Law, Religion and Gender: A Study of Women's Rights in Mizoram

Doctor of Philosophy

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A Dissertation Submitted to the University of Hyderabad for the Degree of Doctor of Philosophy in Sociology

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DECLARATION

I hereby declare that this thesis entitled *"Law, Religion and Gender: A Study of Women's Rights in Mizoram,"* submitted to the University of Hyderabad in fulfilment of the requirements for the award of the Degree of Doctor of Philosophy in Sociology is a bonafide record of original research work done by me under the supervision and guidance of *Dr. Aparna Rayaprol* and the thesis has not been submitted to any other University or Institution for the award of any degree.

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CERTIFICATE

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CONTENTS

CHAPTER-I
INTRODUCTION

My thesis is a study of law, religion and gender with special focus on Mizoram. The attempt is to understand the legal processes and customary laws in Mizo society. In particular, it is an attempt to understand how these laws are shaped and moulded by different religious ideologies. This study examines the relation between social institutions and their responses to gender issues. The particular focus will be on legal and religious institutions in Mizoram, as this is an area which has not been explored adequately by sociologists.

Law, Religion and Gender

Law and religion as social institutions share certain values and principles, and they also play a role in social control. The Oxford Dictionary of Sociology defines religion as 'a set of beliefs, practice, symbols (rituals) based on the idea of sacred which unite believers into a socio-religious community'. Sociologists define religion based on sacred principles rather, than to a belief in "god" or "gods", because it makes social comparison possible. The role of religion is considered central to the foundation of law. Sixty to seventy years ago, the connection between law and religion in the west was so intimate that it was usually taken for granted. It was generally accepted that the legal system was rooted in Judaic and Christian religious and ethical beliefs (Berman 1983).

Law is generally recognised as an important instrument of social control, and religion is considered to control morals and ethical level in members of the society. Both law and religion are closely related to each other. Morden (1984:8) writes: 'Much of the beginnings of law took over religious institutions and religious precepts and put the force of state behind them'. Morden also points out that law and religion share certain same values and principles, and they also have similarities in many ways such as: the conservatism of law and religion and legal institutions in religion. Mulford Sibley illustrates the intersections of law and religion, he states, 'The relation of law to religion

is two-fold: the sanctions of the legal system provide for and organize the institutions of religion; and, on the other hand, religion undergirds the system of law' (1984:45).

Sibley further states, the relation between secular law and religious law, law of the state and law of the church needs attention. From the viewpoint of legal positivist, the alleged ecclesiastical law would not be considered really "law". On the other hand, pluralist conceptions would recognise not only the ecclesiastical law but also other laws such as trade unions and other associations. In states with an Erastian (the doctrine that the state is supreme over the church in ecclesiastical matters) orientation, it goes without saying that the church law (ecclesiastical) is subordinate to the law of the state. In theocratic states, by contrast, the law presumed by the priest ranks higher than that associated with "mere secular authority". He pointed out, 'The theocracy sharply distinguishes between sacred and secular expressions of authority. In nations which are neither Erastian, supposedly, nor theocratic, the relation between the two spheres is more difficult to state in the abstract'. The problem lies with the fact that they can never be neatly separated (Sibley 1984: 60).

Sibley's argument is that, both law and religion are laden with moral values, and there will always be a tension set up by law when it seeks to regulate conduct, since some conduct will be regarded as an "expression of religious faith" and hence exempt, according to many, from control by secular law. The intersection is inevitable involving property or jurisdiction. At times, the law may find itself challenged by the religious consciousness or conscience. However, a phenomenon rooted in both community and the religious conscience of the individual carries on a 'constant dialogue with the law both secular and non-secular' which at certain junctures may result in a kind of conflict. As Sibley puts it, perhaps this is the "ultimate intersection". In a way, both law and religion are laden with moral values.

Law has been considered essential for maintaining the legal norms of a society. Sometimes the legal system is a tool of the political system and sometimes the religious system is a tool of the political system or vice-versa. The important point is, in whatever

form the relationship takes, there is always a relationship between the legal system and religious system. Over centuries, the legal system and religious system have clashed, co-operated and persecuted one another (Berman 1983).

As social institutions, both law and religion set certain norms, values and principles for members of the community, which is supposedly considered for the well being of the society as well as the members. Within these institutions, gender roles are prescribed. Within the legal and religious institutions, the role of men and women is sharply divided based on the societal norms. For instance, in the context of law in India, it is usually contested that the laws which seek to provide the same protection and equality to all citizens seem to favour men in all levels of the society. In spite of the constitution of India declaring equality for all citizens, women are still treated as second class citizens due to institutionalized patriarchy. The personal laws such as Hindu, Muslim and Christian and customary laws are often the basis for women's subjugation (Nair 1996). Since personal laws are based on religious beliefs they rarely work in favour of women.

This is further complicated by the differentiation between women based on race, religion, sexuality, region, and minority status of different kinds. Such divisions and inequalities persist despite constitutional provisions of equality, social justice and secularism (Rajan 2003).

Sociological Perspectives on Law

The sociology of law defines law as "rules of action" or "statuses established" by authorities such as states. The early social theorists such as Karl Marx and Emile Durkheim did not write a systematized treatise of law. Alan Hunt (1981:91) proposed that the reason why there is no Marxist theory of Law is that, law never constituted a specific object of inquiry for either Marx or Engels. He is of the opinion that the creation of Marxist theory of law is an ongoing subject. Though Marx himself did not devote much space to law, he nevertheless had much to say about it. First, law is presented as part of the bourgeois state; it was an instrument of class oppression. Secondly, since the ruling

ideas of a period are the ideas of the ruling class, legal concepts such as "rights" are part of the system of bourgeois domination. Law is 'presented as an agency of conflict, not integration, which functions to protect and preserve not common and shared interests, but dominant interests variously conceptualized as class or elite interests' (1981:95).

Emile Durkheim in his work *The Division of Labour in Society* (1893) emphasized the legal systems of societies in mechanically solidarities societies. His book on *Professional Ethics and Civic Morals* (1950) contains a significant account of development of contract and property law during the 19th century. Among the founding fathers, Max Weber discusses law in his work *Economy and Society* (1922). He considered law as an integrative force in society which is different from Marx's view. This indicates the different concepts of law among the social theorists. The pioneer of Sociology of Law was Sir Henry Sumner Maine, and others such as W.G Sumners, E.A Ross, Bronislaw Malinowski and Simon Roberts also provide different perspectives on understanding law.

It is difficult to give a clear cut theoretical definition of law. According to Petrazycki (1955), by law he means which is experienced as "imperative-attributive" in its character. Imperativeness refers to obligation, while attributiveness refers to right or claim and obligation. He states, 'Law is that which has to do on the one hand with someone's obligation to do (or to desist from doing) something, and on the other with someone else's demand that the action or desisting identified by the obligation carried out'. Petrazycki further distinguishes between the moral and legal phenomena saying that a moral experience is marked only by the feeling of "obligation", while a law-related experience is additionally marked by the "ascribing of a right" to someone. The former is precise since law is always marked by "moral obligation", but then there is uncertainty in the latter. Because sometimes law may not be additionally marked by "ascribing of a right" to someone, law may be a concern with the maintaining of social order which comes before individual's rights also demanded "duty" and "responsibilities" (Petrazycki 1955; Podgorecki 1974:191).

Indra Deva argues that one of the major problems and difficulties underlining the concept of law is because of the "western conceptualization" of law in terms of its own institution. Since this kind of conceptualized framework of modern centralized state and its instrumentalities have few similarities with the "non-modern" social system, it tends to narrow down the vision to such an extent that even the need to enforce law in some societies is denied (Deva 2005). This is quite similar to that of Simon Roberts's argument. Roberts states that because of the use of English law (I take it as western concept of law) some lawyers who work in small scale societies have misunderstood other people's institutions of social control through adhering to preconceptions they have formed about their own. What they considered law was generally assumed as 'laws which derived from a common law or civil law model' (1976:672). However, there are laws operating in small scale society which are based on the customs and traditions of the people. It is necessary to break away from the concepts and institutions of western legal system if we are to understand the control mechanism operating in other societies such as tribal society.

Malinowski's famous work on the Trobriand Islanders '*Crime and Custom in Savage Society*' (1926) illustrates the process by which people were constrained to adhere to rules and customs (see Moore 1969). Malinowski highlighted that though there are no courts and "described legal system", however, the society has its own ways of dealing disputes and settling. Malinowski summarised his position as follows:

> In such primitive communities I personally believe that law ought to be defined by function and not by form, that is we ought to see what are the arrangements, the sociological realities, the cultural mechanisms which act for the enforcement of law (cited in Roberts 1976: 674).

Malinowski used the term "law" here implying to all modes of social control. His opinion includes though the western legal institution have no direct counterparts in some societies, their functions in maintaining continuity and handling conflict have to be performed somehow in all of them (Roberts 1979). Malinowski plays a major part in introducing new concepts of laws in particular laws in small scale societies. Malinowski's work also raised theoretical questions about written law. Sally Moore

(1969) is of the opinion that, Malinowski's "bold strokes" open new level of understanding of law among the Anthropologists. A theory of primitive law like Hartland's (1924) suggests that, the primitive man automatically obeyed the customs of his tribe because he was absolutely "bound" by tradition. Malinowski on the other hand was less concerned with "prohibitions and sanctions", but he was rather taken by the 'positive inducements to conformity to be found in reciprocal obligations, complementary rights and good reputation' (Moore 1969). Malinowski's view is that, the social and economic stake of the man coupled with one's wishes to remain in "good standing among his fellows" is as the dynamic force behind the performance of obligations. Sally Moore comments:

> He perceived the social and economic stake of the man who wished to remain in good standing among his fellows as the dynamic force behind the performance of obligations. But if the law is so much the stuff behind ordinary social life that it is embodied in all binding obligations, then nothing but a full account of social relations in a society will adequately explain the content and workings of its law. In a way, this is quite true, and is continuously being rediscovered (1969:257).

Bernnett and Vermeulen (1980:211-212) argue, western jurisprudence has refused to seek a proper understanding of the nature of customary law, rather western lawyers have been concerned to define the concept of law in terms of the various common and civil law legal system. To the western mind, law connotes a system of rules which are to be applied by a court to the appropriate facts which are proved during the trial procedure.

The idea of law and definition of law can open up more doors for confusion and debates. Dhagamwar (2006:12) states, 'The Law means different things to different people, and what it means depend on how well they can deal with it'. In order to have a concept of law comprehensive enough to be applicable to all kinds of social system, one needs to view law in a broad sense. Sociologists look upon law as a sub-system of the socio-culture as a whole. Law is very much part of the socio-cultural system of the society and custom, traditions and beliefs/religion play an integral part in forming the laws. The need for legal system is also a function of human beings living in the society. Upendra Baxi (1982) refers to the police, lawyers, the courts and the jails, and the

legislature as forming the legal system. Broadly speaking laws are present in every layer of the society. Moore states, not only does every society have law, but virtually all significant social institutions also have legal aspects. In order to understand the whole legal system of one society, one must master the whole institutional system of that society- 'from citizenship and political place to property and economic relations, from birth to death, and from dispute to peaceful transaction' (1969:253).

Legal Traditions

Legal structure can be divided mainly into two divisions, "civil law" and "common law". Ghosh (2007:6-7) expressed the important distinction between the two, 'whereas in civil law importance is given to legislation and theories of law, in common law precedents in judgement receive priority. Common law is thus a case based law'. Europe is the source of the present legal system in almost all modern nations. Within Europe, there are two major patterns; one is civil law, and the other, common law. Civil law represents the sets of law comprising Roman and Germanic traditions together with ecclesiastical, feudal and local experiences, while the system of common law is constituted by the law of England and that of those countries to which it migrated and, in the process, included the local religious and customary features. The most notable English common law countries are the United States, Canada, Australia, New Zealand, the Republic of Ireland and the West Indies. The modified version of English common law prevails in India, Pakistan, Bangladesh, Sri Lanka, Myanmar, Malaysia and Singapore, Liberia, Africa and Oceania where the British ruled.

In India and other South Asian countries, the demand for codification of their personal and customary laws as well as the importance attached to their actual or potential interpretations by learned judges prove the coexistence of both civil and common law traditions in this region, together with the massive inputs from history and traditions (Ghosh 2007).

Centrist and Pluralist Concepts of Law

There are two main basic approaches to study the interface between the state and the law – centrist and pluralist. According to Tie (2000:885), 'Legal centralism suggests that democratic societies function under one uniform rule of law, based on sets of statues, legal principles and professionally organised training' (cited in Ghosh 2007:22). Legal pluralism recognises the coexistence of two or more system of law in one single political space (Ghosh 2007; Jaising 2005). According to Beckman (2001), legal pluralism is a result of recognition of one legal system by another legal system. A plural legal system indicates a political formation where more than one system of laws applies. South Asian countries such as India, Sri Lanka, Bangladesh and Pakistan are governed by legal plural systems. Indira Jaising (2005) argues that this is a colonial legacy they inherited, a common problem of plural legal systems.

Legal Pluralism

Legal pluralism starts from the rejection of legal centralism- that law necessarily is the law of the state, is uniform and exclusive and is administered by state institutions (Snyder 1981:155). There are different approaches to legal pluralism/multiple legal system; the first is a purely descriptive attempt which resulted from transfer of legal system across cultural boundaries (Snyder 1981; Griffiths 2002). According to this approach, the process began around 17th century, since then there has been an expansion of civil and common law outside Europe in 19th and 20th century. These European laws came into contact with non-European laws which include moral, ethical and un-written laws, whose principles are drawn from a variety of cultures (e.g. Malinowski 1926). The second approach is an associated approach or refined description attempt. This approach takes up the question of diversity of laws and how it came to be and take it further as implying multiple obligations within the confines of the state (Coterrell 1984; Galanter 1981).

Multiplication of obligation arises in four ways: - firstly, through the medium of colonial laws, where the formal legal structure is determined by imported law. Secondly, in those states which were once colonies, indigenous people are treated as second class or

disadvantaged groups (e.g. U.S, Canada, New Zealand, South Africa, and Australia). In each of these, the status of indigenous population shows the ambiguity of the laws. The native populations may or may not be citizens, and are subjects in large degree of every state law. But the operation of state law is limited by some protective legislation (e.g. the discovery of North East Frontier). Their system of obligations also strategically depends on the governance of the state supported by the state. Thirdly, in those states that adopted western laws with the motive of modernizing themselves. The aim here in these states are to replace the existing legal system with a national legal system based on modern models (e.g. Turkey, Thailand, Utopia) where legal change is directed towards social and economic change. Fourth and last is where the traditional system is abolished through penal statutes (Cotterrell 1984; Bernnett and Vermeulen 1980).

Another approach to legal pluralism is that which comes from sociology or standard political science, Upendra Baxi states that legal pluralism makes certain assumptions concerning the nature of state and civil society. However, this assumption cannot be subsumed by "interest group pluralism". According to Baxi, the broad notion of legal pluralism stands for nine core propositions. He further states that these nine propositions do not bind the general theory of legal pluralism. Any critical legal pluralism must involve both the state legal system (SLS) and Non-state legal system (NSLS). Legal pluralism can be as repressive if not more repressive than legal centralism. According to Baxi, the non-state legal system as an expression of non-sovereign power and can be "self-consciously repressive". Also, the repressive character of NSLS could be originally liberating because of certain processes and somehow gets transformed into repressive apparatus (Baxi 1986: 51-52).

In Hindu law, scriptural sanction, and religious laws are clear examples of NSLS being self-consciously repressive. These are either expressed through religious law or other domains. Every society has its own inventory of repressive system of NSLS. It has a reference to certain complex tradition. Baxi makes an interesting point that there is a connection between NSLS and status of women, and also the idea that the states offer an arena for emancipation of women is somewhat a utopia. He also states that legal

pluralism is simply incomprehensible unless we consider a plurality of power structures. Baxi draws from Michel Foucault's theory of power to explain legal pluralism (Baxi 1986).

Debates within Legal Pluralism

Chris Fuller (1994:10) states legal pluralism is a 'Diffuse, contested and arguably unsatisfactory phrase'. Snyder (1981:151-157) also pointed out, there is no satisfactory theory of legal pluralism. Legal theorists have offered different understanding and interpretations. Griffiths offers a "descriptive theory of legal pluralism" within a positive sociological framework. Meanwhile theorists like Fitzpatrick sought to use Moore's notion of semi-autonomous social fields to develop a materialistic/structuralist conception of pluralism in underdeveloped countries.

Merry (1988) classified two forms of legal pluralism- the "classic" and "new" forms. The classic legal pluralism primarily focuses on the relation between indigenous and originally foreign (European) law in colonial and post colonial societies. The most notable results of the classic legal pluralism demonstrated that traditional law was constructed, partly through the dialectical relation with state law during colonial period, and that 'this fact is crucial for the analysis of law'. In addition to work on Africa, research on India done by scholars such as; Marc Galanter (1984;1989), Derrett (1968) and Bernard Cohn (1989), may be recognised for 'their penetrating scholarship in a complex field wherein 'traditional' law encompasses the classical Hindu and Islamic legal systems, as well as the 'customary' law prevailing among ordinary people at local level' (Fuller 1994:10). On the other hand, the concept of "new" legal pluralism focuses on the 'existence of plural normative orders within modern, western societies in particular'. Fuller writes:

> Often allied with the school of critical legal studies, scholars of "new" legal pluralism often reject the preoccupation with the state law characteristic of conventional jurisprudence, and are themselves critics of the official legal ideology proclaiming the law of the state as the only normative order. Because the study of new legal pluralism is mainly concerned with western, its connection with older legal anthropology may not be very close...Moreover, studies of new legal pluralism do

> draw heavily on those of classic legal pluralism, and they are conversely relevant to the investigation of plural normative orders within non-western societies as well (1994:10).

