



Research Paper

# Understanding Filiation, Kinship, And the Incest Taboo: A Cross Cultural - Perspective

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## Abstract

*This study explores the complex concepts of filiation and kinship, examining their significance in understanding human relationships and societal structures. Filiation is a fundamental aspect of kinship, influencing identity, rights, and responsibilities within families and societies. The paper discusses various forms of filiation, including biological, adoptive, and assisted reproductive technologies, highlighting the legal and social implications of each. Cultural diversity further shaped the perception of incest. The study also touches upon the cultural and religious perspectives on incest, including Hinduism, Buddhism, and Roman Catholicism, showcasing the diverse views and rules governing familial relationships and marriage. Ultimately, this research underscores the importance of understanding filiation and kinship in navigating the intricacies of human relationships and societal norms.*

**Keywords:** Kinship, Filiation, Incest Taboo, Identity, Legitimate, Fictive

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## I. Introduction

Filiation and kinship are fundamental concepts in understanding human relationships and societal structures. Filiation refers to the bond between a child and their parents, encompassing biological, adoptive, or assisted reproductive ties, and generating rights and obligations for both parties. Kinship, on the other hand, encompasses relationships through descent or affinity, shaping individual identity and informing social norms. The complexities of filiation and kinship are particularly evident in Indian society, where extended family networks and hierarchical relationships play significant roles. The incest taboo, a universal phenomenon, further highlights the intricacies of kinship and filiation, with various theories attempting to explain its origins and significance across cultures and societies.

## II. Understanding Filiation And Kinship

According to anthropologists, there are two ideas or principles involved in the organisation of domestic life everywhere. The first of these is the idea of affinity, or of relationships through marriage. The second is the idea of descent, or parentage. People who are related to each other through descent or a combination of affinity and descent are relatives, or kin. The domain of ideas constituted by the beliefs and expectations that kins share about one another is called kinship.

Kinship is a fundamental aspect of human society and has been studied by anthropologists, sociologists, and other scholars for many years. Kinship relationships are classified into Consanguine, Affinal and Fictive.

Consanguine relationships are based on biological ties, such as parent-child or sibling relationships. Affinal relationships are based on marriage or other forms of social connection, such as adoption. In addition to these basic types of kinship relationships, there are also other forms of social connections that are based on kinship, such as parenthood, friendship, and fictive kinship.

Fictive kinship refers to relationships that are considered to be kinship-like but are not based on biological or legal ties, such as the relationship between a teacher and student or a boss and employee.

The Indian concept of kinship is complex and diverse, varying across different regions, religions, castes, and communities. However, some common threads run through the Indian understanding of kinship. One of the most significant features of Indian kinship is the importance of the extended family. In India, the family is

often viewed as an extended network of relationships that includes not only parents, siblings, and children but also grandparents, aunts, uncles, cousins, and even close family friends. The extended family plays a critical role in shaping the individual's identity and providing support and guidance throughout their life. Another notable aspect of Indian kinship is the emphasis on hierarchical relationships. In many Indian families, elder family members are accorded great respect, and their decisions are often considered final. This hierarchical structure is particularly evident in patriarchal societies where the male head of the family wields significant authority.

## 2.i Filiation

The term "filiation" is used to define the familial connection between a kid and their parents. There are three different kinds of filiation: blood, assisted reproduction, and adoption. Regardless of the circumstances surrounding the kid's birth, once filiation has been proven, it generates rights and obligations for both the child and the parents. In contrast to inheritance and parental rights, filiation has an impact on both. In a patrilineal community, the tie with the mother's side of the family is referred to as "complementary filiation." The term "complementary filiation" was introduced by the descent theorists prominent among whom was sociologist M. Fortes. He explains that even in unilineal societies, family members have ties with the relatives of the father or mother's side. Like maternal uncles, grandparents, paternal uncles etc. While Lineage links are more hierarchical, complementary filiations are based on emotional and personal relations.

Identity Filiation is the person's right to an identity right from birth. An individual's statement of their presence in a society is their identity. Recognizing their uniqueness and what sets them apart from their peers. Every person must have an identity in order to exercise all of their rights, which is a fundamental human right.

Identity includes a person's family name, last name, date of birth, gender, and country of origin. Every person has the right to a first and last name from birth. The child is also entitled to a nationality from birth. Nationality can be either his parent's nationality or the nationality of the country he is born in. Name can be regarded as one of the most important indications of identity. Identity is an amalgam of different internal and external qualities of an individual, including acquired ones.

In India, the right to freedom of expression (Article 19) in India's constitution includes the ability to express one's identity through words, attire, action, or behaviour. According to Article 19, the values of privacy, self-identity, autonomy, and personal integrity are also essential rights that belong to both transgender individuals and other.

