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PATRIARCHY- THE INDIAN EXPERIENCE

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List of Abbreviations

AIR	All India Reports
All	Allahabad High Court
Bom	Bombay High Court
Cal	Calcutta High Court
CPC	Code of Civil Procedure, 1908
CrPC	Code of Criminal Procedure, 1973
DLT	Delhi Law Times
ed	Editor
ed.	Edition
Ind.	Indian
IPC	Indian Penal Code, 1860
KB	King's Bench
Lah	Lahore High Court
LR	Law Reports
Mad	Madras High Court
PLR	Punjab Law Reports
Rep.	Reprint
s	Section
SCC	Supreme Court Cases
v.	Versus
Vol.	Volume

List of Statutes

- The Convention of the Elimination on of All Forms of Discrimination against Women (CEDAW) 1979
- The Convention on the Political Rights of Women, 1953
- The Divorce Act, 1864
- The Domestic Violence Act, 2005
- The Family Court Act, 1984
- The Hindu Marriage Act
- The Hindu Succession Act 1956
- The Improvement of Nikah Nama Act, 2006
- The Indian Constitution, 1950
- The Indian Penal Code, 1860
- The Maternity Act, 1961
- The National Commission for Women Act, 1990
- The National Policy of Empowerment of Women Programme
- The Optional Protocol to the CEDAW, 1999.
- The Special Marriage Act, 1954
- The Universal Declaration of Human Rights, 1948

List of Cases

- C.B. Muthamma v. Indian Foreign Services   [1979] RD-SC 183
- Air India v. Nargis Mirza   AIR 1981 SC 1829
- S. Vishnu v. India   AIR 1985 SC 1618

CHAPTER – I

INTRODUCTION

The word "Patriarchy" literally means the rule of father or the 'patriarch' and originally it was used to describe specific type of 'male-dominant' family. However recently it is used more generally to refer to the dominant of male and to the power relationship by women is kept subordinate in number of ways.

Julliet Mitchell, a feminist psychologist, uses the word patriarchy to refer the kinship systems in which men exchange women and to the symbolic power that father exercise within these psychologist of women while Sylvia Walbi, in her book "Theorising Patriarchy", called it as the system of social and structure and practice of male dominate, oppress, and exploit women.

To analyze the origin of patriarchy, we can categorize from three different perspectives, i.e. firstly, Engel's explanation who believed that women's subordination began with the development of private property, when the word 'historical defeat of the female sex' took place. Secondly, the views of the radical feminist are of much importance who believed that patriarchy preceded private property and they believed that the original and basic contradiction is between the sexes and not between economic classes. Lastly an amalgamation of both these views, the socialist position is that patriarchy is related to the economic system, to the relations of production, but it is not causally related. In fact, there are many other factors which influence patriarchy, such as ideology.

Further, socio-biologist Steven Goldberg in 1973 wrote that the ethnographic studies of every society that has ever been observed explicitly stated the feelings that in the presence of feelings of men and women, the male will dominates the female were present and there is literally no variation at all.[2] Goldberg had critics among anthropologists. Concerning Goldberg's claims about the 'feelings of both men and women' Eleanor Leacock countered that the data on women's attitudes are "sparse and contradictory," and that the data on male attitudes about male-

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[2] William Morrow, THE INEVITABILITY OF PATRIARCHY, New York, 1973

female relations are "ambiguous." Also the effects of colonialism on the cultures represented in the studies were not considered.[3]

Most sociologists reject predominantly biological explanations of patriarchy and contend that social and cultural conditioning is primarily responsible for establishing male and female gender roles.[4] According to standard sociological theory, patriarchy is the result of sociological constructions that are passed down from generation to generation. These constructions are most pronounced in societies with traditional cultures and less economic development.[5] However, even in modern developed societies, gender messages conveyed by family, mass media, and other institutions largely favor males having a dominant status.

Similarly, the patriarchal nature of ancient Indian society has lead to very different expectations for the behavior of women than that of men. Even something as early as the epic tale of Ramayana, echoes these notions of sex appropriate behaviors by presenting its female characters with attributes that are in stark contrast to the characteristics of their male counterparts. The virtuous women of the story possess exaggerated feminine qualities while the immoral women's actions more closely resemble the behavior of the men. In either case, the women are subordinate and are considered possessions rather than partners. A woman was valued mainly for her beauty and the pleasure she can provide to her husband. Thus, the Ramayana could be considered as the cementing pillar to the patriarchal structure of the ancient Indian society and the sex-appropriate ideals that are prominent throughout the Ramayana were a reflection of the patriarchal values that structured ancient Indian society.

