Postcolonialism and Patriarchy: How Relevant is Western Feminism in the Third World?

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LAWS 5000, Fall Term

<u>Introduction:</u>

Oppression is a state of being under prolonged inequitable authority or force exerted by a dominant person or group. The issue of female oppression in India originated decades ago. It perpetuated with the advent of British rule and continues even today, after 70 years of independence. Feminists and scholars in the West have actively fought against inequality and devaluation; but in the Indian society, female subjugation goes beyond inequality and is closely tied with patriarchy. Patriarchy refers to, "a society in which men hold majority of political and social power. There are different forms of patriarchy throughout the world that range from more hidden forms of control to overt systems that legally give males the control and possession over women."[1] The Indian society is overtly patrilineal, that is, the inheritance of property and name is from male lineage. This reinforces the patriarchy, socially and sometimes, legally. While this ascendancy has been a part of the society for centuries, colonialism in India reinforced the superiority of men through political power.

Colonialism refers to, "a relation between two or more groups of unequal power in which one not only controls and rules the other but also endeavors to impose its cultural order onto the subordinate group(s)."[2] Rachel B. Jones points out, that the undertaking of colonialism relied on patriarchy, that is, in the colonial rule men held the sovereign power and all major authority positions. Therefore, the two systems are related.[3] In my opinion, colonialism acted as an extension of patriarchy, which legalized the superiority of men over women. This also led to the degradation of women's social, legal, and economical status, making them dependent on men. She says that while many Western feminists have written about the need to overcome this notion and provide

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[1] Rachel B. Jones, Postcolonial Representations of Women (New York: Springer Netherlands, 2011) at 16
[2] Sally E. Merry, Law and Colonialism. (New Jersey: Wiley, Law and Society Review, 1991) 25(4) at 889
[3] Jones, *Supra* at para 2 at 3

women with an equal status to men, the problem in India goes beyond the paradigm of gaining equality. Women's statuses are defined as per various socio-cultural factors, customs, and traditional norms. Feminist scholars and postcolonial feminists such as Gayatri Chakravorty Spivak, Chandra Talpade Mohanty, have argued that Western feminists have a narrow focus and a general belief that all feminism should fight for equality. Their emphasis on the sameness and solidarity of women, irrespective of their cultural, social, and economic differences, is problematic for women of color and third world women who have been subjected to "double colonization" by colonizers.[4]

Thus, it becomes important to address these concerns. This paper will focus on how colonialism has conformed and fostered patriarchy in the third world. It will also address questions with respect to women's oppressed status in these countries, especially in India. First, the paper will indulge into a discussion about colonialism and patriarchy, by drawing parallels between both concepts. It will then talk about how the countries formerly occupied by colonial powers continue to be affected by their former history of colonization, and thus the colonized continue to suffer the consequences of their history.[5] Third, it will elaborate on the effects of patriarchy on the social status of women in India – an ex-colony of the British. This will also help to understand the dominance of males in various social systems in Indian society and the prevalence of customs which disregard women as a separate individual. Lastly, it will provide arguments about the inadequacy of Western idea of feminism and how it is inapplicable in India and other postcolonial societies. Throughout the paper, I will define terms and concepts with the help of various literatures

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[4] Yashodha Shenmugasundaram, Postcolonial Feminism, Loose leaf (consulted on 12th December 2017), (New Delhi: Ignou University Press)
[5]*Ibid at 383*

relevant to the arguments of this paper. The paper will use both classic and contemporary works in order to consolidate the argument through a unified understanding of the situation in India.

Colonialism – An Extension of Patriarchy

A very profound way to view colonialism as outlined by Sally E. Merry is, as the act of "transforming the societies of the Third World into the form of the West."[6] She discusses how the effects of enforced compliance and the imposition of new political order as well as culture resulted in the asymmetrical power relations between the colonizers and the colonized.[7] Colonialism in this way led to the generalization of law-enforcing institutions which strengthened the role of colonizers, as well as their approach to law making and regulation in the colonies. Her theory was that colonialism came from European law which would give the colonizers an assertive control over the economic, legal and political factors of a colony. She explains that this is what defined the relationship between two entities in which one is purely dominant and the other simply belonging to such control.[8]

Merry's work demonstrates that colonialism influences the judicial systems, turns courts into centers of sociocultural transformation, propagates the control of the dominant group and makes changes in precolonial traditions.[9] This means, one group tends to exercise power over the other through coercion and establishes sovereignty through dominance in terms of economics, education, etc. This leads to modification and modernisation of colonies as per the requirements of the colonizers. The colonizers strengthen their economies by exploiting the labour,

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[6] Merry, *Supra* at 916
[7] *Ibid* at 915
[8] *Ibid* at 917
[9] *Ibid* at 921

accumulating capital and using resources of the colonies to produce low-cost products for higher profits.

