

READING MODERNITY IN INDIA:
THE PRACTICE OF WIDOW-BURNING IN THE LIGHT OF
NINETEENTH AND TWENTIETH CENTURY DEBATES

BURCU ÖZKAÇAR

BOĞAZIÇI UNIVERSITY

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Burcu Özkaçar

Boğaziçi University

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The thesis of Burcu Özkaçar

has been approved by:

Assoc. Prof. Yücel Terzibaşođlu
(Thesis Advisor)

Prof. Arzu Öztürkmen

Assoc. Prof. Cengiz Kırlı

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DECLARATION OF ORIGINALITY

I, Burcu Özkaçar, certify that

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ABSTRACT

Reading Modernity in India: The Practice of Widow-Burning in the Light of Nineteenth and Twentieth Century Debates

This study examines the practice of burning-wives in colonial India during the nineteenth century, when the debate over abolishing it was at its peak. Based on secondary sources, it tries to understand how the British rule perceived this cultural crime and developed strategies for dealing with it. Putting forward that British authorities paid less attention to common forms of gender violence such as ‘rape’ and ‘prostitution’, the study attempts to show how they focused instead on culturally specific crimes, such as ‘burning-wives’, ‘female infanticide’ and ‘dowry death’. Here, one should call attention to the process of codification of these issues in India. On the one hand, witness narratives show how the colonial power uses ‘law’ in order to constitute a ‘rule of difference’. On the other, however, once the colonial and ‘post-colonial’ cases of suttee are compared, one clearly sees that the colonial approach to the issue of suttee is part of a grand discourse, which contemporary suttee debates must take into account. Based on historical documentation and a contemporary suttee case called Roop Kanwar, the study aims at showing how examining debates over women’s body can be useful in understanding the experience of modernity in India. An interpretation of colonial and post-colonial suttee debates clearly reveals how modernity shaped colonial practices in India.

ÖZET

Hindistan’da Modernite’yi Okumak:

Ondokuzuncu Ve Yirminci Yüzyıl Tartışmaları Işığında Eş Yakma Pratiği

Bu çalışma, Hindistan'da dul kadınların, eşlerinin cenaze töreninde kendilerini yakma pratiğini, bu konudaki tartışmaların zirvede olduğu ondokuzuncu yüzyıl bağlamında incelemektedir. İkincil kaynaklara dayanarak, İngiliz yönetiminin bu kültürel suçu nasıl algıladığı ve bununla başa çıkmak için hangi stratejileri geliştirdiklerini anlamaya çalışmaktadır. Çalışma, İngiliz yetkililerin cinsel şiddet içeren 'tecavüz' ve 'fuhuş' gibi yaygın formlara daha az dikkat çekmesini öne çıkararak, bunun yerine nasıl 'eş yakma', 'kız bebeği öldürme' ve 'çeyiz yüzünden ölüm' gibi belirgin kültürel suçlara odaklandığını göstermeye çalışır. Burada, Hindistan'da bu sorunun yasallaştırılması sürecine dikkat çekmek gerekir. Bir yandan, tanıkların anlatıları sömürgeci iktidarın ‘kanunu’, ‘farklılaştırıcı bir kural’ oluşturmak için nasıl kullandığını göstermektedir. Öte yandan, kolonyal ve post-kolonyal sati vakaları karşılaştırıldığında açıkça görülen tam da çağdaş sati tartışmalarının, sati meselesine kolonyal yaklaşımın daha büyük bir söylemin parçası olmuş olmasını dikkate alması gerektiğidir. Tarihi belgeler ve Roop Kanwar adı verilen bir yakın dönem sati vakasına dayanarak, bu çalışma, kadınların bedeni üzerinde tartışmaları incelemenin Hindistan’daki modernlik deneyimini anlamakta nasıl faydalı olabileceğini göstermeyi amaçlamaktadır. Kolonyal ve post-kolonyal sati tartışmalarına yorum getirmek, modernitenin Hindistan’daki sömürgeci uygulamalara nasıl şekil verdiğini açıkça ortaya koymaktadır.

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La Loba
sine qua non

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION.....	1
1.1 Reading modernity in India from Turkey: Women's bodies as agencies of political strategies.....	2
1.2 In search of a comparative frame: A reflexive account on sources.....	4
1.3 Dichotomizing the East and West: A critical survey.....	6
1.4 Codification as otherification.....	9
1.5 The particularity of suttee as a case-study	10
CHAPTER 2: DISCOURSES OF MODERNITY AND LAW: A FEMINIST CRITIQUE TOWARDS THE STUDY OF SUTTEE.....	14
CHAPTER 3: CONSTRUCTING INDIA FOR COLONIAL RULE: CODIFICATION AND LEGISLATIVE REGULATION.....	24
3.1 Law in colonial India.....	28
3.2 Colonialism, the self and the other.....	38
CHAPTER 4: STRATEGIES OF DEALING WITH THE SUTTEE: IMAGES AND NARRATIVES.....	46
4.1 Suttee in Hindu tradition.....	53
4.2 Suttee and the colonial gaze.....	54
CHAPTER 5: 'RE-OPENING' A HISTORICAL DEBATE: THE CASE OF ROOP KANWAR AS A TWENTIETH CENTURY SUTTEE.....	64
CHAPTER 6: CONCLUSION.....	73
BIBLIOGRAPHY.....	79

CHAPTER 1

INTRODUCTION

This study examines ‘suttee’, the practice of burning-wives in colonial India during the nineteenth century, when the debate over abolishing it was at its peak. Based on secondary sources, it tries to understand how the British rule perceived this cultural crime and developed strategies for dealing with it. Putting forward that British authorities paid less attention to common forms of gender violence such as ‘rape’ and ‘prostitution’, the study attempts to show how they focused instead on culturally specific crimes, such as ‘burning-wives’, ‘female infanticide’ and ‘dowry death’. It is surprising how the literature on the issue of suttee did not directly raise this critique, although there have been a number of studies exploring its legal regulations.¹ Based on historical documentation and a contemporary suttee case called Roop Kanwar, this study aims at showing how examining debates over women’s body can be useful in understanding the experience of modernity in the context of India.

Given the above framework, the focus of the study is on the multifaceted nature of colonialism and law's complicity in constituting ‘the different other.’ Even today, one can clearly observe that the suttee debates do not come to an end in modern India. While in the past the law served the colonizer to secure its rule, the codification debate in India brought out many concerns for the British. This study

¹ Nehaluddin Ahmad, “Dying for the Dead: A Socio-Legal Examination of Sati in India,” *Asia-Pacific Journal on Human Rights & the Law* 9, no. 2 (July 2008): 1–10; Elizabeth Kolsky, “The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805–57,” *The Journal of Asian Studies* 69, no. 04 (2010): 1093–1117; Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India* (Berkeley: University of California Press, 1998).

claims that although the British used law to establish its rule with the promise of justice, law does not always operate as state's emissary. The case of 1829 regulation is a case in point. With this regulation, the British was captured in its own rhetoric, by introducing two categories of suttee at the same time as 'legal' and 'illegal'. Thus, this study argues that there has been an opportunity to manipulate law, as best shown in the case of Roop Kanwar, where the practice of law was a site of struggle, carrying at the same time the possibility of resistance within itself.

1.1 Reading modernity in India from Turkey: Women's bodies as agencies of political strategies

Reading modernity through women's bodies has been a central topic of feminist scholarship. In the analysis of modernity in Turkey, women have also occupied a central place, an issue broadly discussed by feminist scholarship since the 1980s. For our generation of researchers, the terms 'emancipation', is for instance, a deconstructed term, where the interplay between state and women's rights is genuinely criticized.² While the abundance of historical sources and issues await to be examined, many of us born into these feminist debates have developed our own subjectivities, where bodily experiences have been at forefront. Besides the issue of women's bodies, fervent debates include civil rights and legal regulations, making us often wonder how similar issues are discussed around the world, particularly in non-

² Şirin Tekeli, *Kadınlar ve Siyasal Toplumsal Hayat* (Istanbul: Birikim Yayınları, 1982); Deniz A. Kandiyoti, "Emancipated but Unliberated? Reflections on the Turkish Case," *Feminist Studies* 13, no. 2 (July 1, 1987): 317–38; Nükhet Sirman, "Feminism in Turkey: A Short History," *New Perspectives on Turkey* 3 (September 1989): 1–34.

Western domains. This study nourishes very much by the curiosity about different problematics in other cultural domains.

Searching for a more global picture of ‘experiencing modernity’, feminist literature has usually approached the issue of ‘women's bodies’ in different frameworks. Earlier feminist debates were often based on a discourse of dichotomy between ‘East and West’. For long years, the ‘East’ was interpreted as the ‘colonial’, the ‘underdeveloped’, and more recently the ‘Third World’. With no colonial experience and categorized as a ‘developing’ country, it has always been difficult to situate Turkey in a comparative framework, where women’s modernization has been a rather unique experience. Analysing women’s bodily experience from a Turkish perspective does not therefore fit into the mainstream ‘East-West’ dichotomy, nor to that of colonial debates.

It is therefore important to question our discursive and perceptual stance of being from Turkey. By looking at the practice of burning-wives in colonial India, this study aims firstly at calling attention to how the British rule perceived this cultural crime and developed legal strategies around it. But more importantly, it tries to understand the feminist discourses produced in the Western world.

This stance is very close to our debates of ‘honor crime.’ Spotting on how certain common forms of gender violence take place and criticizing it is obviously an acknowledged aspect of feminist approach. But how this critique is discursively constructed is a question we ask from our Turkish scholarly subjectivities, when comparing for instance the issues of ‘honor crime’ and ‘passion crime’. While ‘honor crime’ is usually categorized as an Eastern problem, ‘passion crime’ is not categorized as such, though in both cases men kill women on the basis of their

normative approach to their own cultural world.³ Putting forward that British authorities paid less attention to common forms of gender violence such as ‘rape’ and ‘prostitution’, this study attempts to show how they focused instead on culturally specific crimes, such as ‘burning-wives’, ‘female infanticide’ and ‘dowry death’. Here, one should call attention to the process of codification of these issues in India. Very shortly, in this encounter between the colonizer and the colonized, the colonizer becomes the decision-maker in defining “the modern.”

1.2 In search of a comparative frame: A reflexive account on sources

To my best knowledge, suttee has not been a research topic conducted in the history departments in Turkey, where the general thematic focus of history students has been the study Ottoman social and economic history.

I got acquainted with Victorian Britain for the first time during my senior year at my undergraduate training. Given my feminist background, I soon developed an interest in women’s issues in this new territory. My graduation project consisted of an analysis of prostitution and contagious diseases based on Acts in the nineteenth century Victorian Britain. In the footsteps of this research, for my MA thesis, I first decided to explore prostitution within the framework of Britain’s colonial experience. A preliminary library search revealed three directions: law-race; law-gender; and law-public health. However, knowledge on India was fulfilled with

³ Dicle Koğacıoğlu, “The Tradition Effect: Framing Honor Crimes in Turkey,” *Differences* 15, no. 2 (2004): 118–51.

culturally specific gender violence than a culturally common form of it, such as prostitution. Thus, this study turned to be about the practice of suttee.

Doing research on colonial India in Turkey is not an easy task in terms of finding the right research material. I was obliged to conduct my research based on internet archives. The amount of digitalized sources which is increasing day by day are undoubtedly very useful for long distance researchers who are unable to use printed primary sources in India and Britain. I acknowledge that this study is a modest attempt to bring Indian studies into attention of researchers around Turkey. I also acknowledge the partiality of my outsider position within the field of Indian studies.

Examining different debates over women's bodies in a comparative perspective undoubtedly broadens our understanding of modernity. While discussing suttee as a colonial experience of the West, we also discuss a culturally layered encounter, which defines what modernity is.⁴ Modernity as defined by the colonizer through this encounter, contests women's bodily experiences in many cultural forms

⁴ Carol Gluck, "The End of Elsewhere: Writing Modernity Now," *The American Historical Review* 116, no. 3 (June 1, 2011): 676–87.

such as suttee, female infanticide, rape, foot-binding, prostitution, dowry murder.⁵

All of these forms have been explored as traumatic experiences of a given social context, but they all also have legal implications. There is a substantial literature on legal anthropology which displays different forms of such bodily experiences.⁶

Studying suttee as one of the significant forms of such bodily experience of the nineteenth century, one also observes how the legacy of colonial legal system carries out its traces in the twentieth century.

1.3 Dichotomizing the East and West: A critical survey

In the discussion of the so-called ‘Western’ discourses, one should pay attention on how the dichotomy between the East and West runs the risk of marking them as homogenous. Despite metaphysical, ontological and essentialist connotations,

⁵ For sati see Andrea Major, *Pious Flames: European Encounters with Sati* (New Delhi: Oxford University Press, 2006); Mani, *Contentious Traditions*; for infanticide see Lionel Rose, *The Massacre of the Innocents: Infanticide in Britain, 1800-1939* (London ; Boston: Routledge & Kegan Paul, 1986); Barbara D. Miller, *The Endangered Sex: Neglect of Female Children in Rural North India* (Ithaca: Cornell University Press, 1981); for rape see Elizabeth Kolsky, “‘The Body Evidencing the Crime’: Rape on Trial in Colonial India, 1860–1947,” *Gender & History* 22, no. 1 (2010): 109–30; Kolsky, “The Rule of Colonial Indifference”; for footbinding see Dorothy Ko, *Cinderella’s Sisters: A Revisionist History of Footbinding*, Philip A. Lilienthal Asian Studies Imprint (Berkeley, Calif: University of California Press, 2005); Beverley Jackson, *Splendid Slippers: A Thousand Years of an Erotic Tradition* (Berkeley, Calif: Ten Speed Press, 2000); for prostitution see Judith R Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State*, 1st paperback ed (Cambridge ; New York: Cambridge University Press, 1982); Judith R Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger In late-Victorian London*, Women in Culture and Society (Chicago: University of Chicago Press, 1992); Ronald Hyam, *Empire and Sexuality: The British Experience*, Studies in Imperialism (New York : Manchester University Press ; Distributed by St. Martin’s Press, 1992); for dowry murder see Veena Talwar Oldenburg, *Dowry Murder the Imperial Origins of a Cultural Crime* (Oxford: Oxford University Press, 2002); Mala Sen, *Death by Fire: Sati, Dowry Death, and Female Infanticide in Modern India* (New Brunswick: Rutgers University Press, 2002).

⁶ Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983); Lauren A. Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900*, Studies in Comparative World History (New York: Cambridge University Press, 2001).

Western subject is not unified furthermore, does not ontologically exist. As Meyda Yeğenoğlu formulates, it refers to coming into being, an invention and fashioning of a place called “Western”. Therefore, “Westernizing” is a fashioning of a fantasy where members imagine themselves as Western.⁷ Yet, it does not mean this fictive Western subject is not real, it produces certain material effects that are also relevant to this study.

These material effects display themselves in the construction of Oriental women where one can spot a certain contribution of the feminist approach. Western subject's masculinist and colonialist position are hand in hand in relation to its Oriental other. Thus, this masculinist and colonialist position is not simply the product of men. The role of Western women in the construction of Oriental imagery is also very significant. There is the need of recognizing the complicity between Orientalist's imperialist operations and a certain type of Western “feminist” stance. Western women's accounts of the Orient cannot be separated from the masculinist and imperialist accounts of the Orient provided by male travellers. Lady Montagu's *Letters* is an example of this claim where in Orientalist and patriarchal tone, she wishes for an Englishman to be with her and to see what she was allowed to see. Lady Montagu assumes male desire to see the truth of woman and she integrates masculine desire with Orientalist's desire to know what is hidden from him.⁸

Colonial feminist discourse over the Oriental women is rooted in three tracks which overlap each other. Discourses produced by Western feminism emerge from

⁷ Meyda Yeğenoğlu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge: Cambridge University Press, 1998).