1.1   Research scheme

The research scheme undertaken by the researcher would comprise of doing a doctrinal study of the concept of Patriarchy as a whole and then tapering down to the concept as has been experienced in India. Besides that the researcher would include the authority of Sir Henry Maine on the issue and also the views of some of the feminists because their view would throw broad light of the concerned topic.

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[3] Steven Goldberg, REVIEW OF THE INEVITABILITY OF PATRIARCHY, New Series, Vol. 76, No. 2 (Jun., 1974), pp. 363-365, Blackwell.
[4] Sanderson, Stephen K., THE EVOLUTION OF HUMAN SOCIALITY., Rowman & Littlefield. p. 198; James M. Henslin, ESSENTIALS OF SOCIOLOGY., Taylor & Francis. pp. 65–67, 240.
[5] John J Macionis, SOCIOLOGY: A GLOBAL INTRODUCTION. Prentice Hall. p. 347.

1.2 Research Techniques for Data Collection

Research technique of analysis, critique, and review of the theories would be intended to be employed.

1.3 Research Methodology

The researcher has followed the doctrinal method of research throughout the project and the MLA system of formatting has been adopted by him.

1.4 Scheme of Chapterisation

The first chapter would comprise to giving a general introduction to the project. It would also state the research scheme, the research technique, the research methodology and the scheme of chapterisation which would be followed in the project. The second chapter would lay down the structures of patriarchy as is laid down in India and is also incorporates the views of various feminists. The third chapter would incorporate the theory of patriarchy as laid down by Sir Henry Maine. The fourth chapter would have a practical exemplification of the patriarchy in India. The fifth chapter would deal with the decline of the patriarchate and the issue of women empowerment in India. Lastly, the sixth chapter would conclude the project.

1.5 Footnoting Style to be adopted

National Law University standard style of footnoting will be followed throughout the project.

CHAPTER – II

STRUCTURES OF PATRIARCHY

The first lessons of patriarchy are learnt in the family where the head of the family is a man father. Man is considered the head of the family and controls women's sexuality, labour or production, reproduction and mobility. In a patriarchal family the birth of male child is preferred to that of a female. The former is considered as the inheritor of the family while the later is considered as *paraya dhan.* The Indian joint family is the "patriarchal family" and it was constituted by a group of persons related in the male line and subject to absolute power of the senior most male member.[6] In the South Asian context kinship systems are largely based on patrilineal descent which is the foundation of a pervasive patriarchal ideology that rationalizes the differential access of men and women to the material and symbolic resources of society.

According to Gerda Lerner, family plays an important role in creating a hierarchical system as it not only mirrors the order in the state and educates its children but also creates and constantly reinforces that order.[7] Family is therefore important for socializing the next generation in patriarchal values. The boys learn to be dominating and aggressive and girls learn to be caring, loving and submissive. These stereotypes of masculinity and femininity are not only social constructs but also have been internalized by both men and women. While the pressure to earn and look after the family is more on the man, the women are supposed to do the menial jobs and take care of their children and even other members of the family. It is because of these gender stereotypes that women are at a disadvantage and are vulnerable to violence and other kinds of discriminations and injustices. Systemic deprivation and violence against women: rape, sexual harassment, sexual abuse, female foeticide, infanticide, witchkilling, sati, dowry deaths, wife-beating, high level of female illiteracy, malnutrition, undernourishment and continued sense of insecurity keeps women bound to home, economically exploited, socially suppressed and politically passive.

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[6] Henry Maine in Uberoi, Patricia, THE FAMILY IN INDIA BEYOND THE NUCLEAR VERSUS JOINT DEBATE in Mala Khullar, (ed). *Writing the women's Movement A Reader,* Zubaan, New Delhi, 2005.
[7] Lerner, Gerda, THE CREATION OF PATRIARCHY, Oxford University Press, Oxford and New York, 1986 p. 127; Bhasin, Kamla, UNDERSTANDING GENDER, Women Unlimited, New Delhi, 2003 p.10.

