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## Political ideas of B.G. Tilak: colonialism, self and Hindu nationalism

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### Citation

Oak, A. (2022, April 12). *Political ideas of B.G. Tilak: colonialism, self and Hindu nationalism*. Retrieved from <https://hdl.handle.net/1887/3283505>

Version: Publisher's Version

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**Note:** To cite this publication please use the final published version (if applicable).

### 3. Dharmaśāstra and Gender Reform in Maharashtra: The Socio-Religious Thought of Tilak

Modern social reform in India is traced to the 19<sup>th</sup> century. It was primarily concerned with the social status of upper caste women. One of the first social reform initiatives undertaken by the Bengali reformer Ram Mohan Roy was the issue of *sati*, which culminated in a ban on the inhuman practice of forcing an upper-caste widow to burn herself upon the funeral pyre of her deceased husband. A law to that effect was passed by the Governor-General of Bengal, Lord William Bentick, in 1829 and was later extended to other parts of India under British jurisdiction (Mani 1998). In subsequent decades, questions related to woman's role in the family, her status as a wife, her responsibilities as a mother and her overall role in the burgeoning nationalist movement of India were hotly debated and contested in the public sphere of India (Chatterjee 1989; Chakrabarty 1993). As Ashis Nandy has pointed out-

“All major social reforms and attempts at social change after the beginning of British rule have centred on woman and femininity [sic]. It is by protesting against or defying the traditional concepts of woman and womanhood that all Indian modernizers have made their point. On the other hand, all forms of conservatism and protests against modern Western encroachments on Indian society have taken shelter in and exploited the symbol of motherhood” (Nandy 1990: 37).

The role of 'gender relations' in India's nationalist movement has attracted widespread scholarly attention in recent years. Modern Indians, it has been argued, imagined women as a woman-goddess (Ramaswamy 2010), exhibiting charming forms of domesticity (Sarkar 1992; Hancock 2001; Walsh 2004; Allender 2016), in the image of an ideal 'mother' to be projected on the perfect nation, and facilitating the growth of patriotic asceticism required for nationalist purposes (Forbes 1996; Sarkar 2001).

Gender consciousness in western India grew under the auspices of various social, religious and political agencies. It was initially facilitated by the introduction of modern political and educational systems, where issues related to citizenship rights and responsibilities of a State were widely discussed. Of particular influence were the writings of 19<sup>th</sup> century British Utilitarian thinkers such as John Stuart Mill who were avidly read in the colonies (Stokes 1959;

Zastoupil 1994; Mantena 2007; Botting and Kronewitter 2012). Exposure to European modernity created turmoil in the social set-up of India which was ruled for centuries by religious norms related to status of women, unchallenged authority wielded by the male-members in a family, invincibility of the clerical class and social-behavioural diktats laid out for members of a community in the private and public spheres. The Hindu orthodoxy reacted strongly against the waves of modernity and social change hitting India and took refuge in the Dharmaśāstra [theologico-legal] texts and ritual customs, while enclosing the walls of caste (jāti) endogamy around it. Social reformers, on the other hand, established social reform organizations (such as Prārthanā Samāj and Satyaśodhaka Samāj), fought for making modern education accessible to young girls and while defending a noble and egalitarian golden past of the Vedic period.

The social thought of B G Tilak has been a bone of contention among Tilak scholars as well as historians of modern India (Wolpert 1989; Rao 2010). Tilak has been described as an orthodox conservative leader who upheld the values of Hindu upper-caste orthodox community, causing the “greatest harm” not only to the social reform movement but to the cause of political reform movement of India (Ambedkar 2014: 218). During crucial moments of social reform such as the controversy surrounding the Age of Consent [AoC] Bill (1891) or the right of upper-caste Hindu women to convert to Christianity (1884-1896) *Kesari* and *Mahratta* published articles defending the Brahminical narrative. Tilak’s ‘reactionist’ stand on ‘gender equality’ and Indian feminist movement of the 19<sup>th</sup> century has been severely criticised (Kosambi 1991: 1860). Rosalind O’Hanlon refers to him as a ‘conservative thinker’ who defended female docility through his “nationalist newspapers” - *Kesari* and *Mahratta*- since for Tilak “[...] teaching Hindu women to read would ruin their precious traditional values, making them immoral and insubordinate” (O’Hanlon 1994: 16). Tilak sought to enforce traditional views of female inferiority and docility (Kosambi 1988). Women were primarily home-makers (Tilak 1976c: 219-20) and therefore did not require modern education but should be content with basic information regarding home science and allied subjects (Rao 2010). After congratulating Anandibai Joshi for completing her nursing course in America, Tilak warned his readers that, “[...] such education would not be of much use for our women and if enforced would be detrimental to our society” (‘Female hāyaskūlātīla śikṣaṅkrama-2, *Kesari*, 4<sup>th</sup> October, 1887) (Tilak 1976c: 212, my translation). He regularly invoked the ideal

image of a 'chaste wife' ("shālīn gruhīṇī") and that to find a "good woman" was indeed "rare" (Tilak 1976c: 266, my translation).

Instead of treating Tilak as a representative of religious orthodoxy, in this chapter I propose to assess Tilak's socio-religious ideas by positioning him within the logic of nationalist subjectivity. In the aftermath of the failure of the Revolt of 1857, Indian liberal intelligentsia was confronted with a vexing dilemma, viz. the role of a 'foreign state' in mediating social reform. Social reform movement in Western India continued to invoke the language of (western) modernity and post-Enlightenment values to address 'evil elements' in its religious practices. Nationalists such as Tilak were increasingly suspicious of the 'governmental meddling' in religious customs, rituals and practices. Tilak feared that an uncritical acceptance of colonial legislations by Hindu social reformers would corrode incipient national unity and misdirect the nationalist movement. He was opposed to differential community identities based upon sectarian affiliations which might prove detrimental to the cause of Svarājya (Self-Government). He was also suspicious of socio-religious organizations such as Prārthanā Samāj which were imitating Christian forms of religious congregations (Tilak 1995: 1-3). Tilak projected the notion of a homogenous religious community premised upon racial (Aryan) and Brahminical narratives. While he reiterated notions of patriarchy and exhibited upper-caste authority, he also argued for reconstruction of the Dharmaśāstra doxa imbibing modern ideals. While change was inevitable it could not be at the expense of tradition. Thus, I read his position on the 'social question' in relation to gender (marital rights/rites)- as treading a middle ground between liberal modernism and Hindu sanātani thought.

In this chapter I juxtapose the 19<sup>th</sup> century colonial policy and the nationalist response it evoked in the context of the colonial legal structure as opposed to the traditional Dharmaśāstra tradition and its effect on gender relations. This would help me in deciphering the teleology of Tilak's nationalist politics in its differing appropriation of the social and political reform as the 'space of debate'. In the context of these philosophical and exegetical debates, I place the controversies surrounding the AoC Bill [1891] at the centre of my enquiry. Locating the precise ideological standpoint of Tilak in this debate would help me in unearthing his socio-religious and nationalist thought, which stemmed from an immense pride in Hindu Dharmaśāstra traditions while conjoining them with modernity.

I propose to conceptualize Tilak's socio-religious thought in terms of granting priority-status to political reform over social reform. The latter, according to Tilak, could be achieved not through (coercive) colonial laws but by undertaking a rigorous reconstruction and re-interpretation of traditional Dharmaśāstra laws which had been governing lives of Hindus for centuries. Unlike the orthodoxy, Tilak believed that the Dharmaśāstras had tremendous potential in abetting modernity and social reform. Change was important, but for Tilak, it had to be gradual. Any undue zest for radical social reforms through legislative means would not help solve issues of social inequality and discrimination. Thus, Tilak viewed social hierarchies as a symbol of stability which could, to a very limited extent, be negotiated in order to conform to a changing world. The fact that religion survived for thousands of years represented its resilience as well as its extraordinary malleability. Intervention from the colonial state in Hindu socio-religious activities would unnecessarily upset the traditional social order, resulting in stiff resistance from the Hindu orthodox community.

### 3.1 Gender Reform Over Caste Reform: Brahmin Intellectuals' Ambiguity and Tilak's Negligence

Marathi intellectuals of the late 19<sup>th</sup> century firmly believed in the legitimacy of Dharmaśāstra tenets. Dharmaśāstra provided for these intellectuals (most of whom belonged to various sub-sects of the Brahmin caste) the religious parameters to determine social life (Varnāśramadharmā). As such, the social reform movement of Maharashtra concentrated upon only such colonial legislations which directly affected socio-religious customs of upper-caste Hindus. Ipso facto gender reforms, unlike reform in caste-relations, came at the forefront of social reform agitation. Moreover, the intellectual world of western India was firmly entrenched into the Purāṇa-based lore, that being- in the Kaliyuga only two castes existed in the world, namely, the Brahmins and the Shudras. Extraordinary endeavours by Jotirao Phule and his associates to emancipate Shudras from the stranglehold of Brahmin hegemony was confined to a small section of Pune. While social reformers such as M. G. Ranade and R. G. Bhandarkar supported Phule's endeavours, conservatives such as Vishnu-śāstrī Chiplunkar viciously attacked Phule's demand for an egalitarian social order (Keer 1959: 144-49). Moreover, the Brahmin intellectual world posited an internal unity- both religious and political- which was largely inaccessible to non-Brahmins. Apropos, the latter either

remained docile or concentrated on cultural activism throughout the 19<sup>th</sup> century (Omvedt 1976).

Caste appeared on the periphery of Marathi social reform movements (Singh 2016: 90-99). Bhandarkar, for instance, traced the emergence of 'caste-system' to the Aryan invasion of the 'land of dāsyu' (Bhandarkar 1928: 443-486). Ranade argued that the caste was the "[...] main blot [...]" on Hindu social system robbing modern individuals of grand ideals such as equality and justice (Ranade 1902: 290). Prārthanā Samāja did not follow caste-discrimination and allowed all men and women to attend its meetings (Phatak 1924: 224). However, Ranade, just like his Brahmin compatriots, fell short of calling for a sustained campaign to eradicate caste discrimination (Tucker 1972: 218-223; Bagade 2006: 287). B. R. Ambedkar, reflecting many years later, pointed to the extraordinary difficulties faced by social reformers. They lived at a time when "[...] social and religious customs however gross and unmoral were regarded sacrosanct and when any doubt questioning their divine and moral basis was regarded not merely as heterodoxy but as intolerable blasphemy and sacrilege" (Ambedkar 2014: 218).