The socio-political domination of the colonizers and imposition of authority through force showcases how the colonies became a center of the oppressed and subjugated. They transform the colonies by bringing changes to education, infrastructure, social norms, and cultural practices. They impose customary laws, which elevate one group in the society, while simultaneously degrading the other. Merry argues that colonialism pervades into all social aspects of the society as a method of control and the imposition of customary law plays a "cutting edge" in all colonised societies. She says, law is a central force for the colonizers but also demonstrates its capability of enforcing new (colonial) systems of regulation.[10] Even though this meant better regulation and efficient law mechanisms in some societies, it did also cause them damage and harm. In my opinion, colonial state does assume the inefficiency of the native law. Merry explains, customary laws were "created" using Indigenous law as a base, and by customary law becoming a "construct" of the colonial period, it re-shaped a subtle, adaptable and unwritten system to a fixed, formal and written group of rules.[11] She also argues that a fluid, never static, customary law lost its flexible character through interpretation and formalization by the colonizers. Furthermore, Merry points to the emergence of a constant struggle by the colonized to manage this coerced transformation and find ways to turn it to their own benefit.[12]

An example of this relationship can be seen in Bernard Cohn's work on colonial India. Cohn's text is an illustration of a struggle between the colonizers and the colonized.[13] It also

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[10] *Ibid at* 894

[11] *Ibid* at 897

[12] *Ibid* at 892

[13] Bernard Cohn. Law and the Colonial State in India, in Colonialism and its Forms of Knowledge, B. Cohn. (Princeton: Princeton University Press 1996), Chapter 3 [Cohn]

showcases how the Indian population resisted the East India Company which had taken the role of the state, thus establishing dual sovereignty. He argues that due to the colonial policies and laws, several instances of breakdown of social order, famine and deaths took over the Indian society. This was majorly due to imposition of "civilisation" by The East India Company and Great Britain on the people of India. He discusses several changes made to policies and laws by the East India Company thereafter, which only led to further exploitation of the Indian population.[14]

While colonialism elevated the status of British men and women in India, Patriarchy on the other hand, elevated the status of native men. Clearly then, the most disadvantaged group was of native women. Joanne Conaghan, in one of her works, tries to assess women's position in law and seeks to identify the 'reality gap' between women's perceived and actual material position.[15] She argues, that women are disadvantaged by rules formally complying with the rule of law and that gender-neutral laws impact upon men and women differently.[16] Conaghan's work has implications for law and women of India. In ancient India, as per the *Rig veda,* women enjoyed a higher status than they do in the contemporary world. As per the *veda*, women were considered equal to men and were highly educated. The decline in the status of women started with the creation of *Smritis* (*Manusmriti).[17]* With the development and transition of the society towards monarchies and dynasties, men came into power and thus, the freedom and rights of women were curtailed. Most of the dynasties in India have had male rulers. The warfare between kings for acquiring

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[14]Ibid

[15] Joanne Conaghan, Reassessing the Feminist Theoretical Project in Law in Journal of Law and Society, (New Jersey: Blackwell Publishers, 2000) 27, at 353

[16] *Ibid* at 354

[17] Smritis are religious and spiritual guidelines. The Manusmriti was the first law text of India and continues to influence the law. Online: www.wikipedia.ca/Manusmriti

power and acquisition of land led to the exclusion of women from certain fields and restricted them to the domestic sphere.[18]

