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[SHORT ARTICLE]

The Trajectory of Women's Property Rights through the lens of Gayle Rubin

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Abstract: One of the most important aspects in Indian society is the role of the family and more specifically the role of women in the family. While women play a central role and are given the utmost importance in the private sphere, property rights for women have been one of the most deeply contested issues where women have had to fight against an inherently capitalist, patriarchal system for years on end. To synthesize a clear understanding of how and what changes have taken place, this paper will trace the trajectory of women's property rights. Further, to understand holistically the underlying psychoanalytical reasons of these changes and in order to understand the deep rooted patriarchy and the functioning of society it is important to trace the trajectory of women's property rights through a feminist, Marxist and psychoanalytical lens. This paper will draw on the work of anthropologist Gayle Rubin's work which seeks the origin of female oppression and kinds of social relations facilitating it. The essay's central issue is to decipher the root of women's oppression and social subordination. In order to come up with an answer Gayle Rubin analyses Marx's and Engels' works to locate sexism in capitalism along with a study of Lévi-Strauss and Freud's theories to understand the social mechanisms that

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systematically discriminate and push them into the domestic sphere. This paper will draw on the same to understand the complex structure of Indian kinship relations and societal structures and property rights.

Keywords: Women's property rights; Patriarchy in India; Property Rights in India; Gayle Rubin; Karl Marx; Levi Strauss; Sigmund Freud; Friedrich Engels

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INTRODUCTION

The structure of the Indian society is, fundamentally, capitalist and patriarchal. In the past, the Indian society has used every opportunity to deceptively and conveniently infantilize women to exploit their labour and suck them dry. How families are structured, in this kind of a capitalist society, creates a disproportionate distribution of power¹. Even today, men are typically the breadwinners in society as their labour is duly acknowledged and paid for. Labour performed by women often goes unrecognized and unpaid, which leads to women becoming submissive to the breadwinners in the house- the men. And this, over time, creates a hierarchy- which gives men a dominant position within the family.

Housework is one of the key aspects of reproductive labour and since women (mostly) perform household labour, they also contribute to the surplus-value under capitalism, from behind the scenes. Essential services and commodities such as housing, food, clothing, etc. are required by the workers (usually the men of the households) and a great degree of productivity is shown, on part of women of the society, to provide men with everything they require. This is where women's labour is exploited. We cannot, however, conclude that because the capitalist-patriarchal structure preserves the oppression of women, it is the genesis of the oppression. We must take a deeper look into how society has organized itself and how this, then, affects the functioning of society and perpetuates oppression.

One way of understanding the underlying notions of patriarchy in society is by tracing the inheritance rights of women in the Hindu Intestate Succession. "The Traffic in Women: Notes on

¹ Nancy Holmstrom, *Women's Work, the Family and Capitalism*, 45 (1981).

the Political Economy of Sex" is an essay by Gayle Rubin² which is a complex attempt to synthesize feminist, Marxist, structuralist, and psychoanalytical explanations for the oppression and it gives an in-depth analysis of the roots of oppression. Using the lens of Gayle Rubin, we can critically analyze the transformation of women's inheritance rights to better understand the society and the implications of how it is organized. Rubin uses the works of Claude Lévi-Strauss and Sigmund Freud to enhance the argument she makes. In her work, Rubin also refers to their theories to understand the social mechanisms that systematically discriminate and push women into the domestic sphere.

UNDERSTANDING THE INTERSECTION BETWEEN FEMINISM, LAW, MARXISM AND PSYCHOANALYSIS

The Hindu Joint Family has one head or patriarch,³ who controls the property and sets the rules for the family to abide by. One of the most important factors in understanding the reason for classifying the members of the Hindu Joint Family is sex. A member's importance has always been determined and calculated based on their sex. The Hindu Joint Family is a sex/gender-based system. Gayle Rubin, in her essay, argues that a sex/gender-based system is a manner in which a society organizes itself to transform biological sexuality into products of human activity. Also, through which the sexual needs are satisfied.