Tilak considered the demand for reforms in caste-relations as divisive, often fuelling communal hostility and hence an anathema to India's national unity and progress. Similar to Bhandarkar and others, he legitimized caste-hierarchies based upon 19<sup>th</sup> century Orientalist narratives which visualized caste as an Indian variant of 'race'. He also compared Indian caste-system with the guild-system existing in medieval Europe. Every caste, in such a conception, had an industrial role to play which meant that caste-system was to be regarded as "[...] an essentially secular and social organization amongst the members of Aryan race for the preservation of hereditary occupations and for the purposes of mutual help and co-operation [...]" (Tilak 1976e: 472). In the ancient Vedic period marriages across the three dvija castes (Brahmin, Kshatriya and Vaishya) was a common practice. Moreover, non-Aryans (dāsa) who became Shudra in the four-fold Aryan caste system did not meet contemptuous treatment (Tilak 1976e: 467-77). Indian caste-system's origin was traced to the entry of Aryans into the Indian subcontinent. However, unlike the white colonists of North America and Australia who decimated the original inhabitants of those regions, the 'civilized' Aryans absorbed the pāradhi (pariah) community within its fold. This resulted into the birth of the varna-system codified into the Dharmaśāstra texts.

Tilak believed that the three Brahmin sub-castes of western India- Deśastha, Kokṇastha and Kārṇāḍe- must resume the practice of inter-sub-caste marriages since it would result in a genetically superior progeny (Tilak 1930: 1-6). Unlike Brahmins from the rest of India, Vedic learning was not the sole occupation of Marathi Brahmins. They were capable administrators and industrious men, had held important administrative posts in the Maratha and Peshwa kingdoms and had laid the foundation of Svarājya (Tilak 1930: 211). Therefore, Brahmins and other upper-castes were vital in India's fight for 'self-government' ('Jātibheda', *Kesari*, 13<sup>th</sup> May, 1896) (Tilak 2004: 212-218).

In his public speeches, however, Tilak showed slight sympathy towards the marginalized population and greater intolerance towards caste discrimination. While delivering a lecture marking the 13<sup>th</sup> anniversary of the Ganapati festivals, he defended its inclusive character. Orthodox Brahmins such as Kashinath-śāstrī Lele through his journal *Dharma* had criticized Tilak's public festivals which did not adhere to shastric prohibition on inter-mingling of different caste- groups (viṭāḷa) and practicing untouchability (Lele 1905). Tilak referred to the Vedic image of the ādi-puruṣa from whose body the four varnas had been supposedly created. He argued that the head (Brahmin) of the body was not separate from the feet (Shudras). "Hindu religion is one whole body and not hands and legs severed and kept at a distance [...]" Those who accept the Vedic tradition are Hindus and make up an indispensable part of the theo-body [...] One should strive towards greater unity within the Hindu community and cease discrimination" (Tilak 1908: 26-32, my translation). Hinduism, for centuries, had been tolerant of others religions and it would serve the Hindus well to continue the practice, assimilate their ideals without losing one's subjectivity (Tilak 1908).

The need for eradicating caste-discrimination did not appear prominently in his political discourse. But when it did, it was camouflaged in polemics actualized by immediate political interests. In the final years of his life, at a time when political movement representing non-Brahmin interests was gaining momentum, Tilak showed greater elasticity. In his Presidential Address delivered to the 2<sup>nd</sup> Untouchability Eradication Conference (1918) organized by the Depressed Class Mission in Bombay Tilak appealed to his audience to "prohibit the entry of caste-based discrimination in the upcoming 'self-governed India'" (Tilak quoted in Shinde 1958: 293). However, when the Assembly decided to propose a petition to eradicate Untouchability, Tilak refused to put his signature on it<sup>16</sup>. In response to Wrangler Paranjape's

letter in the Bombay Chronicle where he criticized Tilak for avoiding taking responsibility of removing Untouchability Tilak stated, “Mr Paranjape knows well that I am for removing all caste distinctions regarding inter-dining and untouchability. I have said so many a times. But I am not prepared to take up the work of actual propaganda in this matter as my own, and I refused to sign a manifesto which would have clearly thrown that responsibility on me” (Tilak quoted in Navare 1925: 194). Similarly, in 1918 when the Congress leader Vitthalbhai Patel proposed a Bill in the Imperial Legislative Council to allow for inter-caste marriage Tilak wrote to Dadasaheb Khaparde objecting to the Bill since it went against Dharmaśāstra’s injunctions (Tilak to Khaparde, 9<sup>th</sup> September, 1918) (Khaparde 1978: 70-71). In an editorial published for *Kesari* he argued that a child born out of inter-caste marriage, the śāstra suggested, should be forbidden to carry out any dharmic rites (birth, death, etc.) or to inherit property (‘Hindu –Hindūnce Vivāha saṅkara’, *Kesari*, 17<sup>th</sup> September, 1918) (Tilak 1976c: 186-191).

Tilak showed remarkable ambiguity in his approach to caste-discrimination and changed his stance depending upon the audience which he was addressing. The vagueness can be attributed to the liabilities thrust upon him by his local constituency (his Marathi upper-caste supporters) which he represented. While not too rigid in following rituals in his personal life Tilak’s overall political outlook could not break out of the traditionalist fold<sup>17</sup>. For him a self-governing modern India “[...] was to be buil(t) on old foundations” and any social reform “based on utter disrespect for the old”, did not appeal to him as “constructive work” (Tilak 1976e: 45). He further added, “I don’t hold that social reconstruction must be undertaken prior to political emancipation. I attach greater importance to the latter. Without the power to shape our destiny, our national regeneration, in a large sense, in my opinion, cannot be effected [sic]. And I have throughout my career tried to preach and emphasize this view” (Tilak 1976e: 42).

In any case, Tilak’s political discourse was dependent upon the exigencies of colonial policies. As suggested earlier, colonial state did not pass any major legislation which disturbed the status quo of the upper-castes in the Hindu social order. Political movement representing the non-Brahmins was yet to take proper shape during Tilak’s lifetime. Therefore, an exploration of his socio-religious should be undertaken through the lens of the antagonism between colonial gender-laws and Dharmaśāstra law and their combined effect upon the intellectual and cultural milieu of 19<sup>th</sup> century Maharashtra.



The socio-religious ideology of Tilak and his approach to gender reform under the aegis of colonial law brought him in direct confrontation with the leading social reformists of his times. These included the firebrand journalist Gopal Ganesh Agarkar, once a collaborator and later the editor of a competitive newspaper *Sudharak* (1887-1896), Ranade and the great Indologist Bhandarkar.

### 3.2 Dharmaśāstra and the Birth of Colonial Laws

Pre-colonial jurisprudence in Western India under the auspices of the Yadavas, Mughals, the Sultanate (Bijapur) and later under the Marathas adopted an already existing long tradition of legal jurisprudence handed down through various Sanskrit and Arabic texts. It was also conscious of the Maharashtra specificity of jurisprudence and polity, termed 'Maharashtra-dharma', embedded into the region's history and the evolution of the Marathi vernacular and intellectual traditions. The earliest Maharashtrian writer on Dharmaśāstra was Vijñāneśvara (c. 12<sup>th</sup> century) who produced an authoritative commentary on *Yājñavalkya Smṛti* called *Mitākṣara*. The diktats laid out in *Mitākṣara*, with the exception of Bengal which had developed a distinct Dāyabhāga tradition and Kerala which followed a matrilineal state, were followed in many parts of the Indian subcontinent until the 19<sup>th</sup> century. In pre-colonial Maharashtra the Yadavas of Devagiri (1187-1317 CE) helped in the preservation of Dharmaśāstras through numerous literary and theological commentaries (*nibandha*). A minister in the Yadava court named Hemādri produced an encyclopaedia on civil and criminal law based upon Dharmaśāstra rules and called it *Caturvarga Cintāmaṇi*. In subsequent centuries a large corpus of commentaries on Dharmaśāstras were produced in Paithan and adjoining regions as well as by various Brahmin families which had migrated to Benares and Tanjore (Apte 1972).

None of the medieval kingdom-states bothered to interfere in the tenets of theological law. In western India *Mitākṣara* was complemented by *Vyavahāramayūkha* (written by Nīlakaṇṭha-śāstrī) during the early 17<sup>th</sup> century (Gune 1953: 68-69). Under Chatrapatī Shivaji the Maratha judicial system followed civil and criminal divisions and functioned according to Śrauta (based on Vedas), Smārta (based on the Smṛtis) and Śiṣṭācāra (expected public behaviour) legal injunctions. Amongst them Varṇāśrama and Jāti behaviour was governed primarily by the Smṛti-texts (Gune 1953: 69-73). The early Peshwas, owing to their caste-

superiority, usurped partial authority in presiding over cases of caste-transgressions. While individuals could seek redressal over unjust arbitration by the law, the Peshwa-state took up such matter on an individual case-by-case basis (Wagle 2000).

However, during the late Peshwa period (1780-1818) jurisprudence was completely localized with juridical powers largely vested with the local deśpāndes and the zamindars and the Peshwas used Dharmaśāstra texts frugally (Guha 1995). Co-terminus with the elite Brahminical theological commentaries was the purported challenge to its authority by the heterodox traditions. The earliest attack was mounted by Swami Chakradhar and his Mahānubhava sect followed by the Vārkarī sampradāy which compelled the upper-caste community to rescind into formulating even more rigid norms of social interaction to avoid gender and caste-transgressions (Kotani 2006). However, the heterodox tradition and its textual corpus (such as *Ṭīlācaritra* and *Bhāvārtha Dīpikā/Jñaneśvarī*) could, at best, only bring down the lofty Sanskrit verses into quotidian Marathi but was unable to break out of the stranglehold of Dharmaśāstra tutelage (Novetzke 2018). Thus, under the Peshwas Maharashtra, and especially Pune, saw rapid growth in religiosity (in terms of temple-establishments and religious rituals) but new debates around Dharmaśāstra were largely absent (Gokhale 1985).

