then turned toward the Chitpore cremation ground where, again, Eliot blocked their entry. The local *darogah* reported that the widow's age was around fourteen, so she was still considered underage. The girl was then taken back home by her father, but then, at two in the morning, was smuggled out to Kossipore where the *darogah* found them "sitting concealed under a shed" at Surmongolah Ghat. They then went to the Bankhbazar cremation ghat in Calcutta Town where immolations were, in any case, forbidden. Eliot hastened to inform Magistrate Blaquerie about the girl's age and he, too, prevented the burning. The procession now moved into a third district, the 24 Pergunnas, at Ariadhee. Eliot informed Magistrate Sage about the details of the case, and Sage issued a *perwannah*, or order, forbidding the immolation. Then he unexpectedly issued a second *perwannah* asking that the girl's age be confirmed again from witnesses. If she was found to be above twelve, then immolation should be permitted.[66] Later, he defensively said that the point about letting the girl burn if she was twelve was inserted by the *darogah*. He himself had made no such stipulation and, in an oversight, he did not notice the insertion when he hastily scanned the second *perwannah*, which his *sheristadar* had written out on his behalf.

All this time, Sage was under great pressure from local Hindu notables who urged him to allow the immolation. Madan Dutt and Rajah Rajkissen—almost certainly from the Shobhabazar Raj estate, whose scion Radhakanto Deb would later lead the orthodoxy against abolition—pleaded with him urgently. So did his peon who said that after four days of fasting, the girl would surely die of starvation and grief. It is strange that Sage made no effort to meet the girl personally and that he made up his mind on the basis of hearsay, conveyed by his Indian subordinates, Hindu pandits, and local notables. He had nervously consulted his own pandit, who advised him that immolation was scripturally prescribed to widows above the age of twelve. Dreading the consequences of a ritually countermanded death, Sage then withdrew the prohibition. Digamburee was allowed to burn, in violation of previous official orders, on 31 December, after five days of high drama and tension that had gripped the streets of three different districts.

The governor general ordered an inquiry into the events on 21 March 1817.[67] Sage apologized for reading only fragments of circulars and missing out on the crucial sentence that proclaimed sixteen the minimum age for immolations. He had glanced at a phrase that said she should be above the age of puberty, and he had been told by the pandit that this occurs punctually at twelve. Moreover, he added later, his *darogah* had advised him that Digamburee seemed to be eighteen or nineteen, well above the age ceiling.[68]

Opinions varied enormously about her age. In course of the inquiry, the acting superintendent of police of the lower provinces reported that her correct age would be around twelve or thirteen, though one witness put it at eleven. "I have forborne to take the evidence of the father of the girl," wrote the superintendent, "as he would thereby have been reduced to . . . confessing himself accessory to an act which has been declared illegal or of being guilty of perjury."[69] What is certain is that all family testimonies show her to be underage. Clearly, the family was unaware of the age ceiling. It was an outsider—Sage's *darogah*—who alone said that she was nineteen. Highly contradictory testimonies show how difficult it was to arrive at a firm conclusion regarding the right age.

We always refer to the colonial state as a monolithic entity. It is, therefore, important to

66. Eliot to W. Blunt, police superintendent, 26 March 1817; J. W. Sage to Blunt, 31 March 1817, appending *arzee* of Darogah of Ariadhee, dated 31 December 1817, PP, House of Commons, 1821, 46–49.

67. W. Blunt to Bayley, 18 April 1817, Extract, Bengal Judicial Consultations, 25 April 1817, PP, House of Commons, 1821.

68. See Sage to Bayley, 25 April 1817, PP, House of Commons, 1821, 51–53. See also Governor General's Resolution on the case, PP, House of Commons, 1821, 61.

69. Eliot to Blunt, 26 March 1817, PP, House of Commons, 1821.

underline the very diverse stances of different officials in this instance. Eliot, magistrate of Suburbs of Calcutta, stated in his deposition that he had heard from the *mohurree* at the Sulkea police station that Digumburee was about thirteen, "but the peculiar manner in which he spoke, and his agitated state at the moment convinced me that he had not stated the fact." So Eliot spoke "harshly" to him, and he confessed that she was under twelve. He threatened him for concealing the facts and forbade the immolation. He then received written applications from "important natives." "Ramdololl, a man of immense wealth," came to intercede. This was probably Ramdulal Ghose, a leading entrepreneur of early nineteenth-century Calcutta and one of the pioneers of the new Western education. The intervention of Hindu notables is important. In 1818, the orthodoxy sent up a plea that all restrictions so far placed on immolations—notwithstanding the fact they were based on verdicts of pandits—should be removed. When the funeral procession "attempted to carry the body and child into the town from Chitpore," Eliot conveyed this to Blaquiere, who stopped them from entering the town.[70]

When inquiries began, Sage claimed that he had been circumspect, even if eventually he chose to waive Eliot's warning. He had asked the *darogah* of Ariadhee to ascertain that the stipulated conditions had been met and he was told that she was of "soodur" caste and was not pregnant: that, he presumed, entitled her to die. Having affirmed that this was a legal immolation, he responded sympathetically to a letter that a *vakeel* from the Sadr Diwany Adawlut had handed over to him on the evening of 31 December. It enclosed a *bewasta* from a pandit, authorizing immolation and reporting, "Two days had elapsed since the Darogah's first report arrived. The woman had refused food, she was not expected to live." Much moved by the ritual predicament, Sage now gave in.[71]

His pandit and his Hindu *darogah* prevailed over his colleagues and his rules. According to the *arzee* or petition sent to Sage by *darogah* Nubkissen Mozoomdar of Ariadhee, Digamburee had told him that Digumburee was eighteen or nineteen and that she had been on fast since 27 December. She had been married for four years. Her relatives, on the other hand, told him that she was about fourteen or fifteen.[72] So, Sage chose to believe the *darogah* rather than the family. Hearsay prevailed. A Hindu policeman, a pandit, and urban social leaders became stakeholders in the family drama and an English magistrate went along with them. Networks of ritual and custom were widely spread out, spanning public and private, British and Hindu: they covered unexpected places.