Rubin examines systems of kinship to look for empirical and observable forms of sex/gender-based systems and their contribution to reproducing certain kinds of societal norms of sexuality. It is important to note that sexism is propagated more

² Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, Monthly Review Press (2012), <https://philarchive.org/archive/RUBTTiv1>.

³ S. Chandrasekhar, *The Hindu Joint Family*, 21 (1943).

by socially organized sexuality than by the mere variance in biology. Social, economic, political, and sexual interaction among people procreates sexist notions, which are carried forward through generations. Different kinship systems define different rules regulating as to whom one can or cannot marry. These rules can be understood by using the concept of "gift" by Lévi-Strauss, where he talks about the importance of giving and receiving women in the form of a gift thereby strengthening the kin relationships in society.

The most basic understanding of marriage is that it is something done in pursuance of procreation of humans. However, it is not that simple. Marriage has a larger social connotation and implication than just that. The process of giving and receiving gifts was, in primitive societies, a means of social interaction. Rubin talks about Strauss's argument which essentially states that marriage is a means of gifting women and is a way of forming stronger social relatedness within the society.

In the system of bestowing gifts, it was men who entered into connections; a partnership was established between them under "women being a conduit of a relationship rather than a partner to it."⁴ Men, ultimately, became the beneficiaries of these relations and women could not even enjoy the outcomes of their transaction. The exchange of women had its consequences which are deeply embedded in the society, to this date. Sex/gender-based systems are actually consequences of historical human activities, such as this one.

Building on Strauss's argument, Rubin argues that the concept of gifting women was powerful because it placed the roots of oppression not in biology but rather in social systems. It was seen as a cultural necessity, and people were dependent on the traffic in women to build and enhance bonds and alliances.

⁴ Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, Monthly Review Press (2012),
<https://philarchive.org/archive/RUBTTIv1>.

Kinship also exchanged sexual access, genealogical statuses, lineage names, and ancestors, rights, people. It became evident that it was men that had rights over women. Women did not have such rights over themselves or other women, let alone having them over men. In the Indian context, this could be used to understand why, initially, women were not given any control and ownership rights to the property. Women had to wait for decades just to obtain the rights to own, inherit, use, and dispose of the property.

In classical law, a Coparcenary is a smaller institution consisting only of male members within a joint family. Earlier, this concept was a way of knowing who could offer ministrations to the father- the Karta of the family. Coparceners had rights in the father's property by birth. Only the male members of the family had rights to the father's property. Women were simply not given the right to property (or considered coparceners) as they were regarded to be dependent on men. This system, therefore, presupposed and required all relationships to be heterosexual as that would be the only way a woman would have access to the property since control and ownership of property was exclusively limited to men.

A Hindu joint family has been a very interesting organisation of the sexes. Lévi-Strauss would argue that gender is a socially imposed division of sexes. It is the product of kinship, which is rooted deep into the institution of marriage. Lévi-Strauss draws a rather stimulating connection between sexual division of labour and heterosexual marriages. Drawing from that, we can look at how people in various societies have been assigned tasks according to their respective sexes. Such a division of work varies among communities. For example, in some of them, women perform agricultural activities while in others; it is men who are responsible for the same. Thus, it is not based on any biological factors but to form a combination of men and women in all units of the economy- "reciprocal state of

dependency between the sexes⁵", thus, emphasising heterogeneous marriages. Moreover, it depicts the demand for men and women to not be the same. It is for this very reason that homogeneous relations are seen as non-natural. It is ironic how homosexuality and incest are considered to be non-natural when the creation of gender identities itself suppresses the natural similarities that exist in men and women. Conscious quashing of characteristic "feminine" traits in men and characteristic "masculine" traits in women is yet another way in which disparity is created between men and women. It is further widened by strictly assigning gender roles to both the sexes.