The origin of modern colonial legislation and the birth of colonial jurisprudence in India is a tale told many times (Lingat 1973; Derrett 1977). In brief, the Charter of George I in 1726 brought the three Presidency towns under direct jurisdiction of the English legal system. Common Law applied to these towns was borrowed from English jurisprudence. However, after gaining *diwani* rights from the Bengali Nawab and the Mughal Court, Governor-General Warren Hastings set up a committee to advise him in regulating the civil and criminal laws for the regions under the Company's jurisdiction. It was decided, after much discussion, that traditional Hindu and Muslim laws would be treated equally and that the English law was not to be applied to the natives (Rankin 1946: 2-4). However, Hindu and Islamic legal jurisprudence was too varied, adhered to an enormous textual corpus with no doctrinal uniformity (Rudolph and Rudolph 2001). Sir William Jones identified Manu-Smṛti (which he dated to 1580 BCE) as the oldest Dharmaśāstra text containing ancient Hindu laws. He translated the text into English as *Institutes of Hindu Law* [1794]. It was followed by Nathaniel Brassey Halhed's *Code of Gentoo Laws* [1775] under the supervision of ten pandits and a

multi-volume digest of Hindu laws pertaining to family, succession, marriage and property compiled by Henry Thomas Colebrook [1795]. After *Manu-Smṛti* the second most important Smṛti, viz. *Yājñavalkya*, was translated almost 60 years later. It was commonly assumed that the “[...] differences between commentaries on, and compendia of, Smṛti texts largely reflected local custom [...]” (Rocher 2010: 85). The antiquity of texts was of secondary significance. But since British judges working in the provincial courts were not trained in Sanskrit or Vedic exegesis the British administration employed śāstrīs to assist these judges in adjudication and interpreting the Dharmaśāstra doxa. The practice was discontinued in 1864 (Rocher 2012: 79).

The administration of Dharmaśāstra and the interpretative nibāṇḍha-texts to civil and criminal cases involving Hindus created a fundamental disjuncture between the British Legal Code and the traditional Hindu jurisprudence. The disjuncture arose partly out of the misguided interpretations of the Sanskrit texts arising out of a misconception of the nature of the Dharmaśāstra textual enterprise. Unlike modern European and the British legal system, which had transformed the Common Law into Civil Law, the Dharmaśāstras did not possess legislative capacity. Legal proceduralism was but a small aspect of it. The Dharmaśāstras, principally dealt with righteousness, codified through a set of customs and ethics, which was considered of supreme transcendental value. Their codes of conduct were, therefore, meant to exhort the practitioner to fulfil his/her duties (both sacred and profane), recommended through a complex set of ritual customs (yajña-karma) and civil actions (saṅskāra) (Derrett 1973). British laws- guided by the principles of ‘justice, equity and good conscience’- came closest to the concept of sadācāra (Good Custom) described in the Śrauta (Revealed) texts (Lingat 1973: 14-17). Closer to Tilak’s lifetime two significant legislations - Caste Disabilities Removal Act [1850] and Hindu Widow’s Remarriage Act [1856]- were seen as a direct assault on the tenets of Dharmaśāstras but, nevertheless, following the British judicial principles of individualist-universalist legal egalitarianism.

The transfer of power from East India Company to the British Crown fundamentally altered the nature and form of the British colonial government. Queen Victoria, in her Royal Proclamation [1858], clearly stated that the British state would not interfere into the religious customs and practices of the colonised- “We [the British Royal Family] do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with

the religious belief or worship of any subjects on pain of our highest displeasure” (quoted in Desika Char 1983: 294).

British jurisprudence, following the Queen’s Proclamation, worked on, what Mithi Mukherjee calls, “[...] the twin discourses of *justice as equity* and *justice as liberty* [...]” (Mukherjee 2010: xx, italics added). The deployment of these two discourses allowed the British Empire to deny the birth of a ‘native’ State while garnering legitimacy from the colonised for its colonial rule. Mukherjee explains the deployment of the ‘justice as equity’ by the British rule in India in the following manner-

“What is distinctive about the notion of equity as it historically developed in Britain is that, as opposed to the concept of justice under the law, natural or common (on which the Burkean discourse of imperial justice was based), the principle of justice as equity was grounded in the ‘conscience’ of the monarch, that is, in the person of the monarch. Unlike the common law courts in England based upon the notion of the universality and rationality of an impersonal law and upon rigorous formal procedures, the equity courts, based ultimately upon the notion that the monarch was the source of all justice, were grounded in moral principles like duty, trust, and conscience, and were addressed to the compassion and mercy of the king. Justice as equity thus assumed the sovereignty of the person of the monarch and of the courts that administered justice on the ruler’s behalf and not of an impersonal system of common or natural laws” (Mukherjee 2010: xx-xxi).

The other part of the discourse, almost in plain sight but camouflaged in the language of ‘enlightened self-interest’ or ‘civilizing mission’, became ‘justice as liberty’. ‘Justice as liberty’ model assumed that India was moving, irrespective of its past and its present conditions, towards greater liberty facilitated by the British State. Thus, while the state continued to deploy ‘justice as equity’ model to its colonial government, ‘justice as liberty’ model was a carrot continuously dangled before the Indians. This new dialectic, Mukherjee believes, absorbed from and later replaced the old dialectic of colonial and imperial and came to be articulated more forcefully in the decades following 1858 (Mukherjee 2010: xxii-xxiii).

Using such formulae, Henry Maine (a member of the Imperial Legislative Council from 1861 to 1869), following British jurisprudence, codified Criminal Law into the Indian Penal Code [IPC]. Civil cases, after due corroboration with native religious theologico-legal tradition, came

to be construed as Customary Law (Agnes 2005). Traditional Hindu jurisprudence, as mentioned earlier, was divided into Mitākṣara (prevalent throughout India, except Bengal) and Dāyabhāga schools (distinct to the Bengal region) (Trevelyan 1917). The rules of scriptural interpretations were laid out in Mīmāṃsa-texts and these two schools referred to different authorities within the Mīmāṃsa textual corpus. The British State could not create a uniform civil code due to these textual and geographical variations. Therefore, it adopted the method of adjudication by which case laws and judicial interpretation of legal principles took precedence over Hindu scriptural interpretations allowing the British State to pass civil laws related to family, marriage and inheritance. Amongst them the 'Widow Remarriage Act' [1856], the 'Indian Divorce Act' [1869], the 'Prohibition of Female Infanticide Act' [1872] and the 'Age of Consent Act' [1891] directly affected Hindu women's life and simultaneously challenged the twin authorities of Hindu religious scriptures and the authority exerted over it by the upper-caste male exegetes.

### 3.3 Competing Sources of Authority: The Colonial state and the Dharmaśāstras

Competing sources of authority, described in the previous section, opened up fissures, hitherto unknown, in the public and private arenas of Western India. The British colonial state, working under the spell of rapidly decreasing power of the Christian papal authority in England during the late 18<sup>th</sup> and early 19<sup>th</sup> centuries, may have wanted to replicate the model in their colonies (Burns 2006) and sought help from educated Indians.

However, unlike modern European States, India in the 19<sup>th</sup> century, continued to submit to multiple sources of authority. Hinduism did not function upon the ecclesiastic principles of institutionalized public obedience. Traditionally South Asians recognized authority in the King [Monarchy] as well as religious customs, with the latter often overwriting the decrees of the former. The establishment of a colonial legal-state, developed along ambiguous supra-religious norms, proposed a difficult dilemma for the 19<sup>th</sup> century Indian intellectuals. In the classic Weberian sense traditional and legal-rational modes of authority claimed for jurisdictional space. The British colonial state expected the colonised to obey colonial law, not only on the grounds of its moral superiority but because disobedience from them would threaten the colonial state's legitimacy.

However, when looked at from a different angle, modern state legislations are letters embossed upon a large human Ideal which requires popular sanction. The latter, generally spearheaded by a community of citizens, must resonate with the overall sentiments and belief-systems which govern it. 19<sup>th</sup> century Hindu society was governed by an already existing, millennia-old, theologico-legal code of social conduct which was articulated through the Dharmaśāstras and sanctified by śabdapramāṇa. The Vedas and post-Vedic literature claimed absolute authority due to their sacred status. Therefore, the duty [dharma] of a Hindu lay in following the diktats prescribed in the Vedas and codified in the Dharmaśāstras. The Vedic and post-Vedic literature upheld Varṇāśramadharma, that is, Varṇa-based division of Hindu society characterized by four stages of Hindu domestic life (Carpenter 1992). Vedic rituals based upon archaic cosmogonies reflected social mores which carried extraordinary value in the opinion of devout Hindus (Smith 1992).

The religious discourse or “dharma vicāra” [religious discourse] is the classic signifier in determining the intellectual history of colonial-modern Maharashtra (Deshpande 2009: 14). Facets of dharma vicāra include the discourse related to Varṇāśramadharma and textual exegesis of the Dharmaśāstras. Traditional notions of authority came to be reimagined with the advent of colonialism. Colonial regime, during its Victorian period, established modern forms of disciplinary mechanisms in the colonized region in order to maintain the difference between the colonizers and the colonized (Chatterjee 1995: 8). Thus, the Hindu dharma vicāra was reconstructed by the Orientalists in the context of European secular traditions and compartmentalized within the larger ideologies such as agnosticism, atheism, materialism and utilitarianism. The colonized natives too adopted and/or challenged new forms of ‘colonial authority’ (Orientalist and Statist) in the following ways- either they invoked the European Enlightenment tradition by tying it with Hindu theology justifying the capacity of religious communities to evolve; or they posited the Hindu tradition in the form of its antiquarian nature and a centuries long lineage to challenge the British involvement in the social matters of the natives. In the late 19<sup>th</sup> century Maharashtra this process was first witnessed through the controversy around the widows’ right to remarry.

### 3.4 Gender and Colonial Laws: The 'Widows' Remarriage' Controversy in Maharashtra (1870-73)

Modern feminism in India emerged in the context of new colonial laws which sought to establish conditions of equality between both the genders. Important legislations such as the prohibition of the practice of Sati [1829] (Mani (1998), the right of Hindu widows to re-marry [1856] (Carroll 1983) and the AoC Act [1891] has attracted widespread attention from feminist scholars and historians (Heimsath 1964; Engels 1983; Anagol-Mcgin 1992). Such colonial laws contributed to the birth of social reform movement in India and helped in pushing Indian women to gradually 'cross the threshold' of their domestic life (Kosambi 2007) and form an identity for themselves from within or independent of the nationalist movement.