Sage's explanations did not placate the higher authorities. Bayley pointed out that in his first order Sage had countermanded the appeal for immolation because the widow was about fourteen and thus underage. How could he then allow it later, saying that she was above twelve and therefore entitled to immolation? Moreover, even at the time of the first *perwannah*, he knew of "her alleged refusal to take food." The governor general, too, recorded his displeasure. He said that Sage's order violated the circular instructions of 1813. "In these instructions the performance of the ceremony of Suttee by a girl not yet arrived at her full age is declared to be contrary to the Shaster as well as inconstant with every principle of humanity." The circular orders had distinctly specified that she should be over sixteen, "the age of maturity . . . having been clearly and unequivocally specified."[73]

Faced with a strong reprimand, Sage repeated the sequence of events that led to the immolation. On 30 December, he did receive a private notice from Eliot about the "female child" that asked him to prevent the immolation. On that basis the first *perwannah* was issued. Then he opened the *darogah's* report, which stated that Digambaree was eighteen or nineteen, that she met all prescribed conditions, and that she was fasting. He received statements from other witnesses putting her age at fourteen or fifteen. On the morning of 31 December, he was told that she "was in a very emaciated state." "Being unwilling to bring

70. Ibid.

71. Sage to Blunt, 25 March 1817, PP, House of Commons, 1821.

72. Translation from *arzee* (petition) by Nubkissen Mozoomdar, Darogah of Ariadee, 29 December 1816, nos. 16–18, PP, House of Commons, 1821.

73. Bayley to Sage, 25 April 1817, PP, House of Commons, 1821.

an afflicted and apparently devoted female to the courthouse," he further heard that on hearing that the immolation was refused, the girl had "wept bitterly . . . threw herself in a transport of grief on the corpse of her husband and declared she was determined to terminate her existence."[74] Sage then looked up a letter dated 5 December 1812 from the chief secretary to Nizamat Adawlut that instructed all government officers to abide by the religious faith of the subjects and to consult pundits at each step on such matters. It said that widows believed that immolation would lead to an afterlife of happiness. It also specified that the minimum age limit was after puberty. Since Digumbaree met all these conditions, and since Sage's pundit told him that puberty occurs at twelve, he feared that there would be grave ritual consequences if she committed suicide or died of fasting instead of immolation. Sage writes that "if [he] had been aware that the age fixed by the government . . . was 16 years or if [his] pundit had informed [him] that the age of puberty exceeded 12," he would never have allowed it.[75]

Consent is dissolved into her age and her grief. Both, however, are accepted on the basis of hearsay. Even the cardinal fact—that she had voluntarily sworn the pledge—is not verified. Thus contracted in meaning and transposed onto other registers, consent, nonetheless, still remains a central axis for decision making. It can no longer be the silent and almost unnoticed point of initiating the ritual after which the ritual sequence takes its own course. It is problematized and diversely interpreted, framed and reframed within several distinct perspectives. The entire rite now hinges on its continuous existence.

From this centrality and pervasiveness that the bureaucratic context unwittingly bestowed on the word, it was a short if uncertain step to the acquisition of different and life-affirmative meanings. So, we return to a paradox that we have traced throughout this narrative. Even if law provides a woman with an entitlement to life below a certain age, it does not present it as a right. Nor does it describe abolition of immolations as a right to life. Immunity is, instead, given in the name of sacred texts. The woman becomes a culture-bearing person rather than a rights-bearing one by upholding authentic scriptural norms. Yet state intervention and public debates did create an antithesis to culture, however covertly. We may call it a negative right, or an elaboration of exemptions from the remit of cultural power. In the course of the debates, Rammohun wrote a tract to argue for the inheritance rights of the Hindu widow where he used the word "rights" in its modern sense, perhaps for the first time.[76] Nowadays, vernacular equivalents for liberal or human rights are *adhikar* or *huq*: both meant graded privileges and hierarchized entitlements in older times.

Within two decades of abolition, another act legalized remarriages of Hindu widows. It included a startling clause, negating the mandatory nonconsensual nature of Hindu marriages. In the case of an adult widow whose parents did not want to give her away to a second husband, "her own consent" would be sufficient to sanctify the new marriage.[78] Consent had, therefore, changed its location: from death to the renewed sexual life of the widow. ıllıı

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74. Extract from Bengal Judicial Consultations, 4 July 1817, no. 12 (Criminal), Lower Provinces.

75. Sage to Bayley, 10 June 1817, PP, House of Commons, 1821.

76. See Rammohun Roy, "Brief Remarks Regarding Modern Encroachments on the Ancient Rights of Females According to the Hindoo Law of Inheritance" (1822), in Nag and Burman, *English Works*.

78. Clause 7 of Act No. XV, July 1865: "An Act to Remove All Legal Obstacles to Marriage of Hindu Widows," Record Office, India Acts, 1854–57, Papers Relating to Act XV of 1856, Government of India, Legislative, National Archives of India, Delhi. See also Sarkar, *Rebels, Wives and Saints*.

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