Patriarchal constructions of knowledge perpetuate patriarchal ideology and this is reflected in educational institutions, knowledge system and media which reinforce male dominance. More subtle expressions of patriarchy was through symbolism giving messages of inferiority of women through legends highlighting the self-sacrificing, self-effacing pure image of women and through ritual practice which emphasized the dominant role of women as a faithful wife and devout mother.[8] Laws of Manu insist that since women by their very nature are disloyal they should be made dependent on men. The husband should be constantly worshiped as a god, which symbolized that man is a lord, master, owner, or provider and the shudras and women were the subordinates. It legitimized that a woman should never be made independent, as a daughter she should be under the surveillance of her father, as a wife of her husband and as a widow of her son.[9] While in ancient India i.e. Vedic and Epic periods, women were by and large treated as equal to men, the restrictions on women and patriarchal values regulating women's sexuality and mobility got strengthened in the post-vedic periods, i.e. Brahmanical and Medieval periods with the rise of private property and establishment of class society.

Patriarchal constructions of social practices are legitimized by religion and religious institution as most religious practices regard male authority as superior and the laws and norms regarding family, marriage, divorce and inheritance are linked to patriarchal control over property biased against women. A person's legal identity with regard to marriage, divorce and inheritance are determined by his or her religion, which laid down duties for men and women and their relationship. The imposition of parda, restrictions on leaving the domestic space, separation between public and private are all gender specific and men are not subject to similar constraints. Thus the mobility of women is controlled. They have no right to decide whether they want to be mothers, when they want to be, the number of children they want to have, whether they can use contraception or terminate a pregnancy and so on and so forth. Male dominated institutions like church and state also lay down rules regarding women's reproductive capacity.

Similarly caste and gender are closely related and the sexuality of women is directly linked to the question of purity of race. The caste system and caste endogamy retained control over the labour and sexuality of women. Anuloma and pratiloma marriage by definition

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[8] Desai, Neera and Krishnaraj, Maithreyi, AN OVERVIEW OD THE STATUS OF WOMEN IN INDIA in Manoranjan Mohanty, (ed). CLASS, CASTE, GENDER., Sage Publications, New Delhi, 2004.p 299.
[9] Chakravarti, Uma, GENDERING CASTE THROUGH A FEMINIST LENS, Stree, Calcutta, 2006 p.75.

denigrate women.[10] Caste not only determines social division of labour but also sexual division of labour. Ideologically concepts of caste purity of women to maintain patrilineal succession justified subordination of women. The prohibition of sacred thread ceremony for both women and sudhra, similar punishment for killing a women and sudhra, denial of religious privileges are illustrations which indicate how caste and gender get entrenched. Feminist writings as *'Gendering Caste Through a Feminist Lens'* illustrates how caste system upholds the patriarchal values and ideology which is used to justify the dominant, hegemonic, hierarchical and unequal patriarchal structures. Therefore it is important to emphasize the substantive question of sub-ordination of certain sections of society and the structures that make their sub-ordination. For feminist scholars the issue is no longer whether the status of women was low or high but the specific nature and basis of their subordination in society.[11] Hence the historical developments of patriarchy lies and how they have come to stay is important.

Lastly, Uma Chakravarti argues that the establishment of private property and the need to have caste purity required subordination of women and strict control over their mobility and sexuality. Female sexuality was channeled into legitimate motherhood within a controlled structure of reproduction to ensure patrilineal succession.[12] According to her the mechanism of control operated through three different levels. The first device was when patriarchy was established as an ideology and women had internalized through stridharma or pativartadharma to live up to the ideal notion of womanhood constructed by the ideologues of the society. The second device was laws, customs and rituals prescribed by the brahmanical social code which reinforced the ideological control over women through the idealization of chastity and wife fidelity as highest duty of women. She believes that patriarchy has been a system of benevolent paternalism in which obedient women were accorded certain rights and privileges and security and this paternalism made the insubordination invisible and led to their complicity in it. The relationship between women purity and caste purity was important and central to brahmanical patriarchy and women were carefully guarded and lower caste men were prevented from having sexual access to women of higher caste. The third was the state itself which supported the patriarchal control over women and thus patriarchy could be established firmly not as an

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[10] Desai, Neera and Krishnaraj, Maithreyi, AN OVERVIEW OD THE STATUS OF WOMEN IN INDIA in Manoranjan Mohanty, (ed). CLASS, CASTE, GENDER., Sage Publications, New Delhi, 2004.p 303.
[11] Chakravarti, Uma, GENDERING CASTE THROUGH A FEMINIST LENS, Stree, Calcutta, 2006 p. 25.
[12]ibid at p. 69.

ideology but as an actuality.[13] Therefore gender relations are organized within the structural frame work of family, religion, class, caste, community, tribe and state.