The British laws meant for female emancipation were governed by a sense of moral superiority and an absolute distaste towards the, often regarded, 'barbaric and degenerate nature' of social customs of India. Colonial policies were meant to establish a 'grammar of difference' between the colonial metropolis and its colonies (Cooper and Stoler 1997). New philosophical traditions in Britain, such as Utilitarianism and Social Darwinism, developing during the 18<sup>th</sup> and 19<sup>th</sup> centuries were influencing and moulding colonial policy towards gender equanimity in its colonies. In an important article, Partha Chatterjee has captured Indian response to the colonial policies on social reforms in terms of a binary division between the inner sphere and the outer sphere. The nationalist discourse believed that the 'outer-material' domain was influenced and was conditioned by colonial law and therefore came to be regarded as insignificant. It was, in fact, the inner-spiritual domain which contained seeds of actual belongingness and a space where one's true self could be known. Thus, the nationalists believed that "[...] as long as India took care to retain the spiritual distinctiveness of its culture, it could make all the compromises and adjustments necessary to adapt itself to the requirements of a modern material world without losing its true identity" (Chatterjee 1989: 624).

While Marathi liberal intellectuals belonging to the post-Mutiny period were enamoured by the colonial state and its capacity to introduce new ideas of progress and modernization the orthodox sections found them abhorrent. English education had opened a whole new range of European post-Reformation ideas and philosophies which were completely unknown to

Indians. Introduction of European notions about rationality, scientific outlook (Quack 2012: 60-77) and Utilitarianism guided colonised Indian liberal intelligentsia in developing critical approach towards Hindu rituals and practices (Singh 2016). The Social reform movement in Maharashtra under the auspices of the Paramahansa Mandaḷī, the Prārthanā Samāḷ and the Satyaśodhaka Samāḷ pushed for substantial social reforms pertaining to gender rights of upper-caste women (Jones 1989: 137-144).

The earliest public confrontation between the liberal and orthodox Hindus was over the rights of widows to remarry. Liberals such as Ranade, Mahadev Moreshwar Kunte and Vishnu-śāstrī Pandit, taking inspiration from the movement led by Ishvarchandra Vidyasagar in Bengal in the preceding decade, established the Vidhavā-Vivāhottejak Mandaḷī [Widow-Remarriage Association] in 1866. Children borne by widows or out of wedlock were killed. In order to support such distressed women Jotirao Phule established the Bālahatyā Pratibandhaka Gṛha [1868]. Newspapers such as *Indu Prakash* too carried articles and editorials in favour of Widows' right to remarry. The orthodoxy retaliated with the establishment of Dharma Vyavasthāpaka Mandaḷī (Society for the Protection of Hindu Religion) in 1868.

With the publication of a Ishvarchandra Vidyasagar's writings supporting widow remarriage were translated (by Vishnu-śāstrī Pandit) and published serially through *Indu-Prakash* [1868] ensued a bitter conflict between the śāstrīs and the reformers which raged for close to three years. Both parties invoked the tenets of Dharmaśāstra and other Hindu religious texts to defend their view-points. Vishnu-śāstrī Pandit and his associates argued that repressive practices such as Sati and prohibition on widows to remarry were a later addition to Hinduism and were completely absent in the Vedas and early Hindu texts. The conflict between the two groups reached its crescendo when a public debate (dharma-sabhā) was called on 20<sup>th</sup> March, 1870. The two sides were asked to present their view-points using Dharmaśāstra texts before a large public gathering. The Śāṅkarācārya of Karvīra-pītha acted as the principal adjudicator. Ranade wrote two articles, 'The Texts of the Hindu Law on the Lawfulness of the Re-marriage of Widows' [1870] and 'Vedic Authorities for Widow Remarriage' [1870] in which he quoted numerous Hindu religious texts to argue that prohibition on re-marriage was qualified only under exceptional circumstances and was not to be regarded as a norm. Prohibition on widow re-marriage was a corruption of the later Puranic period and hence lacked Vedic sanction. The Śāṅkarācārya favoured the view-point expressed by the Śāstrīs. But since he did not possess



any legal rights the Śaṅkarācārya threatened those who would allow widows in their family to re-marry with societal excommunication (Kolhatkar 1901; Tucker 1972: 48-54).

### 3.5 Tilak and Gender Reform: The Early Years (1881-87)

The earliest instance of Tilak's engagement with the 'gender question' could be attributed to an article (written in four-parts) and published in *Kesari* ('Nāḥaṇavali-1, 2, 3 and 4', *Kesari*, 23<sup>rd</sup> January, 1883, 6<sup>th</sup>, 13<sup>th</sup> and 20<sup>th</sup> February, 1883) (Tilak 1976c: 19-38) where he argued that any changes in the social customs were to be embraced with open arms. Religion was created for the purpose of disciplining human behaviour and harmonise society. Therefore, distress caused by religious rituals and customs could not be justified. Tilak openly challenged the sanātani views [including those of *Kesari's* former associate Vishnu-śāstrī Chiplunkar] by proclaiming inferiority of religious eschatology to human ontic belief (Kelkar 2012a: 186-87)<sup>18</sup>.

Issues such widow's right to remarry, access to education, need for financial independence to women and child-marriage were constantly debated in Maharashtra throughout the 1880s and early 1890s<sup>19</sup>. Therefore, it is highly unlikely that Tilak chose to neglect these issues. Closer inspection of intellectual evolution suggest that Tilak was, in fact, quite fond of Utilitarianism and other 19<sup>th</sup> century European materialist philosophies and had spent considerable time studying them, only to be disillusioned in his later years (Tilak 1976c: 536-547). Thus, while we are clueless about Tilak's precise opinions on the controversy raging around Widows' right to re-marry (mentioned in the previous section) Tilak took up the issue of 'Widowers' Remarriage' in 1892 (Tilak 1976c: 249-267). In these article ('Punarvivāh-1,2,3', *Kesari*, 8<sup>th</sup>, 15<sup>th</sup> and 29<sup>th</sup> March, 1892) Tilak argued that "[...] while the motivation driving the social reformers to create equality between men and women is commendable, there is no need to liberate the woman-folk from marital chains. Rather, the focus [of the movement] should be on teaching men to control their [bodily] desires" (Tilak 1976c: 255, my translation). Tilak observed that a widower, upon the death of his wife, is eager to marry again, regardless of the extraordinary sacrifice and love which his wife had showered upon him over the years. Such "[...] shameless behaviour [...]" (Tilak 1976c: 252, my translation) was widespread among the orthodox community and was often seen among 'social reformers' as well. Dharmaśāstras did not explicitly prohibit a widower from remarrying, partly because 'marriage' was one amongst 16 saṅskāra to be followed by all upper-caste individuals ('dvijamātra'). Marriage was

not mandatory and whenever possible men ought to practice celibacy. Under exceptional circumstances a widower could re-marry on the condition that he did not cross 30 years of his age (Tilak 1976c: 257-59). Thus, following the Dharmaśāstra tenets Tilak suggested the following alternatives to Hindu men- ‘maintaining life-long celibacy and acting with no desire for social welfare was the superior means’ [“uttama pakṣa”], ‘abdicating in favour of desireless action towards social welfare, after fulfilling one’s responsibility of a householder as the mediocre means’ [“madhyama pakṣa”] and ‘life-long commitment only towards one’s family while leading a life of material desire was the inferior means’ [“adhama pakṣa”] (Tilak 1976c: 261).

Suffice to say here that Tilak’s association with gender-reform did not emerge out of a natural inertia for ‘reform in Hinduism.’ Under Agarkar’s editorship *Kesari* routinely exhorted colonial state to aid gender reform. But after Agarkar’s resignation in 1887 and Tilak taking up its mantle we see a fundamental shift in *Kesari*’s approach to social reform. Unlike the earlier years when *Kesari* tried to disengage with religion-based debates and conflicts (Kelkar 2012a: 182-87), from the late 1880s onwards *Kesari* took up cudgels against social reformers. Tilak’s ambiguity towards radicalizing social reforms in general and gender-reforms in particular were determined by the peculiar character of the nationalist movement taking shape after the establishment of the INC in 1885. Social reformers such as Justice Telang were resilient towards prioritizing social reform over progress in the political sphere. In his famous lecture delivered in Bombay on 22<sup>nd</sup> February, 1886 Telang asked- ‘Must Social reform Precede Political Reform in India?’ (Telang 1916b) and suggested that social and political reform could not be dealt separately. British history of the modern period (starting with the Tudor era) and the pre-modern history of India showed remarkable improvement on political liberties and the emergence of a highly-evolved administrative polity. And yet, social condition of British and Marathi women during medieval period was pitiable. Therefore, mobilization for political reforms needed to target the recalcitrant orthodoxy and push for simultaneous emancipation of the marginalized sections.

Tilak was thus faced with a three-pronged challenge- first, the over-zealous social reformers who, in a typical Orientalist fashion, blamed Hinduism and its social structures for many of the social evils plaguing 19<sup>th</sup> century Hindu society and were disinterested in shaping and leading anti-colonial nationalist mass movement under the auspices of the INC; a colonial

state which asserted its authority over Indians by flouting centuries old Dharmaśāstra norms through unmitigated legislations; and, the Hindu religious orthodoxy which was determined in sticking to the traditional Dharmaśāstra tenets rather than exposing them to critical re-examination. I propose to develop his socio-religious philosophy in the context of the AoC Bill and the accompanying Vedic- Dharmaśāstra exegesis. The complex arena of multiple sources of authority in the late 19<sup>th</sup> century mediated through Vedic exegesis, education and colonial state produced complex ideological positions which cannot be neatly posed within a simple binary of liberalism-conservatism. Thus, I propose to locate Tilak in a twilight period or the grey zone between liberal and conservative social ideologies. In any case these ideological positions were not clearly defined but were developed as a part of the ongoing political debates. While such political debates lacked consistency and rigour of philosophy, an “action-oriented political thinking” found in the participants of these debates should be considered as an important component of political thought (Bajpai 2012: 55).