Various cultural and religious practices such as *Sati* – women committing suicide by burning themselves with the husband's pyre, continued to degrade the status of women. The practice of *Sati* was primarily based on the idea of women's dependency on their male counterparts. It was assumed that to help their husbands achieve salvation, women must sacrifice their lives by jumping into their husband's funeral pyre.[19] Another version of *Sati* was *Jauhar*, which was a similar self-immolation act practiced by the queens. The queens together committed mass-suicide if a king died fighting a war or lost his kingdom to foreign invaders.[20] Women were often subjected to such practices to not only save their "honour" and escape rape or sexual abuse by foreign invaders, but also for their spouse's "respect." Instances of foreign powers sexually abusing, raping and using the women (queens) as a means of sexual pleasure also portrays the inferior, weak status allotted to women in the Indian society. It was also assumed that a woman is economically dependent on her husband for her living, hence, ending her life along with the man would be saving her "pride." [21]

Aside from patriarchy, matriarchy and egalitarianism were still prevalent amongst some castes and tribes; but the technological advancement and idea of private ownership in the Indian society led to an assumption that males' access to land within a household, renders the household

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[18] Varsha Chitnis & Danaya Wright, The Legacy of Colonialism: Law and Women's Rights in India, (64 Wash. & Lee L. Rev. 1315, 2007), Online: http://scholarship.law.ufl.edu/facultypub/174 [Chitnis & Wright]

[19] Arvind Sharma, Sati: Historical and Phenomenological Essays, (New Delhi: Motilal Banarsidass Publications, 2001), 19-22 [Sharma]

[20] *Ibid* at 20

[21] *Ibid* at 21

to be less likely affected by poverty and thereby provides protection to all its members.[22] Thus, this further curtailed the freedom and rights of the women, who now had limited access to ownership of land or property. In the 17th century, The East India Company set up their first office in West Bengal. Through collaborations with the rulers in power, the East India Company transitioned from a trading company to the company which went on to devise new political and legal structure for the newly-acquired dominions. "After the transfer of power to the English Crown in 1858, there were two competing groups vying for political and legal legitimacy within India: the British colonial authorities and the native male elite."[23]

The history of male supremacy within India and continuation of the notion of "dependency" of women on men for their survival, was formalized with the help of colonial rule. "The condition of the Indian woman, particularly within the home, became the battleground on which the contests of power between Indian and British men were fought."[24] Furthermore, with the English Crown being the supreme power, the Victorian notions of womanhood (chastity, innocence, self-effacement, and passiveness) continued to pervade laws. "The traditional training of lawmakers and judges in the British legal system often brought their patriarchal understanding of the historical foundations of these laws to bear as precedents and jurisprudential principles, even when the laws were facially egalitarian."[25] Thus, the British lawmakers, actively formulated laws which favoured men. Such laws limited the voice of women in the public sphere and labelled them as reproducer of the workforce.

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[22] Bina Aggarwal, Who sows? Who reaps? Women and land rights in India (New Delhi: Journal of peasant studies,1988) 15(4):531-581[Aggarwal]
[23] Chitnis & Wright, *Supra* at 1317
[24] *Ibid* at 1319
[25] *Ibid* at 1320

Clearly, colonialism and transformation of laws by the British in India, socially transformed the social relationships between men and women. Both forms of dominance, patriarchy and colonialism, are comparable and overlapping.[26] While colonialism entailed the subjugation of the economically, culturally and socially weaker groups through exertion of force and imposition of authority; patriarchy established supremacy of men (both socially and legally through colonial laws), which provided the basis for the exploitation of women. While the British established control over resources and political power, patriarchy placed the man as the ruler of the household, having complete control over decision-making and access to household resources. Thus, colonialism and patriarchy are both ideas based on subjugation of the weaker social group through domination, suppression, and force. This led to the "double colonization" of the Indian women under the British rule. "Double colonization refers to women of colonized nations being doubly oppressed due to their race as well as their gender. It analyzes the concerns of women as members of marginalized groups within postcolonial societies, the case of Indigenous minorities, and as women with a history of unbroken oppression."[27]

Status and Subjugation of Women in Colonial India

The Indian society faced a major breakdown in social order due to inefficient customary laws legislated by the British. Thereafter, the East India Company underwent an extensive study to change and incorporate the Hindu Law, spiritual texts and Muslim Communities into their laws and policies.[28] The British's approach to colonial rule now aimed at establishing relations with native Indians through research of Indian law, history, culture, society, and language. The British intended to "create a body of knowledge that could be utilized in the effective control of Indian