Fuller is of the opinion that, the usage of legal pluralism is "faulty" because, the coexistence of plural legal or normative order is nothing new rather it is a universal fact of the modern world. It merely confirmed that homogeneous society does not actually exist. Fuller argued, legal orders are not "equally legal", but also legal pluralism is 'partially a relation of dominance, and possible resistance' that must be understood and should be able to explain through non-legal context (1994:10). This view suggests that legal pluralism does not adequately address the ongoing debates and problems within the legal realm of the society.

The debate within legal pluralism is inevitable, as Griffiths (2002:289) pointed out, 'On the one hand, state law defines the conditions under which legal pluralism is said to exist. On the other, its centrality is displaced by the recognition that state law may be only one of a number of elements that give rise to a situation of legal pluralism'. Griffiths is of the opinion that whatever form it takes legal pluralism is important and central to the understanding the meaning and scope of law, because it raises important questions about power such as: - 'Where it is located, how it is constituted, what forms it takes- in ways that promote a more finely tuned and sophisticated analysis of continuity, transformation and change in society'.

Much of early explanation of legal pluralism was associated with "weak", "juristic" or "classical" legal pluralism. Griffiths points out why many scholars have rejected this model. According to her, these models only reflect 'a legal centralist or formalist model of law'. She argued that it has consequences for the ways in which we perceive law. Under this model, authority became centralised in the form of the state, represented through government, the most visible manifestation of which is legislature. Law was considered as gaining its authority from the state, and eventually becoming part of the process of the government. In Giffiths's words, 'This authority, at its most basic level, was upheld through the power to impose or enforce sanctions' (2002: 292).

Laws in India

India is governed by a legal plural system. In India, laws can be broadly categorized into two types; the first one is that which we know as "state laws" or constitutional laws enforced by the state government which is secular in nature and more located in the "public" layer of the society. The second is what we consider as "family laws or personal laws" ('codified religious laws/ or 'customary laws') which are confined within the "private" domain of the society, and whose association with the lives of the individual is more intimate (Jaising 2005). The former formed the constitution and deals with several issues such as the welfare of citizens, ensuring social security, fundamental rights, crime and punishment etc. The latter is mostly confined within the "private" domain of society and deals with marriage, divorce, custom etc. Indira Jaising critiques the "public/private" divide as it legitimizes gender inequality. The applicability of separate systems of law in the public and personal domains is legitimised by the continuance of personal laws. She states, 'This position has been justified by the State on grounds of non-interference with the right to religious practice of communities, thereby supposedly according precedence to religious rights over women's right to equality' (2005:5).

Personal Laws

There is no precise definition of the term "Personal law". According to Jaising (2005:2), laws that apply to individuals by virtue of the religion to which they belong are "personal laws". Ghosh (2007) expressed, there is a basic contradiction in the term "personal law". On the face of it, since a person is an individual, as such, any right of an individual should mean that it is a personal right. 'But personal law connotes a set of legal rights pertaining to family affairs that an individual is entitled to not just by virtue of being individual but by virtue of being a member of a religious or ethnic group or community' (Ghosh 2007:9). "Personal laws" are laws that relate to the regulation of the family. Jaising argued, 'They define the family and thus constitute it as a heterosexual unit that has legal sanction to cohabit through the recognition of marriage…' These include the legal sanction to cohabit through the "recognition" of marriage, controls the

rights of individuals within the family as "wives", "mother", "sisters", "brothers" and "widows" (2005:2).

Hindu, Muslim, Christian and Parsi communities are governed by their respective religious personal laws especially in matters of marriage, divorce, inheritance and property rights. Archana Parashar pointed out, in all these personal laws; women have lower rights than men. Hindu law remains the only law till date that has been "extensively modified" by the legislature. Though Hindu women seem to be the main "beneficiaries" of these changes, yet, 'they have not managed to attain a complete parity of right' (2005:287). Other communities' laws largely remain untouched.

Hindu Law

In a broad sense, Hindu law is a combination of *shashtric* injunctions and customary traditions. Hindu law essentially revolves around the concept of *dharma.* Though in common practice *dharma* means religion, in the cultural context, it has a wider meaning that "encompasses righteousness". 'As such *dharmashashtras* were not religious treatises in the strict sense. *Dharma* meant the aggregate of duties and obligations, moral, social and legal' (Ghosh 2007:13). The *dharmashashtras* describe three sources of dharma: the Vedas, the *smritis* and good customs. Vedas are of primary significance and others follow in order of decreasing importance. The Vedas or *sruti*, constitute the fundamental source of *dharma* (Parashar 1992:48-49). Over a period of time Hindu laws have undergone several changes. During the colonial period, there was an attempt to codify Hindu laws, which was mostly based upon the Brahmanical scriptures.[1]

Muslim Laws

Unlike Hindu laws, Parashar (1992:58) states, 'The rules of Islamic law are not solely constituted by divinely revealed, immutable injunctions. They have acquired their present form by a process of historical development'. Muslims are broadly divided into Sunnis and Shias. South Asian Muslims are mostly Sunni. There are four major Sunni

[1] Implications of "Personal Law" on marriage, divorce and property rights will be discussed in chapter 4, 5 and 6 respectively.

Schools of Islamic legal thought (*fiqh*), namely, Hanfi, Maliki, Shafi and Hanbali. Depending upon the cultural, political and socio-economic milieus in which they are developed and also upon philosophy of reasoning, each school has differed from the other in some sense or the other (Ghosh 2007: 16).

Christian Laws

Christian Personal Law is intended for the Christian community in India. The law provides how marriage and divorce should be conducted among the Christian population in India. The law relating to divorce among Christians is contained in the Indian Divorce Act, 1869 and the law relating to marriage is contained in Indian Christian Marriage Act, 1872. Both these enactments are based on the law 'as it then stood in England'. Based on these enactments, marriage ties were almost in dissolvable. As argued by several scholars, the Christian Personal Laws originate in the English law. However, with a view to adjust the law to changes, the British has enacted a number of statutes culminating in the Marriage Acts, 1949 and 1954, and the Matrimonial Causes Act, 1950. In India, the law that was originally enacted in 1869 and 1872 remains practically unchanged up to the 21st century (Massey 1963; Agnes 2000).

Archana Parashar (1992) points out, Christian women, like other religious communities, have fewer rights than men in personal matters. However, unlike the other communities, Christian Personal Law consists mainly of state-made law. Parashar stressed that the British government was more confident about legislating for Christians than Muslims or Hindus, however, the promulgation of the Government of India Act, 1935, did not result in bills being introduced to reform Christian personal laws. After India's independence, the government did not reform Christian personal law although the commission prepared two reports (fifteenth and Ninetieth Reports of the Law Commission of India 1960 and 1983). In 1962, the government introduced the Christian Marriage and Matrimonial Causes bill (Bill 62B of 1962) in the Lok Sabha.

The Lok Sabha shows no record of any discussion on this bill which lapsed in 1971. It is generally believed that the government acceded to the wishes of some

Christian Bishops who were opposed to the contemplated reform. Since then no further effort has been made to reform any aspect of Christian personal law. In 1983, the Law Commission again prepared another report on the grounds for divorce for Christians but the government has yet to act upon its recommendation. There is no direct information available about the government's view on the matter of Christian personal law reform although the government has been made aware of the demand at least by a certain section of the community, for changing their personal laws (Parashar 1992:189-190).

Parsi Personal Laws

Besides the Hindu and Muslim and Christian personal laws, there are also Parsi personal laws. Unlike Hindu and Muslim personal laws, which have religious basis, Parsi personal law has no religious foundation though all Parsis are Zoroastrians. Their personal law is largely based on Hindu customary laws and English common laws (Ghosh 2007: 16- 17).

Customary Laws

Personal laws are mostly based upon religious ideology and are usually written or documented. Whereas, customary laws means those legal norms established by or founded upon law or official accepted rules having legal efficacy or force. The customary laws are usually unwritten, if customary laws are to be written and had to go through codification, it is assumed that it will undergo inevitable changes (Beckmann 2001). Basic to the customary laws is acceptance by the members of the community. In modern times, most customary laws have undergone changes in their content, interpretation and enforcement (Fernandes 2004).

Customary Law or "tribal law" as some have put, is not the same as "personal law". Personal laws are based on religious ideology whereas tribal laws or customary laws are more or less based on the customs and traditions of the people. Ghosh states that, 'Personal law is not territory-specific and its application is generally determined by the community to which persons belong by birth or the religion to which they adhere…in contrast, customary law is generally territory-specific' (2007:129).

To understand what tribal customary law is one must first understand what a tribe is. Sociologists and Anthropologists usually define tribes as 'This term usually denotes a social group bound together by kin and duty and associated with a particular territory' (Marshall 1994:674). In India, popular opinion about tribe people is divided and ambivalent. During the British rule, census commissioners faced considerable difficulties in deciding where the category of tribe ends and caste begins. In 1881, when the first proper all-India was conducted the word 'forest tribe' was introduced (Ghosh 2007:128). The tribe are also referred to as indigenous people. According to Virginius Xaxa, 'The Indian-language term for the indigenous people freely to refer to the tribal people'[2]. He argued that the term has been extensively used by scholars and administrators in their writings and reports mainly as a mark of identification and differentiation, that is, to mark out a group of people different in physical features, language, religion, custom, social organisation etc. (1999:3590).

The tribal society is characterised by distinctive features from caste society. According to Xaxa,

> It has generally been assumed that tribe and caste represent two different forms of social organisations castes being regulated by the hereditary division of labour, hierarchy, the principle of purity and pollution, civic and religious disabilities, etc, and tribes being characterised by the absence of the caste attributes. The two types of social organisations are seen as being governed by different principles. It is said that kinship bonds govern tribal society. Each individual is hence considered equal to the others. The lineage and clan tend to be the chief unit of ownership as well as of production and consumption. In contrast, inequality, dependency and subordination are integral features of caste society (1999: 1519).

Tribals in India form 8.2 % of the Indian total population. The tribal populated states are Arunachal Pradesh, Chhattisgarh, Jharkhand, Meghalaya, Mizoram and Nagaland. Barring Chhattisgarh and Jharkhand, which are so-called tribal states without tribal majority, the remaining four are almost entirely tribal.

[2] Xaxa states, 'defining 'tribe' has conceptual as well as empirical problems for the academician. But this term of administrative convenience has now been adopted by the tribals themselves to mean the dispossessed, deprived people of a region' (1999: 3589).

Feminist Perspectives on Law and Religious Institutions

The functioning of legal and religious institutions is often critiqued by feminists. Feminist legal scholars argue that legal theory reflects an "ideology of male supremacy". The legal system is fundamentally patriarchal in its method, content, theory, personnel, process, and outcome (Daly 1990; Lahey 1987). Maria Drakopoulou pointed out, "women suffered by law". She argues, the oppression of women is routinely comprehended as stemming from women's social reality and considered "natural" feature of any society, whether ancient, medieval, modern or postmodern (Drakopoulou 2000: 47-50). Feminist legal studies exposed the absence of women and women's issues from the agenda of legal study, and also highlighted the discrimination of law based on gender.

Feminist Legal Studies

Feminist legal theory is based on the belief that the law has been instrumental in women's subordination. Susan Atkins and Brenda Hoggett, *Women and the Law* (1984) opened up the possibility that law's contribution to the sexing or gendering of its subjects might interact with other social forces, hence constituting multiple female subject positions. Maria Drakopoulou (2000:48) points out, 'feminist legal scholarship' or 'a tradition of feminist legal thinking', is a logic derived from a belief that an intimate and singular relationship exists between women and law, such that law participates in women's social subordination.

Feminist legal theory seeks to explain ways in which the law played a role in women's former subordinate status and argued that laws need to be reformed. There are many theories within feminist jurisprudence. Each theory of feminist jurisprudence evaluates and critiques the law by examining the relationship between gender, sexuality, power, individual rights, and the judicial system as a whole; the second wave women's movement of the late 1960s and 1970s gave a fresh impetus to feminist thought, and in particular stimulated the gradual entry of feminist ideas into the academy in response to political and intellectual developments in the legal field of law (Lacey 2000; Wiesberg 1993). Nicola Lacey points out that the early feminist legal scholarship pointed out and exposed the absence of women and women's issues from the agenda of legal study. This

was followed by questions such as domestic and sexual violence, family and criminal law and the need to review such laws. Women's 'distinctive position in the economy began to be acknowledged in labour law and social welfare law courses'[3]. In simple terms, we may say that feminist legal study helped make women or gender question visible.

Feminists critique law as being patriarchal, male-dominated legal doctrine that defines and protects men, not women. By discounting gender differences, the prevailing conception of law perpetuates patriarchal power. Because men have most of the social, economic, and political power, they use the system to subordinate women in the public spheres of politics and economics as well as in the private spheres of family and sex (Carbone 1994). The language, logic, and structure of the law are male created, which reinforces male values. Most troubling, these concepts and values are presented as it is and are widely perceived to be both neutral and objective, and even the state which is dominated by male perpetuate such ideologies (Lahey 1987; Agnes 2005). Feminists challenge biological determinism, the belief that the biology makeup of men and women is so different that certain behavior can be attributed on the basis of sex. They argued that biological is used to curtail women's power and their options in society. Certain roles and responsibilities imposed on women are the product of societal rather than biological norms. Sex is viewed as ascribed status and gender is an achieved one (Bhasin 2000; Lindsey 1997), and gender is created socially, not biologically. In analyzing the workings of gender in the law, feminists seek equality between men and women. They demanded reconstitution of legal practices that have excluded women's interests.

Feminist Critique of Religion

Religious prescriptions on gender roles are often criticized by feminists as being too patriarchal. Rosemary Reuther suggests that religion is the most important enforcer of the image of the traditional role of women in culture and society (Reuther 1974). Religion has been one of the strongest forces in upholding the institution of patriarchal family (Dietrich 1986). Religion can be considered a central part of culture which

[3] Nicola Lacey. 'Feminist Legal Theory and the Rights of Women', retrieved from, http://www.yale.edu/wff/cbg/pdf/LaceyPaperFeministLegalTheory.pdf

regularly communicates a great deal about the relative roles of women and men (Burn 2000:159). Therefore, religion is one of the most important cultural agents that shape our conceptions and perceptions of female and male, and our conceptions of male and female are clearly the reflection of our culture.

Feminist critiques of religion suggest that most of the religious texts tell us that status relation to women is "appropriate" and "acceptable". For instance, a Christian woman is made to feel that she is secondary to her husband. The main texts of Christianity rarely include women as the major actors. Thus, we rarely find female ministers, bishops, priests, rabbis, gurus or Sadhus (Burn 2000). Feminists criticize the use of male imagery when referring to God, the father, and the son. But theologians are quick to point that God is neither male nor female, no one knows the gender identity of God and it is not to be considered in any sexual terms at all. However, the prayer and how they address God is depicted in masculine terms. Radical feminists have argued that, despite the claim of Christianity that God is above sex, it has been characteristically depicted and refers to God as "he" and how he commands the subordination of women (Clarke at el 1977). This is a key factor in shaping one's perception of oneself. When God was identified as male, a hierarchy of value was established. Since man was made in God's image and God was male, females were excluded from participation in that image (Collins 1979:224-225).

Since our religious beliefs have direct impact on one's self, it is true that women themselves may feel bound to certain restriction drawn upon them. Some may feel oppressed because it excludes them and denigrates them while some may feel empowered because it offers them a place of belonging, comfort, acceptance, and encouragement (Shaw and Lee 2001). And sometimes women are socialized to accept the sufferings in the name of their patriarchal religious beliefs. In other words, religions are used in the oppression of women (Burn 2001). As El- Saadawi (1987) says, religion is flexible sometimes to the point of being manipulated by those who are in power. Religion practices sometimes change with power and those who have the power change religious norms according to their own interest, not according to the interest of the people.

Women and Law in India

Like any other parts of the world, laws in India also reflect "ideology of male supremacy". Family laws such as: - religious personal laws (Hindu, Muslim and Christian) and customary laws tend to discriminate women. Janaki Nair (1996) says that personal laws discriminate women in the most fundamental ways. The state has failed to enact laws in favour of women. In fact, women struggle to have laws which will give them the same provision as men. Indian feminists critique personal laws such as Hindu, Muslim and Christian laws for its patriarchal ideology. Legal reform was necessary as women have no legal rights.

Women's movement in India has been engaging with laws throughout centuries. In the initial stage, the idea that law can be reformed to end oppression of women was strongly believed in India. No doubt, the movement has played an important part in releasing women from the previous oppression that they suffered to a certain extent. I will give a brief account of legal reforms and the movement's engagement with law in India.

Pre-Independent India

Law reform attempt first started during the colonial period. During that time, issues related to women such as Sati, widow remarriage and child marriage were raised. One of the most debated issues which related to women's lives was Sati. It can be broadly divided into four themes such as early phase of sati, widow re-marriage, child marriage and education.

Sati

The British saw the practice of Sati (widow immolation) as "barbaric" and "uncivilized". The early writings of the British highlighted the "peculiarities" and "barbarities" Hindu tradition to which Indian woman was the subject. According to Janaki Nair, the most common strategy adopted by all imperial power in the 19th century was highlighting the 'denigration of politically and economically subjected cultures by

foregrounding the position of women in those societies, compared with the more obvious freedoms of the European woman' (1996 50-51). This was done by pointing out the most unusual of cultural practices for attention, which were then taken as representative of the culture as a whole and worthy of reform. In fact, the practice of sati was not a common practice. However, 'regional variation in the mode of committing sati' was ignored by the colonial officials (Mani 2006).