I locate the three-pronged challenges mentioned above within a contextual and heuristic space amplified over the ‘rightful ownership of authority.’ In the late 19<sup>th</sup> century, there came into existence multiple sources of authorities, asserting their predominance over the public and private lives of the Hindus. These were the educated Hindu male Brahmins, the śāstrī community and the colonial state. As with the Widows’ Remarriage controversy these three sections competed to assert their authority over Dharmaśāstras, the Hindu religious rituals and the legal mechanisms.

Notions about authority within the religious lexicon, at once, takes up questions related to its ‘nature’, that is, whether the authority is exercised through an oral or written tradition. In the context of Vedic religion, scholars have debated over the ‘performative’ aspects of Vedic religion, that is to say, the authority [adhikāra] over religious rituals (Patton 2002). With the advent of modernity, the 19<sup>th</sup> century Indians graduating from modern universities, engaged in debates concerning the enunciation of the Vedic and Dharmaśāstra texts and who wielded hermeneutical authority over them. In this context I prefer to use the category of ‘Enlightenment text’, a coinage by Laurie Patton, to indicate the approach and transformative capacity of educated Indians towards Vedic śāstras. An ‘Enlightenment Text’, Patton explains, “can be viewed as a printed or written source of knowledge to which *each individual has access without the mediation of a community*” (Patton 1994: 11, italics added). The birth of

‘Enlightenment Texts’ opened up the vast pool of Hindu religious canon to Indians which resulted into nationalist-racist pride amongst the upper-caste educated men, excitement amongst the lower castes and women and tremendous anxiety amongst the clerical class. I also hasten to add that, by the late 19<sup>th</sup> century, the onus of interpreting the śāstras had shifted from the colonial state to the colonised. Contributors to the debate over gender reforms, I suspect, also saw themselves belonging to the ancient lineage of nibaṇḍhkāras [commentators] and the tradition of nibaṇḍha which had disappeared for few centuries and which the colonial Orientalist partially resurrected. Thus, I do not read Tilak’s reading of the Dharmaśāstras as merely a deliberate and malicious attempt to suppress women’s demand for greater liberty or even to oppose legislation for the sake of its ‘colonial’ origin, but rather contributing in the making of a ‘micro-moment’ in the long lineage of Dharmaśāstra exegesis. Social reform agitation and the AoC Bill acted as significant triggers for imagining a renewed Dharmaśāstra-based socio-legal Hindu community.

### 3.6 Background to the Age of Consent Bill Controversy (1891): The Rakhmabai Case and Malabari’s Notes

The immediate background to the debate around the marital rights of a Hindu woman and the subsequent AoC Bill was the Dadaji vs Rakhmabai case (1884–1888) (Kosambi 1995a). Rakhmabai, an 11-year-old girl, was married to a 20-year-old man, Dadaji Bhikaji, in 1875. After spending six months in marriage, Rakhmabai decided to separate from her husband on the grounds that Dadaji was unable to provide proper residence and financial support to her. He suffered from tuberculosis, was an alcoholic and showed unruly behaviour towards her parents and relatives. She also suspected his foul character. Their marriage was not consummated. Dadaji filed a case against her in 1884 at the Bombay High Court. The court case attracted tremendous public attention and a strong male outrage against Rakhmabai. The plaintiff as well as the defence counsels invoked Customary Laws and Hindu scriptures. Justice Pinhey of the Bombay High Court dismissed the case on the grounds that no court [in England or India] could force a woman to consummate her marriage, despite the wedding rituals, against her will. Ipso facto, in the absence of the consummation of marriage, Rakhmabai’s right to separate from Dadaji was upheld by the Court. Justice Pinhey further stated that at the time of marriage Rakhmabai was a minor. Justice Pinhey was applying the

British Common Law framework to the case. The 'Matrimonial Causes Act of 1857' passed by the British Parliament allowed ordinary British people to apply for a divorce. Justice Pinhey applied the legal precedents of the 1857 Act to India considering it a British colony and the natives to be subjects of the Crown.

A disgruntled Dadaji appealed to the Appellate Court presided by Justices Sargent and Bayley. Justice Pinhey's verdict was construed by the Appellate Court as an undue interference into the Customary Laws of the natives. Therefore, the two judges overturned the earlier verdict on the grounds that wedding rituals were duly performed and that the British Common Laws were inapplicable *in toto* to India (Chakravarti 1998: 138-151). At the time, the British Parliament had not set a minimum legal age for British girls to marry and was following Roman Canon Laws of the 12<sup>th</sup> century. Therefore, a minimum legal age for an Indian girl-bride could not be determined. Customary Law (based upon Dharmaśāstra) prevailing in India contained divergent opinions. Therefore, Rakhmabai's status as a minor at the time of wedding was deemed irrelevant and she was denied her conjugal rights by the Appellate Court<sup>20</sup>. In the immediate aftermath of the case the Government of India formed a committee of 14 leading jurists and civil servants of Bombay and called for an amendment to Section 260 of the Civil Procedure Code (XIV of 1882) regarding restitution of conjugal rights and divorce.

Taking advantage of the debates around the Rakhmabai case, a Bombay-based philanthropist and social reformer Behramji Malabari wrote and published pamphlet on 15<sup>th</sup> August 1884. Entitled *Notes on Infant Marriage in India and Enforced Widowhood* [henceforth, *Notes*] Behramji sent the pamphlet to all the influential men of Bombay and Bengal to elicit their opinion. He also publicly distributed the pamphlet. *Notes* was celebrated in the social reform quarters of Bombay Province. Justices K. T. Telang and M. G. Ranade came out in support of *Notes* (Telang 1916: 239-258). Ranade demanded legislative and executive sanction for limiting the age for marriage. In an article for the *Times of India* (August 24, 1884) he wrote-

"The truth is, the orthodox society has lost its power of life, it can initiate no reform, nor sympathize with it [...]. It is this conviction of the hard conditions of the problem which retards our progress. People find fault with us, even abuse us for half-heartedness, for our apparent want of fire and enthusiasm. God only knows that in our households we are perpetually at war with our dearest and nearest, we struggle and strive to do our best, and have perforce to

stop at many points when we fear the strain will cause rupture” (quoted in Ganachari 2005: 128).

The British parliament had passed the ‘Criminal Law Amendment Act’ [1885] under pressure from the London-based “Society for the Prevention of Cruelty to Children” and raised the age of consent for British girls from 13 to 16. Malabari spent several months in England trying to persuade the British government to pass a similar legislation for India and arousing British public opinion in favour of it (Gidumal 1892: 125-245). Due to mounting pressure from the social reformers in India and the British press, which was criticizing the government for its lackadaisical behaviour, Sir Andrew Scoble introduced the AoC Bill in the Legislative Council on January 9, 1891 and this was turned into a law on March 19, 1891<sup>21</sup>. The new Law made sexual intercourse with girls of less than 12 years a cognizable criminal offence. The AoC Bill was celebrated amongst the progressive and reformist sections of India, who upheld the Bill as having Hindu sacerdotal sanction, whereas the conservatives were anguished by the ‘foreign interference’ in the religious matters of Hindus, seeing it as an assault on the Queen’s Declaration of non-interference in the native Customary Laws. Both took refuge in the Dharmaśāstra texts in arguing their case.

Since the Rakhmabai case and *Notes* were concerned with issues related to conjugal rights, age of marriage and the role of consummation of marriage within the theologico-legal space, Hindu reformers and the conservatives participated into a vociferous debate about their exegetical origins. In these debates as well as the Court rulings the consummation ritual (known in Sanskrit as *garbhādhāna-vidhi*) played the most significant role and attracted maximum attention. A brief enquiry into the theologico-textual origins of the ritual serves to better situate the debate.

### 3.7 The Hindu (Vedic) System of Marriage

Marriage is considered as one of the saṁskāras [sacraments] that make up the life of a Hindu. Marriage-saṁskāra’s origin can be traced to *Jaimini Sūtras* [600–200 BCE] where it is prescribed as a purification act to be performed before a Vedic altar (Jaimini Sūtra, 3.8.3) (Kane 1941: 190-91). All saṁskāras fulfil sacred and profane purposes. Thus, the marriage-

saṅskāra is seen as a union of two individuals (and their families) legitimized by God and society. There is no unanimity among Sūtra and the later Smṛti texts on the number of mandatory saṅskāras. They vary from 7 to 45 and are divided into three parts – those which are performed before and after the child is born, those performed during and after the completion of Vedic studies and those performed during the life as a householder. Of these the garbhādhāna is the first saṅskāra to be performed after marriage when the wife completes her first menstruation cycle and is biologically capable to conceive a child. Of these numerous saṅskāras those which have a direct bearing upon the present enquiry into the AoC Bill controversy are the ritual of Vivāha (marriage) and garbhādhāna. They will be explored in brief.

It is vital to remember that women did not possess any rights in ancient (Hindu) India to lead religious ceremonies, although they could participate in some of them as a companion to the husband. They were denied the right to read and interpret the scriptures. Thus, Vedic liturgical exegetes were largely men (McGee 2002). Pre-marital sex was considered a grave sin and sexual promiscuity was prohibited by Vedic and the post-Vedic Dharmaśāstra texts. The earliest records of the institution of marriage could be found in the *Ṛgveda*, the oldest Vedic text [X.85.36]. Following the *Ṛgveda*, the Dharmaśāstra texts prescribed complex rules for choosing an ideal bride which included caste-lineage [gotra] restrictions. The minimum age for marriage for a man was not set. Generally speaking, a Brahmin boy would need at least 12 years to complete his Vedic education after his initiation ceremony into the first stage of Vedic determined life through the upanayana ceremony [performed at the age of 8]. Thus, the groom would minimally be above 20 years at the time of his marriage<sup>22</sup>.

Most scholars agree that the earliest Vedic texts do not clearly state the age of marriage for a girl. However, the girl had to be a virgin. Numerous injunctions in the latter Smṛti and Dharmaśāstra texts argued that the girl bride must be a ‘naganikā’ (the naked one). Thus, the *Baudhāyana Dharma-sūtra* [c.600 BCE], for instance, [IV.1.11–14] states-

“Let him give his daughter, while she still goes naked, to a man who has not broken the vow of chastity and who possesses good qualities, or even to one destitute of good qualities; let him not keep (the maiden) in (his house) after she has reached the age of puberty” (quoted in Kapadia 1972: 138).