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[26] Shenmugasundaram, *Supra* at 389
[27] *Ibid* at 389
[28] Cohn, *Supra* at 61

society."[29] In attempting to incorporate the great diversity of customs among every caste, subcaste and tribe, the British law makers found it difficult to devise a governing structure that would incur the least resistance from the native populations.[30] In certain regions, they said that the customs were rigidly governed by the heavily patriarchal *Sanskritic* customs and a complex system of caste system. Thus, "to control the [cultural] pluralism, the British redefined Indian society along religious and caste lines that had little correspondence to the authorities and norms of power previously accepted by Indian communities."[31]

Clearly then, as discussed earlier, the colonial laws by the British were patriarchal in nature, because the religious and caste beliefs used to formulate them favoured male lineage. "In the early decades of colonial rule, a complex caste system, an agrarian society with a variety of land rights, a pluralist religious system, and customary laws set India apart from other British colonies."[32] While the British colonized India for 300 years, the women in India were double colonized. They were ruled not only as per the colonial laws which enforced a patriarchal view of the world, but also by the cultural norms and social systems which defined the Indian society at large. One such system was the Varna system or the Caste System. "The Indian Caste System is historically one of the main dimensions where people in India are socially differentiated through class, religion, region, tribe, gender, and language." The major problem with this system was its sole basis of systematic ranking, unequal access to valued resources such as wealth, income, power, prestige and restrictions on interaction with people of another social status.
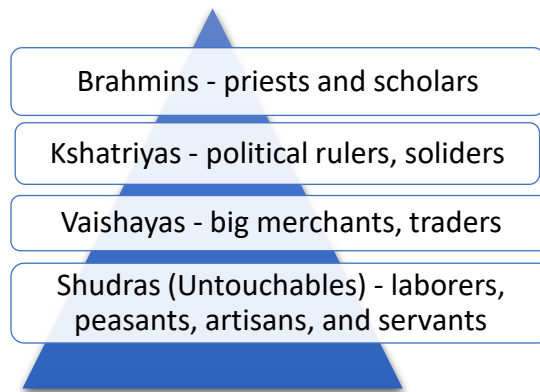
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[29] Law and Colonial State in India. Online: < https://blogs.baruch.cuny.edu/thumpitukmodernimperialism/?p=41>
[30] *Ibid*
[31] Chitnis & Wright, *Supra* at 1321
[32] *Ibid* at 1322

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LAWS 5000, Fall Term
Final Submission: Research paper

The caste system classified people into four hierarchically ranked castes called Varnas –
Brahmans, Kshatriyas, Vaishyas, Shudras. They were classified according to their occupation and
access to wealth, power, and privilege.[33] While Brahmins and Kshatriyas were the strata that
enjoyed access to education, power and wealth; Shudras were the outcastes who were secluded for
being "polluted" and "unclean." "Maintaining this hereditary occupational specialization and
hierarchical ranking of occupations is said to be done through an elaborate ritual system…"[34] A
simple way to understand the classification of individuals under this system is as follows:

Brahmins - priests and scholars

Kshatriyas - political rulers, soliders

Vaishayas - big merchants, traders

Shudras (Untouchables) - laborers,
peasants, artisans, and servants

The caste system played a major role in defining the social laws and regulations in the
Indian society. Therefore, when the British amended their laws, the caste system was used as a
guide to interact and establish relations. Furthermore, the British favoured the upper castes over
the lower castes in terms of jobs and allotment of land, hoping to establish a control with the least
amount of resistance.[35] Conaghan also argues in her work, that concepts of property and contract
in public discourse, commercial practices, and the historical commodification of women's bodies

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[33] Manali S. Deshpande, History of Caste System and its impact on India Today. Loose leaf, (consulted on 16th
December 2017) (California: University of California, 2010) [Deshpande]
[34] *Ibid* at 3
[35] *Ibid* at 4

made law a poor mechanism for conceptualizing and regulating intimate relations or facilitating egalitarian social change.[36] She says that legal concepts are gendered not just in their application, but also in their meaning and scope. Therefore, with formalization of the caste system, women, irrespective of their caste, faced exploitation and subjugation. In certain regions, upper caste women were oppressed due to heavily patriarchal practice and had no autonomy or control over their own lives. They were expected to be authoritative with lower caste women, who usually worked as house help or maids in their houses. But at the same time, they were expected to be submissive to their husbands. This was also due to the patriarchal alliances in the society. After marriage, a woman was expected to leave behind her father's caste and accept her husband's caste name as her own. There was no "choice" or "option" for them to choose or voice their opinion and thus, their statuses were tied to their husbands.