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[13] Mohanty, Manoranjan, INTRODUCTION: DIMENSIONS OF POWER AND SOCIAL TRANSFORMATION in Manoranjan Mohanty, (ed). *Class, Caste, Gender*. Sage Publications, New Delhi, 2004. p.285.

CHAPTER – III

THE PATRIARCHAL THEORY OF SIR HENRY MAINE

"Even had our anthropologists at their command material that would justify them in prescribing a normal programme for the human race and in decreeing that every independent portion of mankind must, if it is to move at all, move through one fated series of stages which may be designated as Stage A, Stage B, Stage C, and so forth, we still should have to face the fact that the rapidly progressive groups have been just those which have not been independent, which have not worked out their own salvation, but have appropriated alien ideas and have thus been enabled, for anything that we can tell, to leap from Stage A to Stage X without passing through any intermediate stages. Our Anglo-Saxon ancestors did not arrive at the alphabet, or at the Nicene Creed, by traversing a long series of 'stages'; they leapt to the one and to the other"[14]

Maine was not the first to discover that the ancient Indo-European tribe or city, as the case may be, is an expanded family with the tie of actual kindred supplemented, so far as needful to keep the community together, by adoption or even by bolder fictions; indeed, the conception is in its essential points as old as Aristotle. But he was, it is thought, the first to call attention in an adequate manner to the general existence and importance of this feature in archaic society. His view has been strikingly confirmed by the researches in the history of Slavonic institutions which are mentioned in "Early Law and Custom" under the head of East European House Communities. The family element in the Indo-European community has now and then been unduly suffered to drop out of sight. Thus the exclusiveness of the archaic village or township is simply and adequately explained as the exclusiveness of a community which had been or pretended to be a clan, and no deeper mystery need be sought in the much discussed Salic rule *De Migrantibus.*

Maine's original thesis was further developed by himself in the lecture on Kinship as the Basis of Society in "The Early History of Institutions".

With regard to the extreme form of paternal power which, as Maine says, we may conveniently call by its later Roman name of Patria Potestas, it is not clear that it is a mere

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[14] F.W. Maitland, DOMESDAY BOOK AND BEYOND: THREE ESSAYS IN THE EARLY HISTORY OF ENGLAND, p. 345.

incident of family headship. Some competent persons, such as Mr. Kovalevsky, hold it to be derived from the notion that the wife is the husband's property, and therefore her offspring must be in his power too. If this be so, the right, being proprietary and not merely social, would belong exclusively to Private Law, and the "maxim of Roman jurisprudence that the Patria Potestas did not extend to the Jus Publicum" would be strictly logical as well as politic. But some, again, think that the paternal family itself was developed through marriage by capture or purchase, causing the wife so acquired to be regarded as the husband's chattel. Not that lordship in a rudimentary society can safely be identified with our modern legal ownership. *Dominus* is an ambiguous word except in strict Roman law. At all events we cannot disregard the testimony of Gaius that the Patria Potestas of the Roman family law was, in the time of Hadrian, singular among the Mediterranean nations; and, so far as we know anything of the provincial customs of the empire, they seem to have been not less but more archaic than the law of Rome. The responsibilities of the Roman paterfamilias, on the other hand, are not distinguishable in character or extent from those of the patriarch in other Indo-European family systems.

Another reason against regarding the Roman Patria Potestas as of the highest antiquity is that at an earlier time the paterfamilias was regarded not as owner, but as an administrator of the family property which in some sense already belonged to the heirs as well as himself. Indeed, this idea survived as late as the classical ages of Roman law in the untranslatable term of art *sui heredes,* of which "necessary heirs" is perhaps the most tolerable rendering, and the comments of the jurists upon it, "The Common Law,". We are fully confirmed in this by the history of the Hindu Joint Family. In Bengal the change from the position of an administrator with large powers to that of an owner is known to have taken place in relatively modern times.