The renowned Hindu encyclopaedist and Dharmaśāstra scholar P. V. Kane is of the view that the practice of pre-pubescent marriage became popular only after the composition of *Yājñavalkya Smṛti* [c. 200 CE] (Kane 1941: 443) and holds the growth of Buddhism partly responsible for this change<sup>23</sup>. In texts such as *Saṃskāra-Kaustubha*, marriage for a girl was projected as an equivalent to the upanayana ceremony for boys and thus had to be performed around the age of 8. However, the most horrendous threat to girls came from the *Parāśara-Saṃhitā* [VII.6–9], considered by *Yājñavalkya Smṛti* as an authoritative text on marriage rituals, which stated that if a girl remains unmarried after she turns 12, the souls of her ancestors will be cursed to drink her menstrual blood while her parents would permanently rot in hell [Kane 1941: 444]. *Parāśara-Smṛti* being one of the principal Smṛtis its authority acceptable to *Yājñavalkya Smṛti* [I.1, 2] and its laws were particularly prepared for the inhabitants of Kali age [*Parāśara-Smṛti*, I.24] (Bhattacharya 1887: iii).

The *garbhādhāna* ceremony is described in the *Atharva-Veda* [V.25.3] and the *Bṛhadāraṇyaka Upaniṣad* [VI.4.21]. By offering food and water, divine blessings are sought for the embryo. Then the wife is primed for intercourse. Once again, the deities are invoked to help her in opening herself up (literally) for the husband. Most of Dharmaśāstras agreed that the *garbhādhāna* ritual is to be performed three days after marriage. The girl must have had her first menses prior to the *garbhādhāna* ritual (Kane 1941: 201-06) Thus, sexual intercourse with a pre-pubescent girl was strictly prohibited by the scriptures.

It is quite clear that most of the later Smṛti texts, using their authoritative status, sanctified the marriage of upper-caste girls at an early age by using various threats against the family-members and invoking codified rituals. Since *garbhādhāna* ceremony was to be performed after the girl's first menses, the śāstrīs did not enter into a deeper enquiry whether the counting of first menses was after marriage or the first menses which the girl experiences in her life-time. An easy way out was to count the latter. Thus, the girl was married off at a tender age [before she reached puberty] which became a norm amongst the upper-caste Hindus for well over thousand years.

However, there was a caveat. While the Dharmaśāstra texts contrived female docility, a parallel tradition within Hinduism gave women substantial freedom in choosing their



husbands. Within the form of marriage popularly known as the 'Svayamvara' [Self-ordained Marriage], the girl could choose her husband and the time for marriage. Principal characters from the two Indian Epics *Rāmāyaṇa* and *Mahābhārata* were shown opting for the Svayamvara method. Thus, Devika's marriage to Yudhiṣṭhira [Mahābhārata 1.90.84], Kuntī's marriage to Pandu [Mahābhārata 1.105.2], Damayanti's choice of Nala [Mahābhārata 3.53] and the famous contest to win over Draupadi are examples of Svayamvara marriage (Schmidt 1987: 84-85). Similarly, the famous *Kāmasūtra* text also made marriage optional for a girl. However, since the Epics and *Kāmasūtra* were not part of the Dharmaśāstra canon, they were dispensed off by both-the Hindu exegetes and the British law-makers- proscribed to the margins of Hindu tradition.

### 3.8 The Intellectual Response to Colonialism and Hindu Religion: Aristocratic Liberal and Radical-Reformist

In the ensuing debate on the female emancipation in general and the AoC Bill in particular, male intellectuals of Maharashtra participated vociferously in a prolonged debate. The approach of the jurist Ranade and Indologist and Sanskritist Bhandarkar exhibited tendencies of 'aristocratic liberalism' (Kahan 1992). For both Ranade and Bhandarkar, who were trained in the British Empiricist tradition, religion was relegated to the background and progress through modernization was considered the sole rationale behind modern history. But the life-world of 19<sup>th</sup> century Hindus was controlled by the ideas of virtue-sin, karma-dharma and soṇale-ovaḷe [purity-pollution]. Thus, Ranade and Bhandarkar wished to replace superstition with reason without abandoning its religious core. The kind of social transformation which they sought was a "change from constraint to freedom, from credulity to faith, status to contract, from authority to reason, from unorganized life to organized life, from bigotry to toleration, from blind fatalism to a sense of human dignity" (Ranade 1992: 116).

Ranade believed that religion had always enchanted human mind across time and space. Religion, when understood in its right context and performativity, gives immense strength to undertake arduous tasks. Ranade wrote, "[t]here appears to be no ground for hope [...] of seeing any genuine reform movement springing up from within the heart of the nation, unless that heart is regenerated, not by cold calculations of utility but by cleansing fire of a religious revival" (Ranade 1992: 51). The word 'revival' here connotes ethical dimensions of religion.

The socio-ethical responsibility of interpreting religions lay on the rational capacities of humans (Lederle 1976: 91).

The rational human capacities could be developed by taking refuge to the 'science of history' ('itihāsa śāstra'). Ranade's vision towards present-day deformities in Hindu social practices was informed by the need for detailed enquiry into the historical transformations in religious customs and social mannerisms. Through a deep reading of ancient Vedic and post-Vedic texts, through essays such as 'Vedic Authorities for Widow Marriage' (Ranade 1902: 53-91), joined the chorus of intellectuals who argued for a national rejuvenation for social and political emancipation. Simultaneously Ranade traced the genealogy of Indian nationalism to the Vedic times, considered a 'golden period' of Hindu civilization, which eventually "[...] lapse[d] into decrepitude and dotage" (Ranade 1902:26). It is interesting to see that, for Ranade, the Vedic age as well as the texts lose their divine and sanātani status but gain a capacity to reflect upon their immediate material reality (Devare 2011: 107-113).

It must be clarified that the exegetical enquiries undertaken by the upper-caste educated men fulfilled a specific purpose, namely, to assist or oppose as the case may be, all British legislations under the auspices of the Customary and Criminal Laws. A precise interpretation of the Dharmaśāstra texts was of vital importance in determining the clauses of the AoC Bill. Since the Bill was intended to criminalize pre-pubescent sexual intercourse, an enquiry into the theologico-legal basis for the appropriate age for sexual intercourse was deemed necessary. It must also be remembered that neither the social reformers nor the conservatives and the legislating British state sought opinions from women, whose lives and bodies they were expecting to regulate. Interestingly none of the public intellectuals who participated into the debate took upon themselves to directly challenge the legal parameters of the Bill irrespective of being legal experts<sup>24</sup>. They debated the viability of the law in the context of the traditional Hindu Law as stated in the śāstras.

It is important to note that while Ranade encouraged discussions amongst different Sanskrit exegetes and historians over precise interpretations of Vedic and Smṛti texts he was also beseeching the colonial state to intervene in the matter. Writing a year after Malabari came out with *Notes* Ranade argued that the call for state intervention in matters of 'advancing the marriageable age for Hindu brides' was not dissimilar to previous laws passed by the colonial

government which banned Satī, hook-swinging before idols or jogīs annihilating themselves on the banks of river Ganga (Ranade 1992: 70- 86)<sup>25</sup>. He argued-

“Whenever there is a large amount of unredressed [sic.] evil suffered by people who cannot adopt their own remedy, the State has a function to regulate and minimize the evil, if by so regulating it, the evil can be minimized better than by individual effort and without leading to other worse abuses.” (Ranade 1992: 78).

Ranade regarded the modern state as an institution which best represented “[...] the power, the wisdom, the mercy and charity, of its best citizens” and by that token regulating issues such as determining the marriageable age for girls lay within the purview of the “[...] national jurisprudence [...]” (Ranade 1992: 78). The source of the legislation, has had been purported by the conservatives, was not of British origin but was proposed by Indians. Therefore, Ranade rubbished the claim that the British colonial state was ‘breaching its jurisdictional reach and interfering into the natives’ social matters’ by suggesting that the State was not acting out of ‘self-interest.’ And in the event that “[...] the foreign rule will last [...] for an indefinite length of time” it was wise to utilize its reformist tendency till it lasted [Ranade 1992: 80]. The new law was meant to “[...] substitute the more ancient and righteous [Vedic] law for a later corruption, [...] amenable to reason” (Ranade 1992: 82).

Ranade was aware of the backlash from the śāstrī community to his comments. Therefore, he took up the responsibility of excavating the Dharmaśāstra tenets (śāstra-vacana) to solidify his demand for reform legislation. In an essay titled ‘The Sūtra and Smṛti Texts on the Age of Hindu Marriage’ (Ranade 1902: 26-52)<sup>26</sup> he argued that during the ‘Sūtra period’ marriage was optional. Those women who chose to get married had no maximum age-limit while it generally varied for a man, depending upon the number of years required of him to spend in the house of his guru for studies (Brahmacarya). These principles were most famously laid out in the *Gr̥hya-sūtra* and the *Mahābhārata*. The Smṛti texts carried forward the progressive legacy of the Sūtra texts, only to be manipulated in the latter centuries. Nevertheless, Ranade contended that 36 authoritative Sūtra and Smṛti texts recommend 12 to be the minimum age of marriage for girls while 16 to be the age for its consummation (Ranade 1902: 26-52). In a speech delivered to the Vaktruttvottejak Sabhā [the Elocution Society] in Pune on May 22,

1887 he also argued that the interpretations of the Dharmaśāstra texts must be in consonance with deśācār [customs of the land]. Since India, barring few princely states, was under foreign colonial rule the British common law was applicable while the ancient Hindu Law ought to be suspended. Ranade interpreted the maxim “nā stri svātantryam arhati” (a woman is not worthy of freedom) from *Manu-Smṛti* [9.3] as a conditional constraint on her freedom. Thus, according to him, relative freedom was guaranteed to a woman only in terms of *protection to her life* and not in terms of the pursuit of her interests or entitlements. It was the *duty* of the father, husband and son to protect the woman during different phases of her life (Phatak 1924: 405-06).