2.i Children are connected with their parents in the following ways-

- The child's civil status in regard to his or her father or mother is known as filiation. Either paternity or maternity, Paternity refers to the father's legal relationship to the kid he has fathered. And Maternity is the mother's civil standing in relation to the child she gave birth to is as follows.
- Children can be born naturally or through adoption. Natural filiation may be lawful or unlawful. Children conceived or born from legally wedded parents or legally adopted or legal births through ARTs are considered legal heirs.
- Filiation by birth is the relationship that is created by the birth of the child with his parents. The child is recognized by the surname of his family. Every child that is born and has legitimized status gets a birth certificate with the name of the father.

## 2.ii Complementary Filiation

According to sociologist Meyer Fortes, relationships are brought about by the fact that a person is the legal child of the parents. According to him, filiation is typically bilateral or equal because the vast majority of societies recognize both parents as parents by law. As a result, filiation can be defined as the relationship between succeeding generations. It is a relationship of compounded rights and identifications, which are exemplified by the laws of inheritance and succession on the one hand, and of disparities and gaps, which are exemplified by the incest taboo, as well as by traditions of respect and avoidance. The fact that people in uni-lineal descent groups also have significant relationships with family members who are not members of his descent group, and notably with a parent who is not a member of his descent group. This relationship is termed as complementary filiation. As an illustration, under a patrilineal system, the son derives his status as a descendant group from his father's lineage, but also benefits from sharing complementary relationships with his mother's relatives, particularly his mother's brother.

Fortes compare "Filiation" with "Descent" to further clarify. He continues by saying that although if a child in a unilineal descent system is filiated to both parents, he is descended from any one of the parents. He is therefore equally the child of both parents, but only one of them —"mother" in a matrilineal system and "father" in a patrilineal system— gives him his "legal" and "political" position.

Even if the child has a connection with one parent in a unilineal family, he still has a filial connection to the other parent. As a result of "Complementary filiation," he also possesses some rights.

## 2.iv Filiation through Artificial reproduction techniques

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination through a written document executed and signed by them before the birth of the child. The document shall be recorded in the civil registry together with the birth certificate of the child. However, as the world is witnessing the new technologies of reproduction filiation is legal like in NRT as in the same method that blood filiation is prevalent., namely, by the birth certificate. The individual will be the sole person listed as the child depending on the parent who has arranged the birth. However, the donor and the child resulting from sperm, or egg donation cannot claim paternity or maternity because there is no filiation between the child and the sperm or egg donor. Furthermore, they are not able to claim filiation with such a child. When a single person or a couple choose to use someone else's genetic material to conceive. The use of sperm from a donor other than the husband during artificial insemination.

#### 2.v Filiation by Adoption

Whether the parents are of the same sex or the opposite sex, the relationship between the child and the child's parents is known as filiation. In some circumstances, legislation or an adoption judgment may be used to prove the kinship, in addition to biological relations. Either a final decision or the birth record listed in the civil register; the official evidence of filiation is an admission of legal filiation in a public document, or a private handwritten document signed by the relevant parent is the legal proof of filiation.

It is clear that filiation cannot be reduced to just a biological connection of the parent-child bond in adoption. At the same time, an adopted person's past is composed of intricate layers that are shaped not only by the individual but also by the social, political, and cultural context in which he or she was abandoned. The same rights and obligations resulting from filiation by blood are established for the adoptive parent and adopted child through a judicial act in the case of adoption.

#### 2.vi Status of Children

The Filiation status of children can fall under the following categories.

Legitimate children are conceived or born through marriage of the parents or children conceived through artificial insemination of the wife with sperm from the husband or donor, or both, provided that both the spouses authorized or ratified such in a written document executed and signed by them before the birth of the child, which is recorded in the civil registry with the birth certificate of the child.

Illegitimate - When children are conceived and born outside of a legally binding marriage, they are regarded as being illegitimate.

Legitimated - Those children who were conceived by parents who, at the time of conception, were not legally married to one another and who are later recognized as legitimate because of their parents' future marriage.

Adopted - Children who are adopted are individuals who, regardless of their blood relationship to the adopter, are deemed the latter's legitimate children by legal fiction. or in other words by virtue of the adoption process.

#### 2.vii The legal implications of Filiation

According to civil law, filiation is the legal link between a child and either their mother or father. The legal connection is known as parenthood in common law. Whether for the purported biological parents or the parents by adoption, the establishing of parental status has urgent legal repercussions. The child must be cared for, educated, and watched over by the legal parents while they are minors. The parental status is detrimental to give the child further kinships like grandparents, cousins, uncles and aunts.