Before 1937, disputes that arose regarding property rights were settled by customary practices, as there was no codified law as such. Women's rights were, practically, non-existent and on the death of a coparcener, (in an undivided Mitakshara Coparcenary) the widow was entitled only to maintenance from the joint family property. Plus, due to the doctrine of survivorship, the share that belonged to the deceased coparcener was taken up by the rest of the coparceners, and the widow was not given any share. The Hindu Women's Right to Property Act, 1937 came into force and made some minimal changes that loosened the strict and instantaneous application of the doctrine of survivorship. This meant that upon the death of a coparcener in the undivided Mitakshara Coparcenary, the property did not immediately go to the surviving coparceners. Instead, it was held that the widow had a limited right to the property to enjoy it and appropriate the income arising out of it. However, the interest widows had been limited, which meant that they did not have the right to alienate the property and upon their remarriage or death, their interest was terminated. This perpetuated the continual of the dependence of women on men and further reinforced the heterosexual norm that exists.

⁵ *Ibid.*

Rubin would argue that social impositions of such a kind are not simply a product of the capitalist structure. It was a carefully curated organisation that resulted in the subordination of women in pursuance of a heteronormative society that inherently produced a sexual asymmetry. The fact that a widow's remarriage terminated her right to the property is problematic because in a way it regulated her sexuality. Rubin would cite Strauss to explain that such a law ensures that a sexual relationship always contains at least one man and one woman. And this, ultimately, upholds heterosexuality as the supreme form of relationship, and further oppresses homosexuality.

Rubin would also argue that one of the causes of oppression is how society is structured. Rubin draws on Sigmund Freud's theories to understand and explain that oppression begins from within the structure. Freud's theory and its interpretation by Rubin must be used cautiously as it is applied to the western idea of a nuclear family, whereas, we are analyzing the Hindu Joint Family in the Indian context which is much more complex than a nuclear family. The fact that two parents of different sexes bring up children and they contribute to bringing up the children in an unequal manner causes the child to go through a lot of trauma.

The Oedipal complex, one of the psychoanalytical theories by Freud, explains how children realize sexual personality and how they battle with their own psychosexual emotions to fit into this criterion of heterosexuality. A girl understands her inferior position but has no way of expressing the anger and rejection she feels. It is an apparatus for the development of sexual personality. The girl would see and understand that she does not have a phallus, which then leads to the recognition that the lack of a phallus on her body means that she is castrated. Freud explains that how a girl acquires her "femininity" is by the recognition of the anatomical difference between the sexes. A girl observes within her parents that a

woman is only capable of being loved by someone who has a phallus as if the phallus is equipped enough to satisfy the mother. Therefore, she would never feel like she can love her mother or any other woman.

Building on Freud's argument, we can observe that the girl would look up to phalluses as objects that are symbolic of having more rights and soon start associating it with all the socio, economic, and political privileges that men receive. She would then start craving for a phallus, to be loved. This then, as Freud argues, automatically pushes the idea of homosexuality away from the girl as she starts craving for a heterosexual relationship. Her homosexuality is also suppressed as she does not have the symbolic token, (the phallus) which can be exchanged for a woman. This creates a hierarchical arrangement of the male and female genitals. So, a girl's castration forces her to rethink her relationships with herself and within her family.

The Oedipal phase divides the sexes and the kinship systems contain rules which govern these sexes. A girl turns to her father for she is castrated and because he has a phallus. She, then, realizes that her castration is what is needed for her father to love her and, therefore, she comes to terms with it and begins to desire it. The girl finds joy in pain and adjusts to her subordinate position.

If Rubin were arguing keeping the Indian society in mind, she would perhaps argue that how the joint family is organized is completely different from that of a nuclear family. However, a child would first encounter her parents, after which she would learn the roles played by all the members. Rubin would say that the crisis of the child would begin once she comprehends the system; she is a part of and locates her position within it. This crisis could only be resolved once the child accepts her place in the system and overcomes the oedipal phase to conform her gender identity and sexuality to the norms of the culture she is part of. Women accept their subordinate position within the

joint family and, so, let men exercise rights over them as though, they have been socially approved to do so.