Finally, it is ventured to record, for what it may be worth, my impression that recent inquirers, with the notable exception of Mr. J. G. Frazer, have somewhat neglected the part of superstitions and magical or pseudo-scientific beliefs in the formation of social customs. There is no presumption whatever that the true explanation of any savage practice is that which to us appears most reasonable or natural. The fundamental difference between religion and magic has been explained by Lord Avebury and Sir Alfred Lyall. Religious offerings and ceremonies, apart from the higher ethical and philosophical developments of advanced theology, seek to propitiate supernatural powers, magical ritual to control both natural and supernatural agencies. The priest

is, in the current phrase, a minister, that is to say a servant of whatever gods he worships; he begs their peace and alliance with tribute in his hand. The magician or wizard acts as a master; he aims at using the secrets of nature, or commanding for his own use or that of his clients, and at his own will, the "armies of angels that soar, legions of demons that lurk." Solomon's seal is magical, his dedication of the temple is religious. But this has little, if anything, to do with the present subject.

Since the foregoing note was in type Andrew Lang's book, "*The Secret of the Totem*", has been published. Lang, agreeing in the main with Darwin on this point, wholly rejects the hypothesis of a promiscuous horde having been the earliest state of human life, and holds that "men, whatever their brutal ancestors may have done, when they became men indeed, lived originally in small anonymous local groups, and had, for a reason to be given" the jealous despotism of the eldest male, as is explained in a later chapter "the habit of selecting female mates from groups *not* their own." McLennan's explanation of exogamy is dismissed as wholly inadequate, and the facts supposed by Morgan and his school to establish a general epoch of "group-marriage" are treated as exceptional and belonging to a relatively advanced stage. It is not presumed to appreciate Lang's theory, or make any critical comparison of it with those of other anthropologists who differ widely from Lang and from one another. But it is legitimate to observe that Lang, as well as Tylor, appears to justify Maine's opinion as to the primitive character of the Cyclopean family, and that it is less plausible now than it was twenty years ago to regard Maine as an old-fashioned literary scholar standing out against the lights of modern research. No doubt Maine, when he wrote "Ancient Law," conceived the transition from the savagery of the Cyclops to the archaic civilisation of a Roman paterfamilias under the Kings or the early Republic as having been a far more direct and simple process than we can at this day think probable. This is so common an incident of historical speculation, in the absence of full and trustworthy material, that there is nothing in it to derogate from Maine's credit.

CHAPTER – IV

INDIAN PATRIARCHY- A PRACTICAL EXEMPLIFICATION

In our Indian families, grandparents are given complete respect and often the power to make family decisions. However interestingly, this expectation of living with the parents is limited to the sons only. It is clearly a patriarchal system that is still deeply entrenched in India. Once the daughter marries, it is expected that her husband's family will be her first priority in every respect and her own parents and siblings become secondary. Further, she is expected to take care of her in-laws along with her husband and children. Hence this is the prime reason of sons continuing to carry a high premium in India. Earlier before the property laws in India changed in 2005 leading to females also being considered as coparcenaries in the Hindu joint families and deriving complete equality in the sharing of property, only the sons were heirs whereas the dowry given to the daughter was considered her share and claim to the family's wealth. However of late, anti gender-bias legislations have tried to ensure gender equality in the modern times.

In the traditional Indian home, it was assumed that the son upon marrying would bring his bride to live in his parents' home in the joint family set-up. In fact, when the parents wanted to arrange a match for their son, one of the prime qualities they sought in their future daughter-in-law was her ability to adjust 'into the family' and were ubiquitous in describing the merits of a 'good girl'. Ideally, the new bride was supposed to be treated like a new daughter in her new home, but in reality, it was often not so. Along with the benefits of loving familial bonds, were the more serious problems of mother-in-law and other extended family interference due to reluctance to let go of the son to the detriment of his wife's interests and needs.

The themes of a mother-in-law's ill-treatment of the daughter-in-law who was often relegated to taking care of the household drudgery and doing chores for the entire families was quite a usual thing in the ancient pretext. This exaggerated depiction was based on reality, often harsher and it was actually no picnic also for the poor husband being caught in the middle of these family dramas. If he agreed with his wife, he was immediately made to feel guilty by his parents as to how much they had sacrificed for the son which was actually very true as the parents went to great lengths for their son's education and financial success as a son was

considered a sort of life insurance for their old age and if he sided with his parents, the wife accused him of being tied to his mother's apron strings. Generally, due to her financial dependence as a mother of her growing family, the wife remains trapped in the dysfunctional family dynamics.