According to some academicians, the filial tie places the child in the family's lineage or history. Children are also supposed to support parents and have a responsibility to look after them in their old age. One of the fundamental tenets of the civil law of the family is filiation. Civilian academics have historically viewed marriage as the act that creates a new family and filiation as the institution through which that family continues into the future. Long before legislators acknowledged the legal institution of adoption, adults reared children as their own and felt obligated to do so. Judges and legislators are beginning to understand how important it is for people to have a child's custody or visitation rights in addition to their legal parents. Contrary to the top-down filiation process outlined in the Civil Code, such orders are derived from family living circumstances using the best interests of the kid as a filter.

### **III. INCEST TABOOS AND CULTURAL PROHIBITION**

There are rules which prohibit certain persons as sexual partners and as marriage partners. These are the rules of incest. Incest refers to sexual congress as exogamy to marriage, a relationship which cannot be created merely by sexual congress and includes in addition to sexual congress, a number of reciprocal rights and duties.

Lewis has described incest as any prohibited union is known as incest. Understanding that prohibition includes cousins who are considered to be members of the family, even if they may be several degrees apart and have very little in common physiologically.

For example, it is essentially accepted wisdom that a man may marry the daughter of his mother's brother, who is a cross-cousin, but not the sister. So, incest prohibitions or taboos prohibit ego from having sexual relations with specific relatives. They appear to exist everywhere, though their precise range varies greatly between societies. Incest is prohibited because the partners are closely related. Some societies do not require them to be blood relatives. However, the only relationships in which sexual congress is considered incestuous are those of parent and child and brother and sister. At first glance, the prohibition appears to be straightforward, no marriage among close relatives. But who exactly are the close relatives?

### 3.i Various anthropologists have made some observations

Tylor and Freud argue that sex relations with close relatives are forbidden in all societies and that these rules have some social benefits. The taboo promotes group growth by allowing new members to join and forging alliances across kin boundaries. If there is no prohibition on sexual relations with close relatives, family expansion will halt due to inbreeding.

According to Levi Strauss, the proponent of structuralism theory, there are forms of relations in a man's mind. The man categorizes women into two mutually exclusive groups: wives and sisters. As a result, the woman classified as a sister cannot be contracted for sexual relations.

Westermarck argued that people who grew up together (primarily brothers and sisters) became so accustomed to one another that the concept of sexual desire did not occur to them until they were adults.

In general, the theories about incest are of two kinds. One asks why it is regarded with such horror; the other asks why there is a rule against it in every known society. The first question is what philosophers would call a pseudo-problem. Incest is often held to be a sin, that is to call down supernatural punishment without the need of any human agent to punish the offenders. Freud accounted for the horror as a building-mechanism to repress a strongly felt desire (thinking primarily of sons and mothers).

A taboo's inherent prohibition includes the idea that breaking or defying, it will result in some kind of trouble for the person, such as a lack of success in hunting or fishing, sickness, miscarriage, or death. In such kind of cases, proscription is the only way to avoid this danger.

In other cases, the danger represented by the taboo can be overcome through ritual. This is often the case for taboos meant to protect communities and individuals from beings or situations that are simultaneously so powerful as to be inherently dangerous and so common that they are essentially unavoidable.

There is no such thing as a universal taboo, but some (such as cannibalism, intentional homicide, and incest taboos) exist in the majority of societies. Taboos can serve many purposes and are frequently enforced long after the original reason for them has passed. We can say that taboos reveal the history of societies while records are unavailable.

### 3.ii Taboo related to Food, Drink and Shawl especially among the Naga Tribes

Food and beverages which people abstain from consuming for religious, cultural or hygienic reasons. Many food taboos forbid the meat of a particular animal, including mammals, rodents, reptiles, amphibians, bony fish, and crustaceans. Some taboos are specific to a particular part or excretion of an animal, while other taboos forgo the consumption of plants, fungi, or insects. Food taboos are rules, codified or otherwise, that govern which foods or combinations of foods may not be consumed and how animals are slaughtered. These prohibitions and commandments have a variety of origins. In some cases, these taboos are imposed for health or other practical reasons.

- They are the result of human symbolic systems in others.
- Some foods may be prohibited during certain festivals like Lent, at certain times of life like, pregnancy, or to specific groups of people like priests, despite the fact that the food is generally permissible. Certain types of food are prohibited by various religions.
- Among the Naga tribals, certain shawls are reserved for specific individuals or groups, reflecting their social status, age, or achievements, and are thus forbidden to others. The rengma naga shawl called Jonyuphi also called as Anonthsu is the most honoured shawl to be worn by males who have performed the feast of merit called Guga or Kethi. These shawls are taboo to be worn by ordinary persons or who have not performed the requisite feasts of merits. Traditionally the weavers of these shawls should remain holy by abstaining from physical relations with male members.