The situation was worse for the lower caste women. Such women had to bear both the social humiliation and male domination in the family. They became victims of psychological and physical violence from the upper caste groups be it the caste or ethnic groups who are supposed to be superior to them. In fact, there were cases where the upper caste women beat the Dalit or Shudra women merely for using the public taps for filling their water jars.[37] In all sense, the Dalit women were a lot more vulnerable in comparison to Dalit men. With the advent of British rule in India and changes to colonial laws which conformed to such a system of stratification, the condition of Dalit women was such that they were even deprived of a normal life.[38] It had devastating effects not only on their social, educational, or economic status, it also deprived them from being allowed

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[36] Conaghan, *Supra* at 362
[37] Samira Luitel, The Position of Dalit Women in Caste System, Loose leaf, (consulted on 17th December 2017), (New Delhi: Occasional papers)
[38] *Ibid* at 78

to be present in public spheres.[39] From my past learnings and interactions with such women, I was also told that during the colonial rule, in many regions of India, Dalit women were not allowed to cover their upper bodies. Upper bodies could only be covered by upper caste women. Dalit women were also not allowed to wear jewellery or ornaments, they were restricted from wearing materials such as Silk and they could only wear knee-length sarees. They were not only subjected to physical abuse, but also sexual abuse by upper caste men.

While Dalit women were labelled as "impure" and "polluted" and suffered the most due to the hierarchical differentiation of caste system, upper caste women also faced exploitation by their husbands and his mothers. In fact, their actions were closely monitored, and they were heavily burdened with regulations to follow an "expected" behavior and demeanor around men, in the society and at home.[40] A family's honor was closely tied to the honor and "purity" of their women, as reflected in the virginity of unmarried girls and the fidelity of married ones. "Rural women who deviated from the strict social codes were sometimes stripped naked in public or even gang raped." In cases of adultery the man is often let off lightly and regarded only to take a ritualized purifying bath while the woman is regarded as polluted for the rest of her life. Other punishments might be imposed depending on the caste of the man and woman involved. [41]

Patriarchy and Women in Post Colonial India – Did the Subjugation of Women End?

Since India's independence from Britain in 1947, there has been considerable relaxation of rules related to the caste system. There was more sharing between members of the middle and upper castes, but those in the lowest castes continued to eat separately from the rest. [42] Although

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[39] *Ibid* at 79

[40] Caste Rules and Women Customs in India, Online:
http://factsanddetails.com/india/People_and_Life/sub7_3c/entry-4169.html

[41] *Ibid*

[42] Deshpande, *Supra* at 4

some caste-based prejudice and ranking still existed, wealth and power was now less associated with caste. Caste became a lot less significant part of daily lives of people, but its significance still varies by social class and occupation. Sadly, caste laws, traditions and cultural practices continue to define women's lives and favour patriarchy in India. Although discrimination on the basis of caste has been outlawed, it still exists in the Indian community today. [43]

Aggarwal highlights that as per the ancient law, women did not have the right to property.[44] There were two main ancient Hindu laws according to Dharmashastra[45] – Mitakshara and Dayabhaga, which prevailed until the Britishers provided modification. The Mitakshara school was followed throughout India except Bengal state. As the Hindu law is patriarchal in nature, the right to Hindu joint family property is by birth. So, a son immediately after birth gets the right to the property. The share of co-parcener in the joint family property is not definite, as their shares are fluctuating with births and deaths of the co-parceners. As per this system, a woman could never become a co-parcener. The widow of a deceased co-parcener cannot enforce partition of her husband's share against his brothers.[46] The Dayabhaga system existed only in Bengal and Assam. In this system, the right to Hindu joint family property is not by birth but only on the death of the father. The legal heirs (sons) have definite shares after the death of the father. Each brother has ownership over a definite fraction of the joint family property and so can transfer his share. The widow has a right to succeed her husband's share and enforce partition only if there are no male descendants.[47]

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[43] *Ibid* at 5
[44] *Aggarwal, Supra* at 537
[45] Dharmashastra is an ancient body of jurisprudence. Manusmriti is the first hindu law book which talked about the rights of an individual to property and land. www.britannica.com/topic/dharma-shastra
[46] Aggarwal, *Supra* at 539
[47] *Ibid* at 542