R. G. Bhandarkar defended Ranade by publishing a pamphlet entitled *A Note on the Age of Marriage and its Consummation According to Hindu Law* in 1891 (Bhandarkar 1928: 538-83). Bhandarkar gave a more systematic exposition of the texts used by Ranade. Bhandarkar quoted the *Manu-Smṛti* [9.89–90], the *Baudhāyana-Smṛti* [4.1.14] and the *Vasiṣṭha-Sūtra* [16.67–68] to argue that the Sūtra and Smṛti writers had reached a consensus regarding the appropriate age for girls to get married, that being, three years after reaching puberty. On the issue of consummation of marriage, authoritative texts such as *Aśvalāyana* and *Parāśara* extended the period for sexual abstinence up to a year post-wedding. The fourth part of the pamphlet dealt with the garbhādhāna ritual. Referring to extensive number of texts Bhandarkar drew the following inferences, viz, sexual intercourse [marked by the garbhādhāna ceremony] ought to have been performed after the first menstrual cycle post-wedding but could also be postponed indefinitely, and the prerogative rested solely with the wife. Bhandarkar argued that *Parāśara Saṃhitā*, considered by many as the authoritative text on the garbhādhāna ritual, was of recent origin<sup>27</sup>. Older texts like *Baudhāyana sūtra* which recommended abstinence from sex for up to 3 years after marriage seemed to be more in sync with the traditions of that period and hence must be considered more authentic (Bhandarkar 1928: 559-83).

Ranade and Bhandarkar were distinguishing between, what they referred to as, the ‘Sūtra period’ and the ‘Smṛti period’ of the Dharmaśāstra textual corpus<sup>28</sup> in terms of their purposiveness and historical chronological. It was common knowledge that the Smṛti texts carried customary diktats for domestic and social behaviour [unlike in Europe the ‘Oriental-

pre-modern' cultures did not distinguish between the two spheres]. Amongst them the *Gr̥hya-sūtras* were especially concerned with domestic religious activities of a householder. The *Gr̥hya-sūtras* were constructed prior to the conception of any Smṛti texts (Williams 1875: 195-96). Orientalist scholars were suggesting that the *Gr̥hya-sūtras*, being closer to the śrauta-tradition (that is, to a branch of Vedic learning) in terms of their metrical form and essence, ought to be considered primordial Hindu law books for domestic matters (Oldenberg 1886: 3-11).

Gopal Ganesh Agarkar came out in absolute support of the AoC Bill. But he did not seek legitimacy from the Dharmaśāstra texts. His approach, which I refer to as 'radical reformist', to the colonial state and Hindu religion was governed by a sense of 'mitigated scepticism'. In any case religious exegesis did not have much importance in his socio-political thought of Agarkar. He followed an agnostic position towards religion (Sumant 2000) under the influences of the European thought which restricted his desire to plunge into shastric injunctions. Agarkar differentiated between Rāj-dharma and Samāj-dharma. The latter, according to him, was conceptualized in terms of the moral codes of conduct which a society, at a particular time during its historical growth, finds collective approval and any attempt to go against these social conventions accrues social ostracism. However, Rāj-dharma or the moral code by which a state functions, was expected to rise above social conventions. In case of a conflict between state law and social conventions the latter were to be abandoned. Modern British government, Agarkar argued in his article 'Sāmājika sudhārṇa āni kāyḍā', was driven by Enlightenment rationality which has no place for religious dogmatism. Thus, for Agarkar the state, whether foreign or native, must be granted the most dominant status in a modern society (Agarkar 1994: 237-245). His critics pointed out that Herbert Spencer, whom Agarkar revered, was against making the state all-powerful and was an ardent advocate of a minimalist state. Agarkar responded by stating that the condition of a minimalist state only applied to industrially advanced nations and not to backward societies like India (Ganachari 2005: 130). Educated Brahmins like Tilak, despite their modern education, were opposing social reform, which perplexed Agarkar. He tried to explain this paradox by arguing that conservative Brahmins society as static whereas modern societies around the world were dynamic owing to morality and the scientific laws of evolution<sup>29</sup>.

### 3.9 Tilak's Response: Reform from Within the Hindu Community

The social reform movement which gathered momentum in the wake of the popularity garnered by Rakhmabai's case impelled Tilak to openly speak on the matter. Unwilling to directly confront the British judiciary he treaded cautiously. Commenting on Justice Pinhey's verdict on Rakhmabai's case Tilak wrote- ('Rakhmabai Case,' *Mahratta*, 11<sup>th</sup> October, 1885) (Tilak 1995: 885-86): "With all due deference to the learned Judge we are constrained to say that although his decision appeals to our humanity on social and religious grounds, we are forced to condemn it." Tilak accused Justice Pinhey of misunderstanding "the spirit of Hindu Law" and ignoring "local custom" by treating Hindu marriage as a social contract which could be dissolved before its consummation and observed that "[a] Hindu marriage, once entered, can [sic.] never be dissolved" ('Rakhmabai Case', *Mahratta*, 11<sup>th</sup> October, 1885) (quoted in Kosambi 1995a: 283; Tilak 1995: 885).

When Dadaji's appeal reached the Appellate Court Tilak wrote ('Rakhmābāicā khaṭlā', *Kesari*, 22<sup>nd</sup> March, 1887) (Tilak 1976c: 203-05) that while he was in favour of reform for women they should not be spearheaded by an 'immature woman' like Rakhmabai. Rakhmabai's desire to separate from her husband was criticized by Tilak. "In the English society too, once marriage takes place, whether they follow a garbhādhāna ritual or not, an English woman cannot separate from her husband on the pretext that she dislikes him. She possesses no such right" (Tilak 1976c: 204, my translation). In any case, Tilak thought, Rakhmabai would find no respite in Hindu Dharmaśāstras which prohibit separation from husbands. However, he also reprimanded the Appellate Court for sentencing her to imprisonment. Such harsh punishment was unwarranted and had no doctrinal sanction in Dharmaśāstras (Tilak 1976c: 203-205).

Tilak congratulated Behramji Malabari for taking the initiative in publishing *Notes* and for spearheading social reform movement in western India. He pointed out that the debate on social reform had divided Marathi intelligentsia/ public opinion into three camps- a) those who favoured legal mechanisms in implementing social reforms, b) those who sought majority support before pleading for legal intervention, c) those who followed progressive ideals in their personal life and set an example for others to follow ('Malabārīśeṭājīncā udyoga', *Kesari*, 12<sup>th</sup> August, 1890) (Tilak 1976c: 204-07).

Tilak's primary concerns were two-fold- he detested government's interference into the religious matters of Hindus. British judicial system had, more or less, stopped seeking guidance from śāstrīs in judicial matters by the middle of the 19<sup>th</sup> century. Tilak feared that the natives would lose their civilizational heritage if the decisions of their 'domestic lives' were to be determined a 'foreign law.' The AoC Bill, if passed, would "interfere with the religious custom" of the natives and would overshadow the promises given by Queen Victoria through her Royal Proclamation of 1858 (Tilak 1976e: 972). Moreover, Dharmaśāstras prohibited a King ("Sovereign") from such laws which provoked discontent among his subjects. The King was expected to respect 'local customs' ('The Age of Consent', *Mahratta*, 1<sup>st</sup> February, 1891) (Tilak 1976e: 971-77)

Secondly, he was suspicious of those social reformers who were willing to tweak Dharmaśāstra rituals in order to corroborate colonial law. Tilak took objection to Ranade's interpretation of theologico-legal maxims. Tilak pointed out that, irrespective of the governing institution, deśarivāja or sadācāra [customs and traditions of a land] lay prior to deśācāra [State laws]. Tilak separated Śrīti texts from Smṛti texts. Traditional hermeneutical principles laid out in Mīmāṃsa-śāstra state- in case of different maxims found within the same or different Śrīti texts, each maxim was to be considered as separate *dharma* (means of conduct). According to Mīmāṃsa-śāstra, *Manu-Smṛti* was considered the oldest and most authoritative among Smṛti texts. If maxims from the *Manu-Smṛti* were found incomplete or missing, other Smṛtis were referred for better clarity. The most important commentators on the Smṛti texts such as Nīlakaṇṭha, Kuṭukū and Vijñāneśvara followed this basic hermeneutical principle in their approach to the Śrīti-Smṛti texts. Therefore, Tilak granted great weightage to the commandments given by these commentators who seemed to agree that only after reaching a consensus about the "correct reading" of a Śrīti-Smṛti maxim did deśācāra apply. If deśācāra came in conflict sadācāra with the former was to be abandoned (Tilak 1976c: 77-90).

On the issue of relative autonomy to women prescribed in Dharmaśāstras, Tilak refuted Ranade's interpretation by citing other passages from *Manu-Smṛti* which forbade women free-will, relative or otherwise, since they were prone 'vyabhicāra' ['immoral acts']. The *Manu-Smṛti* prescribed all women to be *obedient* to her father, husband or son. Thus, the

constraint upon her freedom was not relative but absolute. In an article titled ‘Raobahādura Rānaḍe yānce apūrva yukti-cāpalya’ (*Kesari*, June 7, 1887), Tilak wrote, “Just as ridiculous it is to find references to railways or telegraph wires in the Vedas so preposterous is it to claim that the Śrīti-Smṛti texts spoke of freedom of women” (Tilak 1976c: 85, my translation).

Tilak challenged Bhandarkar’s interpretation by arguing that the difference between “mandatory” and “permissive” nature of shastric precepts was unwarranted especially since most of the Smṛtis such as *Manu*, *Yājñavalkya*, *Parāśara* and *Baudhāyana* as well as their commentators held similar views, namely, that intercourse during puberty was “mandatory” till the birth of a son. Bhandarkar had based his thesis on the garbhādhāna ritual and the accompanying ‘Prajāpatya Homa’ [Prajāpatī alter-ritual] described in the *Aśvalāyana Smṛti*. Bhandarkar had interpreted the term ‘ṛtu’ to mean any menstrual cycle which a woman experiences, following which, the first intercourse was permissible. Tilak argued that such a reading of the term was peculiar to Bhandarkar and had no basis in traditional exegesis. In fact, exegetes such as Anantadeva, in his *Samskāra Kaustubha* or texts such as *Caturviṃśatī Smṛti* [author unknown] had interpreted the term ‘ṛtu’ as the *first* menstrual cycle (Tilak 1976e: 978-83). The conclusions to be drawn from Tilak’s statements were quite clear. His opposition to the AoC Bill was on the grounds of shastric injunctions. Ancient texts, according to him, clearly stated that the garbhādhāna ritual had to be performed (by the husband) on the first day of the first menses experienced by his wife. This meant that a girl had to be married before she hit puberty. However, Tilak also made it clear that if the wife was in her pre-pubescent age the Śāstras strictly prohibited all sexual relations between the married couple<sup>30</sup>.