⁸ Reina Lewis, *Gendering Orientalism: Race, Femininity and Representation*, Gender, Racism, Ethnicity Series (New York: Routledge, 1996); Danielle Haase-Dubosc, “Lady Mary Wortley Montagu (1689–1762): Her Turkish Performances,” in *Medieval and Early Modern Performance in the Eastern Mediterranean*, ed. A. Öztürkmen and E. B. Vitz (Turnhout: Brepols, 2014).

historical, cultural, physical, political obsessions that produced Western women themselves. The second track is about the discourse of Enlightenment. These two actually lead to the third track which is linked to the regime of modernity that is defined by the mastering, controlling and reshaping of the body of the subject. Michel Foucault of course has offered us a framework which claims that modernity as a regime is in need of making its subjects and their bodies visible. It reinforces and intensifies visibility in order to regulate. In colonies, the Western fetishism of visibility is apparent in legislative regulations. Legislation emerges as a tool to make colonial subjects visible by situating them within a certain legal vocabulary.

The debate over modernity did not only concern the colonies, The West itself and the localities with no colonial experience have also been concerned with modernity at home, through various regulations on women's bodies. One major example of this concern has been for instance the Contagious Diseases Acts in Victorian Britain in the nineteenth century. In colonial India, the Britons were also troubled by what is called 'white violence', which they considered as another attack on modernity for them. In this respect, this study asserts that legislation in India was not only concerned with Indian population. Codification debate in India was very much affected by the anxiety towards European and British population in India, and the cases of white violence and related legislation on the subject have been significant cases to prove this claim. In India, most of the legislations were the outcome of "third face of colonialism" in Elizabeth Kolsky's words. The European Vagrancy Act of 1869 is a clear example of this concern.

1.4 Codification as otherification

Given the above framework, this study assumes that culturally specific forms of violence such as sati, female infanticide, dowry death were stated as scandalous crimes of culture by British officials, while common forms of gender violence were not paid the same amount of attention. This assumption reveals itself in legislative regulations. Law constitutes racial difference as well as the difference based on gender. In Indian context, there are three main Acts that manifest in colonies as “the rule of difference” rather than “the rule of law”. One of them is the *Criminal Tribes Act* of 1871, a law which dictated that one is “born criminal.” This Act marked criminal behaviour as to be hereditary. This is a shift to look at crime from social determinism to biological determinism. The other example is the *Indian Evidence Act* of 1872, which is influenced by the colonial context. This Act reproduces cultural stereotypical characteristics such as ‘Indian untrustworthiness.’ The *Code of Criminal Procedure*, 1861 is another remarkable example to claim that “the rule of difference” was at stake in colonies. This Code was a legal construction of racial difference. It granted rights and privileges based on race and provided courts with European majority for Europeans.

1.5 The particularity of suttee as a case-study

Legal anthropology shows various forms of women's bodily experiences over which modernity is defined. Among a variety of practices rooted in women's body, this study focuses on suttee in India during the nineteenth century, as a case which clearly displays the interwoven set of relationships between race, gender and power through the manipulation of law.

The term *sati* (Anglicized as suttee) is used in wide range of meaning. *Sati* can refer to the action in which woman immolates herself in her husband's pyre, to the woman who is at the centre of the action and to Sati as goddess. In English, the first meaning is overriding: suttee as an action or ritual. English usage mostly associate the term with the verb “commit” pointing suttee as an act to 'perform'. Yet common usage of the verb commit characterize suttee as a crime or a form of suicide since in English one commits suicide and one commits crime. Whether it is performed or committed, in English it refers to a thing not a person. *Hobson-Johnson* defines suttee as “the rite of widow-burning”; “the burning of the living widow along with the corpse of her husband, as practised by people of certain castes among the Hindus, and eminently by the Rajputs.”⁹ Another major use of the word suttee refers to the person and is secondary. Sir William Jones says a woman “became a sati” and thus reveals a derivation from dictation of an Indian language; remark Indian acquaintance. In Hindi, sati is a person not a practice. For *Hindi Shabd Sagar*, sati is

⁹ Henry Cole and A. C. Burnell, *Hobson-Jobson* (New Delhi: Munshiram Manoharlal, 1979), 878.

any woman and actually has nothing to do with the “widow” implied by English usage. Sati used to designate a woman who "is burned on the pyre along with the body of her husband," and no direct mention of widowhood is made.¹⁰

In English, suttee and widow-burning is used interchangeably and it explains the reason behind the title of this thesis. Widow-burning is a more familiar word to general reader yet it excludes the meaning in its locality since the person either becomes a widow or a sati.¹¹

Following the Introduction, the second chapter entitled “Discourses of Modernity and Law: A Feminist Critique towards the Study of Suttee” elaborates how debates on modernity are formulated over women’s bodies. The chapter also provides a critique of Western feminism, which dismisses local dynamics of how modernity is experienced. Asserting that modernity is an ‘experience’, it aims to address connections, commonalities as well as differences among such different experiences in various localities. It claims that women’s bodies were not only problematized in the colonies to discuss modernity. They were also central to discussions on modernity at home, and legislative regulations were the outcome of this concern. Focusing on the case of prostitution this chapter tries to illustrate how legislative regulations concerning women’s bodies emerged in Britain.

Chapter 3 entitled “Constructing India for Colonial Rule: Codification and Legislative Regulation” examines the construction of colonial India by the British rule. It tries to show that the relationship between Britain and India had changed over

¹⁰ Cited in John Stratton Hawley, ed., *Sati, the Blessing and the Curse: The Burning of Wives in India* (New York: Oxford University Press, 1994), 12.

¹¹ This study leaves this discussion for further chapters and uses the general naming for the title. Nevertheless, in Turkish title, burning-wives (*eş yakma*) is used.

time due to different political and social conjunctures. Under East India Company rule, this relationship was shaped by a cordial approach and even an admiration. It is also why it took years of debate to abolish suttee since the British was not in favour of any kind of interference. After 1829, the relationship became tense, the British were disturbed by Indian culture and feared of the brahmanising tendency. They re-discovered Indian past, emphasizing its so-called ‘barbaric’ aspects. This tense relationship peaked up after the proclamation of 1858. In the long run, the British rule centralized suttee within Indian culture as well. This chapter also gives a look at codification debate in India and provides first-hand accounts of how the British aimed to use colony as a laboratory. This relationship, the chapter shows, is a case in point in discussing the construction of the self and the other in colonial world.

“Strategies of Dealing with the Suttee: Images and Narratives,” the fourth chapter, explores the practice of burning wives in India. It discusses suttee in Hindu tradition and the British approach to the practice. After giving a history of legislation on the issue, the chapter focuses on the representations of suttee, by using accounts by eyewitnesses, travellers, officials, missionaries. Focusing on images and narratives, this chapter tries to elaborate the British strategies of dealing with suttee. It also questions the scarcity of sources in analysing women’s writings on suttee and suggests the production of representations by women can be complex in our understanding of British colonialism in India.

Chapter 5, “ ‘Re-opening’ a Historical Debate: The Case of Roop Kanwar as a Twentieth Century Suttee”, reopens the suttee debate with the latest example of Roop Kanwar case of Deorala. Showing how a nineteenth century controversy still continues, the chapter examines the case of Roop Kanwar to the extent it enlightens

centuries long wider debate between Westerners and Indians. The suttee of Roop Kanwar is significant since it converted suttee from a religious theme to a critical political issue. This chapter tries to raise questions about women's subjectivity, and the culturally constructed and gendered notions of sacrifice. Very shortly it tries to explore whether analysing Roop Kanwar case grants us an interpretation of suttee from colonial to post-colonial connotations.

The last chapter is the conclusion where areas of further research are explored. Suggesting that suttee should be considered together with widow remarriage in India, it favours that conceptualization of suttee without national lines can provide rooms for current debates over violence against women. If considered together suttee, thuggee, female infanticide reveal a more nuanced picture of British attitudes towards gender, religion and race in the nineteenth century India.

CHAPTER 2

DISCOURSES OF MODERNITY AND LAW: A FEMINIST CRITIQUE TOWARDS THE STUDY OF SUTTEE

Feminist approach to the use of women's bodies in constructing modernities, has centered upon an analysis of power. Asserting that 'personal is political', feminists highlighted that power at the microlevel constructs gender and hierarchies at macro level as well. Inspired by Foucauldian perspective that power does not operate merely from a top down force, many feminists delved into local power dynamics.¹² Others pointed out that theorizing power in local scale, misses oppressive patriarchal institutions and systematic domination on women.¹³ These scholars while acknowledging the operation of power discursively and materially, also called attention to how power operates in contexts including state institutions.¹⁴

It is important to remind that the concept of feminism which originated in Western society has based most of its analytical framework on Western forms of gender relationships. The notion of "civilizing mission" in the colonial world may also be immersed in Western feminist discourses. India emerges here as one of the important example where Western feminism, bound with its own perception of

¹² See, Susan Bordo, «Anorexia Nervosa: Psychopathology as the Crystallization of Culture», in *Feminism and Foucault: Reflections on Resistance*, ed. Irene Diamond and Lee Quinby, Back in print edition (Boston: Northeastern, 1988), 87–117.

¹³ Irene Diamond and Lee Quinby, eds., *Feminism and Foucault: Reflections on Resistance*, (Boston: Northeastern, 1988); Nancy Hartsock, "Foucault on Power: A Theory for Women?," in *Feminism/postmodernism*, ed. Linda J. Nicholson, Thinking Gender (New York: Routledge, 1990), 157–75; Lois McNay, *Foucault And Feminism: Power, Gender, and the Self*, (Boston: Northeastern, 1992); Jana Sawicki, *Disciplining Foucault: Feminism, Power, and the Body* (New York: Routledge, 1991).

¹⁴ Alan Hunt, «Foucault's Expulsion of Law: Toward a Retrieval», *Law & Social Inquiry* 17, Issue 1 (01 January 1992): 1–38.

gender, failed to grasp cultural and local practices. Its basic tenets and conclusion unknot Western problems of gender relations. Feminist theorization about the role of women and the advancement of women's status were mostly developed under the influence of various versions of Western feminist theory. These frameworks were exported to the rest of the world as a set of visions and strategies despite being context specific to Western women's movements.

Especially, the debate on the role of women unveils the differentiated approaches and strategies by Western and non- Western feminists. Western feminism emphasizes the ideas such as: sex inequality is the main problem faced by women in the Third World. Other analytical categories such as race and class are less important than gender. A sisterhood between Western and non-Western world will thus provide an advancement in sex equality, and women activism and feminist mobilization is effective to promote changes in the sphere of women's rights.

In relation with this last idea, Western feminism tends to think advancement in women's status as the result of mobilization at the base, pressure from below, it sees feminist mobilization as a force to changes in political system. According to this view, non-Western world lacks sufficient feminist ideology and appear to be subordinated to the (patriarchal) power of the State.¹⁵

A significant difference between Western and non-Western feminism is found in their conceptualization of women as the subjects of struggle. Non-Western feminism “stressed satisfaction of basic material needs as a pressing issue in the

¹⁵ Wellesley Editorial Committee, ed., *Women and National Development: The Complexities of Change*, (Chicago: University of Chicago Press, 1977).

context of disadvantageous international economic order.”¹⁶ In non- Western feminism, the situation of women is perceived not only as the result of unequal gender relations, but as the consequence of various oppressive situations that transcend gender categories and are related to race and class.

In consequence, non- Western women activists criticized the notion of a single and uniform feminist movement. They advocated for feminism to struggle against all forms of injustice. The “change from below” paradigm as conceptualized by Western feminism relied on the assumption of the availability of sufficient resources at base, which would spark feminist mobilization and put pressure onto power holders. However, the conditions did not prove to be universal. The normative prescription by Western feminism has been criticized as being an imposition to local, cultural and religious traditions in the name of women's rights. In the case of colonial India, changes in women's status carried either by male activists or power holders.

Similarly, the concept of “sisterhood” has its own problems in non-Western world. The concept rooted in a perception of global, unified, homogenous obstacles to women's rights. Instead of a monolithic and dominant force, feminists should deconstruct it and analyse its complexities, think of a wider alternative forms of resistances.

Concurrently, conceptualization of law as discourse, practice, process and system of domination and resistance opened new directions. 1970s and 1980s hosted a great deal of studies on the power of law. Studies in 1970s challenged the equation

¹⁶ Kriemild Saunders, ed., *Feminist Post-Development Thought: Rethinking Modernity, post-Colonialism & Representation*, (London: Zed, 2004).

of law with coercion, and Marxist view of law as a tool serving class (elite) interests. Legal anthropology contributed to the conceptualization of power and law relation, arguing that certain classes and state rely upon law to uphold power and thus law is never “neutral” and lawmakers fashion a “reality” to which the governed must agree.¹⁷

Elaboration of law as “not only practice and process, but also discourse, code, and communication”¹⁸ enabled scholars to analyse law as a contest area. As feminist legal scholarship demonstrated for women, law not only constructs subordinate subjectivity, enforces patriarchal terms, but it offers very much liberation.¹⁹

The uniqueness of law is its contestability and law as a place of contest and struggle brings hegemony and resistance into picture. The question of law as a struggle revealing contested states of governance and mind is slightly addressed in this study. This study only deals with it in terms of possibilities of resistance within law. Theories of law and power are in need of considering the forms in which people contest the very institutionalized polities, reshape and resist them. Law brings out its own resistance. Thus, many research have been showing resistance against

¹⁷ June Starr and Jane Fishburne Collier, ed, *History and power in the study of law: new directions in legal anthropology*, (Ithaca: Cornell University Press, 1989), 6–9.

¹⁸ Mindie Lazarus-Black, «Review of History and Power in the Study of Law», *APLA Newsletter* 12, Issue 2 (1989): 11.

¹⁹ Zillah R. Eisenstein, *The Female Body and the Law* (Berkeley: University of California Press, 1990); Martha Fineman and Nancy Sweet Thomadsen, ed, *At the boundaries of law: feminism and legal theory* (New York: Routledge, 1991); Catharine A. MacKinnon, *Feminism unmodified: discourses on life and law* (Cambridge, Mass: Harvard University Press, 1987); Carol Smart, *Feminism and the power of law, Sociology of law and crime* (London ; New York: Routledge, 1989).

domination in court cases. This studies point out the manipulation of legal rhetoric in courts.²⁰

This study cannot ignore to focus on law, power, hegemony and resistance in relation with each other. It is only significant to claim law as a site of struggle if power is described as fluid and dynamic and presence in any encounter. Law in this study, is viewed as a power to manifest certain visions of the social order, to shape cultural discourses, to ascertain relations between persons, but it is also the site to contest and carries its own bugs to discover. This perspective offers law into the service of the dominated as well and law could provide acquirements for the dominated.

Resistance is the form in which people depend on oppositional tactics to think themselves out of hegemony. This “everyday resistances” against domination have the potential for us to reconsider relations of power.²¹ Analysis of resistances shows us gender, race and class are critical factors in power struggles. Concepts of hegemony and resistance constitute each other, use each other's terms and transform them, challenge and change the existing social order. Hegemony and resistance are mutually constitutive.