When the social reform movement took place in the 19th century in Bengal, women's issues were discussed at length. The early 19th century was marked with the struggle of social reform led by prominent personalities like Raja Ram Mohan Roy. From the latter half of the century educated women began raising their voices. There were two cases which drew the national attention and also which marked the beginning of women's direct involvement with the movement. The first is the tragic case of a young Brahmin widow, Vijayalaksmi, who murdered her illegitimate child in 1881. Vijayalaksmi was condemned to death by a Session judge in Surat on the ground of "moral depravity". Some women including Tarabai fought the judgment and took up the case. As a result, the sentence was commuted to life imprisonment and later reduced to five years. Aparna Basu points out, there was a fierce debate regarding this issue, especially a strong opposition from male writers who accused Vijayalaksmi of "being immoral". In reaction, Tarabhai pointed out the double standards men apply while dealing with men and women. She points out 'inconsistencies of the *shastras* and the disjuncture between the scriptures and reality'. The issue marked the very early critique of patriarchy. Basu pointed out, 'It was an indictment of male hypocrisy, but equally was a call for national justice that did not force women to shoulder the burden of morality alone' (2008:6).

The second was Rukmabhai's case. This was a great deal of debate through newspapers all over India. Rukmabhai was married at the age of 11 to Dadaji Bhikaji. The marriage was never consummated and she refused to go back to him. Most of the men had stood together and stated that she should go back to her husband. This case resulted in people like Pandita Saraswati to expose the contradictions in the *shashtra* vis-a-vis upper caste Hindu women. Pandita Saraswati saw 'the complicity between the

supposedly reformatory impulse of the colonial system and the reconstituted Indian patriarchy, which increased the oppression of women' (Basu 2008:6).

As mentioned, the issue of child marriage, Sati and widow remarriage has been brought up before during the social reform of 19th century mainly in Bengal. Though women's issues were discussed, there was little involvement of women themselves. Since the 1920's women became involved in a bigger way. Also, one notable change was that by this time, the debates on child marriage issue had shifted from Bengal to Maharashtra.

Child Marriage

Though women like Tarabhai Shinde and Ramabhai Saraswati had spoken against child marriage, the issue did not really capture the interest of the larger women section until 1920's. This era also marked the beginning of the Gandhian freedom movement as well as the formation of women's organizations like All India Women's Conference (AIWC) in 1927 and the National Women Council (NWC). During this period, demands were made to raise the age of marriage. The government sponsored a Bill in 1925 to raise the age of consent. In 1927, Harbilal Sharda introduced a Bill increasing the age of consent for a girl to 14 and boys to 18. He stated that this was necessary in order to prevent early marriage. At the same time, a second Bill called Children Protection Bill was introduced by Sir Harisingh Gaur, who later became the Vice Chancellor of Delhi University. Harbilal Shardar's Bill was referred to a select committee and it was argued that the Bill should not only apply to Hindus, but to all communities.

Women's Education

The AIWC became more active towards this campaign. Initially the AIWC was advocating for education, but later realized that women's education could not progress unless the age of marriage was raised. It passed the resolution that the minimum age of marriage should not be 14, but should be 16 for girls and strongly supported Hari Singh Gaur's Bill. Around this time, the government also appointed the Joshi Committee led by N.N Joshi to discuss both the Bills of Hadbilal Shardar and Hari Singh Gaur. A resolution was passed to elect a small committee to watch and report on the progress of the Bill and

co-ordinate and direct the activities of the various provincial committees. Small committees were formed in each province to put pressure on their local members of parliament to pass this Bill. A huge campaign was launched against child marriage through public participation, articles, propaganda, posters and even postcards with many signatures were sent to parliament. During 1928 -1929, AIWC strongly campaigned against child marriage, they brought out to public the ill effect of child marriage on health, education etc. Finally, with a fairly substantial majority (77 members voted and only 14 were against) the Bill became law. However, the age of marriage was not fixed at 16 for girls, but at 14. However, it is found that the law did not really achieve what was expected. Child marriage still continued and the Census report of 1931 shows that many more child marriages took place in that year. The reason was that before the Bill became an Act, and child marriages were made illegal, parents rushed their children to get married. This shows that getting a law was not enough, it had to be followed up, implemented and women organizations also realized much more work had to be done to change society (Basu 2008).

During the 1930's, women's movement took up the right to divorce, and inheritance and control of property. The AIWC for instance, formed a committee on legal status, undertook studies, talked to lawyers, published pamphlets and articles etc. They argued that the Hindu law should be reformed. During this time, the state of Baroda had passed a law on divorce. This strengthened the women's movement argument and justified their statement that if an Indian princely state could do it, why couldn't British India? Meanwhile, Dr Hafiz Abdullah, the then Member of Legislative Assembly argued that not only the Hindu law but also the Muslim Personal Law should be reformed. A bill for preventing polygamous marriages by Radha Subbarayan was also put forward. The women's movement also wanted an amendment in the Special Marriage Act, 1872, and suggested that this should be made applicable to all Hindus and not just the Brahmos. They demanded equal rights for women in inheritance and control of property. After a great deal of pressure from the women's movement, the government finally formed a committee under Sir B.N.Rao, D.N.Mitter and V.V Joshi from Baroda but interestingly no woman member was appointed as a committee member (Parashar 1992; Basu 2008).

However, women witnesses were called to give evidence before the B.N Rao Committee. When the quit India movement was launched in 1942, the women's movement faced a dilemma as to whether or not women should cooperate with the government. Gandhiji's famous statement was 'These issues concern elite women and that there should be concentration of fighting for freedom'. This was endorsed by Rajkumari Amrit Kaur who also suggested that women should cooperate in the freedom struggle (Basu 2008).

Post-Independence Struggle

In post independent India, the women's movement addressed various issues concerning women's rights. Even in pre-independence period, women's movement played a vital role in implementing laws that concern women's rights. There is no doubt that women's movement is responsible for laws which have been passed or amended. Lawyer Kirti Singh is of the opinion that certain areas where women's legal status has not improved could be because of "the lack of prioritization by the women's movement". She points out an example such as, the area of family law/laws within the home. Since the 1970's women's movement focused more on laws relating to violence against women. They have been fighting against various forms of widespread violence such as: - dowry related violence, rape, female foeticide and other forms of sexual assault (Singh 2008:9). One may say that the question of inheritance rights and other women's legal status was pretty much taken over by the issue of sexual violence.

There are certain new laws being passed and amended such as the introduction of Dowry Prohibition Act 1961, and the amendments in 1983, 1985 and 1986.The amendments of rape laws in 1983, the introduction of labour legislations concerning women such as Equal Remuneration Act and the Maternity Benefit Act. In the 1980's laws such as Sati Prohibition Act, the PITA and ITPA, the National Commission of Women Act and the Protection against Domestic Violence Act were passed. Kirti Singh (2008:10) classified the changes and reforms of law in the post independence period into three broad categories. The first category is laws which recognise certain rights of women

which previously did not exist, such as Hindu law reforms in the 1950's, which now acknowledged and highlighted certain rights of women within marriage. Kirti Singh highlights, though there were law reform taking place in the area of labour legislation, Christian marriage and divorce amended in 2005 and also reforms of Hindu personal laws and introduction of the Hindu Succession Act, 1956, these laws grant women better rights but only at certain levels. Women were given "only partial rights" and not equality. She further points out that the laws that were introduced and reforms during the 1950's could be characterized, as a member of parliament at that time said "mild moderate reforms".

Violence against Women

The second category is the introduction of laws that define and recognize certain acts of violence against women. The second broad trend in the post-independence law reform according to Kirti Singh focused much on violence against women. The new offence called "dowry death" was introduced in IPC, which allowed punishing of the husband and his family for dowry harassment, physical and mental torture. 'This offence defined a new species of murder, which occurred in specific Indian situations' (Singh 2008:10). The definition also took an account of the fact that in cases of dowry death, it is difficult to gather evidence and usually there are no eye witnesses. The Dowry Prohibition Act itself sought to define the offence of giving and taking dowry, and made it punishable. Hence, an amendment to this Act in 1986 shifted the burden of proof to the accused person. This is in contrast to the previous situation where the burden of proof lies on the person making the allegations. During the first phase of the violence against women, "dowry violence" was taken as the dominant concept for understanding violence within the family. However, it was soon realised that focus on dowry alone failed to address the unequal power relations within the family that caused persistence of domestic violence. Eventually, the focus on "dowry violence" gave way to broader notions of "wife beating" or "wife battering" and then to the use of the term "domestic violence" (Suneetha and Nagaraj 2006).

The third category is the "discriminatory laws", these are laws which have been amended, or which women's organizations and groups are seeking to amend. For instance, archaic Victorian laws like 377 IPC, which target oral, anal and other forms of consensual sex and homosexuality. Section 377 of the Indian Penal Code was introduced during colonial period. This section declares sexual activity "against the order of nature" as criminal. The AIDWA (All India Democratic Women's Association) re-drafted the Bill and sought to repeal 377 IPC, and also the Bill includes marital rape as a form of rape. Not only this, but also women's groups have also demanded other legal provisions such as: - the restitution of conjugal rights and laws that punish sex workers for soliciting need to be repealed. Kirti Singh proposed that 'the future challenges will be to legislate in areas in which there is still a paucity of laws, like in the area of Registration of Marriage, Marital Property so as to give women further and better rights, and define crimes like "honour killing", which are invisible as far as the law is concerned (Singh 2008:12) .

Attempt to reform Personal Laws

In the post-independence period, though there have been debates and discussions on the reform of personal laws, there have been not much success. During the 1950's the reform of Hindu personal law was discussed and certain reforms were also made. Madhu Kishwar says, the codification and reform of the Hindu personal law was hailed as the symbol of the new government's supposed commitment to the principles of "gender equality and non- discrimination" enshrined in the constitution. However, the history of this legislation and its consequences over the years shows 'a good example of the gap between governmental promise and performance, and the course taken by state-initiated social reform-a process that began with the establishment of British rule in large parts of India' (Kishwar 1994:2145).

Property Rights

The attempt to codify Hindu laws within the reformed laws gave women better rights, however, women are still denied to have equal property rights in the 'Hindu Undivided Family'. The Hindu Succession Act, 1956, gave full ownership rights to women, whereas earlier she had only a limited estate in property and could neither sell

nor alienate property in any manner. Though women were given right to inherit intestate property, she was denied this right in the Mitakshara coparcenary (joint family property). Not only this, there were sections within the congress which were against the reforms. The *Hindu Mahasaba* was against the reforms on the ground of Hindu *Shashtra* and Hindu religion. The party also argued that Hindu men alone could not be targeted since Muslim personal laws remain unchanged. The fact that they were promoting negative concept of equality that stopped women from getting equal rights was of no consequence to them (Singh 2008).

Since the 1970's women's movement focus was somewhat shifted to 'violence against women', and has continued till today. In the 1980's, the women's movement hoped to have Uniform Civil Code, a law which will cover all sections of people irrespective of religions. However, the UCC was not successful though there was a reform of Hindu Code and Hindu law. The women's movement was of the view that introduction of the Uniform Civil Code should benefit women of all religions and communities. Uniform Civil Code was demanded based on the Indian Constitution Article 44 which provides the Directive Principle that 'the state shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. However, even after four decades, although women's organizations have demanded the implementations; the state has not made any progress. Parashar (1992) points out that the main problem in enacting UCC is because it concerns the relationship between the constitution and various religious personal laws. However, after the Shah Bano case and the introduction of the Muslim's (Protection Rights) Act, most constituents of the women's movement started suggesting reforms within each community-based personal law (Singh 2008; Agnes 2011).

Shah Bano was a seventy year old woman who was unilaterally divorced by her husband, who refused to pay her maintenance. Both unilateral divorce and non-payment of maintenance are sanctioned by the Muslim personal law in India. Shah Bano sued her husband under CrPc.125 section a provision that allowed destitute women to ask for maintenance. The lower court granted the petition, however, the case was put up to

Supreme Court because of the protest from Muslim community. The Indian Supreme Court held with her, but her case led to a great deal of Muslim unrest in India which also affected the then Rajiv Gandhi led congress at the centre government. The Shah Bano issue became a political issue and the status of Muslim minority in India was highlighted. It was argued by many people that any change in the status of the personal laws is seen as an assault to the Muslim community (Coomaraswamy 2005).

Contemporary Women's Questions and Legal Reforms

The women's movement in India has been engaged with law for a long time to negotiate women's rights. Though the constitution gives equal rights to individuals; the same constitution gives special provisions to all religious groups and tribal communities which caused conflicts in relation to women's rights. Article 15 of the Indian constitution declared:

> The state shall not discriminate against any citizens on the grounds only of religion, race, caste, sex, place of birth, or any of them.

However, within the constitution itself Article 25 (1) says:

> Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Janaki Nair points out; "On the face of it, Article 25 does not appear to contradict the Article on fundamental rights, since freedom of religion is subject to fundamental rights listed in the part III of the constitution. Yet, in the name of freedom of religion, which leaves personal laws strictly alone, women are discriminated against in the most fundamental ways" (Nair 1996:4-5). Nair rightly points out 'there is no single set of laws which discriminate explicitly on the basis of sex as do personal laws'. However, because of the constitutional mandate, these inequalities within personal laws and customary laws are many times ignored. Indrani Mazumdar has rightly pointed out that, 'We have some advantages in the fact that we have a constitution which defines equality, and we also have the disadvantages of that constitutional mandate of equality operating in a social life of inequality' (2008:28).

Some people used to argue that India has good and just laws, but they are not implemented properly. If laws are to be implemented, as it should be, there would be less discrimination. Janaki Nair says, this problem has a colonial origin which goes back to the nature of law-making. The problem is the assumption that we live in a society where everybody knows their rights and the expectation that 'people will access their own rights in their own way, according to their own need'. Nair writes:

> ...It stems from a colonial framework, or is a given notion stating that it is not the business of the state, but that of the individual to operationalise the law. You may choose to operationalise it, you may choose not to. And this is where non-implementation comes in, because the means with which to implement the law is not available in the law. If they are not available in the law, if they are supposed to be located within individuals, then it is futile to say that the law is not being implemented (2008:23).

Janaki Nair suggests, in order to access justice, law has to be thought carefully at the stage of drafting, and before given to the public. This indicates you are not just in the realm of "the substantive law, but that you have gone beyond". She argues that consensus norms in society (to change the law) is not enough, rather we should focus on how these norms are going to translate into actual practice. In India, no adequate thought have been given to these issues. For instance, the absence of "rich debate" on the Criminal Procedure Code, the Civil Procedure Code, the India Evidence Act- all of which are meant to be tools to operationalise the substantive content of the law. She suggests the need of continuous debate and to review provisions which focus on the issue. We need mechanisms which can enable us to monitor and evaluate the functioning of the law, which intersect with different aspects of society.

Understanding Differences in Society

The term "intersectionality" is basically coined by Crenshaw in 1989 (Denis 2008: 680). The concept of "intersectionality" emerged as 'an interplay between Black Feminism, feminist theory and post-colonial theory in the late 1990's and the beginning of the third millennium' (Knudsen 2006: 62). Crenshaw (1989:139) used the concept to develop a 'Black feminist criticism because it sets forth a problematic consequences of its tendency to treat race and gender as mutually exclusive categories of experience and

analysis'. Crenshaw argued this tendency is perpetuated by a "single axis" framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist theory. According to Crenshaw, "single axis" framework ignored Black women distinctive experiences of race and sex discrimination, by using "single axis" approach, the experiences of otherwise "privileged" of the group overshadowed Black women's experiences. Crenshaw writes:

> This focus on the most privileged group marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting discrete sources of discrimination…..this focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conception of race and sex become grounded ion experiences that actually represent only a subset of a much more complex phenomenon (1989: 140).

Crenshaw's argument is that, since laws such as anti-discriminatory or antiracist are based on "a discrete set of experiences" that often excluded and overlooked Black women, it fails to see the interaction of race and gender. The existing "established analytical structure" is not adequate to address these problems. Crenshaw calls for the need to study and examine "intersectional experience" which will address the issue. She argued 'a concrete policy demands must be rethought and recast' and to include "women's experience" or "the Black experience" (1989:140-141). Crenshaw later explained her approach, she states '….I used the concept of intersectionality to denote the various ways in which race and gender interact to shape the multiple dimensions of Black women's employment experiences'. Crenshaw's objective was to exemplify that many of the experiences and problems faced by Black women are not subsumed within the "traditional boundaries" of race or gender discrimination. In other words, Crenshaw used the concept of intersectionality to explore the various ways in which race and gender intersect in shaping structural, political, and creates different forms of discriminations (1991:1244).

In the beginning, "intersectionality" was introduced as intersection referring to race and gender. American researchers criticized the gender-based research for "producing diversity in gender but homogenized race". Feminist's scholars such as

Crenshaw (1989) and Mc Call (2005) argued that, in feminist studies, women and men were analysed as 'different and heterogeneous across and within the female and male categories'. However, when it came to the question of race, the race-based critics argued that women and men were analysed as 'all white and the entire same Western race'. Though the concept of "intersectionality" was considered mainly focused on race and gender, however, since the studies concentrated on the "poor" and "marginalized" coloured population, the class dimension was often implied in the theoretical reflections and analysis. Disability and alternative sexualities have also been integrated in the theory of "intersectionality" (Knudsen 2006: 61-64).