However, over time the property rights of Indian women have come a long way from not even being recognized to giving them absolute ownership and autonomy over the property. This gradual change in the rights occurred systematically to ensure that men maintain their dominant position in other spheres. And even though women have been given the property rights now, it does not mean that they have been given equal position in all the spheres of the society.

The Hindu Succession Act, 1956 codified and amended the classical laws of joint family and Coparcenary, the laws of intestate succession, and testamentary succession. With this Act, the doctrine of survivorship was terminated and the concept of notional partition was established. Section 6⁶ of the Act provided that if a member of the undivided Coparcenary died and had left behind a Class I female heir as specified in the Act, then the notional partition would take place, and his share would devolve according to intestate or testamentary succession and not by survivorship. The women, however, did not have the right to ask for partition as only the males were coparceners. Women had the right to absolute ownership of the estate, but married women were not considered to be a part of their maiden home, and instead, they were considered to be a part of the husband's family.

Section 15⁷ of the Act was also very problematic as women didn't get to decide how the property devolves and there was no reasonable categorization of the heirs because Section 15 (1) (a)⁸ specified that the property must devolve upon the children but Section 15 (1) (b)⁹ specified that the property must devolve upon the heirs of the husband. It remains unclear as to why the

⁶ The Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

property devolves upon her husbands' heirs and not upon her maiden family members.

We must go back to Strauss's argument about how marriage is a means of gifting women. He argued that a man had more rights over his female kin than the woman handed over herself, and so he was in a position to give her away in a transaction for kinship. The exchange of women was seen as a cultural necessity and once married; the woman was completely given away in the sense that she is no longer even considered to be a part of her maiden family.

In the context of Indian law, once a woman was married, she was no longer a part of her maiden family. And though she could, after 1956, get rights to the property of her deceased husband, she could not ask for partition as she was not a coparcener. This was again a way of keeping the power hierarchy in place. Women were still in a subordinate position and had to submit to the decisions of the male members.

The Hindu Succession (Amendment) Act, 2005¹⁰ came into force and finally introduced women as coparceners and, therefore, this also gave women the right to be the Karta of the family. There seems to be a loosening of the tight grip of patriarchy over property rights. Women, now, are given autonomy to enjoy and have absolute ownership over the property. They may also initiate partition as they are now coparceners. Rubin would say that this is an evolution in cultural norms. And to preserve existing structures, it is important to let go of certain restrictions.

Giving women autonomy in property rights does not mean that men have given up their dominant position. Oppression is something that is located within structures and is perpetuated by culture. The structure still largely favours men, and Freud and Strauss in their theories have demonstrated how deeply rooted oppression really is. And by interpreting it we can see

¹⁰The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

how it manifests itself in different forms. Although we cannot strictly apply the theories put forth by Freud and Strauss, we can interpret it in a manner to understand it in the Indian context.

CONCLUSION

In conclusion, "Kinship systems require a division of the sexes. The Oedipal phase divides the sexes. Kinship systems include sets of rules governing sexuality. The Oedipal crisis is the assimilation of these rules and taboos. Compulsory heterosexuality is the product of kinship. The Oedipal phase constitutes a heterosexual desire. Kinship rests on the radical difference between the rights of men and women. The Oedipal complex confers male rights upon the boy and forces the girl to accommodate herself to her lesser rights."¹¹

Different societies have different ways of organizing themselves and they follow a different set of rules. Yet, somehow, undercurrents of the notions of patriarchy manage to manifest themselves. Rubin suggests that cultural evolution is what would help us seize control of sexuality, reproduction, and socialization. If we can organize our culture to include our economic, political, social, and sexual activities in a way that they do not divide the sexes, the oppression of women will probably reduce to a large extent.

¹¹Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, Monthly Review Press (2012),
<https://philarchive.org/archive/RUBTTiv1>.