Incest refers to consanguineous sexual relations that are prohibited by law in a particular society, like those between a father and his daughter or son, a mother and her daughter or son, a brother and a sister. Basically, Incest is a universal taboo that is deeply enrooted in legal, religious, and moral traditions from the past and present, and it is stigmatized as a deviation that results in severe penalties.

#### **IV. PERSPECTIVE ON INCEST TABOO**

In the late 19th century, Sigmund Freud claimed that the phenomenon in the population is one per million. Since then, and until the late 1970s, public disregard of the phenomenon of incest continued, a disregard that was accompanied by an absence of suitable legal interest. Researchers indicate the great prevalence of incest and the increase in awareness of this phenomenon in recent years. In their opinion, two main factors influenced this change in attitude. One is the change in the status of the victim (mainly child sexual abuse) in the criminal process, that was created on a background of changes in the status of the child and basic and human rights laws. The second is the changes that have taken place in women's status and the contribution of the feminist movement.

Incest is a kind of rape within the family. However, contrary to rape by a stranger, the sexual abuse in incest is possible not only by the use of force, but also by the authority and trust found

in the hands of the abuser, and due to the helplessness of the child. This abuse causes a severe and ongoing trauma, particularly in incest perpetrated by one of the parents. It is difficult to assess the prevalence of such cases, due to the secrecy involved in this issue. Anthropological Explanations for the Incest Taboo

Sociologist Edward Westermarck who in his work 'The History of Human Marriage' in 1891 enumerated on the reason of the prevalence of the Incest Taboo. That reason was known as the 'instinctive aversion to incest'. Westermarck said that there is an innate aversion to sexual intercourse between persons living very closely together from early youth, such persons are in most cases related, this feeling displays itself chiefly as a horror of intercourse between near kin. This denotes that our avoidance of incest is purely based on an inner, inborn, natural tendency. Children brought up together form a sentimental connection and attachment by its nature non-erotic or non-sexual.

Edward Tylor also gave the Alliance Theory with regard to the incest taboo. According to Tylor different kinship groups and communities were tied together in mutual aid for survival through the marital and sex rules, which required persons to have relationships outside their kin community. Leavitt said in modern parlance - Tylor's "savage" societies would be recognized as nomadic hunters and gatherers and simple agricultural people. Such societies, organized around family groups and kinship lineages, enhance their survival and well-being if they abide by rules which require their members to make associations outside their immediate kin communities. While other kinds of cooperative alliances can occur to the same ends, marriage and sexual prohibitions are especially effective in compelling individuals to connect with outside persons and communities.

Durkheim explains the prohibition of incest as a part of his general theory of totemism in his article on incest entitled as 'La prohibition de l'inceste et ses origines' published in *La Année Sociologique* in 1898. Durkheim reasoned for the savage society that blood is a vital fluid or principle. To shed the blood of one's own totemic group would be a great sin or crime. Since blood would be shed in the initial act of intercourse, a man must eschew all women of his own totem. Thus, the taboo against incest and rules of exogamy came into being.

According to Claude Lévi-Strauss and others, the taboo exists to encourage people to marry into other groups (exogamy) in order to build social, economic, or political alliances with other groups and thereby increase the group's ability to survive and expand. This theory applies particularly to ancient societies when most people lived in small, often isolated and vulnerable groups. Levi-Strauss claimed that culture is influenced by deep social structures of which people are not always aware. The anthropologist must therefore decode the deep structure that affords meaning to the culture. According to Levi-Strauss, the incest prohibition plays a key role in shaping human society. The prohibition prevents the family from functioning as an economic independent unit, since its members must go outside the family in order to have sexual relations and reproduce - that we know as rule of exogamy. Practising exogamy creates a mechanism of exchange which merges different families and creates associations with the aim of developing social networks and responsibility between groups, and strengthens the social structure itself.

The family structure and the social order derived from it are based on the daughter's moving to another family after marriage. Exchanging the daughter creates alliances between families, which can lead to social and economic benefits. Therefore, the daughter is the repressed factor of establishing the patriarchal social order.

Lewis H. Morgan said that sexuality with close genetic relatives can increase genetic diseases or other problems. Historically, people usually did not understand how genetics affected reproduction. Among modern Western cultures, this explanation is still strongly believed. However modern genetic research does not always support this belief. Genetic problems are more likely to occur in a closed group that inbreeds for several generations than in a one-time, close-cousin reproduction. About half of the prohibited incestuous unions in the world have been with genetically unrelated people.