Doing "intersectional analysis"

The "intersectional" approach has been used by many feminists' scholars, most notably American, British and English Canadian feminists. Ann Denis pointed out, "intersectional analysis" is an important theoretical contribution by feminism to sociology. Denis (2008:677) states, 'Intersectional analysis involves the concurrent analysis of multiple, intersecting (and interacting) sources of subordination/oppression'. Denis sees "intersectional analysis" as an outcome of the same type of critiques within feminism that most notably applied by feminist sociologists. The "intersectional" approach is considered important in the study of relationships between socio-cultural categories. Knudsen explained,

> Intersectionality implies more than gender research, more than studying differences between women and men, and more than diversities within women's groups or within men's groups. Intersectionality tries to catch the relationships between socio-cultural categories and identities. Ethnicity is combined with gender to reflect the complexity of intersectionality between national, new national background and womanhood/manhood… Intersectionality focuses on diverse and marginalized positions (2006:61).

Knudsen's article suggests, by diverse and marginalized position, it includes gender, race, ethnicity, disability, sexuality. She also stresses that class and nationality are categories that may 'enhance the complexity of intersectionality, and point towards identities in transition'. According to her, "intersectionality" is a theory to analyse how social and

cultural categories intertwine and how the relationships between gender, race, ethnicity, disability, sexuality, class and nationality are examined (2006:61-62).

"Intersectional analysis" provides a theory to address in the ways race and racially discrimination interacted with gender. In this context, it is also useful for the present study to define and analyse how social and religious institutions intertwine and control gender relations. As mentioned before, "intersectional analysis" focus is not only limited to race and gender, but also provide concrete theoretical basis for the study of "marginalized" groups, relationships between social-categories, social institutions, individual experiences and different forms of discriminations. "Intersectional analysis" tries to understand as McCall (2005) puts "complexity of intersectionality" in social life. This approach is useful to address the complexities and different experiences of women belonging to different groups, and to understand the relationships between different social-categories, institutions and individual experiences.

Patricia Hill Collins used the "intersectionality" approach to study the relation between gender, race and nation. She explored the contradictory relationship between equality and hierarchy within the family. Rather than examining gender, race and nation as distinctive social hierarchies, she looked at their intersections and how each of these mutually constructs one another. Collins highlighted, 'each dimension demonstrates specific connections between family as a gendered system of social organization, racial ideas and practices, and construction of U.S. national identity' (2001: 62). Collins's approach is useful in examining the complexities of social relationship and the so called "natural" hierarchy which promulgated such relationships. It is an insightful tool to explore family rhetoric, racial ideologies and national identity. This approach is relevant to study how law, religion and gender intersect and mutually construct one another.

Context of the Study

Because of the geographical location and also different ethnic identity and cultural practices, mainstream women's issues hardly make impact on Mizo women. However, due to the 'modern' thought and also education now Mizo women began to

understand the discriminatory nature of Mizo Customary Law and therefore, women's associations like MHIP have started to raise their voice. Even at present, the Mizo women feel themselves very different from those of the Hindu and Muslim women, therefore, women's issues raised in mainstream India (e.g dowry related violence) is seen as a problem which is faced by Hindu or Muslim women and not of Mizo women.

Here I find it useful to employ "intersectionality" analysis to study tribal women. The tribal women's experiences cannot be considered to be the same as women from the mainstream. More importantly, within the women's studies in India, tribal women's experiences are often ignored and subsumed in the mainstream India perspective. For instance, tribal women's (especially northeast women) issues were hardly discussed in the mainstream Indian women's movement, but when UCC was demanded, it was suggested (Hindu Majority) that, the Act will provide provisions for all women, and suddenly the discriminatory laws of the tribal (especially of the northeast) were highlighted. Mainstream feminists criticize the tribal community as being "traditional" within "modern" India, while overlooking that tribal society is based upon lineage, kinship and for the tribal all these laws are "new" and " strange" to them.

There is also a sweeping generalization about tribal women implying that all women from northeastern states shared the same experiences. However, the north east is hardly homogenous, so also the experiences of women. In contemporary times, there are some publications, academic studies based on north east women. However, most writers are usually making certain generalizations by assuming differences between tribal women and mainstream women. I will discuss this in detail in Chapter- III.

Mizoram: Mizo Women

According to the provision of Sixth Schedule of Constitution of India, special provision was given to these areas in regards to their customary practices and tradition. The Mizo customary laws are the governing laws related to marriage, divorce and inheritance/property rights. It is based on patriarchal ideology which put women at a disadvantaged position. According to Mizo Customary laws, women do not have

inheritance and property rights. For instance, a widow can inherit her dead husband's property only by virtue of her children and for promised fidelity to the dead husband. There is no security for a widow within the bounds of the customary laws unless a will is written.

Christianity: Churches in Mizoram

Christianity came to Mizoram in 1894. Within just 50 years of missionaries' work, majority of the population have adopted Christianity. The growth of Christianity in Mizoram is highest as compared to other north eastern states in India. It has been said that 'a situation has been reaching when it has become a shameful thing not to be a Christian', the rapid growth of Christianity and the willingness of the Mizo people to adopt the new religion thus resulted in changes within the society (Kipgen 1996: 209-210).

When the missionaries first came to the region, the Welsh mission and British Baptist Mission Society covered the region where Lusei or Duhlian was the Lingua franca. The Lakher (Mara) Mission Pioneer Mission was assigned to work with the Mara people who lived in the southernmost corner of Mizoram. At present they are known respectively as, Mizoram Presbyterian Church, Synod (MPC), The Baptist Church of Mizoram (BCM) and Evangelical Church of Maraland (ECM). Mizoram Presbyterian Church has the largest number of members followed by the Baptist, while ECM has a much lesser member compared to the other two. Later other Christian groups like Salvation, Roman Catholic, United Pentecostal Church, Seventh day Adventists and others emerged. They have drawn their members from the churches that have been already established by these missionaries (Kipgen 1996; Hminga, 1987; Sangkhuma 1995). The people's loyalty towards each denomination in the church is notably important. The important role played by the Church cannot be overlooked. Aleaz (2004:1) has rightly commented that, 'Religion developed not only homogenous identity, but it is the prime denominator in socio-cultural, cultural, political and economic existence as well, the penetration is total and complete'.

The general perception is that the emergence of Christianity has changed Mizo society in positive ways, including that of Mizo position. It is believed that Mizo women have more freedom as compared to their fellow women in other religions, some even went to the extent to say that the Mizo women were liberated from the traditional way of living which is male-dominated and opened up new gates of entry in the field of the larger world, where they can freely express themselves. Phadke (2008:268) also stresses that the adoption of Christianity proved a positive factor in terms of Mizo women's status in the family because Christianity has consistently expressed disapproval of the Mizo customs of polygyny and divorce. But the important question is: have women really benefited from Christianity?

At present, the legal system in Mizoram presents an interesting field. There are parallel law forces coming from three angles, first, the state law(written), second is the customary law (both written and unwritten) and third the "Church Law" (from religious tradition mainly Christianity). It is quite complicated to understand which laws dominate. These three types of laws are not absolutely independent of each other but at times function in connection with the other. For example: in relation to Marriage, Divorce and Inheritance we see the combination of Mizo customary laws and Church laws. While using the term "Church law" this does not imply the Christian Personal Law as mentioned in the Indian Constitution and also Indian Christian Marriage Act, 1872 as these laws are not adopted and therefore I use the term "church law" only referring it to the rules and regulations of the churches in Mizoram.

The study looks at the relationship between the "state laws" and "non-state laws". I use Upendra Baxi's (1986) concept of 'non-state legal system' and 'state legal system'. Baxi conceptualized people's law as non-state legal system (NSLS) and state-legal system as the one which is more associated with the sovereign power. Baxi also states the non-state legal system as an expression of non-sovereign power and can be "self-consciously repressive" (Baxi 1986:51-52). The research attempts to examine the dynamic and interface of both these laws and gender relations. I place my study within

the context of Mizoram and focus on the customary laws of the Mizo with special reference to marriage, divorce and property rights of women.

Objectives of the Study

- An attempt at an historical understanding of legal systems and the process of codification of customary laws in Mizoram.
- To study the implications of customary laws on marriage, divorce and inheritance in Mizo society.
- To understand the transformation of customary laws by the state.
- To understand - State laws vs Customary laws vs Church laws.
- To understand Mizo women and their engagement with laws.

Methodology

The study was conducted in Aizawl, Mizoram. Apart from literature review such as theoretical readings and intensive secondary research, content analysis of news bulletins, official records and in-depth interviews, as well as participant observation were conducted. Interviews were held with the respondents with the help of interview guide. Interview guide consists of the list of general areas and certain topics, which needs to be covered and discussed. The method for selecting respondents is based on purposive sampling and snowballing. Respondents selected are: - members of *The Committee on Mizo Customary Laws (*CMCL), leaders of *Mizo Hmeichhe Insuihkhawm Pawl* (MHIP) (United Organisation of Mizo Women) lawyers and judges. Participant observation is used with the aim to get a true picture of the subject being observed. This standpoint is made in order to achieve the objectives of the research study.

I conducted an analysis of laws in Mizoram related to marriage, divorce and property rights. I looked at judgements on cases of court records in District Council Court to analyse the existing legislation on divorce and maintenance under Cr.Pc Section 125. I also looked at judgements on cases of court records on property and inheritance disputes available in Gauhati High Court, Aizawl Bench to analyse women's property rights. I have conducted observations at the Lok Adalat, Aizawl Mizoram. I looked at Mizoram

Presbyterian Church's rules and regulations on marriage and divorce and family to refer to the "church laws".

The field site is selected based on the guidance of key informants (e.g. lawyers, MHIP leaders, members of the CMCL etc). The features and descriptions of the field sites and the reason for selecting these particular sites are given below: -

Description of Field-site

For my research, I did field work three times. The first phase of field work was conducted in Mizoram during the period of July 7th, 2008 to August 25th, 2008, secondary data were collected. Second phase of field work was conducted during 1stMarch -14th April, 2009. I visited Anthropological Survey of India (ASI) Kolkata, Anthropological Survey of India (ASI), North Eastern Region, North Eastern Hill University (NEHU) Library, North Eastern Council (NEC), NER-ICSSR and Aizawl Theological College (ATC), Durtlang, Mizoram. Third and final field work were conducted in Aizawl from March - May, 2010 (3 months).

Aizawl

Aizawl is situated in Northern Mizoram, and is the capital of Mizoram. There are 64,753 households in Aizawl and total population is 3,25,676; 1,66,877 males and 1,58,799 females. Literacy rate is 96.50 percent (Statistical handbook 2010). Like all other towns in Mizoram, Aizawl is located in a hilly area. Since it is the capital of Mizoram it has the State Museum, district library, Mizoram university, Archives, bookroom etc. And most importantly, all my respondents, the District Court and Gauhati High Court Aizawl Bench are located in Aizawl. I selected two courts in Mizoram; they are District Court Aizawl and Gauhati High Court, Aizawl Bench.

Mizoram Presbyterian Church – Synod

At present, the Mizoram Presbyterian church, Synod is the dominant church in Mizoram. The headquarters of the church is situated in Aizawl, the Capital of Mizoram. They have the largest number of members compared to all other denominations in

Mizoram. The church census on 2009-2010 shows that there are 4, 63,185 total members, out of which there are: 2, 29,580 male and 2, 33,605 female. There are 2,157 permanent and 749 temporary employees and the number of missionaries is as high as 1,634. The Presbyterian Church of Mizoram owns 191 social institutions such as schools, hospital, orphanage home etc. Throughout Mizoram there are 853 Presbyterian local churches/ corp/ parish (Statistical handbook 2010).

Sample Selection

Sample of the population are taken within Mizoram all from Aizawl. The total number of respondents is 36 (thirty six) and my sample of population aged between 35-75yrs. I interviewed six (6) members of *The Committee on Mizo Customary Laws* 'Drafting Committee' (out of seven (7) appointed by the Mizoram government), eight (10) leaders of MHIP, four (4) of them are ex-presidents. MHIP is the largest women's organisation in Mizoram. I also interviewed fifteen (15) lawyers, eleven (11) male and four (4) female (there are 135 names registered in Mizoram Bar Association or *Vakalatnama,* out of 135, active lawyers are just about 50-60). I interviewed five (5) judges (two female and three male) of District Court Aizawl (two senior judges, two junior judges, and one retired judge).

District Court, Aizawl

There are two Judiciary divisions in Mizoram and they are: - Aizawl District Division and Lunglei District Division. Under each division there are several Districts. We may say that geographically District Court Aizawl divisions cover the northern part of Mizoram, and Lunglei District Court covers the southern part. Under Aizawl District Court there are Aizawl District, Mamit District, Champhai District and Serchhip District. Under Lunglei Districts there are Chawngte, Hnahthial, Lawngtlai, Saiha. According to Lawyers and Judges (my respondents) 80 per cent of court cases in Mizoram are file before District Council Court, Aizawl. Therefore, I decided to look at court cases in District Court Aizawl in order to understand how laws operate and also the legal system in Mizoram. I studied 217 Maintenance Case under Cr.Pc Section 125, period from 2002-

2009 (available in the records room). Studies were also carried out on property and inheritance disputes from the Sub-District Council Court & District Council Court.

Gauhati High Court , Mizoram Bench, Aizawl

My interest was to understand implications of customary laws with particular reference to marriage, divorce and inheritance in Mizo society and the way Mizo customary laws operate in modern courts. I studied High Court cases on property and inheritance disputes in order to understand arguments and issues related to women's right. In the High Court, cases which have been tried in Sub-District Council Court and then District Council Court were only appealed. I wanted to understand, whether there is any conflict between the lower court's judgement and High Court, and if so, why? and examine the High Court's stance with regards to customary laws.

Court Cases Studied Based on Court Records from District Court Aizawl and Gauhati High Court, Aizawl Bench.

Table No.1 – Maintenance Case

Court	Period	Number
District Court Aizawl	2002-2009	217
Gauhati High Court, Aizawl Bench	1996-2009	5
Total Cases		222

Table No.2- Property/Inheritance Disputes

Name of Court	Period	Number
Sub-District Council Court & District Council Court	2000 – 2009	60
Gauhati High Court, Mizoram Bench	1990 - 2008	50
Total Cases		110

Journals /Documents

I looked at High Court Cases (North Eastern Region) published in Gauhati Law Times journal (GLT) from 1998 to 2009 and Gauhati Law Reports (GLR) from 2000-2008. There are interesting cases related to customary laws but not of the Mizo's. However, the nature and content of these cases would be taken into consideration. There are very less cases presented in both these journals related to customary law especially which concerns Mizoram.

News bulletins and official records selected for content analysis are:-

- *Zoram Hriattirna* District Information published fortnightly by Lushai District Council. This is an official news letter of Lushai Autonomus District Council where the proceeding of the session debates are given in detail, I covered the period from 1956-1970.
- MHIP (United Organisation of Mizo Women) Documents:- Important official letters of MHIP such as their applications to the Mizoram State Government asking for implications of Mizo Divorce Law, Mizo Women Inheritance Law and others demands made by them.
- Archival documents such as: - British rules and regulation/education policy, diaries, official letters, letter- correspondence between official, government official reports, missionary reports etc.
- The Mizoram Gazette (1972-2006), published by Government of Mizoram, this contained any law or regulation passed by the Mizoram Government. It gives a detailed report of government's activities.

Interviews

Interviewing is usually defined as, 'A conversation with a purpose, specifically, the purpose referred to is to gather information' (Berg 1989:13). In other words interview is defined as 'Method of data collection mainly through the verbal interaction between the respondents and the interviewer' (Sharma 1984:141). Interviewing includes several meetings and interactions between the respondent and the interviewer. In my study, I

have carried out in-depth qualitative interviews; I prepared an open-ended interview guide which is quite flexible. According to Taylor and Bogdan (1984:77),

> Qualitative interviewing has been referred to as non-directive, unstructured, non-standardized and open-ended interview… By in-depth interviewing we mean repeated face-to face encounters between the researcher and informants, directed toward understanding informant's perspectives on their lives, experiences, or situations as expressed in their own words.

I used separate interview guide for each category (e.g. lawyers, members of MCLB, judges and leaders of MHIP. (See Appendix IV- A, B, C and D).

The selection of respondents was based on purposive sampling and snowballing. The criteria of my respondents are 1) member of the Committee on Mizo customary laws 2) MHIP leaders 3) Lawyers 4) Judges. Selection of sample for the interview included only selected people. Interview with members of the customary law board committee provided me with inner information of what is really going on and helped me to understand the gender relationships within Mizo society. Interview with leaders of MHIP helped me to see their experiences as women and acknowledge their struggle and also understanding of women's position. Anonymity is maintained for the sake of confidentiality. The few names that I mention are those who have given me the permission to use their name and identity.

In-depth interviewing method was used because there is a need to understand their experiences, the respondent's way of looking at their experience, to understand their motives, emotions, feelings and how people have come to accept their prescribed roles in the society. Interviews with lawyers and judges helped me to understand the legal system, the patriarchal construction of legal system, and the functioning of law.

Participant Observation

According to Taylor and Bogdan (1984:15), 'Participant observation is used here to refer to research that includes social interaction between the researcher and the informants in the milieu of the latter, during which data are systematically and

unobtrusively collected'. Participant observation also refers to 'primary technique for collecting data on non-verbal behaviour' (Srivastara 1994:110).The participant observer actively participated in all activities that are taking place and shares the situation with the respondents as a visitor, good listener and making notes of everything that is happening or taking place within that observation period, learning from behaviour, non-verbal act, and interpreting group behaviour. Trying to gain the confidence of the respondent or establishing rapport is very crucial in this context.