Law is maker of hegemony and resistance. Hegemony and resistance operate in legal contexts. Law advances hegemony, at the same time defines frameworks which those who resist must attend. It is remarkable to note that, resistance requires

²⁰ For a good collection of this works see, Mindie Lazarus-Black and Susan F. Hirsch, ed, *Contested states: law, hegemony, and resistance*, (New York: Routledge, 1994).

²¹ See, Michel de Certeau, *The practice of everyday life* (Berkeley: University of California Press, 1988).

inclusion in legal institutions. Thus, resistance sometimes appears as participation into dominant society through participating its institutions. A whole history of voting rights, equal education, political representation is few examples of this kind of resistance. People use the terms of law, constructs law in developing opposition.

In colonial world, colonial subjects protested their subordination in the language of colonial law. The logic of opposition that is central to colonial claims to power, produces oppositional discourses. Nevertheless, this oppositions open to be transformed by colonial subjects through appropriating colonial discourses and they are sometimes transformed in radical ways.²² The question whether the oppositional use of legal institutions and processes intensifies hegemony or undermines it still remains at stake. These oppositional performances may highlight the patriarchal nature of law and illustrate how law makers invoke custom, religious ideology and formal statutes to communicate and enforce a certain kind of order. Aside from that, to reduce seeking justice in court into a calculation of “win” or “lost” is a simplistic perspective. It is rather promising to see performance as confronting the limits of hegemony. Legal processes with their repository both for domination and resistance can be a site of subordination and empowerment. In the examples of legal treatment of women, law stands as both of them. Use of the legal system for resistance after all has always potential to reveal gender hierarchy and legal patriarchy and it is better than none.

It is possible to obtain fresh insights about how hegemony is shaped and to what extent resistance is possible through asking what constitutes a legal record, who

²² See, Roger M. Keesing, *Custom and confrontation: the Kwaio struggle for cultural autonomy* (Chicago: University of Chicago Press, 1992).

keeps them, for what purposes, and which legal archives are kept while others are ignored. Law and legal practices are constitutive of variety of powers – political, economic, symbolic – and the power of law is at once hegemonic and oppositional.

While discussing suttee, I use two theoretical frameworks: discussions on the nature of modernity so the concern on how to read modernity, and a certain type of feminist critique. Different localities have their own experiences of modernity. As Carol Gluck points out that “modernity is an experience” it is possible to explore history of modernity from any particular place. Here in this study that takes place in India, it shares connections and commonalities with experiences of other societies. Dealing with India reveals empirical bases on modernity and difference from the European experiences.

Modernity is a concept with possible multiple readings. Over the decades, it has been radically changed by globalization, and emerging new inequalities. Through these historical processes, women's bodies have been a key element in defining modernity and women's place in society has often been viewed as a gauge of it. This was certainly the case in early twentieth century in many societies ranging from Turkey to Algeria, Egypt and China. Cases from the twentieth century demonstrate traces of colonial legal system and illustrate how modernity was discussed in colonial and non-colonial societies. As these societies struggled to find a national unity – and in some cases fight Western imperialism – the subject matter of women became more politicized. There also emerged more discussions on “women’s issues” in intellectual circles, predominantly male. Intellectual debates evolved around transforming traditional women to modern citizens, who could contribute to the cause of advancing towards national modernity. Women on the other hand, looked

for new ways of defining their own roles, yet traditional structures and gender roles have always been hard to break away from. In some cases, as tradition persisted, it reproduced new responses to Western conceptualization of modernity. Turkey and Algeria, for instance, adopted different attitudes towards Islam in constructing their national identity. While acknowledging the need of Western ideas of secularization and modernization, in Turkey, Islam was considered as a barrier to reach “the level of contemporary civilizations”. In the Algerian case, however, Islam was a part of nationalist identity as a response to French colonialism. In Turkey, the veil was to be lifted while in Algeria, it was defended as the symbol of resistance against colonialism.

Although debate over modernity was at climax in colonial contexts, it was very much focal to colonizer at home as well. In this regard, nineteenth century is a culminating point, which hosted many legislative regulations concerning modernity and women's bodies. Analysing prostitution and Contagious Diseases Acts in nineteenth century Britain can be useful to show how women's bodies were scrutinized in relation to modernity.

Rapid transformation due to industrialization, changing conditions in the cities contributed to create processes of “otherification”, marking “the others” as actors over whom modernity was discussed. In Britain, for instance, prostitution emerged as a scandalous case and prostitutes became to be socially stigmatized and despised, while it continued to be demanded and practiced. Prostitution was generally discussed in relation to ‘social hygiene’ and ‘venereal disease’, adding up to many other anxieties that modernity produced. The fact that it was the women's bodies, not men's, the debates were being centered upon, showed very clearly how

women's bodies have been the key to regulate and control new social concern of modernity. The obsession of social hygiene paved the way to the discussions of sexually transmitted diseases. Therefore, mandatory medical exams on prostitutes preserved a sexual double standard, where prostitutes, not the clients, were held responsible for the transmission of disease.

Prostitution which became “the Great Social Evil” by the 1850s, occupied a place in the discussions over modernity, while the Victorian responses to it varied within time. Early and later responses treated the topic by stressing different aspects of this social concern. The variation of these responses was also significant and revealing in illustrating how modernity had been read. In the 1840s, prostitution first became a concern among men of the religious world or doctors who were influenced by evangelical doctrine. The early Victorian period represented systematic efforts to examine the problem in 1840s, leading examinations of causes, extent and remedies for prostitution. In this manner, early investigations placed a “scientific” research into prostitution in the nineteenth century. It appears that the “problem” of prostitution was reformulated within the changed social and political climate of the 1850s and 1860s. For early social investigators, prostitution was an intolerable evil which threatened the holy character of the family as well as the social order. For later investigators, prostitution remained as a “social evil,” but one that could be checked by a system of police and medical supervision, two important agencies which indeed represented modernity. Prostitution had been tolerated until the legislative attack of the Contagious Diseases Acts of 1865-1869. These acts first emerged with the aim of curtailing venereal diseases among the armed forces. They emerged from administrative reforms in the military departments of government. The aim of the act was to control the spread of venereal disease among enlisted men, but the debate was

somehow centered upon women's bodies. The Acts left the men entirely untouched and applied solely to women, reflecting the double standard of sexual morality in Victorian society.

CHAPTER 3

CONSTRUCTING INDIA FOR COLONIAL RULE:

CODIFICATION AND LEGISLATIVE REGULATION

The process of the British construction of colonial India is revealing in terms of showing how the Britons gradually persuaded Indians that the practice of suttee was an essential element of their culture. Once suttee was centralized within Indian culture, Britons were able to establish a legislative regulation. Once legislative debates on suttee began, the process intricately operated both ways, where colonialism affected the ruler as well as it affected the ruled. This double-edged situation can be well observed in the codification debates in colonial India. Analysing reactions to legal system reforms become useful to understand how India became a laboratory for the Britons, constructing this time the colonizer in return.

As well expressed in Ashis Nandy's work *The Intimate Enemy: Loss and Recovery of Self under Colonialism* the self and the other are necessary notions to justify colonial governance and only through this kind of alienation between the core and the periphery, "civilizing mission" that constitutes backbone of colonial discourse would find its way out. Colonialism minus a civilisational mission is no colonialism at all. Colonialism handicaps the colonizer much more than it handicaps the colonized.²³

The promise of justice was very essential to British colonialism. As Sir Robert Fulton said: "The foundation of our empire in India rests on the principle of justice, and England retains its supremacy in India mainly by justice. Without justice

²³ Ashis Nandy, *The Intimate Enemy: Loss and Recovery of Self under Colonialism* (Delhi: Oxford, 1988), 11.

we could not hold India for a moment”²⁴. As pillars of imperial rule, law and legal practices were very effective tools to legitimize colonialism and British colonialism could be discussed around a rhetoric of the promise of justice being cornerstone of civilizing mission. Foundational role of law in British colonial state urges us to study on colonial law more than ever. While law was determining territorial boundaries, legitimizing its authority and shaping colonial governance, it was built on exclusion, it was complicit in differentiating the colonizer and the colonized; by defining race and gender, law was a central institution of colonial control and domination.

Encounter between Britain and India saw different periods. It is not fair to speak of a homogeneous relationship in the long run. Eighteenth century appears to host more equal and cordial state than nineteenth century. Notable figures like Sir William Jones, Warren Hastings were admirers of India. On the purpose of studying Indian languages, laws and traditions, Jones established the Asiatic Society of Bengal on January 15, 1784. The Asiatic Society of Bengal is a representative of gentle kind of relationship. With an increased administrative role in India, the British became acquainted with Indian culture, literature and history and was driven into the study of Sanskrit. It led to a cultural connection between West and East and racial tolerance in an earlier time of British colonial rule in India. In contrast, nineteenth century saw a radical shift. By figures like Thomas Macaulay, for instance the idea of racial superiority emerged as a nineteenth century phenomenon.

²⁴ J. T. Sunderland, *India in Bondage: Her Right to Freedom* (New York: L. Copeland, 1929), 105.

To establish authority in India and to legitimize their colonial rule, Britons found themselves obliged to differentiate their rule from previous regimes.²⁵ The colonial rule handled the degradation of India in two mutually inconsistent ways as Ashis Nandy points out. Firstly, it postulated a clear disjunction between India's past and its present. The civilized India was in the past; now it was dead. Secondly, the British postulated that India's later degradation was not due to colonial rule but due to aspects of the traditional Indian culture which in spite of some good points carried the seeds of India's later cultural downfall.

Britons claimed to be the first and most important opposition as British law in contrast to the tyranny of Oriental despotism. Presenting themselves as an empire of law, Britons contrasted their rule with personal and arbitrary rule of Oriental despot. After setting this kind of contrast, they presupposed that British justice would be beneficial to colonial subjects. Despite a rhetoric of Britain as an empire of law, colonial law in India delivered something very different. Indeed, it is not surprising since British hold in India was achievable only through construction of the self and the other in contrast to each other and law emerges the main site of this kind of differentiating.

In nineteenth century, world view credited binary oppositions. It was a time for grasping world in polarities such as modern / non-modern, secular / non-secular, normal / abnormal, scientific / unscientific. "The drive for mastery over men"²⁶ produced superiority of the masculine over the feminine, the human over the

²⁵ Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal*, (Cambridge: Cambridge University Press, 2007).

²⁶ Nandy, *The Intimate Enemy*, x.

nonhuman. One of the significant example of latter was in nineteenth century Britain, when Charles Darwin came with his evolutionary theory. The main criticism arose from a deep rooted belief in human superiority. The dichotomies such as white / black, colonizer / colonized, civilized / uncivilized were useful for British power and these dichotomies were also explicit in depiction of Englishman and his Indian other. By the late nineteenth century, Englishman the disciplined, frugal, honest, honourable, vigorous and superior was in contrast with his Indian other, extravagant, weak, effeminate, sensuous, deceitful.²⁷ Rightfully, Elizabeth Kolsky argues that colonial world is very uneasy to be cut into two and binary oppositions are not useful to reveal the picture and the complex set of various forces and actors.²⁸ She introduces the third face of colonialism in British India and argues that codification of Indian law was an official response to third face of colonialism by which she means non-official Britons in India. She claims that European misconduct led Britons to consider codification more seriously to avoid white crime which was another 'scandal of empire'.

Kolsky's stand against binary oppositions is valuable and her point on third face of colonialism very essential when dealing with colonial world. However, although third face of colonialism caused various legislations and was a striking concern on the way to codification in India, it is speculative that white violence was a product of construction of the self and the other and this differentiation gave birth to white violence. Similarly, the constructed self required Britons to control their

²⁷ Mrinalini Sinha, *Colonial Masculinity: The "Manly Englishman" and the 'Effeminate Bengali' in the Late Nineteenth Century*, (Manchester: Manchester University Press, 1995).

²⁸ Elizabeth Kolsky, *Colonial Justice in British India*, Cambridge Studies in Indian History and Society 17 (Cambridge ; New York: Cambridge University Press, 2010).

behaviours because the boundary that distinguished the ruler from the ruled based upon it. Both cases, the problem of white violence and the need for codification, emerged from a differentiation between the self and the other, the colonizer and the colonized. Codification of law in India did not simply sound that the reform to Indian legal system would threaten the empire's political existence rather it was necessary to introduce certain legislations and codify Indian law to set boundaries between the colonizer and the colonized. Law took “the task of structuring difference.” Nevertheless, a codified rule of law also would turn the colonizers into “the prisoners of their own rhetoric.”²⁹

3.1 Law in colonial India

Law is considered in two perspectives in scholarship. The first poses law as a central institution of colonial control and domination. In Ranajit Guha words it is “the state's emissary”³⁰ The second favours the use of law as a weapon of weak. Probably the most significant role of law was to restrict colonial rulers in their own rhetoric since the promise of colonial justice brought a set of means that controlled the exercise of power by rulers as well.³¹

²⁹ E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London: Allen Lane, 1975), 263.

³⁰ Ranajit Guha, «Chandra's Death», in *A Subaltern studies reader, 1986-1995*, ed. Ranajit Guha (Minneapolis: University of Minnesota Press, 1997), 40.

³¹ Sally Engle Merry, «Law and Colonialism», *Law & Society Review* 25, Issue 4 (1991): 889–922; Sally Engle Merry, «Resistance and the Cultural Power of Law», *Law & Society Review* 29, Issue 1 (1995): 11–27; E. P. Thompson, *Whigs and hunters: the origin of the Black Act* (London: Allen Lane, 1975).

Law and legal practices are the pillars of imperial rule. The more British empire expanded, the more British law spread. For England, the promise of British justice was the cornerstone in its civilizing mission. Legal practices came to ground and legitimize colonialism. The legitimization of the existence of colonial rule was build by the promise of justice. Law played a foundational role in the construction of British colonial state. It defined the territorial boundaries of the empire, legitimized its authority, helped the daily routines of governance. Despite rhetorical promises, colonial policies built on exclusion, constructed categories that differentiate colonizers from colonized. The law itself was part of the structure of violence.

From the eighteenth century onward, European states display their power not through representations itself but through a more profound governance, through calculating populations, separating private and public spheres, establishing disciplinary institutions, defining deviance.³² To establish this kind of authority in colonies required determining, controlling, codifying and representing the past. The colonial ruler licensed some of the activities as legitimate – interestingly enough, sometimes at the risk of confronting its own promise of justice.³³ – while treating some other as unlawful or immoral.

Elizabeth Kolsky in her *The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-1857* explores the history of intraracial (Indian on Indian) rape, she points out the similarities in practice between British and Islamic laws of

³² Bernard S. Cohn, *Colonialism and its forms of knowledge: the British in India*, (Princeton, N.J: Princeton University Press, 1996).

³³ Elizabeth Kolsky, «The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805–57», *The Journal of Asian Studies* 69, Issue 04 (2010): 1093–1117.

rape. The cases in the article were decided between 1828-56, (Age of Reform) when the ideas of English Utilitarians prevailed colonial administration by ambitious theories about uplifting Indian society. The abolishing of suttee, the expanding of the marital rights of Hindu widow were salutations of the promise of modernity. Yet, rape was seen by British officials as culturally common rather than culturally specific crime and in rape trials, cross-cultural assumptions about men and women sexual behaviours were dominant. In India, culturally specific forms of violence such as suttee, female infanticide, dowry death were stated as scandalous crimes of culture by British officials but common forms of gender violence were not paid the same amount of attention, it is mainly because of colonial state's civilizing mission.