Westermarck's explanation of avoidance of incest correlated with natural selection, in which the former was a product of the latter. Through natural selection an instinct must have been developed, powerful enough, as a rule, to prevent injurious unions. This instinct displays itself simply as an aversion, on the part of individuals, to union with others with whom they have lived, but as these are for the most part blood-relations, the result is the survival of the fittest. He also denoted further that there would be biological harm as a result of close

inbreeding, in other words a negative effect on the children of such a union. Incest was thus defined and prohibited because inbreeding causes biological degeneration. This degeneration theory was also given by others like Lewis Henry Morgan in 1877.

Edward Westermarck and others have said that close family members have an instinctual repulsion towards incest, but other theorists suggest that an instinct of such strength would not need a strong cultural taboo. Other researchers point to the frequency of incest despite the cultural taboo or argue that living closely together as in a family leads to the opposite of incestuous desire referred to as a “habit of avoidance”.

Parent-child and brother-sister incest is the most strongly prohibited, partly because of the assumption of unequal power relationships. In the United States, in the early 1970s, as a result of encouragement from feminist theorists and conservative voters, this has been a major area of concern, with fervent encouragement of very severe punishments.

Since the 1920s, the Freudian theory, which stressed the existence of sexual attraction in the family and the centrality of the social taboo on incest as a curbing factor has become more influential. Freud tried to explain incest in the psychoanalytical theory of the unconscious. According to Freud, the son develops a desire for his mother, which he called the “Oedipus complex” that causes rivalry with the father. Freud claimed that the story of Oedipus expresses the desire of every son to marry his mother and kill his father, who is competing over the exclusiveness of the relationship with her. The daughter’s desire for her father “Electra complex” causes similar rivalry with the mother. Freud believed that the Oedipus complex is the most important factor in determining sexual behaviour. He claimed that these drives are so strong that they need to be suppressed, and that the passage of the child between the ages of two to five, for example from the oedipal stage to the post-Oedipal stage, is essential for healthy human development. Freud claimed that by the time children reach the post-Oedipal stage, the incest taboo is very strongly imprinted in their psyche, and controls their sexual behaviour. But, contrary to the Freudian viewpoint, many Anthropologists talk about social-cultural explanation for the universal prohibition of incest.

## **V. CASE STUDIES**

According to Hinduism view, Incest is described in repulsive terms in Hinduism. Hindus are afraid of the negative consequences of incest and thus follow strict rules governing both endogamy and exogamy within castes or varna in Hinduism, but not within the same family tree/ gotra or bloodline Pravar. Marriages within the gotra or sagotra marriages are prohibited in the traditional matrimonial system due to the rule of exogamy. People within the gotra are considered kin, and marrying one is considered incestuous, i.e. marriage with cousins is strictly prohibited.

Buddhist societies take a strong ethical stance in human affairs particularly in case of sexual behaviour. According to local and cultural standards most of the Buddhist variations decide on the specifics of incest as a wrongdoing. Sexual misconduct is mentioned, but the definition of what constitutes sexual misconduct is a personal matter. The Five Precepts and the Noble Eightfold Path are the most common formulations of Buddhist ethics: one should not be attached to or crave sensual pleasure. In Buddhism Sexual misconduct refers to any sexual behaviour that involves violence, manipulation, or deception, and thus causes suffering and trouble. Buddhist saints and monks strictly forbid all forms of sexual misconduct, but incest is not specifically defined as sexual misconduct and thus depends on local culture rather than a religious mandate.

According to Roman Catholic, Marriage is never permitted in the Catholic Church if the potential spouses are related in the collateral line up to and including the fourth degree. The Church forbids marriage if the potential spouses are related by consanguinity in any degree of the direct line or in the second degree of the collateral line. Marriages resulting in children who are closer genetic relatives than legal are also prohibited unless the genetic relationship does allow marriage between those children.

## **VI. CONCLUSION**

Filiation and kinship are fundamental concepts in understanding human relationships and societal structures. Filiation can be established through biological ties, adoption, or assisted reproduction techniques. Kinship, on the other hand, encompasses not only biological relationships but also social connections and affinity through marriage. The Indian concept of kinship is complex and diverse, with emphasis on extended family and hierarchical relationships. The incest taboo, a universal phenomenon, prohibits sexual relations between close relatives, with various theories attempting to explain its origins and significance. Understanding filiation and kinship is crucial in piloting the details of human relationships, societal norms, and cultural expectations, ultimately shaping individual identity and informing our sense of belonging within families and communities.

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