While the colonial rule transformed these laws, new laws only provided woman the right to own movable property. After India gained independence, many laws were amended. It was argued that women should be provided with equal share as per the law. Aggarwal highlights that today, the property rights of Hindus are governed by the *Hindu Succession Act* of 1956 which is applicable to all states except Kashmir.[48] This act unified the Mitakshara and Dayabhaga system. It laid down a law of succession, whereby sons and daughters would enjoy equal inheritance rights. But even though this act has reduced the pre-existing gender inequalities, it has not ended them.[49] Furthermore, Aggarwal also shows how in other religions, the gaps between men and women remained the same. For example, A vast majority of Muslims in India follow the Hanafi school of Sunni law and a smaller percentage the Shia law. Broadly, as per the Muslim law, Muslim women have inheritance rights in ancestral immoveable property, but it is unequal to men.[50] Not only this, the law of Christians tends to vary by location. The *Portuguese Civil Code* governs Goa and Pondicherry, those from Cochin and Travancore are under the Cochin and Travancore Acts, and rest operate as per the *Indian Succession Act* ,1925 (ISA). According to *ISA*, a widow and her daughter may only receive 1/3rd of all property of the deceased husband, while the son gets the rest.[51]

In overview, despite development and amendments in land rights, legally in relation to men, women in almost all communities in India, still continue to have a highly unequal access to immovable property. Aggarwal in this context highlights this study of women's land access in which it is apparent that the basic normative pattern of land inheritance in India is patrilineal,

[48] Aggarwal, *Supra at* 544
[49] *Ibid* at 545
[50] *Ibid* at 549
[51] *Ibid* at 553

although there have been and continue to be pockets of matrilineal and bilateral inheritance in north-east and south-west. If we enlarge our canvas and consider land access patterns in South Asia, especially in Pakistan and Sri Lanka, we can see that even they are strongly patrilineal.[52] But this unequal status of women is not just defined by the dominance and supremacy assumed by men. The cultural practices, lack of education, limited access to public sphere, economic instability are all factors which weigh down these women. There seems to be a dependency relationship between men and women, where men are the "bread earners" of the family and give financial stability, women perform the role of a "home maker" and produce a son to carry forward the lineage.

Another argument by Conaghan in her work is that law constructs gender by invoking images of 'woman' - the 'good' battered wife, the 'bad' mother, the deserving and undeserving homemaker, and the 'real' rape victim. She says that such images serve to coerce women, both by penalizing them for corresponding or failing to correspond to the image invoked by law and by coning them into believing that 'certain identities are natural and inevitable'.[53] Even in contemporary times, the Indian society has continued to define women as per their femininity and delicacy. In India, Hindu women are expected to be shy, demure and not to speak unless they are spoken to. Indian women also have to traditionally keep their voices low, look downward when speaking and never look a man in the eye.[54] Men look down on women smokers even though men smoke everywhere. Alcohol drinking is prohibited for women in most of the regions and is considered "indecent." In many homes there are separate areas for men and women. Sometimes

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[52] *Ibid* at 561
[53] Conaghan, *Supra* at 364
[54] Caste Rules and Women Customs in India, *Supra* at para 5

men and women drive in separate cars.[55] Apart from this, girls are not sent to schools and in lower castes, they are still expected to reproduce until they have a male child. Despite being banned by law, child marriages are still a practice in the rural areas, where girls are seen as a "burden."

While men may or may not wear their wedding ring, women are expected to have a red dot called *Bind*i on their forehead, which indicates they are married. *'Bindi'* is derived from the Sanskrit word *'bindu'* or a drop. Married women in India often have a dot between their eyes or at the parting of their hair. A widow is not supposed to have such a dot. Only married women, or in some castes women or girls who have never been married, can wear it. The women wear dots of various colors, shapes and sizes.[56] "A red dot on the forehead is an auspicious sign of marriage and guarantees the social status and sanctity of the institution of marriage. The Indian bride steps over the threshold of her husband's home, bedecked in glittering apparels and ornaments, dazzling the red bindi on her forehead that is believed to usher in prosperity, and grants her a place as the guardian of the family's welfare and progeny."[57] Apart from this, married women in the North are supposed wear a string in their neck called the "Mangala Sutra" which also indicates their marital status. Based on my subjective experiences, women in India are also prohibited from entering the temples during their menstruation period. In some castes, the menstruating woman is prohibited from entering the kitchen, perform any domestic tasks and speak to the elder males of the family.