Participant observation was used in order to learn from behaviour, settings and activities, which will enable me to understand the court's (Lok Adalaat) strategies, approaches, values, practices, people's behaviour, gender roles and responses. I have observed how disputes are settled in Lok Adalat, Aizawl. The reason I selected Lok Adalat is because many family disputes are referred to Lok Adalat in order to reach an amicable settlement.

Lok Adalat

Lok Adalat is a system of alternative dispute resolution developed under Legal Services Authorities Act by India parliament in 1987. Sometimes Lok Adalat is referred as "people's Court". Lok Adalat is a non-adversarial system, whereby mock courts (called Lok Adalats) are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee. Lok Adalat is usually presided over by retired judges, social activists, or other members of the legal profession. The Lok Adalats can also settle cases such as:- Civil Cases, Matrimonial Disputes, Land Disputes, Partition/Property Disputes, Labour Disputes etc. Litigants can directly interact with the judge, and there are neither court fees nor any rigid procedural requirements. In Mizoram the first Lok Adalat was opened on 27th and 28th September, 1991 in Aizawl.

Content Analysis of the Data Collected

I used content analysis method for analysing my data whereby identifying similarities and dissimilarities patterns in the data. I used codes and coding method such

as, open coding, axial and selective coding. Open coding includes writing memos, categories and sub-categories being noted and labelled (and a few connections among them suggested). One coded microscopically field notes, observations, court cases etc. (technical knowledge and theoretical sensitivity is required). Axial Coding is done first by laying out properties of the category, mainly by explicitly or implicitly dimensionalizing it. Selective Coding is where the main effort was to 'fairly exhaustively itemize and relate these sub-categories of the core category, more focused on relating previous axial codes-subtypes of the core category' (Strauss 1989: 55-80) After coding, I wrote theoretical memos, both to summarize some of the codes (most common codes) and include research question raised by the codes. And the most common themes or research questions arising out of the codes were taken for data analysis.

Self Reflexivity

As a student of sociology, I was trained to understand the importance of field work, methods of collecting data, and ethics of a researcher such as how one should approach the field. In spite of all the learning and the class room teaching that I received, and even though I have once conducted field work for my M.Phil dissertation, I was very nervous before I really entered the field. I kept planning over and over how I should do a 'good' field work. Before I reached Aizawl, I called up potential respondents (I already met some of them in my earlier visit) and made appointments. This made my work easier and it helped to save my time as well as the respondent's.

Initially, I thought I should first look at the court cases and later interview the lawyers and judges. However, this method did not work well; meeting and talking to judges/lawyers can really help. They can tell you what kind of cases you should look at, and I realised that they are crucial in giving me direction, especially the senior lawyers. After that it was easier to track down certain cases. I came to know this only after going to court for almost two weeks and when I was on the verge of giving up looking at court cases. Out of desperation, I just went to one senior lawyer who gave me one case and that helped me so much. From that day onwards, I looked at the court cases and meeting lawyers and judges simultaneously.

Experience/ relationship with the respondents

Like any other researchers I had ups and downs. I'm glad to say that I have good experiences with all my respondents. My respondents usually asked a lot of questions i.e. where do I come from, what is my qualification etc? Where did I complete my schooling? And where did I enrol for a Ph.D. course etc. After I answered all the questions they usually said (specially the older people) that they are surprised that I do not belong to the majority *Lusei* tribe. Since I am very fluent in *Lusei* (also refer as *Mizo tawng*) dialect it is generally assumed that I belong to the *Lusei* tribe. One of my respondents said he is very impressed as this is the first time he encounter a Mara girl (I belong to Mara tribe). Many respondents expressed that they are happy that I am working on Mizo Customary Laws which is different from the Mara Customary Laws.

Before meeting the respondents, I used to practice/rehearse what line should be best for opening the conversation. How can I provoke them in such a way that they will open up to me? Interviews were usually smooth. Even though I was prepared with interview guidelines I did not follow all of it, some questions needed to be altered, and also based on the person/individual some questions needed to be changed. I do not have a problem interviewing people, but tracking down the respondents was problematic. For example, Members of the Committee on Mizo Customary Laws were randomly appointed by the Mizoram Government. When I asked how many members were appointed? I got different figures from different members. Some people say that it is almost 50 and others said they are about 20. After going through all the details, I came to know that in the first process Mizo Customary Laws Committee members were randomly appointed, and again fewer members were selected to be in what they called 'Screening Committee'. After Screening Committee only seven (7) members were appointed for 'Drafting Committee'. The members of the 'Drafting Committee' are considered to be the key players of 'compiling' Mizo Customary Laws. I interviewed six committee members (out of 7). I could not interview one person, as he was sick and not in a state to talk to anyone.

I used to think being able to keep up a good rapport with the respondents is most important, but I realised dealings with the officials is equally important. They really

helped me. I learned so much about court system, the "good" and the "bad" within the office administration from clerks, LDC and UDC. The officials in District Court and High Court are the ones who really made my research possible. Without them I would have never gotten this much data. They told me all the channels and went out of their way to help me (I cannot say in detail for the sake of secrecy). During my entire field work, my relationship with the officials is what I considered the 'best' when compared with others. For instance, clerks (i.e. '*Peshkar*' who prepare the judgement order) in District Court Aizawl work longer than most of the judges and lawyers and they really know the intimacies within the office.

High Court is very far from Aizawl city, it is a one hour journey, and it is very expensive if one has to go by taxi, the bus services are not frequent as in the city. Because of the officials (specially the bus driver) who told me about the High Court bus, every day the Driver reserved a seat for me, I went with them and came back with them for 25 days. This helped me more than I expected, since travelling together with the officials it was easier to strike up a conversation. Before end of the week, majority of them knew me by my name (there are around 75 officials in high court) and now I also know most of them. I actually feel like I am one of them and they treated me like one.

Being "Outsider"/ "Insider"

Even when one conducts research in one's own community, you are still an 'outsider' in the field, getting inside the field is not easy. Merely being a member of the community does not make me an 'insider' in the field site. However, being a member of the community can help you in many ways. Once I got inside the field and after I got to know the people, I became more comfortable and more confident, and the amount of information I received increased dramatically.

In my first week in District Court Aizawl, I was still very much an outsider, and the official treated me like one. They did not speak much to me and they were watchful and careful in their conversation. After one week, things changed, many people thought that I was one of the new employees and some lawyers even came to me and asked me to

search files for them (since I was in the record's room). By the second week, the record keepers and other official people became closer to me, before the end of the 2nd week they all treated me as one of them. They would just give me the room key and I could enter into the record's room alone, I actually could have stolen files had I wanted. By the end of my field work, I became so familiar with the files that I was entrusted with official work! The officials trusted me. For instance, one day a lawyer came to the record's room looking for an old case – (inheritance case), the record's keeper told the lawyer to ask me to help him find the files, the lawyer came to me and I helped him.

In High Court I was allowed to go by their staff bus, since I went with them and came back with them it was easier to build rapport. I know I was being treated as one of them when I did not go there for one day, and the next day almost everyone in the bus asked me "why you did not come yesterday"? In the first 3 days they thought I was going to apply for a job. After one week, all of them knew I was a Ph.D. scholar. My name was even written in their canteen along with the employee's names (all the employees registered their name in the canteen, whatever they ate for lunch/tea etc they usually pay at the end of the month).

The advantage of conducting field work in one's own state/community- is that it is easier to build rapport and they trust you easily. For example, being able to communicate with the respondents using the same dialect also helps. It helps me and the respondents to talk more and express exactly the way we wanted. Suppose, if I had to use English or other language (i.e. Non-Mizo) in all the interviews, I would not be able to get even half of the information that I have now.

On the other hand, there is also a possibility that I may have missed many things or overlooked some important factors since I am so familiar with the lifestyle of that society. I tried my best to think neutral and try to understand things as if I am from another state. Another thing is that, one can really be misguided if one is too comfortable or gets too familiar with the surroundings in the field. And also one could get disturbed if one is familiar with the officials /respondents.

My Personal Experience as a Female Researcher

It is very common to hear men passing off any kind of derogatory sexist remarks they want towards women. Almost every day I got comment like 'why are you doing research, you must be old by now so get married' or 'no one would want to marry you if you keep talking and asking questions about women's rights' etc. One lawyer said to me "It is good that you are taking Sociology as your major because it is very suitable for women", I replied "why not for men as well? It's equally important and suitable for both men and women". From that day his attitudes towards me changed.

Throughout my field work, apart from minor incidents of sexual harassment on the street, I had no problems. Initially, I thought it would be difficult but, even to my surprise I found out that a large number of people are really impressed that I am doing research. I strongly feel that this has to do with my gender identity as the area of law and customary law is considered 'tough' and 'confusing' especially for women and some of my respondents and people who know me expressed this opinion. When I first started going to courts they usually thought that I was a law student, the question I received most (everyday) was where did you complete your LLM? When I said I am a social science student and particularly I am from sociology department they always looked surprised.

My Own Limitations

Tracing down cases was really difficult because in High Court they do not keep separate records e.g. 'inheritance', 'property disputes' etc. Some cases are appeal under RSA (Regular Second Appeal) some cases are filed through RFA (Regular Fresh Appeal) and some under Civil Revision and so on. This means that even in order to get one case, I usually had to go through 20 cases. Had I met the litigants, things might have been different. But meeting and tracking all the litigants of the cases was not possible. However, to make up for this, in a small way I did my best to interact with people who come to court.

In order to get inside the court records room and to study cases, I had to meet many officials to get permissions. I was given the permission to examine the court cases and use them for my research only under the condition that I would not reveal the litigants name.

Chapter Outline

The thesis is divided into the following chapters:-

The second chapter titled '*Historical Overview of Mizoram'* presents an overview of Mizoram's history, the Mizo Legal system in the pre-colonial, and transition from colonial to post colonial periods. The issue of political autonomy in North East India, Sixth Schedule of the Indian Constitution is also highlighted. In the second part of the chapter, the construction of the written form of Mizo customary law is discussed.

The third chapter titled '*Women's rights and Mizo Customary Law'* is a detailed discussion on the process of codification of Mizo Customary Law known as '*Mizo Hnam Dan'*. Issues, debates and contestations regarding women's rights within the Mizo Customary Law Board are highlighted. The role of state and religious authorities in upholding Mizo customary law is examined. The chapter also presents a discussion on the question of women's rights vs minority rights, issues and debates on customs & tradition, and cultural relativism in the context of human rights framework.

In the next chapters (4^{th}, 5^{th} and 6^{th}) I have taken up analysis of the data collected in the field. The fourth chapter titled '*Marriage and Family*' discussed sociological definitions of marriage and family. The chapter explains changes within family and marriage institutions in Mizo society, and the contributions of external forces such as Christianity in those changes. The chapter also discusses the "Church Law" on marriage and family and how members of the community are shaped and moulded by Christian ideology.

In the fifth chapter titled '*Divorce and Maintenance'*, I discuss system of divorce and how it has different meanings and implications for women. The chapter also contains an analysis of court cases from District Court Aizawl and Gauhati High Court, Aizawl. I show how Mizo women are discriminated by the Mizo customary laws and the legal system. The societal construction of gender inequality is complimented by the legal institution.

The sixth chapter titled '*Women's Property Rights'* deals with detailed discussion on Mizo women's property rights. The chapter also highlights the double standard law of inheritance rights law, the attitude of state when it comes to property rights of women and the subordination of women through economic, and how property rights is used as a means to control women's sexuality is highlighted. The chapter includes data analysis based on cases available in High Court records. The seventh chapter is the '*Conclusion*' and deals with the summary of the study in a comprehensive manner.

CHAPTER – II
HISTORICAL OVERVIEW OF MIZORAM

In this chapter, I present an overview of Mizoram's history. The study examines pre-colonial Mizo society, and the transition from colonial to post colonial period. The chapter discusses social, religious, political and legal changes within Mizo society. The Indian Constitutional provisions given to the tribal community within the Sixth Schedule of the India constitution for the 'North East' region are discussed.

Contemporary Mizoram

The present day Mizoram is situated in the southern tip of North East India. The geographical area of the state is 21,087 sq kms and it shares inter-state border with Assam, Manipur and Tripura besides sharing international boundaries with Myanmar and Bangladesh. The total population, 2011 Census is 10.91 Lakh, with a rather favourable sex ratio of 975. Literacy rate is 91.58 per cent (male-93.72 and female-89.40), which is the second highest in India. Currently, there are eight districts and three autonomous district councils in Mizoram, viz., the Mara Autonomous District Council, Lai Autonomous District Council and Chakma District Council. Administration of the state has 23 sub-divisions and 26 Rural Development Blocks (R.D. Blocks). Mizoram is primarily a hilly area with pleasant climatic conditions. The temperature varies from 11^{0} c to 29^{0} c. Being a tropical-monsoon area, heavy rains occur during the monsoon season, and sometimes this heavy rain causes road destructions and landslides.

Mizoram is inhabited by the Mizo people. Since there is no written record, the origin of the Mizos cannot be traced back very far. Most of the past history is based on oral tradition and legends which are passed on from one generation to another. Therefore, there is no adequate and satisfactory information to explain the origin and migration of the people (Lalchungnunga 1994). There are several theories, one dominant theory is that Mizos originated from *Chhinlung* or *Khul* which has been interpreted as a "cave/rock",

"hole in the earth" or even as the name of a person. They are believed to have migrated through Tibet via Burma to the present day Mizoram.

Despite the problems in tracing the origin of the Mizos, at present, it has now been widely accepted that the Mizos belong to the Tibeto-Burman stock of the Mongoloid race. After a series of migrations, the Mizos arrived at the present land. Contact with other cultures and communities in the process of these migrations have, in some ways, further complicated the already chequered history of the Mizos. As the people they come across call them by different names based on how they understand them to be: like, "Chin" or "Khyans" by the Burmese, "Kuki" by the Bengalese, "khongjai" by the Meiteis and "Shendus" by the Khumis and the Arakanese. This further complicated research into their distant past as to how one should understand and grasp the origin of the Mizo people. Lushai is another name given to the hill people which roughly covers the present Mizoram by the British. It is an anglicised word for Lusei in the Duhlian dialect, which is the most widely spoken (Lalchungnunga 1994; Hminga 1987).

Mizo History: Colonial Narratives

The early writings about Mizos were mostly done by colonial "masters". Mizo history was interpreted from the colonial point of view. Mizos were stereotypically branded as "nomads", "warlike", "headhunters", "bloodthirsty", "wild savages" and "irreclaimable savages". As Lloyd (1991) has pointed out, Mizo are "marauders and head-hunters". There were some who argue that the Mizos practiced head hunting simply to get heads in order to prove their bravery while some writers insist that they were looking above all, for iron/steel that would be tempered and shaped into weapons, and also that they were sensitive to the presence of foreigners on their hunting territories. (Kipgen 1996; Lalchungnunga 1994)[1]. It is precisely the so-called "savage" and "primitive" tag that encouraged the British domination over the Mizo people.

[1] Some scholars insisted that the killing and taking of heads were merely incidents of raids, not the cause of it. Despite such statement it is still believed that head hunting may be one of the major factors for the raids. In the Mizo traditional beliefs the spirit of the person whose

However, to a large extent, the colonial narratives of the Mizos are further developed by early Mizo writer themselves. The early writings on the Mizos (by the Mizos) emphasised on how the previous "backward" region has gone through transformation and much is written about the efficiency of the British administration and the missionaries (Hminga 1987; Dokhuma 1992; Sangkima 2004; Kigpen 1996). How the Mizos are being protected from the "cunning plain" people and so on are highly emphasised. Mizoram, the then Lushai Hills, went through several changes because of colonial intervention. These changes are considered for the "enlistment" and "good" for the society. In fact, British missionaries are given credit for bringing "positive" changes in Lushai Hills. Scholars like C.L Hminga (1987), Kipgen (1996) and ZT Sangkhuma (1995) have praised the missionaries to the extent that "the once dark area has now seen the light". In fact, like the rest of the country, the missionaries are considered one of the most important colonial agents of change (Cohn 1987; 1997). In Mizoram too, missionaries are given the credit for changing the Mizo social system from "bad", "barbarian" to "civilized" society.[2]

British Policy

The "exclusion" of the Mizo from the "mainland India" reflects the Oriental approach, which stated that, these people were too naive to deal with the cruel world, and that they needed the European fatherly role to assist them. The Europeans justified their colonization asserting that they were meant to rule the Orientals since they have developed sooner than the Orientals as a nation which shows that they were biologically superior. Also, it was the Europeans who discovered the orients not the orients who discovered the Europeans (Said 1995). For instance, in Mizo society, the British use different tools in imposing their power, they used education, knowledge and even

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head has been taken would serve the spirit of the successful head hunters in the next life (Kipgen 1996; Hminga 1987; Lloyd 1991).