However, thankfully in the modern era with the empowerment of women through education and other supportive legislation as mandated by the Indian Constitution which right from its inception gave women equal rights with men leading to financial independence for women, the parents of the husbands still live home with their sons, but the daughters-in-law have rightfully a lot of say in the households. On a facetious, yet honest note, many young professional women who have grown-up seeing and/or hearing about the mother-in-law ill-treatment of their female relatives do not want to deal with an otherwise good catch if his mother is still alive or unless he vows to establish boundaries by setting up an independent home. Wiser folks back home, cognizant of the danger of personality clashes and their own innate need for independence and dignity, are increasingly constructing their homes such that they are self-contained units within the family property wherein the in-laws have their own privacy and yet they are within very close proximity to the son's family.

CHAPTER – V

EMPOWERMENT OF WOMEN IN INDIA- THE DECLINE OF THE PATRIARCHATE

For the protection of women from discrimination, law empowers women through various ways by equipping the right and power as so to enable to fight against male hegemony. Apart from the Constitution which provides for the gender equality and also to lessen the gap between two sexes, law can create empowerment through various other ways which includes empowerment through conferment of substantive rights or power, empowerment through institutional infrastructure and supporting, stimulating and monitoring the attitudinal and values change in society.

In particular there are four methods of empowerment through conferment of substantive of rights or power on person to be empowered. Firstly, by creating penal sanctions against certain types of behaviour that violate the dignity and liberty of women, such as section 376 in the Indian Penal Code for custodial rape and section 498-A for harassment and cruelty against women. Secondly, by creating proprietary entitlement for women such as giving them a share on matrimonial property or giving them a right to work and an equal wage. Thirdly, by providing preferential treatment for women or providing compensatory discrimination in their favour by reserving jobs and seats in local self governing institution. Lastly, by facilitating the exercise of liberty and freedom for females.

In relation to empowerment of women through institutional infrastructure, one of the most important strategies for their empowerment is to facilitate access to grievance redressal and rights enforcing institution. Contrasting with the ancient times when patriarchy was all supreme, the modern Indian infrastructure encompasses various institutional framework for the empowerment of women which includes the Family Court Act, 1984 which was passed and which provides an establishment of family court in the view of conciliation and securing the settlement of dispute relating to marriage and family affair. Another form of grievance redressal was set up by the National Commission for Women Act, 1990. Lastly, the incorporation of Public Interest Litigation (PIL) served another device of grievance redressal through access to justice on the part of disadvantage sections.

The movement to change public opinion and societal attitudes and values can at the most catalyze by law. But such change cannot come merely through legal prescriptions. Presently, India has realized that it needs a new movement for such change. It should aim to promoting humanism and respect to individual and liberty. The law can help by protecting the freedom of those people who crusade for the change and by firmly preventing those who try to subvert. Gender justice will be an important item on this agenda.

Further, the considering the wake of female empowerment in the male dominated society, the judicial response relating to gender-justice has to be considered. Before the national legal instruments are discussed, it is better to know first about the international legal instruments which give guarantee and protection for women. They include the Universal Declaration of Human Rights, 1948, the Convention on the Political Rights of Women, 1953, Convention of the Elimination on of All Forms of Discrimination against Women (CEDAW), 1979 and also the Optional Protocol to the CEDAW, 1999.

With respect to the Indian constitutional guarantee against patriarchy, the Indian Constitution has provided many provisions to give guarantees and safeguard for women and also in order to raise the dignity and strengthening the empowerment of women. First and foremost the preamble itself contains the goal of equal status and opportunity for all citizen, either man or women. Further various articles which includes Article 14 which gives guarantee on equality before the law and equal protection of law, Article 15(1) and (2) which forbids discrimination on the ground of sex by the State, Article 15(3) which states that the State can provide special provision for women, Article 16(2) which lays down that no citizen can be discriminated on the ground of sex for any employment under the State, Article 23 which prohibits traffic in human being. Article 29(2) which guarantee for undiscriminating of the sex in educational institution. Article 39 which directs the State to secure equal pay to equal work for both men and women. Article 40 which lays down the directive principle of state policy and Article 51A (e) which states that it shall be the duty for all Indian citizens to protect and give respect to the dignity of women.

Apart from these constitutional provisions there are various other domestic legislations which guarantees against male domination and the supremacy of the patriarchy. These include The Domestic Violence Act, 2005, The Hindu Succession Act 1956, The Improvement of Nikah

Nama Act, 2006, the Maternity Act, 1961, Gender Budgeting Programme, the National Policy of Empowerment of Women Programme and the Indian Penal Code with amendment and revision, i.e. Article 376, 374 and 498.