In early British colonial rule, it was more of a question of racial tolerance and cultural connection between East and West. The establishment of the Asiatic Society of Bengal on January 15, 1784 by Sir William Jones on the purpose of studying Indian languages, laws and traditions is a good exemplar of this kind of relationship. However, Britons soon realised the need of a differentiation between their rule and previous regimes in order to establish their authority. This idea manifested itself in the opposition between the tyranny of Oriental despotism and British law. Personal and arbitrary rule of Oriental despot was contrasted with British Empire as an empire of law and liberty.

Would impartial judicial system and by the equal protection of law secure the stability of the empire and the loyalty of their colonial subjects? After this kind of contrast was in place, Britons would answer 'yes'. This was from above imposition which carried out presumption of British justice would be beneficial to colonial subjects, yet the establishment of colonial state and its laws required the abolishment

of a pre-existing order and definitely this displacement was not by the consent of the governed. In this regard, it is necessary to note that Britain's colonial experiences differ from each other. The empire governed an immense population of colonial subjects in India whereas native people were removed by Britain's settler societies in the Americas.

Was it possible to administer equal justice to those who were not equal legally and politically? At the very end, law's primary purpose was to maintain Britain's hold.³⁴ Thus, the discourse of a rule of law and the practice were different. Even though a rhetoric of legal equality was nurtured, legal practice put most Europeans above the law, tolerated their actions. It was particularly the case of physical assault and abuse. This offends the theory of equal protection that is indispensable to the rule of law. In the situation of legal practice, law became complicit in racial violence rather than a protector against them. Indian nationalist Bal Gangadhar Tilak noted in 1907 "The goddess of British Justice, though blind, is able to distinguish unmistakably black from white."³⁵

Bal Gangadhar Tilak describes only one of many binary oppositions constructed by imperial ideology. Dichotomies were surely useful for British power. But, to what extent these dichotomies are useful for us to understand colonial relations? Colonial world was a sum of various actors and forces that could not simply cut in two, thus binary oppositions are far away to reveal the picture. Third

³⁴ Nasser Hussain, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003).

³⁵ Kesari, November 12, 1907, BL, IOR, L/PJ/6/848, File 453. cited in Kolsky, *Colonial justice in British India*, Cambridge studies in Indian history and society 17 (Cambridge ; New York: Cambridge University Press, 2010) 4.

face of colonialism remains undeniable and that was to great deal considered by British authorities in making of the codification of Indian law.

Third face of colonialism refers to who were neither official British rulers nor Indian subjects. These men like William Orby Hunter, did not work for the state in an official capacity, they were “both the bearers and the targets of colonial authority”.³⁶ Third face of colonialism is a must to dwell upon which unveiled that Britons in India was not a monolithic ruling class. Despite 'wrong sort' and 'right sort' of Britons, imperial whiteness sometimes worked in monolithic ways in the cases of violence toward Indians. Planters were the members of non-official community, depicted as 'wrong sorts' of Britons in India. They were making things easier and complicated for the empire. Their financial returns were critical to the colonial government but in contrast their misbehaviour, drunkenness were disturbing and embarrassing for the 'right sorts' of Britons. Expansion of power of the empire showed that Indian peoples were not the only to be disciplined by the colonial state. The more Indian crime was controlled the more British power was consolidated.³⁷ But white crime was another 'scandal of empire'.³⁸ In this respect, Kolsky's *Colonial justice in British India* is a refreshing study. It deals with white violence in India in the late eighteenth century and she shows via court cases how acts of violence endangered and maintained British power in India. She argues that physical violence was an intrinsic feature of imperial rule. Racial violence was a constant and

³⁶ Ibid., 5.

³⁷ See, Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Delhi: Oxford University Press, 2000).

³⁸ On impeachment trial of Warren Hastings see, Nicholas B Dirks, *The Scandal of Empire India and the Creation of Imperial Britain* (Cambridge, Mass.: Belknap Press of Harvard University Press, 2006).

constituent element of British dominance in India, an endemic part of British colonial rule.

Overview of judicial system in colonial India is in order here before moving further: the East India Company was to make laws to govern its officials in India. In the early eighteenth century, the company established a set of law courts in aiming to govern natives by the native law and Englishmen by English law. In the Presidencies there were Crown Courts which had jurisdiction over everyone in the Presidency and involving Britons. In the *mofussil* (the regions outside the three East India Company capitals of Bombay, Calcutta and Madras), there were Company Courts that had jurisdiction over Indians, and the non-British Europeans in the interior. European misconduct and an expanded white settlement in the early nineteenth century led British authorities to reform judicial system by a uniform law and law courts so, codification of Indian law did not simply emerge out of a requirement of colonial ruling of Indians, whites in India contributed it much. However, reforms to judicial system did not bring more justice to India. “There were far more executions of Europeans in India pre-1860 than there were after the promulgation of the Indian Penal Code (after 1860 there are only four recorded executions of non-military Europeans in India)”.³⁹ An Indian journalist pointed out: “our rulers may say what they like but there is one law for the Europeans and another for the Indians”.⁴⁰

Colonial codification was seen as key to imperial stability. A uniform system of law required colonizer and colonized as equal legal footing so, codification

³⁹ Kolsky, *Colonial Justice in British India*, 12.

⁴⁰ Ibid.

became threat to colonialism's unequal politics. A codified rule of law would turn the colonizers into “the prisoners of their own rhetoric”. Codification of Indian law leaves us with uneasy question of why did law reformers choose to reform the Indian legal system that threatened the empire's political existence?

Eric Stokes in a way responds the question by arguing that the colony formed a laboratory for the codification of law. In his *The English Utilitarians and India*, he argued that law reform in India was shaped by the vision of Benthamites (Jeremy Bentham introduced the word 'codification' into English language. He was critique of what he called “judge-made law” and favoured a structured comprehensive code of laws, the pannomion) who sought “to redeem a people sunk in gross darkness and to raise them in the scale of civilization”.⁴¹ Stokes stressed that codification of law in India and colonial legal developments were the part of “the Utilitarian legacy”.⁴² For English Utilitarians, codification in colony was an opportunity to experiment with legal institution when considered with difficulty to implement it at home. Stokes' argument takes codification very much in a metropolitan perspective, views colonial policies only emerged from metropolitan needs.

Elizabeth Kolsky does better to show us even a more important factor, Europeans in *mofussil*. British authorities were not ignorant to European misconduct.⁴³ The power and the prestige of the empire required Britons to control their behaviours because the boundary that distinguished the ruler from the ruled based upon it and for British authorities codification would give the means to control

⁴¹ Eric Stokes, *The English Utilitarians and India* (Oxford: Clarendon Press, 1959), 302.

⁴² *Ibid.*, 234.

⁴³ The European Vagrancy Act of 1869 is the most notable example of this concern.

all inhabitants in India. Calcutta High Court Judge C.D. Field supposed: “The work that is thus being done in British India will hereafter form an important page in the history of Great Britain and its effects will, in all human probability re-act upon England herself”.⁴⁴ It is interesting in Calcutta judge's words that modernity in the colony would “re-act” upon the metropole. It challenges the idea that colony as to provide raw materials for metropole. Codifier James Fitzjames Stephen who was to introduce Criminal Tribes Act of 1871 and Indian Evidence Act of 1872, wrote: “The Indian Penal Code is to the English criminal law what a manufactured article ready for use is to the materials out of which it is made”.⁴⁵

Kolsky's study of *Colonial Justice in British India* challenges the idea that codification of Indian law was originated merely of an English political philosophy and aimed to rule only Indians in India. She claims codification was an official response to third face of colonialism which carried moral, legal and political difficulties. If white violence was common than what was the relation between 'racial cases' and law? Changes in legal system did not terminate law's collusion in normalizing certain kinds of violence. Therefore, the history of colonial law becomes central to the history of colonial violence.

The basis of the rule of law as governing and protecting equal subjects and reforms to jurisdiction required shared legal identity as the colonizer and the colonized were the equal subjects before the law, they were subjected to the same legal practice and courts. This bore out an immense debate among members of the

⁴⁴ Elizabeth Kolsky, “Codification and the Rule of Colonial Difference: Criminal Procedure in British India,” *Law and History Review* 23, no. 03 (2005): 633.

⁴⁵ George Otto Trevelyan, *The Life and Letters of Lord Macaulay* (London : Longmans, Green, 1876), 418.

ruling race. Lauren Benton argues this possibility of shared legal identity was discontinued by “the task of structuring difference”.⁴⁶ In this regard, law constructs race. Colonial rule appears to establish the boundaries of race through defining race by law. It raises the question of how law participated in the determination and institutionalization of racial difference.⁴⁷

Although reform to legal system said so, Englishmen were unwilling to stand on equal legal footing since they saw themselves as “ruling class” anyway. Thus, law itself remained insufficient to control and punish unruly people. Consequently, non-discriminating law was far more away for India. Despite rhetoric of justice, codified law of India delivered something different. Colonies where “special conditions” prevailed, required different practices and procedures. Partha Chatterjee names this particular form of governance the “rule of colonial difference”.⁴⁸

To study of law in colonial India leads us to the study of race and white violence and this provides us the most complex engagement of law and race. The politics of colonial world were based on the exclusion and subordination. Law played the role to describe and legitimize who the rulers were and who the ruled were, this required mechanisms of differentiation. Where race and law intertwined in colonies, the use of science in law contributed a lot to the maintenance of the

⁴⁶ Benton, *Law and Colonial Cultures*, 12.

⁴⁷ See López's work in which he traces the legal construction of race and examines the justification of whiteness and non-whiteness. Ian Haney-López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 2006).

⁴⁸ Partha Chatterjee, *The nation and its fragments: colonial and postcolonial histories*, (Princeton, N.J: Princeton University Press, 1993), 16.

boundary. Medico-legal expert provided privilege to Europeans by reproducing myths of vulnerabilities of Indians.⁴⁹

Race was one of the first mechanisms of differentiation and with ongoing debates (mentioned earlier) it is understandable. Ideas about race also varied through time.⁵⁰ By the nineteenth century, race became to be discussed in a scientific discourse. To Britons, the inferiority of “others” did not emerge all of a sudden. Definitely, British racial attitudes were reworked within new frames. Stuart Hall points cultural difference and biological difference as racism's “two logics”.⁵¹ Within historical context, the ideas to justify British rule changed as “the otherness of colonized persons was neither inherent nor stable; his or her difference had to be defined and maintained”.⁵²

After all, Britons saw themselves as the lords of human kind, a master race. Catherine Hall in her study of colonial Jamaica, shows that camps in the debate of abolishment of slavery were not simply cut in two as abolitionist were non- racists and slave holders were racists. Britons in Jamaica at the end saw themselves as the tutors of their “children” within the “universal family of man”.⁵³

⁴⁹ Indian Evidence Act of 1872 was loaded by stereotypes.

⁵⁰ Christine Bolt, *Victorian Attitudes to Race*, Studies in Social History (London: Routledge and K. Paul, 1971).

⁵¹ Stuart Hall, «Conclusion: The Multi-Cultural Question», in *Unsettled multiculturalisms: diasporas, entanglements, «transruptions»*, ed. Barnor Hesse (London: Zed Books, 2000), 223.

⁵² Frederick Cooper and Ann Laura Stoler, eds., *Tensions of Empire: Colonial Cultures in a Bourgeois World* (California: University of California Press, 1997), 7.

⁵³ Catherine Hall, *Civilising Subjects: Metropole and Colony in the Englishimagination, 1830-1867* (Cambridge: Polity, 2002), 338.

Similarly, Tony Ballantyne argues that the colonial ideas about race were mobile and they moved within the “webs of empire”.⁵⁴ Knowledge also moved within empire. Colonized were learned through newspaper, theatre, literature, the purchase of exotic goods.⁵⁵ Not everybody had her knowledge at home, some with little economic opportunity went to colonies to have their own experiences, to try their chance and to have their own adventure. But this does not lead us to conclude violence and misconduct were common among working classes.

3.2 Colonialism, the self and the other

Colonialism can not be identified with only economic gain and political power, it certainly includes a search of them, sometimes results in no real economic and political gains, even with economic and political losses. Colonialism was not merely about a political position. It also carried notions of religion and race. Britons tended to see colonialism as a religious duty as well. Words by Bishop of Oxford, Richard Congreve verifies this aspect. He said: “God has entrusted India to us to hold it for Him, and we have no right to give it up”.⁵⁶ Colonial ruler saw its religion superior to the colonized' one. Civilizing mission sometimes toned as religious mission. In James Morris' words, “ Never mind the true motives and methods of imperialism, in

⁵⁴ Tony Ballantyne, «Race and the Webs of Empire: Aryanism from India to the Pacific», *Journal of Colonialism and Colonial History* 2, Issue 3 (2001); Ballantyne, *Orientalism and race*.

⁵⁵ John M. MacKenzie, *Propaganda and empire: the manipulation of British public opinion, 1880-1960*, (Manchester: Manchester University Press, 1986); Hall, *Civilising subjects*, 267–289.

⁵⁶ Kanatur Bhaskara Rao, *Rudyard Kipling's India* (Norman: University of Oklahoma Press, 1967), 26 quoted in Nandy, *The intimate enemy*, 34.

the days of their imperial supremacy the British genuinely believed themselves to be performing a divine purpose, innocently, nobly, in the name of God and the Queen”.⁵⁷

Colonialism is also a psychological state. It may not always begin with an arrival of alien rule in a society and ends up with withdrawal of this alien rule from the colony. Colonialism is a shared culture. As a psychological state, colonialism has its origins in earlier consciousness in the colonizer and the colonized. It represents a certain cultural continuity and carries a certain cultural baggage.⁵⁸ It includes codes which both the rulers and the ruled can share. The main function of these codes is to alter the original cultural priorities on both sides and bring subcultures previously recessive or subordinate in two confronting cultures to the centre of the colonial culture.⁵⁹ The example of this case in British India is seen as Britons created hegemony of religious texts in India, brahmanic scripture was given importance by the British and treated as central to Hindu identity. Without any regard to role of brahmanic scripture in pre-colonial India, the British demonstrated a “brahmanising tendency”.

Western colonialism usually comes with the homology between sexual and political dominance. The homology produced a cultural consensus in which political and socio-economic dominance symbolized the dominance of men and masculinity over women and femininity. According to Ashis Nandy, during the years between 1757-1830, British middle-class were not dominant in India and the rulers came from

⁵⁷ Jan Morris, *Farewell the Trumpets: An Imperial Retreat*, (Harmondsworth: Penguin, 1979), 551.

⁵⁸ Nandy, *The Intimate Enemy*, 2.

⁵⁹ *Ibid.*

a feudal background. In this period, the homology between sexual and political dominance was not central to the colonial culture and colonial rule had not yet internalized as a manly prerogative by the rulers and the subjects. In this years, as pointed out earlier, race based evolutionism was not very rooted in the ruling culture although there were individual racialists. In the earlier periods of colonial rule in India, there were an admiration rather than a differentiation. Most Britons absorbed Indian customs and religious practices, married Indian women. One by one, Britons would express their thoughts on Indian religion, literature. Sir William Jones would say: “I am in love with Gopia, charmed with Crishen [Krishna], an enthusiastic admirer of Raama and a devout adorer of Brihma [Brahma], Bishen [Viṣṇu], Mahisher [Mahesvara]”.⁶⁰

Men like Jones brought their admiration of Hindu ideas back home. Seen as a threat, such attitudes called as Brahmanization bothered British authorities. To prevent Brahmanization of young Britons, British authorities began to train recruits by a myth of racial superiority. The idea of racial superiority was a counterweight against Brahmanization. When the cultural meanings were began to be ascribed to the British domination both by the British and Indians, colonialism emerged what is called as state of mind. The British came to see Indians needed to further civilize themselves. The British rule appeared as an agent of progress. For many Indians, becoming like the British became ultimate goal.