Apart from his debates with Ranade and Bhandarkar over scriptural exegesis, one also finds Tilak lambasting social reformers for their ‘empty talk’ and for not practicing what they preached. 19<sup>th</sup> century social reformers were genuinely crusading against child-marriage. However, many of them were married at a very young age. Amongst the early social reformers Dadoba Pandurang was married at the age of 13 and his bride was 8 years old. ‘Lokahitwadi’ Gopal Hari Deshmukh was married in 1830 at the age of 7 while his bride was a mere toddler of 3 years age. Dadabhai Naoroji got married at the age of 5. The *Oriental Christian Spectator* in one of its articles published in March 1836 showed a sense of anxiety towards the newly



educated and rich merchants of India not displaying any 'progressive' inclinations. It further referred to Jamshetjee Tata who married off his two sons at the age of 4 and 8 and one of his nephews at the age of 9. These were early years of social reforms and, in any case, when these stalwarts were married off, they were too young to resist the parental and social pressures. In the decades that followed, however, these men rose to prominence and declared their unanimous opposition to the 'evil practice' of child-marriage. One would, therefore, expect that they would shiver at the thought of a girl-bride. Ramabai Ranade recollects in her memoirs the incident of a 32-year-old widower Ranade resisting his father's desire for him to get married. He presented his case before his father that he was mature enough to take his own life-decisions and preferred to live the life of a widower. Nevertheless, Ranade was married off to eleven years old Ramabai. Even Telang could not brush away social and family pressures put upon him and in 1893 married off his daughter when she was 8 years old! (Ranade 2005).

Tilak wrote in 1890, "Those who call themselves social reformers or who strive to join the camp of social reforms or those who rejoice thinking of themselves as social reformers and take the lead in ushering in such reforms and imposing them on others must also reflect upon their own lives. These men, before the conclusion of the 13 days of funeral rites of their dead wife are in a haste to get married again, that too to a ten years old girl who appears like their grand-daughter! And even after committing such blunders they have the audacity to walk freely in the society [take moral high ground] and preach social reforms to others. This is simply ludicrous" (Tilak 1976c: 239, my translation)<sup>31</sup>.

In the context of the death of Phulmoni, reformers like Agarkar claimed that hundreds of girls were falling prey to child-marriage. Tilak rubbished it and pointed out in his article 'Kāyḍā māḡnyācā arja', (*Kesari*, 30<sup>th</sup> September, 1890) (Tilak 1976c: 236-39) to a report published by the colonial government authority which stated that in the past 100 years, forty deaths were reported due to sexual misconducts involving pre-pubescent girls. Tilak took refuge in legal rhetoric and wrote, "Firstly, the death of 40 girls allegedly dying due to marital rape before they hit puberty reported in these two [Bengal and Maharashtra] provinces, is not as catastrophic as it appears. The number of murders committed in these provinces is far higher. Does this in any way suggest that all Hindus are inherently murderers? [...] Similarly, one should not assume that all men are fond of raping their wives. And in any case the accused in

these forty [marital-rape] deaths have been found guilty in a court of law and suitably punished. How then will a new law make any difference?" (Tilak 1976c: 238, my translation).

So, was Tilak an anti-reformist? In most of his writings he stressed the need for reform but the onus of it could not rest upon the government by passing a uniform law. The responsibility for social reform had to be borne by the larger Hindu majority. He attributed growing violence against women on 'male gaze' and stated that 'the mindset of men must change' ('Julamācī sudhārṇā', *Kesari*, 2<sup>nd</sup> September, 1890). On this issue he reprimanded those in favour of a law with a starkly Utilitarian perspective in the following words-

"The leaders of the social reform camp should always remember that laws should never be enacted to fulfil the fantasies of a few elite men. A law is supposed to resonate with the pulse of the majority and must add to their overall happiness ["sukha"]. This is a prominent feature of [modern] democracies. On the contrary, an authoritarian state can pass a law unilaterally. But such states also invite great mass discontent and rebellion from the people [...]" (Tilak 1976c: 234-35, my translation).

Within a month after publishing this article, Tilak participated in a meeting held on 26<sup>th</sup> October, 1890 at Tulshibaug in Pune. This meeting was called by the conservative Pune elites who were opposed to the AoC Bill. A declaration stating those assembled at the meeting would publicly take a vow of not practicing or promoting child-marriage, marriage between an old man and a girl-bride, and the practice of tonsure for widows. It was further stated that social reformers who were sending their propositions to the government must also include the views held by the conservatives. The clauses in the declaration were as follows:

- a) Girls should be prohibited from marrying before the age of 16.
- b) Boys should not be married before the age of 20.
- c) After a man crosses the age of 40, he should be prohibited from getting married and in case of an aberration must marry only a widow.
- d) Liquor and dowry should be banned.
- e) One-tenth of one's income should be contributed towards social welfare activities.
- f) Tonsure of widowed women should be prohibited.

Tilak in his speech stated that he was open for reforms if 200 people assembled at the meeting were ready to put their signature on the declaration. These signatories would have to fulfil

their promise. While its non-abidance would provoke no legal consequences, it would certainly tarnish their public image. At the end of six months, another meeting would be called and if the experiment proved to be a success the declaration would be sent to the government for its consideration. Only a handful of attendees signed the declaration. Among the reformers, Ranade resisted the first and third clauses. Agarkar suggested that if the government rejected the propositions given by Malabari, then the clauses of this new declaration could be proposed as an alternative. N. C. Kelkar while recounting this episode calls it as 'a moral and strategic victory for Tilak' (Kelkar 2012a: 258-263). But later historians were unimpressed. Y. D. Phadke, for instance, believed that while the strategy worked in favour of Tilak and made him an undisputed leader of the conservatives it proved disastrous for the social reform agenda. Emboldened by the Tulshibaug, Tilak vehemently opposed joint sessions of INC and the Social Conference leading to their separation in 1895 (when Pune hosted them and Tilak was in charge of the Congress Welcome Committee). In the longer run, argues Phadke, this separation put an end to the social reform agenda as an inevitable part of the INC resolutions only to be resuscitated 20 years later with Gandhi's entry into Indian politics (Phadke 2000: 46-81).

### 3.10 Conclusion

One way of understanding the dual project of social conservatism and political reform found in this first phase of Tilak's public life can be explained by the discomfort which was felt by people like him who had to adopt to an alien government and its ways of functioning; but at the same time Tilak was not averse to political values which modern nation-state brought with it. Political life of any nation has its roots in traditional values which, as a civilization, are carried forward in the form of a legacy. Similarly, modern nation-states in the 19<sup>th</sup> century were also struggling to create their own institutional and ideological legacies. The incompatibility between these two antinomies of a political life would create distrust, discontent and anxiety about a loss of identity. Expediency emerges as the obvious rationalization for confronting this incompatibility. Expediency does not, however, relate to any kind of moral or political philosophy since the latter is premised upon the purposefulness of human life by finding meaning into it. Thus, expediency may ultimately result in a moral or political chaos. The adoption of an alien government, forms of State- rule and as a way of life

must also integrate itself into the moral and social fabric of the host civilization. Tilak was well aware of this dichotomy and the resulting fragmentation of the socio-political life in the late 19<sup>th</sup> century. Unlike his contemporaries who took up an *either/or* position on social reforms Tilak turned towards expediency. But he tried to struggle against expediency turning into a politico-moral chaos. For this he turned his communitarian politics into disloyalty towards the government. His opposition to the AoC Bill, passed Imperial Legislative Council on 19<sup>th</sup> March 1891, was him disobeying the diktats laid out by an alien government. Unlike the later civil disobedience, where Gandhi perennially returned to his conscience and resorted to an almost complete disavowal of negotiation in the face of religious, social or state pressure, Tilak's disloyalty projected flexibility when confronted with the native orthodox opinion, blaming the government machinery for its irresponsibility and/or negligence by keeping the abstract concept of 'individual conscience' out of the political sphere. The idea of 'self-rule' which became one of the most important rallying points of Tilak's political life during and after the Swadeshi movement found its first, nascent articulation through his anti-AoC Bill agitation. Tilak, like other social thinkers of his time, "[...] turned to their own traditions, both consciously and by instinct, and found there an interpretation of this moral basis. They discerned self-rule was necessary for India, not only to gratify a nationalistic urge for self-expression, but primarily because self-rule was an imperative of their civilization's total philosophy of life" (Shay 1956: xix).

Tilak saw a fundamental disjuncture between modern British jurisprudence and the ancient Dharmaśāstra law. Dharmaśāstra law was cosmic in nature and was governed by self-consciousness [Svadharmā]. Thus, the people who followed the Dharmaśāstras were also seen as following a social code of conduct [Samāj-dharma]. Thus, the European legal framework which was premised on a separation between the State and Church was incompatible with the Dharmaśāstra rules. However, the Dharmaśāstras also provided ample freedom for hermeneutical criticism and to which Tilak had no aversion. Thus, in 1918 he wrote, "A Comparative study of different religions will show that every religion enjoins certain rites and ceremonies without the performance of which no one can claim to be included amongst the community of the followers of that religion" (Tilak 1976e: 331) and that such procedural-performative aspects of communities help each sect to distinguish itself from the others. In the case of Vedic religion, the domestic life of Hindus was governed by shastric

injunctions pertaining to birth, marriage, worship and death from “time immemorial” (Tilak 1976e: 335). Tilak particularly welcomed reinterpretations of the Vedic religion by Swami Vivekanand and Friedrich Max Müller (Tilak 2004: 303-311). His own efforts towards such hermeneutical reinterpretation and modernizing of the Hindu religion were undertaken through his magnum opus- *Gītā Rahasya* [1915], analysed in the seventh chapter.