Further, with respect to the empowerment of women several landmark cases have been incorporated in the jurisprudence in the Indian legal system. The most renowned ones include *C.B. Muthamma v. Indian Foreign Services*[15] in which the rules of IFS requiring a women officer to obtain a permission of the government for getting married were struck down by the Court as being violative of the fundamental right to gender equality. Further in the case of *Air India v. Nargis Mirza*[16] the service rule made by Air India International was challenged as being gender discriminatory. The Court struck down the rules on the ground of violative of equality. Lastly, in the case of *S. Vishnu v. India*[17] the Court validated Section 497 of IPC which deals with adultery and held that it was not discrimination by not making woman complainant or accused. Through court said that if legislature may would the legislation with contemporary situation.

However, after having highlighted the brighter side, we should now look into the provisions which need to be revamped to be in consonance with the anti-patriarchal jurisprudence which has to be developed. They include the Divorce Act, 1864 which needs to be restructured in order to remove the male hegemony provisions in it, also the section relating to adultery in Section of 497 IPC needs a restructuring. Furthermore, the Restitution of Conjugal Rights in Section 9 of the Hindu Marriage Act and that of Maintenance in Section 36 of the Special Marriage Act needs to be looked into from the female empowerment point of view.

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[15] [1979] RD-SC 183
[16] AIR 1981 SC 1829
[17] AIR 1985 SC 1618

CHAPTER – VI

CONCLUSION

To conclude Patriarchy is based on a system of power relations which are hierarchical and unequal where men control women's production, reproduction and sexuality. It imposes masculinity and femininity character stereotypes in society which strengthen the iniquitous power relations between men and women. Patriarchy is not a constant and gender relations which are dynamic and complex have changed over the periods of history. The nature of control and subjugation of women varies from one society to the other as it differs due to the differences in class, caste, religion, region, ethnicity and the socio-cultural practices.

Thus in the context of India, brahminical patriarchy, tribal patriarchy and dalit patriarchy are different from each other. Patriarchy within a particular caste or class also differs in terms of their religious and regional variations. Similarly subordination of women in developed countries is different from what it is in developing countries. While subordination of women may differ in terms of its nature, certain characteristics such as control over women's sexuality and her reproductive power cuts across class, caste, ethnicity, religions and regions and is common to all patriarchies. This control has developed historically and is institutionalized and legitimized by several ideologies, social practices and institutions such as family, religion, caste, education, media, law, state and society, which are discussed in the later sections.

Patriarchal societies propagate the ideology of motherhood which restrict women's mobility and burdens them with the responsibilities to nurture and rear children. The biological factor to bear children is linked to the social position of women's responsibilities of motherhood: nurturing, educating and raising children by devoting themselves to family. "Patriarchal ideas blur the distinction between sex and gender and assume that all socio-economic and political distinctions between men and women are rooted in biology or anatomy".[18] Gender like social class, caste, race or religion is a significant social cleavage and it is important to analyse it to understand social inequalities, oppressions and unequal relationship between men and women. It has been explained by feminist scholars who believe that the theory of 'sexual politics' and

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[18] Heywood, Andrew, POLITICAL IDEOLOGIES: AN INTRODUCTION, Palgrave Macmillan, New York, 2003, p.248.

'sexism' are conscious parallels with theory of 'class politics' and 'racism' to understand oppression of women.

The traditionalist view accepts patriarchy as biologically determined and as the biological functions of men and women are different, the social roles and tasks assigned for women are also different. Sigmund Freud stated that for women 'anatomy is destiny' and it is women's biology which primarily determine their psychology and hence their abilities and roles. Similarly the traditional notion of 'public-private divide' which located politics in the public sphere and family and personal relationships in private sphere as non-political, believed that sexual inequality is natural and not political. While the political sphere was preserved for men the private sphere was reserved for women as housewives and mothers who were excluded from politics. These theories of male supremacy have been challenged and opposed by feminists as they lack historical or scientific evidence. Feminists argue that the biological difference might lead to some difference in their roles, but the former should not become the basis of a sexual hierarchy in which men are dominant. The dismantling of these theories enables us to acknowledge that patriarchy is man-made and has developed historically by the socio-economic and political processes in society.

As stated already Gerda Lerner in *"The Creation of Patriarchy"* has argued against single cause theories and against looking for one historical moment when patriarchy was established. Patriarchy has been conceptualized and analyzed by several feminist scholars in different ways. Feminists have challenged patriarchal knowledge, ideology, values and its practice.