While feminist scholars in India are actively resisting such patriarchal views, and challenging the legal system of the country, it is unknown how much the changes in policies and laws are actually transforming the Indian society. Theresa Murphy in her work, talks about how women have a "choice." She says, Feminism is about choice – For choice or By choice. "For

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[55] *Ibid at* para 7
[56] *Ibid* at para 8
[57] *Ibid* at para 9

choice" feminism requires proactivity and entails moral expectations, whereas, "by choice" feminism is founded on the basis of choosing and is always situational.[58] She argues that the boundaries between law "here" and "there" are contingent ones, and remain open to variation. This is majorly due to three things – (1), there is no one-time only choice; (2) "Either/or" choices should be approached skeptically, and (3) there may not always be a choice in the first place.[59]

The question that arises here then, is that do Indian women, burdened by cultural sanctions and patriarchy, actually have a "choice" in the first place? Murphy partly answers this question. She says that, scholars such as Ratna Kapur and Martha Nassbaum acknowledge that Indian feminists live in an unjust reality and hence, their theorizing is tethered to practical commitments such as female literacy and changes in rape law. She further argues that Indian feminists emphasise on a practical-oriented solution as in need of interrogation.[60] This argument brings to notice how theory alone would not provide a "choice" to Indian women. It also poses doubts and ambiguity over the Western feminist's work for equality which do not seem to address the issues of postcolonial women. Even though the inequality in India majorly stems from the continuation of patriarchal religious beliefs and colonial laws; customs and cultural practices also continue to devalue the Indian women pushing them back in to the domestic sphere in order to maintain the gender based discrimination. Clearly then, such a hierarchical differentiation is not entirely due to patriarchy and hence, can not be combated solely with theoretical change. It also then poses an important question about postcolonial India - Has the modification of legal policies and laws actually led to a socially transformed society?

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[58] Theresa Murphy, Feminism Here and Feminism There: Law, Theory and Choice in D Buss and A Manji (eds) International Law: Modern Feminist Approaches (Oxford: Hart 2005), 68
[59] *Ibid* at 69
[60] *Ibid* at 78

The Relevance of Western Feminism in Post colonial India:

To sum up the arguments until now, it is unclear if the transition from colonial India to postcolonial India actually transformed the society for the women. While the laws in India are constantly amended with an aim of achieving gender equality, it is unfair to believe that the society is accepting of such laws. It is argued that educating women has encouraged feminism in India, but at the same time, it is also true that women continue to be oppressed by cultural practices which look down upon them for working outside their homes. While western feminists continue to fight against gender inequality, the problem for Indian women goes beyond being equal to men. Indian women are oppressed by the ancient laws, spiritual texts and religious beliefs which define a "good woman" as one who solely, but wholeheartedly performs the role of a devoted mother and submissive wife.[61]

Shenmugasundaram writes about the emergence of postcolonial feminism in India and gives reasons for the inapplicability of western feminism to the situation of the women in the postcolonial societies. She says, "western feminist theories have a tendency to lump all women together and treat them as homogenously marginalised. In order to highlight a common sisterhood, they often ignored the social, cultural and racial differences that divide women."[62] But, in reality, the experiences of Indian women are different from those of women who live in the western world. Women in postcolonial societies face suppression in the light of geographical, historical and cultural factors and thus, can not be in a homogenized category with the women of the west.[63] The idea of a commonality and homogeneity in women's lives has only served the interests of the women in the west. Thus, Shenmugasundaram also argues that postcolonial feminism emerged in

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[61] Caste Rules and Women Customs in India, *Supra* at para 7
[62] Shenmugasundaram, *Supra* at 383
[63] *Ibid* at 384

an attempt to address the experiences of women born and raised in former colonies of Western imperial powers.[64]

Since most of the feminist movements were based on the universalization of Western women's experiences, and overlooked the voices of the postcolonial women; The scholars in such societies, through the lens of colonialism, explored several third world women's issues relating to subordination, such as slavery, representation, suppression and resistance. They believe that "gender cannot be extricated from other aspects of their identity and one cannot gloss over the differences between the western and third world countries."[65] Thus, the life story-oriented narratives of third world women are an essential context to analyze third world women's engagement with feminism. Chandra Mohanty says, that the collective agency posed by the narratives and scholarly works seriously challenge the relations between men and women.[66] Post coloniality in this sense, articulates its theories alongside economic, social, cultural and historical factors. In practice, it works differently in different parts of the world. It conveys patriarchy as a relationship of inequality that is highly variable because it is to be considered always along with the other social structures." [67]