Colonialism affects the ruled but it very much affects the ruler as well. The ideology of colonialism also bore out degradation in the colonizers themselves. Aime

⁶⁰ S.N. Mukherjee, *Sir William Jones: A Study in Eighteenth Century British Attitudes to India* (Hyderabad: Orient Longmans, 1987), 107.

Cesaire describes it as follows: “Colonization works to *decivilize* the colonizer, to *brutalize* him in the true sense of the word, to degrade him, to awaken him to buried instincts, to covetousness, violence, race hatred, and moral relativism ... slowly but surely, the continent proceeds toward *savagery*”.⁶¹ 'Decivilization' of the colonizers Aime Cesaire calls, is not a fantasy but an empirical reality. In *the Wretched of the Earth*, Frantz Fanon describes a police officer who becomes violent towards his wife and children as he tortured freedom fighters in Algeria.⁶² Then, we have in true sense of the word, a boomerang colonialism.

Colonization dehumanizes even the most civilized man; that colonial activity, colonial enterprise, colonial conquest, which is based on contempt for the native and justified by that contempt, inevitably tends to change him who undertakes it; that the colonizer, who in order to ease his conscience gets into the habit of seeing the other man as *an animal*, accustoms himself to treating him like an animal, and tends objectively to transform *himself* into an animal.⁶³

To claim further, experience of colonialism was more immense and killing for the colonizers than the colonized. After all, India was a country with large number of inhabitants in large mass. Despite the presence of dominant power (colonial ruler), India was culturally fragmented and politically heterogeneous. Not all of the regions in India experienced colonialism in the same way. Thus, it is not at risks to claim cultural impact of colonialism penetrate to urban centres and to upper and middle-classes and to traditional elites. To the contrary, being colonial ruler was welcomed by every Briton and had references among everyone so, the British was

⁶¹ Aimé Césaire, *Discourse on Colonialism* (New York: Monthly Review Press, 2000), 35–36.

⁶² Frantz Fanon, *The Wretched of the Earth* (Harmondsworth: Penguin, 1967), 215–17.

⁶³ Césaire, *Discourse on Colonialism*, 41.

overwhelmed by the experience of being colonial rulers. This leads to conclude cultural damage might be more immense to colonial ruler than Indian subjects.

Insofar, the relationship between the colonizer and the colonized, tensions specific to British colonization of India have been highlighted and by doing it, the world view of nineteenth century which hides itself in bushes of binary oppositions has been touched upon. From now onward, the focus will be dichotomy between the self and the other.

This study claims that the self and the other exist in a mutual relationship and focuses on how non-West is constructed by the West through legislation. It dwells upon examples of gender violence and argues that culturally specific forms of violence such as suttee, dowry murder were paid much more attention in law than culturally common forms of violence such as rape, prostitution. This kind of variation leads to argue for law functions as a tool to define the self and the other, becomes the site of reproduction of identity and alterity and sets division among the self and the other, the colonizer and the colonized.

This study attributes identity a fluid and mutual nature, it is not stuck in a coherent stability, it is a process and never can be 'complete'. Based upon several positioning in class, gender, race, religion, generation, identity is “complex of self-significations”.⁶⁴ As Schick neatly defined, identity is “representation, and the representation of identity, whether to oneself or to others, is in fact its very construction”.⁶⁵ This study is concerned with identity in regard to how one defines

⁶⁴ Irvin C. Schick, *The Erotic Margin: Sexuality and Spatiality in Alteritist Discourse* (New York: Verso, 1999), 19.

⁶⁵ Ibid.

oneself in relation to class, gender, race, not with what one becomes by her interaction with one's environment. Though identity is a process of construction and reconstruction, it acquires stability. "While identity does not rest upon sameness or essence, it does acquire durability and permanence according to the stories we tell ourselves and others about our history".⁶⁶

The construction of identity is very much dependent upon alterity and both of them owes its existence to each other. In other words, the other is the construction of the self. Through an opposition, a negative-identity, identity constructs itself. From this opposition emerges the constitutive role of difference. Yet, the constitutive difference is itself constituted and legal practices in colonial India demonstrate it very well.

Constitution of constitutive difference is held place by a process of "othering" which found its best opportunity in colonialism. The discourse of the "other" played an important role for European to make their self-definition. A set of discourses around the "other" were a part of fears, racial anxiety, sexual desires, class, religion of the "self". Therefore, a rhetoric of control and domination of the "other" is "not just outer-directed" but "also inner-directed".⁶⁷ Identity exists only by its alterity and both identity and alterity is manifested through discourse. As a state of mind, colonialism is an indigenous process, it is "inner-directed" as well as "outer-directed". Thus, the sources of colonialism located deep in the minds of the rulers and the ruled.

⁶⁶ David Harvey, "Class Relations, Social Justice and the Politics of Difference," in *Place and the Politics of Identity*, ed. Michael Keith and Steve Pile (London ; New York: Routledge, 1993), 59.

⁶⁷ Schick, *The Erotic Margin*, 23.

The construction of the identity was achieved through many means. Spatial discourse (maps are one of them), literature, travelogues were few of this means. Scholarship on literature and travel writing is very large, analysis of European writings about the “other” world has been studied in detail and in various interpretations.⁶⁸ Having this scholarship, this study argues for legislation to be constitutive difference to the “self”.

From Marxist view of centralized power state to Gramsci's notion of fluid and dynamic hegemony and to Foucauldian perspective of power as dispersed and everywhere, it is agreed by all that power is present anywhere and intrinsic to any encounter. “The formula of 'power through transparency'”⁶⁹ manifests itself in law in colonial world. Colonial obsession with voyeurism and denuding is not only apparent in depiction of the Orient, images, travelogues.⁷⁰ Law is very much the same product of this kind of fetishism of transparency that could provide power to the colonizer in turn. Thus, law functions as a tool of transparency and by the inclusion of the colonized in legal terms and practices aims to make itself transparent and claims power.

Picking up Jeremy Bentham's *panopticon*, West obtained a sexual panopticism over East. Interest in the harem, symbolic violation of its walls and of

⁶⁸ Suvendrini Perera, *Reaches of Empire: The English Novel from Edgeworth to Dickens*, (New York: Columbia University Press, 1991); Patrick Brantlinger, *Rule of Darkness: British Literature and Imperialism, 1830-1914* (Ithaca: Cornell University Press, 1990); Martin Burgess Green, *Dreams of Adventure and Deeds of Empire*, (New York: Marboro Books, 1979); Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation* (London ; New York: Routledge, 1992).

⁶⁹ Michel Foucault, «The Eye of Power», in *Power/knowledge: selected interviews and other writings, 1972-1977*, ed. Colin Gordon, (New York: Pantheon Books, 1980), 154.

⁷⁰ On critical analysis of voyeurism and denuding see, Meyda Yegenoglu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge: Cambridge University Press, 1998); Schick, *The erotic margin*.

the veil were all serving to “power through transparency”. The construction of power over the Orient came into being through voyeurism and subjection by denuding. Sati Regulations in Bengal in 1812 and later in 1829 were originated from this kind of claim on power through transparency. It was an inclusion of the colonized in legal terms. “Colonialism is an operation of discourse, and as an operation of discourse it drafts colonial subjects by incorporating them in a system of representation”.⁷¹ Thus, colonial law appears as an apparatus to reproduce the self and the other. Importance given to culturally specific forms of gender violence such as suttee, and 'naturalizing' culturally common forms such as rape urges to argue that colonial law functions as a constitutive difference to the self and this constitutive difference is itself constructed. The core conceptualizes, constructs the periphery; by becoming different, constitutive different, the periphery constructs the core. The self and the other are mutually constitutive and colonial subjects controlled colonial rulers as same as the colonizer controlled the colonized. Thus, subjugation of the ruled included the subjugation of the ruler. The colonizer is caught in the culture of colonialism either.

⁷¹ Chris Tiffin and Alan Lawson, ed, *De-scribing empire: post-colonialism and textuality* (London: Routledge, 1994), 3.

CHAPTER 4

STRATEGIES OF DEALING WITH THE SUTTEE:

IMAGES AND NARRATIVES

This chapter shows regulative attempts on suttee. Before the British arrival, there had also been efforts to regulate the practice. After stating this, it focuses on representations of suttee using accounts by eyewitnesses, travellers, officials, missionaries. These accounts demonstrate how Westerners in India perceived suttee and believed it was such a barbarian practice and Westerners were the ones to bring them justice. Eye-witness accounts can be useful in this regard, since they are explicit to point out Western thrill on the practice. Yet, the British needed to build its own presence in India on binary oppositions and suttee was paid much attention in order to differentiate between India and Britain. Therefore, it was used to legitimise British rule in India.

I am using Anglo-Indian term suttee to refer to the ceremony of immolation, and the term sati to denote/ inform the woman who immolates herself. The use of different terminology, suttee and sati, promisingly highlights the focus of Western colonialism on visual value (suttee as a spectacle) and Indian concentration on sati's virtuous devotion. The common translation for suttee as widow-burning indicates a popular misunderstanding of Indian conceptualization of suttee. John Stratton Hawley prefers to use *The Burning of Wives* as his book's subtitle and skilfully points out that the general translation is oxymoronic since in native Indian terms sati and widow are exclusive categories: when her husband dies, a wife decides to become widow or sati.⁷² Widowhood in India requires devotion, self-sacrifice, ritual

⁷² Hawley, *Sati, the Blessing and the Curse*, 13.

observance and its supreme example is suttee, being the supreme example of conjugal devotion. Therefore, the difference between becoming widow or sati is the difference of being death in life for an indefinite period, or committing a heroic self-sacrifice immediately after husband's death.

While discussing suttee, there is one point to be clarified: it is not a monolithic phenomenon. Is there a 'traditional' practice of suttee? Is it a person or an event? Additionally, the question of what causes suttee remains significant. It carries out aspects of inheritance and property rights thus forces us to think suttee in complex set of relations as well as raises concern about the sensibility of asking whether suttee is a voluntarily or coerced action.

Formal efforts to prevent suttee were not considered for the first time by the British. Even before the Moghul rulers, permission was required prior to any suttee under the Delhi Sultanates⁷³ but did not apply to Hindu women from royal families. Humayun (1530-1540) attempted to put a ban on suttee, but later withdrew it. Akbar (1556- 1606) also insisted on permission to commit suttee. The woman was offered pensions, gifts to decline the practice. The later Mughals adopted the same stand, put obstacles to prevent suttee but the practice continued in the regions outside Agra.⁷⁴ The Portuguese, Dutch and French considered suttee as a problem in the areas under their control, but it was Lord William Bentinck after 1829 took a complete step against suttee in the British controlled territories.

⁷³ Satish Chandra, *Medieval India: From Sultanat To The Mughals 1526-1748* (New Delhi: Har Anand Publications, 2007), 107.

⁷⁴ Muzaffar Alam and Sanjay Subrahmanyam, eds., *The Mughal State, 1526-1750* (Delhi: Oxford University Press, 1998), 116.

Except in Calcutta – where suttee had been abolished in 1798- there was no official policy until 1805 and East India Company administrators were unofficially willing to prevent suttees through persuasion.⁷⁵ In 1805 when Lord Richard Wellesley, Governor General at the time, asked the provincial court Nizam Adalat to investigate whether it was possible to abolish suttee, after a twelve-year-old girl was forced on her husband's funeral pyre. After the court's response, East India Company issued a circular in 1813 introducing legal and illegal suttees. Emphasising that suttee was based on Hindu religious beliefs, the British “defined 'illegal' suttee as when a widow (a) committed suttee under compulsion, (b) was intoxicated with drugs or liquor, or (c) was pregnant or had a child under three years whose nurture by another person could not be provided for”.⁷⁶

The years between 1813 and the abolition of suttee in 1829 saw an increase in recorded 'legal' suttees as well as a highly contentious debate over the toleration of suttee. Despite the agreement on repulsion at the practice, it was difficult to be sure about whether the British should take action to interfere with suttee. When suttee debate was framed by the practice's foundation in Hindu scriptures, the British doubted to continue the policy of respecting the religious customs or to outlaw it as part of the promise of justice and supposedly civilizing mission. This debate created camps for and against suttee and their arguments reveals British anxieties in colonial India as well as their implications on British identity. James Peggs for example, argues that the British bring shame to themselves by allowing suttee in India:

⁷⁵ V. N. Datta, *Sati: A Historical, Social and Philosophical Enquiry into the Hindu Rite of Widow Burning* (Riverdale, Md.: Riverdale Co Pub, 1988), 22.

⁷⁶ *Ibid.*, 25.

And when it is considered, that this practice causes the death of a greater number of persons in one year, who, if they ought not to be thus burnt alive, involve the country in all the guilt of innocent blood, than are publicly executed for their crimes throughout the whole of India in the course of twenty years, it cannot be wrong to call to this momentous subject the attention of every friend to his country.⁷⁷

Peggs insists that the willingness to tolerate in India what the British would not tolerate at home is a source of guilt for the national character. On the other side of the camp, opponents of abolition had fears about the consequences of interfering with Hindu cultural practices. Governor generals prior to Bentick refused to take step against suttee on the grounds that a rebellion might turn up.

By the 1820s, evangelical and missionary campaigns influenced British public opinion against the practice of suttee and pressured East India Company to abolish it and tolerance of suttee became highly problematic for the colonial state.⁷⁸ This fostered a heated debate on the feasibility of practice's prohibition, its place in religious texts and British neutrality in 'religious' affairs. Lata Mani concludes on the production of knowledge about suttee by colonial officials:

[Several interlocking assumptions informed this discourse. Chief among these was the hegemonic status accorded by colonial officials to brahmanic scriptures in the organization of social life. The corollary to this was to assume an unquestioning submission of indigenous people to the dictates of scripture and thus to posit an absence of conscious individual will. . . . Whatever their views on the feasibility of abolition, all colonial officials shared to a greater or lesser degree three interdependent ideas: the centrality of religion, the submission of indigenous people to its dictates, and the "religious" basis of sati. Those against abolition argued that prohibition of sati was likely to incite native resistance. . . . Officials in favour of

⁷⁷ James Peggs, *The Suttees' Cry to Britain: Containing Extracts from Essays Published in India* (Seely, 1827), 50.

⁷⁸ Clare Midgley, "Female Emancipation in an Imperial Frame: English Women and the Campaign against Sati (widow-Burning) in India, 1813–30," *Women's History Review* 9, no. 1 (March 1, 2000): 95–121.

abolition. . . developed arguments reflecting the view of Hindu society generated by these same assumptions.