Despite a range of common themes within feminism, disagreements exist amongst the feminists in understanding patriarchy. All feminists do not like the term "patriarchy" for various reasons and prefer the term "gender" and "gender oppression". Patriarchy has remained a relatively undefined concept and some feminist scholars are at unease with the use of the concept of 'patriarchy' when it involves the notion of a general system of inequality. Michele Barrett argues that the use of the term patriarchy assumes that the relation between men and women is unchanging and universalistic. She suggests that it can only be appropriate if it is defined very narrowly and refers to specific aspects of ideological relations such as those of father-daughter relationship described in Virginia Woolf's Three Guineas.[19] The use of the term often involves confusion between 'patriarchy' as rule of the father and 'patriarchy' as men's domination of

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[19] Barret, Michele and McIntosh, Mary, THE 'FAMILY WAGE': SOME PROBLEMS FOR SOCIALISTS AND FEMINISTS, CAPITAL AND CLASS, no -11, Summer, 51-72. 1980. P.15.

women. However, Sylvia Walby critiques Barrett as the problem is not with the concept itself but with the way it is used in specific texts as it involves problems of reductionism, biologism, universalism, and therefore the inconsistent definition of patriarchy needs be overcome in an adequate analysis of gender inequality.[20] Sheila Rowbotham also argues that 'the term patriarchy necessarily implies a conception of women's oppression that is universalistic, ahistoric and essentially biologistic and that it incorrectly leads to a search for a single cause of women's oppression either in a base super-structure model or as quest for ultimate origins from capitalist relations'.[21]

Suma Chitnis argues that because of the inadequate note of historical circumstances and values that render women's issues different in India, a large section of the population recoils from the feminist rhetoric. Similarly the unease with the term patriarchy is because of the role that men have played in the emergence and growth of women's question in India. In a hierarchical society often gender oppression is linked with oppressions based on caste, class, community, tribe and religion, and in such multiple patriarchies "men as the principal oppressors" is not easily accepted.[22] However, Mary E. John argues that multiple patriarchies which are byproducts of discrimination along class, caste and communal lines, are diverse in nature and it is because of the unequal patriarchies that "there is a need to conceptualize the complex articulation of different patriarchies, along with the distinct and equally challenging question of how subaltern genders are relating to questions of power in the current conjuncture".[23]

The assertion of autonomous dalit women's organizations have thrown up several crucial theoretical and political challenges besides underlying the brahmanism of feminist movements and patriarchal practices of dalit politics. Within the framework of 'difference' the issues of caste is primarily responsible for oppression of dalit women.[24] Sharmila Rege argues that the category

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[20] Walby, *SYLVIA, PATRIARCHY AT WORK,* Polity Press, Cambridge in association with Basil Blackwell, Oxford, 1986, p. 28.

[21] Rowbotham, 1981, in Walby, Sylvia, PATRIARCHY AT WORK, Polity Press, Cambridge in association with Basil Blackwell, Oxford, 1986 p.30.

[22] Chaudhuri, Maitrayee, Introduction in Maitrayee Chaudhuri (ed). FEMINISM IN INDIA, Kali for Women and Women Unlimited, New Delhi, 2004 p. xxii-xxiii.

[23] Mary E. John, FEMINISM IN INDIA AND THE WEST: RECASTING A RELATIONSHIP, in Maitrayee Chaudhuri, (ed). FEMINISM IN INDIA, Kali for Women and Women Unlimited, New Delhi, 2004, p.66.

[24] Sharmila Rege, DALIT WOMEN TALK DIFFERENTLY: A CRITIQUE OF DIFFERENCE AND TOWARDS A DALIT FEMINIST STANDPOINT POSITION in Maitrayee Chaudhuri, (ed). FEMINISM IN INDIA, Kali for Women and Women Unlimited, New Delhi, 2004 p.211.

of 'difference' has been brought to the centre of feminist analysis by the black and third world feminists who question the sex/class debate of the 1970s and argue that the complex interplay between sex, class, race need to be underlined. Vaid and Sangarion the other hand make a distinction between the modernizing of patriarchal modes of regulating women and the democratizing of gender relations both at home and work place and underline both the revolutionary potential and inherent contradictions that the democratizing movements constituted for peasants and working class women.[25] Thus feminist historiography made radical breakthroughs in redefining gender and patriarchies in the context of hierarchies of caste, class, community and ethnicity.

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[25] ibid at p.215.

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