[2] The colonial rule is seen as "inevitable" to the development. This view is similar to what Marx has argued elsewhere, Marxism sees capitalism as exploitative and yet necessary phase of human social development. Marx himself regarded colonialism as a brutal precondition for the liberation of these societies (Loomba 2007:26).

medicine. The British self declared superiority is reflected in the first text book *Zirtirh.* That text book was intended to impart knowledge on students about different people and tribes living in different parts of the world. Thangliana, a well known historian among the Mizos said,

> *In the year 1901 the first Mizo text book 'Zirtirh' was prepared by Zosapthara (Edwin Rowlands). It was written "The world is inhabited by different tribes and races, such as white, yellow, brown and black. Though they are different they are all equal". However, in the year 1916 and 1917 this line was changed in to this "The world is inhabited by different tribes and races, such as white, yellow, brown and black. Amongst them the White people are the one who possess most knowledge (wise) and most powerful.*

In the light of the above discussion, it is evident that the British government was very successful in winning the favour of the hill people especially of the Mizo, and keeping them aside from the rest of the Indian society, in the name of "preserving tribal customs and identity" continues to speak even today. In the advent of India's independence, the majority of Mizos 'sought a guarantee on the maintenance of the existing safeguards of their customary laws and land tenure' (Zorema 2007:155). The leaders of the Mizos were concerned with preserving the Mizo Identity through their customary practices. However, once democratically elected, indigenous leaders control power in their states, cultural survival is not an "un-problematic concept". The influence of the modern world seems to determine what those societies feel, what should be preserved and what should be changed (Baruah 1999).

Colonial Construction of the "Mizo" & Mizo Customary Laws

What is currently known as "Mizo Customary law" is also the handiwork of the Colonial masters, and which in turn is the culmination of the exigencies of enforcing "modern" administration in what was otherwise considered "tribal" and "uncivilised" territory. N. E. Parry, the author of the monograph on Lushai customs and ceremonies, has explicitly mentioned that more than majority of his sources constitute the *Sailo* chiefs. The very source of the "law" presents problems in nomenclature as well as in the

questionable content of the "law" in terms of its wholesale/universal application amongst what is understood today as the "Mizos".

In the 1920's when Parry compiled the monograph, the notion/conception of the idea of "Mizo", in its contemporary avatar, was at its embryo or even non-existent. The crystallization of Mizo as a generic term happened well after two decades of Parry's monograph. This is evident from the names of early NGO's like the *Young Lushai Association* (YLA) founded by the Pioneer Missionaries in June 15th 1935 and which was subsequently re-christened *Young Mizo Association* (YMA) in 7th October, 1947, and even from the name of the first political Party Commoner's Union (founded 25th April, 1946), which was subsequently renamed Mizo Union only in 1947. These developments clearly highlight the change amongst the tribes who were hitherto generalized as "Lushais" or "Kukis" etc. by the outside world and their awakening to the reality of their subtle differences which was, however, underscored by the reckoning of their similarities in substantial measures and the urge to explore affinities in their shared cultural elements etc. Hence, the emotional as well as practical compulsion to use the generic term "Mizo" subsequently as an all-encompassing term for the different "Mizo" sub-tribes arose.

Generalization of tribal societies ignores/undermines the composite/multi-layered character of tribal cultures which is especially true of tribes in the NE and of the "Mizo" society in particular. The march of civilization and the exigencies of contemporary socio-political developments present multiple challenges for the tribes amongst which the issue of nomenclature is one of the most potent/contentious sources of inter vis-a-vis intra tribal animosity. The use of the term "Mizo Customary Law", taking into consideration the original source of the compilation, undermined the customs and tradition of those other major sub-tribes like the Maras, Lais and Hmars for the Lusei dialect speaking "Mizos". Further, continuation of the same is liable to be interpreted as manifestation of the hegemonising tendency of the "Mizo" identity by the Lusei dialect speaking people in total disregard for the sentiments of the other tribes as well as against the temporal realities of the composite "Mizo" tribal society. Hence, the present study uses the term "Mizo" in its composite sense and should not be read otherwise.

Mizo Society: Religion, Law, Family and Political Institutions

This section discusses the pre-colonial Mizo society and colonial rule with special focus on social, religion, legal, family and political aspects. The section also describes the emergence of Christianity in the region.

Pre- Colonial Mizo Society

The Mizo society, prior to the British administration in 1894, was a well knit community, each village was sovereign independent and was ruled by its chief or *Lal* (Dokhuma 1992). Each family built their own household and struggled for their livelihood. Lloyd (1991:3) has mentioned that, they had to fend for themselves and their own village. Each village was self-contained, self-governed and was self-sufficient. The autonomous village system generally worked well and power was centred in the chief, who chose his own cabinet or elders and administered through them. However, inter-tribal, inter-clan or inter-village warfare was very common.

The society was governed by the customs and traditions of the people which were largely based upon their belief system. Any social disputes such as over land, theft, defamation, quarrel, divorce etc. were settled by the chief and his elders. All matters of administration governance were decided by the chief, assisted by his council of elders called *Upas* or elders. The chief enjoyed supreme power over all cases and all matters within his domain were brought to him. The chief also led the people in the war and settled unrest in the village. The chief with his hereditary rights had great control over his subjects and wielded enormous power (Dokhuma 1992; Kipgen 1996).

Social and Religious Aspects

Most writers and historians have stated that the Mizos are "animists"- a term which is coined by anthropologists. According to McCall (1949:67), before the occupation of their land by the British, the Lushai were wholly animists. There are some who argued that early Mizos do not have "religion" (Hminga 1987). Kipgen (1996) has stated that, earliest written account up till recent times have mentioned Mizo people as

being in the power of the devil and all their life bondage through fear. Some even said that the Mizo religion is simply the worship of demons. This may be because, the traditional Mizos strongly believed in the existence of "evil spirits" known as *Huais*, which are variously called *Ramhuai, tuihuai* etc., depending on where they live. They believed that these *huais* lived in water, mountain, and trees and so on. It is their belief that sicknesses, misfortune, pain of any kind were the works of these *Huais*. For this matter, Inthawina, a kind of sacrifice or propitiatory offering, was offered to the *Huais*.

Zairema, a well known figure and Church leader in Mizoram argues while the sacrifice offered to the higher, benevolent gods were "obligatory", the sacrifices offered to the *Huais* are not obligatory (see Kipgen 1996). Other scholars are of the opinion that the sacrifices to the *Huais* do not make them worshippers of evil spirits. It is said that the Mizos in fact believed in various spirits, but these spirits are in fact believed to be wicked, bad, and jealous of human, caused sickness as well as bring misfortune of many kinds. The point that they try to make here is that these spirits or *Huais* were not worshipped as "deities" but rather they offered to them propitiatory offerings in order to appease them (Lloyd 1991; Hminga 1987; Liangkhaia 2008).

The traditional Mizos' religious belief includes the existence of God, who is the creator. They think of "him" as a good and kind God who has little to do with human affairs and in the day to day lives of the people. They call him *Pathian* or *Chung Pathian* (God above), or *Pu Vana* or *Khuannu*. The word *Pathian* is later adopted by the Mizo Christians for God (Lloyd 1991). They also believed in *Khuavang*- who gave birth-marks and moles to them, and who is also considered "the guardian spirit" (Kipgen 1996). The Mizos have another important worship, which they called *Sakhaw biakna*. The term *Sakhua* derived from *Sa*, which according to some means *Meat*, and *Khua* also interpreted as meaning Village. However, the connotation goes much deeper than this literal interpretation. *Sa* stands for the god worshiped by their ancestor and *Khua* for the nature of creation. The worship of *Sa* was the first religious act of any newly established family. Therefore it is called *Sakung- Kung* meaning stamp. *Sakung* was a religious rite

marking the admission of the family into clan, to which the head of the family belongs (Kipgen 1996; Liangkhaia 1973).

There are two types of *puithiam* or priests, one appointed by the chief and the other by the clan group. The one appointed by the chief is known as *sadawt* and their job is mainly to serve as the official priest for the entire village. The other type of *puithiam* is called *bawlpu* who were mainly appointed by the clans or groups to serve their needs, most probably in times of sicknesses and ceremonial rites (Lalthangliana 2001; Kipgen 1996). It is important to note that in Mizo tradition these jobs were never held by women. Women were considered to have no *Sakhua* of their own. It was the *Sakhua* of her father or husband which was responsible for her continued welfare and existence (Kipgen 1996:113).

The Mizos also believe in life after death, they believed in the continuation of life in *Mitthikhua*, the village of the death, or *Pialral*. According to their beliefs *Pialral* was a place where they do not have to work or struggle for livelihood. Everything which was needed will be provided for. And it is said that there are only four groups of people who can enter *Pialral*. Firstly, *Hlamzuih*, the dead infants buried without ceremony are considered to enter *Pialral*. The second groups are those young men who had sexual relations with either three virgin girls of the village (This is difficult to accomplish though as there is also a saying that if the girls remain virgin until their death *Pialral* is guaranteed for her). In the third category are the *Thangchhuah[s]*- Refers to those who had distinguished themselves in either the domestic sphere or in the hunting ground.

There are two kinds of *Thangchhuah* and they are- *Inlama Thangchhuah*- a person who is able to give a series of feast to the public which included the entire village. As this entails huge expenditure, only few could achieve to have completed the whole series of feast. The second *Ram lama Thangchhuah* refers to a person who has killed the following animals such as: - Bear, Tiger, Elephant, Wild Bison, a Viper, eagle, and a flying lemur. One may kill many animals but unless he kills all the animals mentioned above, he cannot be considered as worth giving the title *Thangchhuahpa*. After killing

each animal, there has to be a ceremony called *ai*, which requires the killing of a domestic animal (Hminga 1987).

Family: Structure and Gender Inequality

E.J Thomas (1993:14) points out; the patrilineal Mizo family is nuclear in structure with husband, wife and children, mainly girls as its constituents. The youngest son is expected to stay with parents and look after the parents. In traditional Mizo society, amongst the children, boys were considered as the asset of the community. He mentioned that, the Mizo children have unlimited freedom and parental control was minimal and the family structure functioned in democratic style. He points out, family was part of the whole in its functions and that it had little freedom. Family and gender identity was often merged in the day- to- day activities of the community. In traditional Mizo society, clearing and burning of the cultivated land was mainly carried out by men, whereas, cultivation was the responsibility of women. Mizo family structures the division of labour that was based mainly on sex rather than on merit. For instance, household chores such as fetching water, hewing wood, cultivating and helping to reap crop besides spinning, cooking and brewing were the task of women. Men engaged themselves mainly in war or hunting (Thomas 1993; Dokhuma 1992).

Women worked hard to contribute in the family economy, and yet, her contribution was never considered as equal to men. E. Chapman and M. Clark, a missionary, working with the rural women of Mizoram for some years writes:

> The worst feature in the life of the Mizo district at that time was the treatment women received from men. A woman had no rights at all. Body, mind and spirit, she belonged from birth to death to her father, her brother, her husband". Her menfolk could treat her as they liked, and a man who did not beat his wife was scorned by his friends as a coward. A woman possessed nothing, not even the few clothes she wore. She was not allowed to wear anything new. Her clothes had first to be worn by her menfolk. She did most of the work of the family. A woman began her day's work into the night. She might not go to bed till her menfolk went, and they should sit smoking late while she cooked the pig's food for next day and then spun the cotton for cloth, often nearly dead with fatigue. She was responsible for all the work- the menfolk just helped with house building. She could not go without their permission, It was she who carried all the burdens up and sown the hills- wood, water, rice and anything else. Daily we watched the women with their heavy loads would stagger uphill, and should men be with them they would often be empty-handed (1968:13-14).

Mizo family excluded women from religious rites and ceremonies. The patriarchal structure of Mizo family considers men the sole providers and administrators. Women were only marginal and were relegated the role of care givers and homemakers, they could not become either priests or exorcists. In some ceremonial functions and sacrifices, women were excluded from eating the meat of animals killed or from the feast. In traditional Mizo society, disputes which are considered domestic in nature such as disputes over land, marriage and divorce, property etc. were usually solved within the family. Theoretically, the father is head of the household, who, as part of his role, is responsible for maintaining peace within the household (Dokhuma 1992; *Mizo women today* 1991).

Political Aspects

Traditional Mizo society was ruled by the chiefs. 'The institution of Chieftainship emerged out of the collective need of the villagers. It originated out of the physical ability and intellectual power of an individual to provide safety to the tribal village' (Zorema 2007:14). The origin of the system of Chieftainship is traced back to the early 18th century; and, as far as the *Duhlian-Lusei* speaking tribes are concerned, it is said that almost all the chiefs traced their descent to Thangura, who must have lived in the early 18th century. From him sprang six lines of Thangur chiefs such as 1) *Rokhum* 2) *Zadeng* 3) *Thangluah* 4) *Palian* 5) *Rivung* and 6) *Sailo*. After centuries of feuds and fightings, the *Sailos* came to be the most powerful clan and defeated all their rivals. Some Mizo historians like Thangliana and Dokhuma maintained that unlike most of their contemporaries, the *Sailos* developed a talent for governing by virtue of which they held undisputed sway over representatives of all the other clans, and that is why, nearly the whole of the area is subsequently known as Lushai Hills after the dialect most commonly spoken by their subjects though the *Sailos* were in fact *Paihte* in their origin. Consequently, what is later codified as Mizo Customary law is also largely derived from the *Sailo* customs and ceremonies. The Chieftainship is hereditary and a layman who is not from the chief's clan cannot become the chief. However, after the annexation of the

Lushai hills by the British, colonial hegemony paved the way for the emergence of non-*Sailo* chiefs who are appointed by the new "masters" to sustain and further their interests.

The other official members besides *Upas* or elders are *Tlangau* (Village crier), *Thirdeng* (Blacksmith), *Puithiam* (Priest) and the *Ramhual* (Advisor dealing with distribution/allotment of Jhum lands). The *Tlangau* is to proclaim the chief's orders and make important announcements; *Thirdeng* repairs the village tools and implements. As *Ramhual,* only those who are expert in agriculture are selected, and only few could be appointed as one. They were given the privilege to choose the plot of land for cultivation after the chief had made his choice. And in return, he pays a heavier tax than others called *fathang,* to the chief (Kipgen 1996:60). Some other interpretations suggest that *fathang* should not be taken as tax, rather it is a tribute given to the chief by his people. However, after the British rule, *fathang* was used as revenue and source of economic income and thus became tax (Lalchungnunga 1994).

Legal Aspects

According to James Dokhuma (1992), there were two main laws governing the traditional Mizo society; one is *Khawtlang dan* (Public law) and the other *Mimal Dan* (laws which concern individuals). *Khawtlang Dan* were *law(s)* which concerned village matters and other shared customs such as: - *Khawthar Kai Dan* or Migrating to new village, *Thlawhma lak dan* or system/strategy for cultivation, and regulations, *Sakhaw hman dan'* (Reigious rites), *Inthawina Kut* or Celebration of *kut* or festival, *Lal lal dan* or system of Chieftainship and *Hnatlang* or Village/ Community work. The second *'Mimal Dan'* are laws which concern individuals such as, *Inneihna* or Marriage, *Inthenna* or Divorce, *Rokhawm* or inheritance, *Sawn* or illegitimate children and sexual offences and *Nula leh Tlangval inkawm dan* or etiquettes of courtship of young boys and girls.

Each village chief was responsible to make laws and regulations for the village. The chief held both judicial and legislative powers. The success of village administration depends much upon the chief's capability and the quality of his council. In village matters, *Khawthar Kai Dan* or system of migrating to new village was very important.

Because of warfare and sometimes superstitious beliefs, the earlier Mizos never reside in the same village for long. Migration took place only after everything was supervised by the chief and his elders. There were two ways of migration; one is that the whole population of the village just move into the new village. The other was, before the actual settlement, some families would go ahead and built *bawkte* or a transitional-house, and slowly the others would follow. The reason for this is to protect themselves from the enemy or possible warfare with other villages (Dokhuma 1992; Hming 1987).

The laws of *Thlawhma Lak Dan* or system of cultivation: The Mizos follow the system of Jhum cultivation. The chief controls all the lands including that of agricultural land. The chief with the help of his cabinets will decide and distribute agricultural land among the villagers. Naturally, the chief was the first one to pick up land for his own cultivation, which was followed by *Upas* or cabinets. The third is by the *Ramhual* families, who have more workers and hence would be able to produce more rice than others. The chosen family or *Ramhual* are the ones who would give more *fathang* or tax (in the form of rice) to the chief. After *Ramhual,* there are families whom the chief favours and they are called *Zalen*. The fifth one to pick up the land is known as *Hauthla* whom the chief favours. The category of *Hauthla* was not created in all villages; in most villages, they are included in the *Zalen* category. The sixth and last one to choose land for cultivation was *Vantlang* or the people of the village. Dokhuma (1992) states that there are only few families who are given the privilege to choose agricultural land, so there are always plenty of good land left for the people. Sometimes the people *Vantlang* get better land than those who choose before them such as *Ramhual* or *Zalen.*

Vantlang or people/layman can only choose agricultural land after the chief and his cabinets and few privileged families. The process was usually that, a layman would usually know beforehand what kind of land was already chosen and would mark the land where he wanted to cultivate. As soon as *Tlangau* or village messenger announce that it is the time for the people to pick up land they can go directly to the land where they have been eyeing. Whoever reaches early the land which they want would belong to them. If two people reach at the same time, they will throw their knife and the knife that reaches

first, that individual will get the land. Sometimes there were problems regarding this and this is one of the cases where most litigation takes place (Dokhuma 1992).