. . . [They argued that] the contemporary practice of sati bore little resemblance to its scriptural model as a voluntary act of devotion carried out for the spiritual benefit of the widow and the deceased.⁷⁹

Lata Mani demonstrated that this debate was framed by suttee's scriptural sanction rather than gender violence and the ethics of burning widows.⁸⁰ It was more about the nature and limits of colonial control. Rather than being the subject of the debate, women were the site where different concerns were contested. This interpretation by Mani is criticized by being ignorant of any female agency and by reproducing simplistic representation of the widow as a passive victim who needed to be saved. On the other hand, Mani by showing political motivations of the colonial state also challenged imperialist interpretations of suttee 'abolition' as a benevolent act of colonial regime. However, Mani's position with Gayatri Spivak who argues that in the case of suttee the subaltern female cannot speak⁸¹ have been criticized in recent years.⁸² Ania Loomba argues to modify Mani's argument by saying that 'women were the targets as well as the grounds of the debates over tradition'⁸³ and suggesting that 'we can re-position the *sati* by looking not just at the widow who died but at those who survived to tell the tale'.⁸⁴

⁷⁹ Lata Mani, "Production of an Official Discourse on 'Sati' in Early Nineteenth Century Bengal," *Economic and Political Weekly* 21, no. 17 (April 1986): 32–35.

⁸⁰ Mani, *Contentious Traditions*.

⁸¹ Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in *Colonial Discourse and Post-Colonial Theory: A Reader*, ed. Patrick Williams (New York: Columbia University Press, 1994), 66–111.

⁸² Ania Loomba, "Dead Women Tell No Tales: Issues of Female Subjectivity, Subaltern Agency and Tradition in Colonial and Post-Colonial Writings on Widow Immolation in India," *History Workshop*, no. 36 (October 1, 1993): 209–27.

⁸³ *Ibid.*, 222.

⁸⁴ *Ibid.*, 223.

Despite finding the practice detestable, British authorities followed their predecessors path and instead of banning suttee, they tried to regulate it. In this respect, suttee would be committed in the presence of British officials, according to custom.⁸⁵ Prior to abolition in Bengal, the British set a difference between 'legal' voluntary suttees and 'illegal' coerced ones, thus emphasised scriptural sanction as the ground of suttee's legitimacy. Before Lord William Bentinck's definite step to stop suttee, the number of suttee cases doubled 639 in the ten years between 1815 and 1825.⁸⁶ Ashis Nandy argues that cases of suttee aroused in the early nineteenth century because of the entering of the British into India. Suttee at that time arose out of the, he says, "pathology of colonialism, not of Hinduism".⁸⁷ Nandy argues that hundreds of cases of suttee reported in Bengal were a response to foreign rule. He claims that in premodern period suttee had a different symbolic meaning within society. He insists that the reason foreigners and Indian feminists interpreted the Deorala suttee as insulting and degrading to women is that the original meanings are lost. In traditional society suttee was seen as the power of women. For the society suttee used to symbolize that women were stronger, virtuous than men. It transformed to be violence against women under the direct influence of alien forces.

Nandy's claim about the increase of suttee cases in Bengal is arguable. There was an increase in the number of recorded cases of suttee from 378 in 1815 to 839 in

⁸⁵ Arvind Sharma, *Sati: Historical and Phenomenological Essays* (Delhi: Motilal Banarsidass Pub, 1988), 13.

⁸⁶ Binita Mehta, *Widows, Pariahs, and Bayaderes: India As Spectacle* (London: Bucknell University Press, 2002), 55.

⁸⁷ Hawley, *Sati, the Blessing and the Curse*, 150.

1818.⁸⁸ One of the reasonable explanation of high number of suttees in Bengal than elsewhere is that the legal system which gave women the right to inheritance – *dayabhaga* – was used there. Thus, in Bengal suttee appears to provide a way of eliminating an inheritor.

After becoming the governor of Bengal, Lord Bentinck passed the *Sati Regulation of XVII of 1827*. Certainly, indigenous campaign led by Ram Mohan Roy contributed the legislation to actualize. The regulation stated suttee as illegal and punishable by the criminal courts.⁸⁹ In case of any attempt to suttee, landlords, officials in charge of revenue collection, local agents were assigned to inform nearest police officers. In case of ignorance of any intended suttee, responsible officer could be fined of Rs. 200 or 6 months in jail.⁹⁰

Bentinck's step led to unrest among Hindus as well. They argued that 'self-immolation' was a privilege for Hindus, not simply a sacred duty. Three hundred orthodox Hindus petitioned Lord Bentinck to prevent suttee regulation.⁹¹ The Hindu petitioners argued that George III Statute 37 guaranteed non-interference with their religion. British officials and abolitionists of suttee argued in response that suttee was not compatible with the principles of justice and it could not be allowed in the name of freedom of religion. Lord Bentinck's regulation was finally upheld and it

⁸⁸ Parliamentary Papers, 1821, vol. 18, paper 749, pp. 98, 175, 211, and 242, cited in Hawley, *Sati, the Blessing and the Curse*, 155.

⁸⁹ C. A. Bayly, *The Raj: India and the British, 1600-1947* (London: National Portrait Gallery Publications, 1990), 432.

⁹⁰ Andrea Major, ed., *Sati: A Historical Anthology* (New Delhi: Oxford University Press, USA, 2007), 23.

⁹¹ *Ibid.*, 67.

formed the basis for similar regulations in Madras and Bombay when local rulers after falling under the British control adopted regulations against suttee similar to the British ones.⁹²

4.1 Suttee in Hindu tradition

In addition to suttee as person and suttee as practice, both in Indian and European languages, suttee can refer to the goddess Sati. Yet, there is no tight link between the myth of goddess Sati and the practice of self-immolation. Sati is the daughter of Daksha and wife of Shiva. When her father insults her husband by refusing to include him in his sacrifice, she enters the fire herself. She displays her loyalty to her husband. In some versions of the story, Sati is reborn as Parvati, wins Shiva again in her life. In other versions, Shiva takes Sati's corpse from the fire and carries it across world. Gods dismember her body and every parts of her body fall into the earth, forming a shrine. Then, devotees ritually reconnect her body as they follow each site, the pilgrimage rounds that link the parts of the goddess. In any version of the story, Sati is not widow. Moreover, her act does not signify piety toward a husband but a protest against a father. Thus, Sati myth can not be qualified as inspirational to the practice of suttee.

⁹² Hawley, *Sati, the Blessing and the Curse*, 378.

4.2 Suttee and the colonial gaze

Representations of suttee as a goddess in Hindu framework and those made by Western travellers and officials have great potential to reveal complexity of encountering in colonial world. Many Westerners saw the immolation scene and the immolation itself was what they meant by suttee. To include an eyewitness account of a suttee was a pattern in travel books written from the period of early contact between India and the West until the early nineteenth century. Most of the contributors to this genre were Westerners who placed themselves out of the values of the practice. The veracity of these eye-witness accounts was distorted by the existence of the genre and the morality that produced it. However, they remain as fruitful sources to move closer to the reality of suttee in colonial world.

It is an unfortunate tendency to reproduce another binary opposition between West and East. In this case, suttee does not merely cut the colonial world into two as British rule disgusts the practice and Indians are the only supporters of it. Certainly, there were Westerners who treated suttee with an admiration and idealized it, as well as there were Indians to reviled it. Before the British rule in India, regions that fell under French and Portuguese control enjoyed cultural autonomy and this kind of cultural independence led to a flourishing body of literature where we find absolute examples of Western *thrill*. In relation to political contexts, British approach towards suttee, went through various phases. Indians were relatively more in comfort with East India Company rule and were disturbed with the proclamation in 1858. This period also hosted numerous changes in British – Indian law.

When the British assumed juridical power in India through colonial enterprise in the late eighteenth century and early nineteenth centuries, this enabled them to consider intervening into the practice. The engravings emerged in this period highlight this kind of shift where the agency removed from the sati to the accompanying priest. Increasingly, eye-witness accounts began to stress that the woman was the victim of priestly manipulations urged by greedy relatives for the inheritance that Bengali tradition would have entitle to the widow. Unlike in the most of the rest of North India, in Bengal widows were entitled to their husbands' wealth. Thus for the British, if the ultimate purpose of suttee was the unjust enrichment, it should have been stopped.

The etching from the 1832 pamphlet depicts a black-skinned woman burning in a large fire while black-skinned men hold swords to cut branches to fuel the fire. The sati, still alive raises her hand up to the sky with her mouth open, visual representation of those “cries to British humanity” to which the pamphlet’s title refers. In James Peggs' missionary work *India's Cries to British Humanity* (1832), colonial observers marked by white skin and Western look, turn their faces away in horror, cover their eyes with their hands while the sati gives up to her community. This representation cries to East India Company to bring civilizing rationality to rescue this powerless victim from her own people.

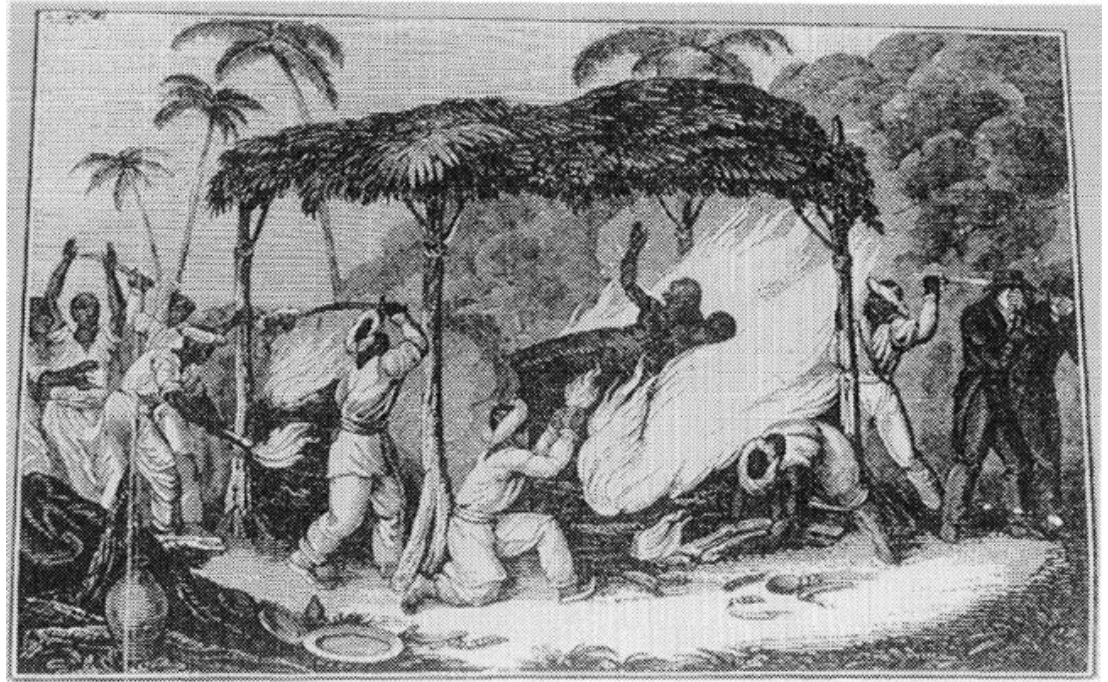


Figure 1. Etching depicting a sati, from James Peggs, *India's Cries to British Humanity* (London, 1832), frontispiece.

The gesture of Indian woman and horrified faces and presence of the British is a capture of colonial relationship between Britain and India in which India must be saved from its own barbarity by a reluctant British. Since Peggs' pamphlet was a criticism to East India Company's reluctance to abolish suttee, averted eyes in the etching have much to say. They point British repulsion at the practice as well as an embodiment of Britain's refusal to act to prevent it.⁹³ The etching is a common depiction of suttee scene, which Gayatri Spivak summarizes famously with the phrase "white men are saving brown women from brown men".⁹⁴ After all, this image materialises the ideology of British colonialism as a civilizing mission.

⁹³ *India's Cries to British Humanity* was a compilation that reprinted earlier writings by Peggs; the material on suttee was originally published in 1827, prior to the East India Company's abolition of the practice.

⁹⁴ Gayatri Chakravorty Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg, (Urbana: University of Illinois Press, 1988).

The question how the representations of suttee functioned in the British colonial imagination is complex and multifaceted. A whole body of works on the representations of suttee focus on writings by male authors, missionaries, politicians who all attended official debates over suttee. Women's writing on suttee has been largely disregarded. Although British accounts during 1820s and 1830s come from male authors, women contributed to production of these representations, tending to how woman imagined suttee can complex current understanding of British colonialism in India.⁹⁵

One of the most interesting and vivid eyewitness account of suttee from this period is the one written by Richard Hartley Kennedy. Kennedy worked in Bombay Medical Service as a surgeon. He lived in Baroda for a decade where he was appointed as surgeon in 1819. He continued his career in Belgaum as staff surgeon. Later served with the army in Afghan war of 1839-1840. He accomplished his Indian career as Inspector General for Hospitals in the Bombay Presidency before retiring to London in 1843.

Kennedy was a multiple person. Besides his medical career, he produced poetry, a narrative of Afghan campaign, a tragic drama and a work entitled "Notes on the Epidemic Cholera." He also wrote an account of suttee he witnessed in Baroda on November 29, 1825. He published this account years after he experienced it, in a London literary magazine.⁹⁶

⁹⁵ For good example of analyzing women writing see: Jeanette Herman, "Men and Women of Feeling: Conventions of Sensibility and Sentimentality in the 'Sati' Debate and Mainwaring's 'The Suttee,'" *Comparative Literature Studies* 42, no. 2 (June 2005): 223–63.

⁹⁶ R. Hartley Kennedy, "The Suttee: The Narrative of an Eye-Witness," *Bentley's Miscellany* 13, no. 75 (March 1843): 241–56.

Kennedy respected Hinduism like most his contemporaries in the East India Company. Kennedy in his account of 1843 thought that the company had run a “fearful risk” in abolishing suttee in 1829 and had been lucky that Hindu religious passions were not stirred seriously. He states his goal of writing a testimony of what he saw was to give “a minute history of the details of the mummeries by which a sanguinary and revolting superstition besots the understandings, and hardens the hearts of its victims”.⁹⁷

In his account, Kennedy calls attention to the horror scene:

...All the rest were not only indifferent to the horror of the scene, but seemed rather excited—I might almost say, if the European reader could understand and believe it, exhilarated- -talking with each other triflingly, and unawed; whilst on one occasion, even the victim herself spoke to me in a tone of absolute jest, on the marked curiosity with which I noted and examined every step of their proceedings.⁹⁸

He describes in the detail the transaction between the widow and her devotees as they fell on their knees and put their foreheads in her feet. The widow put red powder on their foreheads as the devotees receive it as:

the sign of a solemn and important benediction, her countenance all the time indicating rather the smiling joyousness of a festival, or elation of a triumph, than the gloom and sorrow of her husband's funeral, or the horror and alarm natural to the thrilling moment antecedent to her own death by fiery torture. . . [She] exhibited not a sign of reluctance, but conducted herself as one who met her fate with as much inward feeling of alacrity and readiness, as she undoubtedly did with all outward show of superhuman fortitude.⁹⁹

Kennedy concludes his essay by expressing relief at being back in his own culture and anticipates the civilizing influence of Queen Victoria in relieving her Hindu

⁹⁷ Ibid., 241.

⁹⁸ Ibid., 243–4.

⁹⁹ Ibid., 245.

subjects of such victimization: “Let us hope that a new day has dawned on India, and that these wretched sacrifices may be spoken of by future generations as things there were, before British dominion enlightened India”.¹⁰⁰

Almost three decades of debate under East India Company, - decades that saw the shift from entrepreneurship to civilizing mission – suttee was criminalized in 1829. Hereafter, suttee disappeared from the colonial literature and only resurrected at times when it was strategic to remind Hindus of their past, for instance when Gandhi's movement was gaining momentum, Katherine Mayo published *Mother India*¹⁰¹ and Edward Thompson wrote *Suttee*¹⁰², a “historical” account of the practice and its abolishment under the leadership of the Raj.