In her work on subalterns, Gayatri Chakrovorty Spivak also persistently critiques western feminism which she believes has failed to re-examine its own assumptions and takes them for granted. She comments that the west's intervention on behalf of the subaltern women is self interested.[68] Chandra Mohanty also questions Western feminists' representation of third world

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[64] *Ibid* at 384
[65] *Ibid* at para 3 at 385
[66] Shenmugasundaram, *Supra* at 387
[67] Chandra Talpade Mohanty, Under Western Eyes: Feminist Scholarship and Colonial Discourses. (London: Routledge, 1995) 66-88
[68] Gayatri Chakrovorty Spivak, Can the Subalterns Speak? (New York, London: Routledge, 1995)

women. She says, Western feminist discourse views third world women only in relation to negative aspects of their lives such as rape, domestic violence, forced prostitution, and violation of basic human rights. Similarly, emphasis on concepts such as reproduction, sexual division of labour, the family, marriage, household, patriarchy, etc are used by Western feminists without specifying local, cultural, and historical contexts to represent women's subordination.[69]

In sum, Chandra Mohanty strikes a blow at the "monolithic, generalized representation of third world women." She warns against "freezing the women in time, space and history."[70] She says it is important to deconstruct the notion of a universalized sisterhood by documenting the experiences by women of colour in different societies. She urges postcolonial feminists in India to write about the dual system of discrimination articulated by Indian culture and male patriarchy. This, she asserts, would help address issues faced by women in India, irrespective of their caste, subcaste or religion.[71] Thus, both the groups (Western and postcolonial) of women are heterogenous and can never be placed under one homogenous marginalized category. Spivak identifies postcolonial Indian women with a radical and economic underclass. She evokes, "the Hindu woman's subaltern position, her inaccessibility to 'voice' and her 'silenced difficult space of abjection.' Since women are twice colonized, the most oppressed of these women can be seen to be in the position of the subaltern. Spivak observes that there is no space from where the subaltern subject can speak."[72] Thus, this also establishes that application of Western feminist ideas in India is problematic and troublesome. It does not help or support feminist's in India, who seek practical solutions to their problems.

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[69] Shenmugasundram, *Supra* at 395
[70] Mohanty, *Supra* at 73
[71] *Ibid* at 75
[72] Shenmugasundaram, *Supra* at 389

Conclusion:

The emphasis to end the naturalizing of women's oppression on the basis of religious, social, racial and cultural beliefs is reiterated by Indian feminists as well as all other third world theorists. Gayatri Chakravorty Spivak argues that politics in one arena can act as colonizing agent in another. While western feminists continue to resist matters of general concern and public debate on "exploitation, exclusion, harassment, abuse and violence against women", feminist theories in India are developing mechanisms to decode the gender roles and overcome conservative religious beliefs.[73] The problem of oppression and forced subordination in India is age-old. Colonialism fostered patriarchy by formalizing the ancient and spiritual texts as legal guidelines for a smoother control over the colonized populations. India's situation has been similar to other postcolonial societies, where women were double colonized due to their gender and race. But it is important to understand that their subjugation on the basis of gender stems from social and cultural sanctions imposed on them.

Clearly then, Indian women are colonized by social structures and institutions which expect them to be devoted mothers and "good wives." "The mistreatment of women is, therefore, significantly rooted in partriarchal practices and cultural arrangements imbedded in Indian culture and tradition. Certainly, there are a variety of ongoing changes and their mainstreaming is the major focus. Yet, the powerlessness of women is apparent."[74] While the discrimination on the basis of gender seems to be never ending in India, female literacy and awareness has helped to encourage women to resist this unfair treatment. Feminist scholars and activists seem to be voicing their concerns about women's rights assertively and focusing on practically applicable solutions

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[73] *Ibid* at 396
[74]*Ibid* at 398

rather than theoretically changes to law. Even though the legal system asserts that it views men and women equally, law in reality seems to have a limited control and effect on the lives of Indian women.

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