System of litigation

The Mizos, in dealing with cases and disputes, are guided by their customs. In dispute settlements, the maximum fine was Rs 40/- and also a *salam* of Rs 5/-. A *salam* was always imposed for e.g. for a man who commits theft would be fine Rs 40/- and *salam* or Pig. The fine Rs 40/- was paid for compensation to the person who won the case and the *salam* is taken by the chief and *Upas* which generally is spent on feasts. There are also other forms of punishments such as: - banned from village, *tlangchil* (*tlangchil* is a system which permits members of the community to punish whom they find guilty or violates their customs). When cases are filed, the chief along with his *Upas* will sit together with the person involved in the case and try to sort out the problem. Most of the cases are discussed in private, mostly in the chief's house. Sometimes, when sexual offence cases/ complicated cases come up, the whole village can also listen to the arguments. Evidence was considered very important in every case. Therefore, witnesses were called (Dokhuma 1992; McCall 1949).

Colonial Rule 1890- 1950

The way in which the British and Mizo came face to face is through the rapid growth of raids carried out by the Mizos since 1824 (Kipgen 1996). Since 1844, the raids by Mizos on the British territory had increased. Several writers and historians have argued that, if not for the Mizos' constant attack on the British territory, the colonial rulers were not interested in bringing the Mizo under their jurisdiction as they see no economic profit. What seems to be the last straw for the British happened in 1871, when the Lushai people raided a tea garden in Cachar and killed the British proprietor James Winchester and they took his young daughter Mary Winchester as hostage. This incident caused the British to change their policy towards the Lushai from that of "conciliation" to that of "subjugation" (Lalchungnunga 1994:33). In retaliation, the British made a two-prolonged expedition into the hills and established their rule. In 1895, Lushai Hills was brought under the control of the British government by proclamation.

However, Lalchungnunga (1994) is of the opinion that the Lushais were so disturbing to the British that they occupied their territory, does not appear to be an objective view of the whole question. He further argued, as it would be evident in the case of other colonized countries, it is easy to put the whole blame on the natives for the need of the occupation of their territories by the colonial power. It could be argued that the British administration in the Lushai Hills was not necessitated by their commercial interest; rather it was the need to check and unarm the Lushais from within their territory. Whether the occupation of the hills had to take place while it was against their economic interest is a question we cannot answer and pass by (S.N.Singh 1994). It is the result of colonial hegemony.

Geographical and Territorial Context

The then Lushai Hills was divided into two parts, respectively called, North Lushai Hills which was under the administrative control of Assam and South Lushai Hills under Bengal. In the south, Lunglei was used as the headquarters, and Aizawl was used as the north Lushai Hills official headquarter. Both the south and north had separate political officers but the general pattern of rules and regulations were same. In the year 1897, both divisions were combined and instead of political officer, Superintendent was appointed to take full in charge of Lushai Hills administration. The area of Lushai Hills was later enlarged by adding some portion of the Cachar district and the Lakher (Mara) area in the south. The entire area of the present Mizoram was brought under the British in 1930.

Colonial Exploitation of Tribals

Because of the poor economic condition of the land, the British administrators were concerned with the most convenient way to rule the land without incurring heavy expenditure. To attain what they wished for, and also for political reasons, the British found it necessary to continue the indigenous system of village administration through chiefs. A minimum interference on the local matters and respect for tribal laws and customs, support of tribal chiefs' authority as long as it did not conflict their interest.

Zorema states that 'The main object of the government was to make the British paramount in India and to that end administration was geared up mainly to the maintenance of law and order, administration of justice and the assessment and revenue' (2007:58). One of the British government's main interests in governing was, to disarm the Mizos, and put a stop to their constant attack on the British territory, and to maintain peace in the area. The British officers did so by investing their authority more on the state administrations and keeping the civil matters to the village chiefs (Lalchungnunga 1994).

The British government imposed certain rules and regulation including heavy tax and labour work on the people. Each household was responsible to supply one coolie to work for 10 days. Apart from this, the colonial rulers placed a limit on the number of guns to be held by Hillman, except in very special cases, one gun per 15 houses, with maximum of 25 guns per village. In this way, there was lesser chance that the Mizo will take up arms against their colonial ruler. Certain rules concerning village matter includes: - no village should begin war with another village, Chiefs are responsible for collecting the tax, every chief had to attend the meeting (meeting was held every year). The British adopted the "indirect rule" in order to exercise their power over the indigenous people. Under this system, the traditional rulers like the chiefs continue to rule under the domination of the imperial power. However, internal matters, concerning custom and practices were left to the Mizo. [3]

Administration

In general, the administration of Lushai Hills was under the Governor of Assam, acting under the Viceroy and the Governor General in India, the district executive administration being vested in the Superintendent of the Lushai Hills, his Assistant and the Chief Headmen of Villages. The district was divided into two sub-divisions: the North with the headquarters at Aizawl and the South with the headquarters at Lunglei. These sub-divisions were further divided into circles comprising a number of villages. In order to have better communication and more means of keeping in touch with the chief,

[3] See 'Report on Various Matters Concerned with the Chin and Lushai Hill' - J. Shakespeare, Superintendent, Lushai Hills-1902

the "circle system" was introduced by Shakespear, the then Superintendent of Lushai Hills in 1901-1902. The whole district was divided into eighteen circles, eleven in Aizawl and seven in Lunglei sub-division. The circle system provided a staff of one single interpreter and one chaprasi for each circle of 15 to 25 chiefs. However, the circle staffs had no executive powers in relation to the manner in which the chief ruled their villages and any executive duties they performed are in accordance with orders specifically issued by Superintendent, the Sub-Divisional Officer, Lunglei or the Assistant Superintendent to the Superintendent acting on his behalf (Mc Call 1980:18). The main tasks for the circle staff were to act as a link between the Superintendent and the chiefs, and to strengthen the relationship between the chiefs and the Superintendent conferences were held.

Only a few number of the General Acts is enforced in Lushai Hills. In matters relating non-Lushais, general laws will be applied. Cases which are outside the realm of Lushai custom will follow the principle of Indian Penal Code and Criminal Procedure Code. This is intended to "ensure general simplicity and uniformity of procedure" but nothing was done contrary to these Acts that will vitiate proceedings unless specific injury has been suffered unfairly by a party or less an officer has failed to act in good faith. No officers may pass any standing order without the approval of Superintendent. In 1938 A.G Mc Call, the then Superintendent of Lushai Hills compiled the Lushai Hill District Cover, it received official recognition on 7th November of the same year. The District Cover contains information of rules and regulations intended for the Lushai Hills (McCall 1980).

One of the major developments in the Lushai Hills administration was the increasing number of chiefs from about sixty to almost four hundred within forty years. It was mainly because of the chiefs wanting to ensure their son's status as chief by establishing new villages before their death; therefore, there was increase of small dynasty separated from the main line. As a result the prestige and power of the chief declined. To rectify the situation and as Mc Call said 'To prevent a continuance of this unsatisfactory tendency' the British government decided to regulate the succession and appointment of chiefs (cited in Zorema 2007:116). On the other hand, one may also argue

that the government's own policy of appointing new chiefs based on their convenience contributed to the decline of chief's power and affected their status to a great extent.

Adaptation of Laws

P.Chakraborty (1998) termed the period from 1898 to 1921 as the "first Phase" of adaptation of laws in Lushai Hills. From 1898 onwards all laws, in-force in the Lushai Hills were declared under Section II of the Assam Frontier Tracts Regulation, 1880 to have ceased in-force, the Schedule Districts Act, 1874, the Assam Frontier Tract Regulation, 1880, The Assam Police Officers Regulation,1883 and the Indian Penal Code, 1860 were specifically extended to the then Lushai Hills District. Before the completion of the territorial formation of the erstwhile Lushai hills, the Government of India Act, 1919 was passed which put to an end the confusion of "Schedule District" and the "Frontier Tracts" and declared the Lushai hills district as a "Backward Tract".

Under the Schedule District Act, 1874, the ruling chiefs continued to administer justice in all civil and criminal cases except heinous offences like murder, rape and unnatural offences. The same had been directly taken cognizance by the Superintendent and his assistants. In November, 1906, the British government in exercise of power conferred under section 6 of the Schedule District Act, 1874, promulgated the rules for the first time, namely the Rules for the Regulation of the Procedure of Officers Appointed to Administer Justice in the Lushai Hills, 1906, under notification No. 12522 J Dated 29.11.1906. As enumerated under these rules of 1906, civil and criminal justice is administered by the Superintendent and his Assistant, wherein, a sentence of death or transportation required confirmation by the Lt.Governor under Rules Regarding sentence of Death in the Lushai Hills, 1915, and a sentence of imprisonment for seven years and above required confirmation by the Commissioner of the Surman Valley and Hill Districts under rule 9 of the Administration of Justice Rules, 1906 (Larinchhana 2009).

While in the rest of India the criminal and the civil laws enacted by the British Government on India were followed to the latter of the law, in the tribal areas; these were barred by specific regulations (Das 1987), though the spirit of the Civil Procedure Code

and the Criminal Procedure Code are required to be followed. Isolation from mainstream India was complete when, in the year 1935, Mizoram, along with other North Eastern states like Nagaland was declared an "Excluded Area"- which means that laws made by the legislative assembly (India) would not extend to these states. And it remained to be governed and administered by the Governor of Assam. Lalrinchhana states that 'Such kind of exemption from law of the land may lead to ignorance of law among the Mizos' (2009:10). In 1937, a set of rules were made for all the districts of Assam known as "Rules for the Regulation of the procedure of Officers Appointed to Administer Justice in Lushai Hills". This was operated through the powers conferred by Section 6 of the Schedule District Act, 1874(Act XIV of 1874). Under this regulation, the Deputy Commissioner (including the Additional Deputy Commissioner) and their assistants were given magisterial powers. There were no session courts or session judges in the Hill Districts.

Inner Line Regulation

The Inner Line Regulation was extended to Lushai Hills when the 'Bengal Eastern Frontier Regulation, 1873' under Notification No.13, 11th October, 1875 was published in the Gazette of India, 1875 (part-1, page 529). Under this regulation, the entry of outsiders in the tribal area without 'Inner Line Permit' was prohibited**.** Inner line was drawn on the boundaries, and indigenous inhabitants of the Mizo district were only exempted from the prohibition against crossing the Inner line under notification No. pla.393/70-pt/1, 7th September, 1970. The erstwhile inner line of Cachar and inner lines of Eastern Bengal and Assam were deleted in 1930. Whereas, new Inner Line was enacted for the Lushai Hills under Notification No. 9101, A.P. dated, 28th August, 1930.[4]

The present guideline for the enforcement of the Inner Line Regulation was chalked out by Notification No. F. 22015/54/94-HMP.Pt-II, the 1st September, 2006. Under the said new guidelines, the Deputy Commissioner of each eight District shall be competent to issue regular ILP for a period, not exceeding 6 (six) months, which is renewable for not more than two times. Furthermore, the Resident Commissioner,

[4] See "Inner Line Resolution of Mizoram-1890"

Government of Mizoram at New Delhi, the Liaison Officer, Silchar, Shillong, Guwahati, Kolkata, the Deputy Superintendent of Police in-charge of Airport security at Lengpui, Officer in-charge of Kanghmun Police Station, Administrative Officer Bairabi and Sub Divisional Officer (c), Ngopa are authorized to issue temporary ILP in a prescribed form for a period not exceeding 15 (fifteen) days to the bona fide visitors/tourists or business representatives with intimation to the concerned Deputy Commissioner. In respect of persons, to be exempted categories, Notification No. PLA. 393/70-pt/dt/. 7.9.1970 has been partially modified under the said new guidelines. These guidelines had been held valid by the Hon'ble Gauhati High Court on 27.08.2008 in the case of N.E.P.P Trader & Youth Federation vs. Union of India & Ors. Under PIL No. 19/2008. It remained the same under clause of 8 of the Memorandum of settlement signed on 30.6.86 between the MNF and the Government of India that the Inner Line Regulation as now in force in Mizoram will not be amended or repealed without consulting the state Government. In the meantime, the same provision is incorporated neither under Article 371 G of the constitution of India nor in the State of Mizoram Act, 1986 (Lalrinchhana 2009:12).

Operationalization of the Law of Primogeniture

Steps were taken to prepare a manual consisting of rules and regulations, standing orders and circulars on district administration for the benefits of the chiefs and officers. The Governor of Assam had passed the following instructions under Government of Assam letter No 1505 G.S. dated 18th August 1937 addressed to the Commissioner, Surma Valley and Hill Division. The succession of the village lands of *Sailo* Chiefs and clans will be regulated in accordance with the new rules.

The Governor of Assam has passed the following instructions under Government of Assam letter No.1505 G.S dated 18th August 1937. The succession to village lands of *Sailo* chiefs and clans will be regulated by the following rules:-

> 1) The eldest legitimate son of a ruling chief will, unless debarred by mental or physical disability, will inherit his father's village. 2) if the son is a minor, the Superintendent may, according to the circumstances of the case, either appoint the minor's mother and the customary council as guardian (provided that the mother observes such customary rules of chastity and other rules as are incumbent on a

> widow by Lushai custom) or succession may be passed on to the nearest male heir…3) If the eldest legitimate son of the deceased chief suffer, the opinion of the superintendent, from such permanent mental or physical disability as to make him incapable of holding a chieftainship, the office shall pass to the next nearest male heir, but shall return to the original line after the death of that heir…4)Youngest son will inherit their father's property according to the custom. 5) If the eldest son died without male issue, the land and chieftainship of his village will revert to his father…6) If a chief dies leaving only *Hmeifa* or illegitimate sons, the succession will be considered on the merit of each individual case. The above rule debars claims by the deceased's younger brother until the merits of claims by *Hmeifa* is decided (McCall 1980: 34-35).

Apart from these rules, if a chief moves the Superintendent to disinherit a son who would normally succeed him, the Superintendent is required to call a panchayat of fellow chiefs of the same clan. The panchayat will consist of five members, of whom two will be nominated by the chief, two by the son and one by the Superintendent. The Superintendent will make the final decision based on the majority (1980:35).The new rule ensures the legitimate position of a male heir. Rights of daughters were not even mentioned or discussed.

Mizo Customary Law

When N.E Parry took up the Superintendent post he encountered litigations related to the customs of the Mizo. Parry stated, 'When I first came to the district I found it extremely difficult in trying cases to ascertain the correct custom. The customs had never been recorded and it was very difficult to get unbiased information' (1927: i). Therefore, it was considered crucial to put the Lushai customary laws in written form which will be beneficial for the government. '*A monograph on Lushai custom and ceremonies*' was published in the year 1927. In the process of compiling the customs and ceremonies of Mizos, Parry consulted many chiefs mainly belonging to *Sailo* clan. He consulted as many as 56 out of which 46 were *Sailo* chiefs. Parry's monograph on Lushai customs and ceremonies became very useful for the British administrators as well as for the Mizo chiefs. According to this law, women have no legal rights as compared with men. Men controlled the domain of marriage, divorce and property rights.

Since N.E Parry was the one who compiled Lushai Ceremonies or Mizo customary law, thus promoting the Mizos to have the first written form of customary law among the other tribal communities of north east India, he is given credit for such work. A Mizo prominent historian Thangliana states that,

> The Mizos tribe unlike other tribes of north east India is very fortunate to have an able, efficient, far-sighted administrator like Mr .N.E Parry ICS, the Superintendent of Lushai Hills…the Mizo customs have never been recorded earlier. It was Parry who consolidates all practices (2005:216).

Changes in Legal System and Development

The British did not interfere with the local customs and practices as long as it did not clash with their interest. What the British did was to govern the Lushai Hills through the chiefs rather than to try to govern without them. The British government knew that chiefs were instrumental to their administration. Mc Call points out, 'It is of a great importance to maintain the status and influence of the chiefs and consider that the experiment of village welfare Committee under the presidency of chief's should be given full trial' (1980: 36). The chief and headmen of the village were held responsible for the conduct of their people and the Superintendent usually upheld the chief's decision to the best of his ability.

However, the chief's former authority was reduced tremendously. The British administrator made clear division of cases which go to them or the Chief. The chief's authority was limited only to hearing of family matters and cases which were considered "not serious" and "ordinary". All the serious cases like murder and which involves physical violence should be presented to the Superintendent. The Superintendent had the authority to inflict even death penalty. He was responsible for settling all disputes between chiefs, between villages, and between tribes. The chief can only settle disputes between Mizo within the village where he rules. All the chiefs were asked to report any serious matter to the Superintendent. Whenever disputes arose, the chief still had the authority to arbitrate. But if the people were not satisfied with the chief's judgment or decision, they often turned to the British officers (Zorema 2007; Lalrinchhana 2009).

The traditional rights of the Mizo chiefs such as right to order death penalty, right to seize the property of a villager whenever he wishes to, property rights over land, right to tax etc. were all stripped off. However, the chief's rights and privileges of receiving *fathang, chikhurchhiah, khuaichhiah, sachhiah* from the people and the right to keep *Bawis* or 'slave', and the right to appoint the village officials such as *Upas, Tlangau, Ramhual* and *Zalen* remained intact. All chiefs were made responsible for control of their villages i.e tax collection, revenue etc. (Lalchungnunga 1994). The chiefs were responsible for allotment of cultivable land but they do not own the land and only have the hereditary right of cultivation and the use of forest produce for the people's own consumption. The chief would dispose off cases in accordance to the district rules for the disposal of Civil and Criminal justice (McCall 1980:18).

In traditional Mizo society, disputes which are considered domestic in nature such as disputes over land, marriage and divorce, property etc. were usually solved within the family (Dokhuma 1992). Only disputes which cannot be solved within family were taken to the chief's court. Mizo writers and historians stated that, generally, Mizo people are very reluctant to go to court; they consider having to approach court as "embarrassing" and also "degrading" one's family name. However, this is contrary to what J. Shakespear, the first Superintendent of the Lushai Hills, (1897-1898 &1904) wrote in his diary, he states, 'People are quite ready to run to an officer whenever the chief's decision does not suit them' and described the Lushai as 'a great love of litigation'. Cases that have been disposed of or rejected will be brought up again and again whenever a new sahib comes; therefore it is most important to keep a brief record of all cases' (Shakespear 1905, 22nd March). Therefore, *Khawchhiar* or village secretary was appointed to keep the record of all the disputes.