By the end of the eighteenth century, there was already a well-established viewpoint in colonial circles that Hindu women were the victims of their male relatives. This impression mostly rested on the repeated depictions of sati in post-medieval accounts by European travellers in India and it peaked up with the translations of what commonly referred as 'Hindu law'¹⁰³ Governor-General Warren Hastings believed that understanding of Hindu theology from its sacred texts was essential to implement wider reforms in order to legitimise British claims as successor to the Mughals and decrease the cost of administration in India.¹⁰⁴ There

¹⁰⁰ Ibid., 256.

¹⁰¹ Katherine Mayo, *Mother India* (New York: Harcourt, Brace & Co, 1927).

¹⁰² Edward Thompson, *Suttee: A Historical and Philosophical Enquiry Into The Hindu Rite Of Widow - Burning* (London: George Allen & Unwin Ltd, 1928).

¹⁰³ Pompa Banerjee, *Burning Women: Widows, Witches, and Early Modern European Travelers in India* (Palgrave MacMillan, 2003).

¹⁰⁴ Travers, *Ideology and Empire in Eighteenth-Century India*, 100–44.

was no British person to read Sanskrit at the time, Hastings' agent, the orientalist scholar Nathaniel Brassey Halhed collaborated mostly with pundits who provided him translations of Vedic scriptures from Sanskrit to Persian. Then, Halhed himself translated them into English “with an equal attention to the closeness and fidelity of the version”.¹⁰⁵ However, in practice Halhed's translation introduced Persianate terms and imposed British understanding of rights and jurisprudence. Halhed's work was published in London in 1776 being the first aimed to make familiar the British with Hindu law. Despite being a reference point for East India Company, the work was not welcomed warmly either in Britain or in India.¹⁰⁶

These early colonial attempts to codify Hindu law and custom were inherently gendered as Nandini Bhattacharya-Panda has pointed out, and had enduring implications for colonial understanding of Hindu gender roles – particularly the treatment of suttee – .¹⁰⁷ Halhed drew negative characteristics of Hindu femininity under the heading ‘Of What Concerns Women’:

Women have Six Qualities; the First, an inordinate Desire for Jewels and fine Furniture, handsome Cloaths [sic], and nice Victuals; the Second, immoderate Lust; the Third, violent Anger; the Fourth, deep Resentment (i.e.) no Person knows the Sentiments concealed in their Heart; the Fifth, another Person's Good appears Evil in their Eyes; the Sixth, they commit bad Actions.¹⁰⁸

¹⁰⁵ Nathaniel Brassey Halhed, *A Code of Gentoo Laws, Or, Ordinations of the Pundits : From a Persian Translation, Made from the Original, Written in the Shanscrit Language* (London : [s.n.], 1776), x.

¹⁰⁶ Travers, *Ideology and Empire in Eighteenth-Century India*, 124.

¹⁰⁷ Nandini Bhattacharya-Panda, “Women in the ‘S’ astric Tradition: Colonialism, Law, and Violence,” in *The Blackwell Companion to Religion and Violence* (Oxford: Wiley-Blackwell, 2011), 389–405.

¹⁰⁸ Halhed, *A Code of Gentoo Laws, Or, Ordinations of the Pundits*, 283.

In the *Code*, for widows, it was mentioned that they should join their husband on the funeral pyre and this way guarantee Paradise for both parties. If it did not happen so that widow did not become *sati*, she adopted a humble and chaste life without a possibility of remarriage ‘and if she does not preserve her Chastity, she goes to Hell’.¹⁰⁹ For wives, this expectation that husband is the only acceptable figure for exploration of sexuality fulfils numerous writings on Hinduism (both Indian and European).¹¹⁰ Colonial discourse mostly depended on this writings as an explanation in the cases of no evidence of coercion of a woman who became *sati*. Despite the intention of non-interference in Indian religion, when coercion was suspected or proved, British authorities turned these instances in their benefit as 'civilizing rule' in the early nineteenth century. In colonial critiques, the fact that most of *satis* were child widows was paid no attention. Thus, the age factor strengthened the claims that potential *satis* were unable to speak for themselves and the authorities were required to do so on their behalf.

Overruling Hindu sensibilities relating to *suttee*, even after its formal prohibition in 1829, was in fact highly dependent on regional factors and security concerns to retain control in India in the face of protests. Although European critics populously described *suttee* as Indian 'savagery', colonial officials were well aware of that *suttee* did not come out across the country: in some regions it was restricted to certain castes, in some parts of the country it did not appear at all and in some regions it attracted popularity.

¹⁰⁹ *Ibid.*, 286.

¹¹⁰ William Ward, *Account of the Writings, Religion, and Manners, of the Hindoos, 4 Vols*, vol. 2 (Bengal: Mission-Press., 1811), 544–66.

Well after it was banned in British territories, suttee continued to provide material to numerous writers emphasising oppressed Hindu womanhood: the anonymous author of *The Suttee. A Poem, With Notes* (1846) called British women to take active roles and claimed that without their intervention Indian women would remain enslaved by their society and religion.

Daughters of Britain! Does this mournful tale
Your hearts o'erwhelm, and make your cheeks turn pale;
To deep emotions in your souls give rise,
And thanks elicit for the gifts you prize :
Blessings, which Christianity alone
Confers and are to heathen tribes unknown?
Your Hindu sisters' lot compassionate ;
Contrast their sad with your own favour'd state.
Much you may do, if haply so inclined,
To break the shackles which intral the mind ;

To elevate them in the moral sphere,
Their souls enlighten, and their prospects cheer.
Like you, their minds were formed to soar on high,
Beyond the bounds of intellectual night,
And roam enchanted through the realms of light.
But here we pause, -- nor more the likeness own :
The sweets of liberty to them unknown ;
Debased their minds, their persons bound, no choice
Beyond the dictates of a parent's voice,
Or stern behest of spouse, dare they maintain :
Enslaved they are and ever must remain,
Until the light of Truth shall brightly shine,
And permeate their moral gloom with rays divine.¹¹¹

During the nineteenth century, the idea that Hindu religion led to a moral corruption in its worshippers was well-established in Parliamentary papers, the press, missionary writings. To British such corruption started in infancy and accumulated during adult life with references to gods and rituals. As one author asserted in 1858:

The absurdities involved in the mythologies of the gods, and the cruel or disgusting rites observed in their worship, have fostered the most grovelling conceptions of duty; and by familiarizing their worshippers with debauchery

¹¹¹ Anonymous, *The Suttee. A Poem, with Notes* (London: Burnside & Seeley, 1846), 20–1.

in every form, have stamped the Hindoo character with meanness, cruelty, and lust.¹¹²

As early as mid-century, there were claims that instances illustrate physical and spiritual dangers of Hinduism faded out under the British rule.¹¹³ Repetitions of these claims were made throughout the late nineteenth and early twentieth centuries, yet killings that labeled as 'Hindu problems' and terrified as well as fascinated colonial commentators have not disappeared from twentieth-first India. In India, the 1987 case of Roop Kanwar remains the most high profile example of suttee and repercussions of the event continue, lately all of eleven defendants accused of glorifying suttee in the wake of Kanwar's death were acquitted in 2004.¹¹⁴

¹¹² George Gould, *India: Its History, Religion, and Government* (London: Jarrold & Sons, 1858), 10.

¹¹³ *Ibid.*, 14–5; *ibid.*, 74–6; Joseph Mullens, *A Brief Review of Ten Years' Missionary Labour in India Between 1852 and 1861: Prepared from Local Reports and Original Letters* (London: James Nisbet & Co., 1863), 3.

¹¹⁴ "All Accused in Roop Kanwar Case Acquitted," *Times of India*, December 31, 2004, http://articles.timesofindia.indiatimes.com/2004-01-31/india/28346256_1_roop-kanwar-ram-singh-manohar-specialcourt.

CHAPTER 5

‘RE-OPENING’ A HISTORICAL DEBATE: THE CASE OF ROOP KANWAR AS A TWENTIETH CENTURY SUTTEE

Among all other critiques to modernity, perhaps the most symbolic one has been constructed about the so-called ‘women’s issue.’ Feminist critique of modernity deconstructs the encounter between the colonizer and the colonized. In this regard, analyzing a contemporary suttee case called Roop Kanwar can be useful in understanding the experience of modernity in India by examining debates over women’s body. An interpretation of colonial and post-colonial suttee debates clearly reveal how modernity shaped colonial practices in India. Roop Kanwar can be a particular case study which sparked a mass mobilization among feminist activists and intellectuals in India. It converted suttee from a religious theme to a critical political issue.

Bal Singh Rathore and Sneha Kanwar discovered on September 5, 1987 that their eighteenth year old daughter Roop Kanwar had suddenly been widowed and cremated along with the corpse of her husband – whom she married eight months before – according to suttee practice, in the village of Deorala. They read this information in a local Hindi newspaper, they were not informed either the death of their son-in-law in a hospital nor of their daughter’s wish to die as sati.

This piece of newspaper report would have caused little stir under usual circumstances like the forty other cases of suttee-style deaths since 1947 of which

some twenty-eight have occurred in Rajasthan.¹¹⁵ Yet, this time the activism and concern of women made the significant difference. The Roop Kanwar case has converted from a religious theme to a critical political issue on which women's voices were heard for the very first time.

In the colonial period, the debate over suttee was run by men – Hindu reformers and British officials – whose concerns paved the way for East India Company to abolish the practice in 1829. Other princely states followed the company's legislation, for instance the Maharaja of Amber and Jaipur banned the practice in his kingdom in 1846, eighteenth other princely states followed. The revised version of Indian Penal Code in the early 1950s, did not include East India Company's regulation, assuming that its sections on murder and suicide would be enough to deal with such happenings, thus no definitive reference to suttee was made.

The redefinition of suttee as a crime was accepted by women opposed to the custom. The redefinition of suttee should have eliminated the debate whether it has a scriptural sanction, issues discussed intensively in colonial period. Indian Penal Code therefore, formulated committing suttee simply as a crime. The Roop Kanwar case brought up two sides. The death mobilized feminists and liberals to ensure that even a single suttee would have been unthinkable in India. On the other side of the camp, conservatives believed that Roop Kanwar heroically sacrificed her life and finds honour and pride.

¹¹⁵ Veena Talwar Oldenburg, "The Roop Kanwar Case: Feminist Responses," in *Sati, the Blessing and the Curse: The Burning of Wives in India*, ed. John Stratton Hawley (New York: Oxford University Press, 1994), 101.

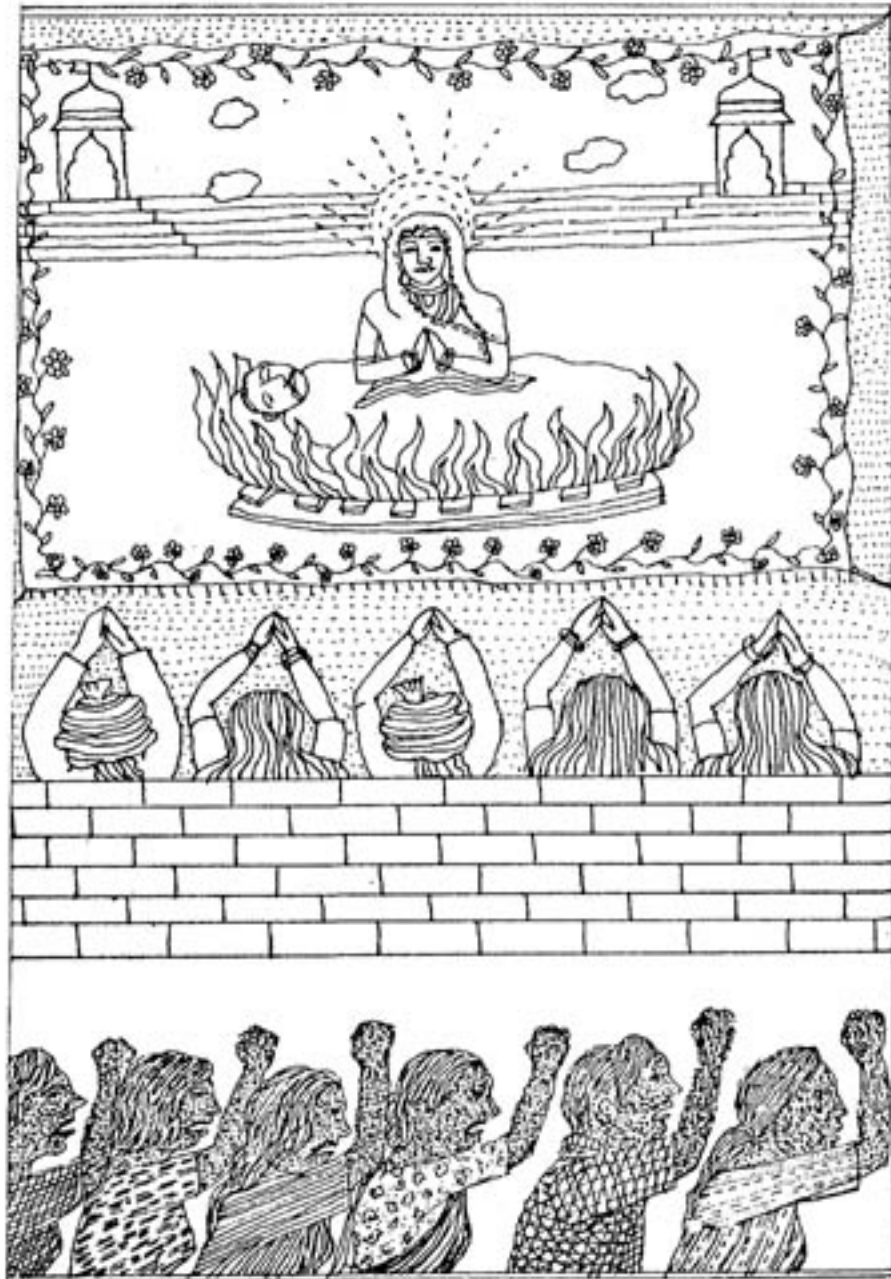
The Roop Kanwar case became day by day the site where questions about women's subjectivity, about culturally constructed and gendered notions of sacrifice were asked. This twist in argument rescued the debate of being a replay of its nineteenth century predecessor. The press reports blew over the case, and it mostly discussed whether Roop Kanwar was "voluntary" or "involuntary". Feminists insisted that suttee is a murder while a Hindi daily approved suttee as follows:

Roop Kanwar did not become a sati because someone threatened her. . . . [S]he purposely followed the tradition of sati which is found in the Rajput families of Rajasthan. Even among Rajasthan's Rajputs sati is no ordinary event. Out of hundreds of thousands of widows perhaps one would resolve on a sati. It is quite natural that her self-sacrifice should become the centre of reverence and worship. This therefore cannot be called a question of women's civil rights or sexual discrimination. It is a matter of a society's religious and social beliefs. . . .

People who accept that this life is the beginning and the end, and see the greatest happiness in their own individual happiness and pleasure, will never understand the practice of sati. . . . The practice of sati should now be totally examined. But this is not the right of people who neither know nor understand the faith and belief of the masses of India.¹¹⁶

Roop Kanwar's unfortunate death caused a fortunate mobilization in India, by bringing new agenda to women's movement and leading to new alliances and strategies. It also produced unconventional iconographies of suttee. One of them is provided by a publication of a woman's organization (see Figure 2). Several marches took place after Kanwar's death (see Figure 3) and women stressed that suttee is not just an issue that concerned women but a crime against women. The government was strictly accused for its failure to enforce the law.

¹¹⁶ Prabhash Joshi, *Jansatta*, September 18, 1987 cited in Hawley, *Sati, the Blessing and the Curse*, 106.



TRIAL BY FIRE

A REPORT ON ROOP KANWAR'S DEATH

Figure 2. Cover illustration designed by Shakuntala Kulkarni for Trial by Fire, a publication of the Women and Media Committee of the Bombay Union of Journalists (Bombay, 1987).

A harsh critique of the state and its involvement in Deorala case was published in *Economic and Political Weekly* in November 1987.¹¹⁷ The authors write “this particular incident has happened, just as communal violence happens because the government is not willing to enforce the norms and laws of a modern and civilized state”.¹¹⁸



Figure 3. Women’s rally in Jaipur protesting Roop Kanwar’s death and its subsequent glorification (*Manushi* 42-43)

¹¹⁷ Imrana Qadeer and Zoya Hasan, “Deadly Politics of the State and Its Apologists,” *Economic and Political Weekly* 22, no. 46 (November 14, 1987): 1946–49.

¹¹⁸ *Ibid.*, 1947.

Imrana Qadeer points the triumph of religious fundamentalists who exploited powerless women. She describes the emerging trends as follows:

... the state not only gives in to their anti-secular demands but also justifies them—and its [own] actions—by changing the very definition of secularism. Then in the name of democratic practice it supports the majority view within religious communities. That as a consequence of the above, the liberal democratic sections are becoming increasingly paralyzed and marginal.¹¹⁹

Deorala case was a major impulsion behind the Commission of *Sati* (Prevention) Act, (the *Act*). Roop Kanwar, who committed suttee two days after her husband's death, became an idol for many traditionalist and even by some extremists her name was mentioned among deities.

After this tragic event, the *Act* of 1987 came as a promising law to eradicate suttee. It replaces any earlier statutes and establishes a law that is operative in any parts of India. Even more outstanding aspect of the *Act* is to make any glorification of the act suttee an offence. Attempt to suttee or abetment of suttee is punishable by death or life imprisonment.¹²⁰

The *Act* defines suttee as the burning or burying alive of:¹²¹

- i. any widow along with the body of her deceased husband or any other relative or with any thing or article associated with husband or such relative, or
- ii. any woman along with the body of any of her relatives.

¹¹⁹ Imrana Qadeer, "Shah Bano and Roop Kanwar," *Seminar* 342 (February 1988), p. 33 quoted in Oldenburg, "The Roop Kanwar Case: Feminist Responses," 123.

¹²⁰ See Section 4 in The Commission of *Sati* (Prevention) Act, 1987.

¹²¹ See Section 2 (1) (c).

Attempting suttee is punishable under Section 3 with imprisonment for a term which may extend to one year or with fine or with both.

The glorification of suttee is defined in Section 2(1)(b) as observance of any ceremony or the taking out of a procession in connection with the commission of suttee; supporting, justifying or propagating the practice of suttee in any matter; arranging of any function to eulogise the person who has committed suttee; the creation of a trust, the collection of funds, the construction of a temple or the carrying on any form of worship or the performance of any ceremony thereat, with a view to perpetuate the honour of, or to preserve the memory of, a person who has committed suttee.

Other highlights of the *Act* are as following:

- all temples dedicated to such practice or persons to be removed (Section 7)
- a person convicted of an offence under Section 4 (1) shall be disqualified from inheriting certain properties.

This legislation was a significant step against suttee, but its implementation was not smooth. Although Section 12 (3) of the *Act* requests the proceedings shall be held as expeditiously as possible, Roop Kanwar trial took nine years to complete.

Difficulties in implementation of current legislation arise from the two facts that the *Act* ignored: One flaw is that the *Act* treats widow as a criminal without noticing social environment and pressures on widow. Secondly, not individuals but corporate

entities donate funds for glorification of suttee, for publicity purposes and tax evasions.¹²²

This anti-sati legislation has replicated many prejudices and ambiguities of the East India Company Regulation of 1829. Instead of prohibiting crime against women, the new law defined suttee as a woman's crime. The *Act* by refusing to distinguish between voluntary and involuntary suttee, managed to "treat all sati as voluntary. That is why the woman is punished and that is why those who kill her are punished for abetment, and not for murder".¹²³

The vexed question of voluntariness is beyond the scope of this study. In cases of suttee, voluntarily sacrifice is becoming even more unconvincing as more evidence of intimidation and murder appears openly. Roop Kanwar's death, -or murder- is one of the cases to point how the family and local business earned sums. Ranging from the builders of the sati shrine to the small traders in the area, all profited from commercialization of Roop's death. This clarifies how widow's in-laws as well as the Deorala community acted according to a strong financial incentive. In this complex set of motivations, suttee appears to be more a sacrificial murder for financial gain and an aid to the family and local business rather than a voluntary immolation. It is hard to find voluntarily sacrifice convincing in which the family definitely gains from the elimination of widow who is burden on the family and whom the family might otherwise have to support her for the rest of her life.

¹²² Nehaluddin Ahmad, "Dying for the Dead: A Socio-Legal Examination of Sati in India," *Asia-Pacific Journal on Human Rights & the Law* 9, no. 2 (July 2008): 6.

¹²³ Vasudha Dhagamwar, "Saint, Victim or Criminal," *Seminar* 342 (February 1988), p.38 quoted in Oldenburg, "The Roop Kanwar Case: Feminist Responses," 126.

Female agency is one of the complex side of suttee debate. The question of agency cannot be conceptualized as smoothly as it has been in liberal feminist theories in the West. It might be better to view as victim until in this particular setting the question of women's agency is resolved. Lata Mani concludes:

The example of women's agency is a particularly good instance of the dilemmas confronted in simultaneously attempting to speak within different historical moments and to discrepant audiences. What might be a valuable pushing of the limits of the current rethinking of agency in Anglo- American feminism, may, if not done with extreme care, be an unhelpful, if not disastrous move in the Indian context.¹²⁴

Given that a woman's status is determined by her relationship to men, as Rani Chundawat asks "can any decision. . . . particularly such a momentous decision, really be called voluntary and self-chosen?"¹²⁵ Therefore, it may be inaccurate to seek female agency in the act of committing suttee.

¹²⁴ Lata Mani, "Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception," *Feminist Review*, no. 35 (July 1, 1990): 38.

¹²⁵ Madhu Kishwar and Ruth Vanita, "The Burning of Roop Kanwar," *Manushi* 42-43 (1987): 21.

CHAPTER 6

CONCLUSION

Experiences of modernity through bodily knowledge have been central to feminist discourses. Expressed as ‘bodily ways of knowing’ anthropologists and folklorists have also explored bodily memories in re-inventing tradition and constructing modernity.¹²⁶

Western feminist debates over women’s bodily experiences focused more on religious practices such as female genital mutilation, cultural forms of gender violence such as foot-binding and honor killings. The study is convinced that considering various women’s bodily experiences in a comparative framework grants us a broader understanding of current debates on violence against women. Analysing other cultural domains provides us a critical perspective of our own experiences of modernity as well.

Suttee, the immolation of a Hindu widow on her husband’s funeral pyre is highly controversial practice, which has been subject to a sophisticated scholarly research. Within this literature there are two main ‘episodes’ to predominate: (1) The early-colonial Bengal where the British prohibition was held in 1829 and (2) the late twentieth century Rajasthan where immolation of Roop Kanwar in 1987 hit. However, there is scarcity of research to compare this two events to unravel the routes from ‘colonial’ to ‘post-colonial’ interpretations of suttee.¹²⁷ The lack of

¹²⁶ Kathryn Linn Geurts, *Culture and the Senses: Bodily Ways of Knowing in an African Community* (Berkeley: University of California Press, 2003); Deborah Kapchan, *Traveling Spirit Masters: Moroccan Gnawa Trance and Music in the Global Marketplace* (Middletown, Conn: Wesleyan, 2007).

¹²⁷ Oldenburg, “The Roop Kanwar Case: Feminist Responses”; Loomba, “Dead Women Tell No Tales.”

research on specific suttee cases carries out the risk of marking colonial debate on suttee as a grand discourse for contemporary suttee debates. As Andrea Major states, this perspective misses the regional and historical elements. On the contrary, suttee remained as a site of contest between 1829 and 1987 with specific local and historical context rather than an ingrained early nineteenth century colonial debate.¹²⁸

Difficulty intrinsic to debate on suttee is the divergence between the case of early-colonial Bengal and other colonial encounters with the practice. British representations of suttee in early nineteenth century were the product of certain political visions and of a particular place and moment. Framing suttee discourse by early colonial Bengal experience runs the risk of producing ‘grand narratives’ out of specific events and as an illness of colonial studies, disproportionate emphasis to Bengal marginalizes other equally significant events and colonial encounters with suttee. Western reaction and intolerance of suttee in the early nineteenth century are in a sharp contrast with seventeenth and eighteenth century European reaction against suttee in which the brutality of the practice and the widow’s bravery and devotion were highlighted equally and the latter were even admired.¹²⁹ Colonial debates on suttee continued to develop in nineteenth and twentieth century and divergent moral and political interpretations were at stake in various regions. Suttee persisted in Rajasthan until 1860 and was treated by a different set of elements than which were at hand in Bengal.¹³⁰

¹²⁸ Andrea Major, “The Burning of Sampati Kuer: Sati and the Politics of Imperialism, Nationalism and Revivalism in 1920s India,” *Gender & History* 20, no. 2 (August 2008): 228–47.

¹²⁹ Banerjee, *Burning Women*; Major, *Pious Flames*.

¹³⁰ Andrea Major, “Self-determined Sacrifices? Victimhood and Volition in British Constructions of Sati in the Rajput States, 1830–60,” *History & Anthropology* 17, no. 4 (December 2006): 314.

As the remark of Hindu ‘tradition’, suttee could be defended publicly as part of the ‘private’ sphere. Yet, it requires to be performed in public sphere, it had to be a public event, performed before the community. Similarly, Radhika Singha argues that the public nature of suttee was a violation of British public space and it made suttee particularly noxious to a colonial state that sought to retain for itself ‘the privilege of taking life’.¹³¹ Gayatri Spivak, Lata Mani and Rajeswari Sunder Rajan, among others, provided a look at the British use of Indian women as a justification for India’s occupation.¹³² This scholarship while focusing on different aspects of British representation of suttee, has shown that abolishment of suttee by the East India Company was less about Indian women than justifying British rule in India and seeding imperialism as the establisher of “the good society”.¹³³

The sensational killings, in particular the examples of suttee (widow-burning), thuggee (an organized cult of killers) and female infanticide filled colonial imagination and were unambiguously represented as *Hindu* crimes, rather than secular ‘Indian’ ones that might be committed without a religious affiliation.¹³⁴ British representations pointed *Hindu* crimes as the examples of the dangers of Hinduism from a gendered perspective. The turn of the nineteenth century and particularly the imposition of Indian Penal Code and the creation of High Courts in the wake of 1857 Great Rebellion caused a striking change in colonial policy and

¹³¹ Singha, *A Despotism of Law*, 118.

¹³² Spivak, “Can the Subaltern Speak?,” 1988; Mani, *Contentious Traditions*; Rajeswari Sunder Rajan, *Real and Imagined Women: Gender, Culture, and Postcolonialism* (London: Routledge, 1993).

¹³³ Spivak, “Can the Subaltern Speak?,” 1988, 299.

¹³⁴ For analysis of changes and continuities in British representation of this three distinct but related issues; see Daniel J. R. Grey, “Creating the ‘Problem Hindu’: Sati, Thuggee and Female Infanticide in India, 1800-60,” *Gender & History* 25, no. 3 (November 2013): 498–510.

practice in terms of law, crime and the rule of difference.¹³⁵ For colonial perception, the victimisation of women formed such dangers and even parallels could be drawn directly with men and women in Britain, colonial discourse linked such crimes immediately with Hinduism. Crimes that were believed to be ‘Hindu’ problems, but were committed by Muslim men and women, such as female infanticide skilfully ignored.¹³⁶ As Susan Bayly points out incarcerating Hindus in these discourses of gendered violence also dismisses the fact that by 1700, elite Muslim and Hindu attitudes to gender, sexuality, appropriate behaviours and norms overlapped.¹³⁷ Suttee with its exclusive impact on the lives of women was utilised in the nineteenth century colonial justifications as ‘bringing civilization’.

Debate over suttee grows on a moral concern and resonates an ethical imperative. But of course, there was a sympathetic view of what happened in Deorala on September 4, 1987 as well as a version of opponents. The former told Roop Kanwar transformed from a human being into a goddess. The latter favoured a different version of the story, reporting that Roop Kanwar was drugged into submission by her in-laws, and tried to escape, but she was pushed back. Other reports also indicated that she asked her father for help. The story gets even more complex when other participants of the event claimed that Kanwar’s in-laws had economic motives to arrange the immolation plot near their own home rather than what the custom dictated. This evidence dictates that Kanwar’s in laws expected

¹³⁵ For continuities and changes in relation to criminal justice; see Kolsky, *Colonial Justice in British India*.

¹³⁶ Daniel J. R. Grey, “Gender, Religion, and Infanticide in Colonial India, 1870—1906,” *Victorian Review* 37, no. 2 (October 1, 2011): 107–20.

¹³⁷ Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge: Cambridge University Press, 1999), 52.

worshipful offerings and wished to continue have offerings by spectators once a shrine was established on the site of Roop Kanwar's death.

With the new legislation, not only its practice but “glorification of *sati*” became also a legal offense in 1987. This development can be interpreted as an outcome of the feminist struggle which have lasted for years and have fought drastically. This study, with its narrow focus, acknowledges that each subject which enhances both elite and popular anxiety and debate, provides even more fertile grounds for historians. As a signifier of imagined Hindu violence and revealing a more nuanced picture of British attitudes towards gender, religion and race in the nineteenth century India, the case of suttee will continue to offer more questions and issues to be discussed. The controversy over suttee can be a debate between cultures and not divided by national borders. In this respect, this kind of conceptualization is promising to provide rooms for current debates over violence against women. Omission of national lines grants us a cross-cultural understanding and favours an approach based on class and socio-economic relations. Thus, this study is convinced that debate over suttee must take place without fundamentalist emphasis on nationalism.

Considering suttee with widow remarriage is another facet of gender questions in Indian society. Although widow remarriage was made legal for Hindu women in the mid-nineteenth century by the British, it is still not a widely accepted practice and remains a contentious social issue. Marginalization and despair that widows face in Indian society remain as a main factor to make suttee a way out. Although suttee is a rare practice among Indian widows, in society where husband's death means death of widow's social life, to some death may look to be more

preferable. Widows remain to be ostracized by their family and their community. At the death of their husbands, widows became legally vulnerable in terms of inheritance, child custody, rights over land and property. They are victimized to the point where suttee stands as an escape because the society accept their miserable plight as a “tradition and culture”. Unless certain steps to social security were assured, suttee remains an option for widows rather than being stigmatized by the society. Indian government could foster a social transformation in addition to outlawing suttee and could assure widows social and legal security. Legislating is a way easier than understanding sentiments behind suttee and creating conditions for social transformation.

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