One notable change that occurs in terms of litigation was that now people can re-appeal cases to the Superintendent if they are unhappy with the decision made by the chief. This option gives more choices to the people. This may promote individual rights. Marc Gallanter in his work among the Indian people have stated, plural legal system promotes "individual rights" because it gives more options to the people (Gallanter

1989). Another change is, when cases are re-appealed to Superintendent, it becomes more complicated. In some regions such as Utter Pradesh and Punjab, Kane (1950:42-3) writes:

> Once a case involving customary law went into the courts, *custom became essentially that which could be established as custom under the rules of evidence*…Custom was what British officers recorded in Village books Wajib ul-arz, which contain the particular rules that officers were told by villagers applied to inheritance, division of property and responsibilities of payment of land revenue, and management of village lands. In addition to what was recorded as custom, the courts in all provinces had to deal with custom, particularly in questions of marriage, adoption and inheritance, if the parties claimed they were not bound by usual practices of Hindu law. *In addition, custom became a residual category of law* (cited in Cohn 1987:617). (Emphasis added)

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Therefore, we may say that, the Mizo customary law is in fact the handiwork of the colonial "masters".

Emergence of Christianity

Before Christianity was brought into Mizoram it had already established its roots elsewhere in India (Jayekumar, 2002). Even among the other north eastern states, Christianity penetrated relatively late in Manipur and Mizoram (Lloyd 1991). In the neighbouring states like Khasi and Jaintia Hills (then Assam), now known as Meghalaya, the Welsh Presbyterian mission had already established their work for fifty years. While the American Baptist Mission had been working for thirty years in the Garo Hills and even in Nagaland, the mission work was already well established. The first European Christian missionary to have contacted the Mizos was, Rev. William Williams in the year 1891. He however did not stay long, since his original work was established among the neighbouring Khasi and Jaintia Hills. In spite of his eagerness to work among the Mizos, he died in 1892 (Lloyd 1991:23).

The first Christian missionaries to work with the Mizos were Rev. J. Herbert Lorrain and F.W Savidge, from the Arthington Mission in England. They belonged to the High Gate Baptist Church in London. They arrived in Aizawl on 13th January, 1894, and

stayed on in Mizoram for almost four years. During this period, they managed to learn the Lusei/Duhlian. Lorrain composed a Lushai-English dictionary of several thousand words and it was published by the British government in 1898 (Hminga 1987). They translated some of the books in the holy Bible such as the Gospel according to St. Luke, St. John and the Acts. Both missionaries were also responsible for the alphabet in the Lusei dialect and teaching the people how to read and write. Since they were sponsored by the Arthington Mission whose policy do not allow its members to stay long in one place, they had to leave the Lushai Hills early. Their missionary work was continued by D.E Jones from the Calvinists Methodist Mission (now known as Welsh Presbyterian Mission). He arrived in Aizawl on 31st August, 1894.

When the Welsh Missionaries started working with the Mizo people, there were already thousands of Christian believers in the Khasi-Jaintia Hills, and over 500 hundred in Nagaland. But within a short period of time Mizoram have managed to out-number the Khasi-Jaintia and the Garo Hills Christians (Sawmveli 2005). Today, in Mizoram majority of the Mizo population are Christians. The rapid growth of Christianity and the willingness of the Mizo people to adopt the new religion thus resulted in changes within the society.

Changes within the society

The missionaries have been considered the most important agents in reshaping and reforming the society during the colonial rule. When the colonizers were busy running the administration, keeping law and order, it was left in the hands of the Christian missionaries to keep an eye on the people and to promote what they thought is good and to eradicate what they believed is not good.[5] Even if we look at the Indian

[5] The most notable changes are "doing away with the rice beer drinking and sacrifices to evil spirits" and become "Pathian thuawi" (obedience to God). The Mizos adopted "western" dress code which is very different from the traditional dress. Also there is no more war between the clans and village, and the abolition of *Zawlbuk* or boy's dormitory, which was considered as one of the most important social institutions in traditional Mizo society. Now the church has become the most common meeting place (Sangkhuma 1995; Hminga 1987; Thomas 1993).

context the missionaries were the most important tools for changes within the socio-cultural context (Cohn 1997). Western education became a tool for changing the structural world view. The literary activities of the missionaries such as compiling dictionaries in local language, grammar books, printing of newspapers and the like began a renaissance in India (Jayekumar 2002). This is true even in Mizoram's case as the British rulers were busy in keeping law and order while the real social works was in the hands of missionaries. Christianity is considered as the most influential tool in re-shaping the face of the society. Kipgen has stated that,

> When the missionaries first came to Mizoram it was dressed in a western garb, the missionary's goal of "retaining what is good in Mizo life while following on to what is better was not really achieved. The early Zo Christian was not in a position to differentiate substance from form and therefore simply adopted Christianity in its western form. Believing western culture to be Christian culture, they discard most of their cultural heritage (1996: 316).

The introduction of western education, Sunday schools, and better health care system are all considered part of this change. Some held the opinion that Christianity has eradicated all the traditional ways of living and liberated people from "tradition" to "modernity". Christianity is also considered responsible for Mizo women's enlistment. The introduction of education played an important role in uplifting the Mizo women from within the household to outside the household. Women were now allowed to speak in public and roles were assigned to them in the Church setup which was not permissible in the traditional way of life. The Christian women missionaries also played an important role in education, especially in the education of the girl child. The first school was established in 2.4.1894 with nineteen students including two women (Malsawma 2002:76).

Though the introduction of western education by the Christian missionaries did result in opening up new opportunities for women, and the "spiritual equality" of both genders in Christian doctrines is very important factors in enlistment of the women. But the important question remains; have women really benefited from Christianity.

Women's Position

Mizo society is a patriarchal society where men are considered superior to women. In traditional Mizo society, most of the important positions are being occupied by the men. 'The status of women was pathetically low. There was hardly any society in which women had lower status than among Mizos' (Malsawma 2002:71). Mizo women's opinion was never sought in the matter of village administration, and they were also excluded from religious rites and ceremonies (Hminga 1987:27). According to Kipgen (1996:80), 'In the social organizations and village administration women have no place at all, except under special circumstances where the widow of a deceased chief might rule over the village on behalf of her minor son till his maturity'.

Like many other societies, even in Mizo society, though women contributed enormously towards substantiating the family economy, their contributions are hardly acknowledged. The coming of Christianity is viewed as one factor that has changed women's lives enormously. It liberated them from traditional exclusions and exposed them to "modernity". It has been argued that, the position of women is also changing alongside the process of social change brought about by Christianity (Hming 1987; Sangkima 2004). However, studies on Christianity and gender have suggested, and the traditional social structures and patterns are still prevalent in many aspects.

Though the coming of Christianity has succeeded in changing the Mizos' world view within the socio-cultural life but the traditional forms were still prevalent in many social aspects. Downs (1983:175) observed that, 'Christianity after all was not contradictory to the tribal content but very mush supportive of the same'. The emergence of Christianity has to some extent changed women's position, but gender inequality can be seen in all the social spheres. In fact, despite the claim that Christianity brought positive changes especially for women, one can see that one kind of inequality intersects with another and gender inequality remains intact (Lalrinawmi 1993; Sawmveli 2005).

" Nation Building": Political Development among the Mizo

During the Second World War, more than three thousand Lushai youth joined British Indian army and Burmese Military services. Lushai youth's participation in the Second World War contributed into the development of political consciousness among the Mizos. According to Zorema, Lushais contact with 'more advanced people in their own land' helped them to develop new ideas. When the Japanese troops pushed into India's north eastern borders, Lushai Hills were occupied by a number of British and Indian soldiers. Lushai Hills area, such as, Aizawl, Kolasib, Lunglei and Tlabung, were used as the supply bases. Besides, the Lushai youth who fought in the war, and who had contact with the "outsiders" adsorbed new political ideas. He states, 'The fast changing war economy and the various concessions granted to the public had greatly increased the political aspirations of the people'. On February 1944, the British India government, in order to win the native's friendship and ally for the war efforts, opened the first High School at Aizawl (2007:133-134).

By the end of the Second World War in 1945, the struggle for India's Independence was at its peak. By this time, it was clear that the British would have to leave India and India's Independence was just ahead. The Lushai people were aware of these developments, and for the first time, political consciousness was the main issue among Mizo as the future of the Lushai Hills was unsure. The need for the discussion on the future position of the "Excluded Area" such as Lushai Hills and Nagaland (Backward Tract) was crucial. Since the Mizos never experienced self- governance or democracy, the British India Government felt that the Mizos need to be educated and be prepared in order to safe-guard themselves from "outsiders" (Chaltuahkhuma 2001). Till Independence, there was no representation or nomination of legislators from Lushai Hills.

The struggle for India's independence and the progress of nationalist movement had its effect on the tribal people of Assam as well. During this time, Mohammed Ali Jinnah's "two nations" theory had created controversy. His theory of a sovereign Muslim state must be composed substantially of the British India Province such as: - Sind, Baluchistan, the North West Bengal and the North East: Assam and Bengal. However, his

proposal of including the North East (Assam) was strongly opposed by Sir Andrew Clow, Governor of Assam. He wrote:

> The implicit demand for Assam strikes me as one of the more brazen of Jinnah's claims. The Muslim population is about 33% and if we exclude the Surma Valley, which is linguistically and geographically part of Bengal, the rest of Assam has only 20% of Muslims, mostly recent immigrants (cited in Zorema 2007:135).

The struggle for India's independence and the national politics along with its communal issue placed the hill tribal people of Assam in a difficult situation. These people were "animists", and now mostly Christians and were not touched by either Hinduism or Islam. The people feel that they are different from the "Indian people"; they strongly felt the need to safeguard their customs, language and culture. In the meantime, the Indian National Congress was trying to achieve a territorial unity within the Indian Union. In this connection, a session of the Congress Working Committee on 15th September, 1945 resolved that:

> It will be for a democratic elected Constituent Assembly to prepare a constitution for the Government of India, acceptable to all sections of the people. This constitution should be a federal one, with the residuary powers vesting in the units. The Congress cannot agree to any proposal to disintegrate India by giving liberty to any component state or territorial unit to secede from the Indian Union or Freedom" (cited in Zorema 2007:135).

The committee also declared that they could not force the people in any territorial unit to remain in an India Union against their will. After much debate, the Congress Working Committee finally gave in and India was to be divided into two countries. In the light of this division, proposal was made for the India Rajas, Princely states: 1) to join India Union 2) Join Pakistan 3) Remain Independent.

Political Development

When the British were to leave India, Lushais had no concept of their inclusion in the Indian Union, not only because of their ancestral differences, but also due to their exclusion from the reformed constitution (Zorema 2007). The educated Lushais did not want the British to leave nor did they desire political power to be handed over to the

chiefs, who according to them were arbitrary and dominating. In reaction to the new political development, the then Superintendent of Lushai Hills, Mac Donald, formed "District Conference". This was a turning point in Mizo political history as it marked the beginning of people's participation in politics. Members of the "District Conference" comprised of 40 members - 20 representatives elected by the chief and another 20 by *Hnamchawm* or commoners. The commoners were selected from each divisions of C.I. Mac Donald's hope was to make the "District Conference" as a representative of the Mizos repressive (Hermana 1999; Vanthuama 2001).

The plan came to be known as *Rorelkhawl* or "Mac Donald Scheme". Mac Donald's idea was to have a legislature consisting of the representatives of the chiefs and the commoners, with power and authority to make laws and levy taxes. There should be an Auditor, a Minister and three Councillors, who would constitute the Executive. The three Councillors shall be the heads of (1) Agriculture, Arts, Industries, Trade, Forest and Fisheries, (2) Public Works and Communications, and (3) Education and Health. There shall be a thirty three member council and a 'historian' would act as its secretary. A Governor, with direct responsibility over judiciary, shall be the head of the state holding office for 16 years. There should also be a Public Service Commission for the recruitment of public servants as members (Chaltuahkhuma 2001: 84-88). The scheme was critiqued as "clumsy and unworkable". Zorema argues that, this may not be as innocuous as it seems. He states,

> It was clearly a reflection of the "Crown Colony Scheme", in which its ardent advocates like Neville Edward Parry, John Hutton, Sir Robert Neil Reid and Sir Reginald Coupland…..suggested the unification of the hill areas of Assam and north-west of Burma into a single and separate administrative unit (Zorema 2007: 136-137) (empasis added).

Construction of Political Autonomy

India was going through political formation process and the Indian Union was in the making. The need to deal with the north-east differently was very strong, due to the importance of their geographical locations and also cultural differences. The government

said the need to find the way by which the hill tribes of "North Eastern Frontier" can be welded into the body politics of India, Manserg states,

> Bearing in mind the need for protection of tribal institution and ways of life, for full scale development and for maintaining the integrity of an external boundary at present with Tibet but foreseeably with the expansionist China; on the whole to be secured by an inter-mashing of Central and provincial machinery (cited in Zorema 2007 :139).

Formation of Political Parties

Under such circumstances, the pressure in Lushai Hills grew stronger and the people's aspirations to participate in political activities could not be taken lightly. On 9th April, 1946 MacDonald lifted a ban on political activities and on 25th April 1946, "Commoners Union" the first political party in Mizoram was formed. However, the chiefs and *Upas* or elders were unhappy with the name "commoners", which they felt did not include them. In order to include all sections of the people the name was later changed into "Mizo Union". But, still the chiefs refused to join-in even after the change (Zorema 2007). The Mizo Union declared themselves as the 'true representatives' of the Mizo people. It continued as the only Political Party in Lushai Hills for quite some time till another Political Party called "Zalen Pawl" or United Mizo Freedom Organization (UMFO) was formed on 5th July, 1947. UMFO was founded by Lalbiakthanga. Later, it was headed by Lalmawia, a retired King Commissioned Emergency Officer, Burma Affairs. These two parties existed till the time of India's Independence.

The declaration of the Mizo Union as the only and true representative of the Mizo people was not accepted by the then Superintendent Mac Donald, due to the reason that Mizo Union did not support the Superintendent. He tried to subjugate the Mizo Union (Lalrinchhana 2009:6). However, the force of Mizo Union was very strong and they had the majority support. Their popularity can be seen through songs and Mizo History writing (Vanthuama 2001). According to Chhuanvawra, the Mizo Union was the answer to the Mizo's prayers. People were really fed up with the chiefs' rule and British administration. He writes:

> *Sap* (Colonial Administrator) never really cared for the Mizo, they will not interfere with the welfare of the people until and unless it is directed toward their interest or seems to threaten their interest. Though the chief's authority was limited to some extent, as long as it does not violate the administration system of the British, the chief exercise unlimited power. There was an alliance between the chiefs and the British Administrators which doubles the sufferings of the people (2008:12) (translated from Mizo)

This is why even in the "District Conference" committee the numbers of chief's representative, though much lesser in number, is the same with that of the commoner's. That is why the Mizo Union supported the boycott. As mentioned, right from the start the Mizo Union talked of self governance and people's rights. Unsurprisingly, they did not have the support of the chiefs and even few of the chiefs who supported the party earlier soon withdrew their support. So when in the year 1947 another political party *Zalen Pawl* was formed, most of the chiefs joined this party. This party lobbied for joining Burma. MacDonald was succeeded by Leonard Lamb Peters who convened a meeting on 14 August, 1947 wherein they discussed the future of Mizos. Three options which they felt important were discussed: joining India, joining Burma or to remain independent (Chhuanvawra 2008).

Right from the beginning, the Mizo Union was in support of reducing the chief's right. They wanted to have self-governance/democracy within Indian Union. Many contemporary writers and academicians such as Zorema (2007) argue that the party, instead of focussing on the "concrete policy of lasting future", were more concerned with the "emotional issues of whether or not to abolish the chieftainship". In Zorema's view the Mizo Union, in their desire to end chieftainship, were impulsive. In spite of their fear of losing their identity, yet, to win their objectives, the Mizo Union choose to remain with India.

The leaders of the Mizo Union were very much influenced by the notion of democracy and modern ideas. They were one of the early Mizo educated ones who had been outside of Mizoram for studies and had experienced socio-political situations of the outside world. Most of the contemporary leaders like R.Vanlawma, Ch.Saprawnga and Khawtinkhuma etc, were either graduates or post-graduates. Because of all these

combinations, they were considered the most suitable for bringing change within the Lushai Hills. These leaders were responsible for many changes within the land. Because, when the Lushai Hills gained the District Council Status, most of them were elected as MDC and faced the challenges of the first legal changes /enactment in the new democratic Lushai Hills.

Democratization of the Mizo

In 1947, the British India Government convened the Constituent Assembly & appointed an Advisory Committee on minorities, tribal etc. under the chairmanship of Sardar Vallabhai Patel, which in turn appointed a Sub-Committee for North East Frontier Tribal & Excluded Areas. The constituent Sub-Committee was headed by G.N Bordoloi, Assam Premier of that time and whose other members included:- Ramadhyani I.C.S, J.M Nicholson, A.V Thakur Babba, Tenjamaliba (Naga) Sir.B.N Rao. They arrived at Aizawl on 17th April, 1947. Prior to the arrival of this famously known "Bordolai Committee", the Mizo Union appointed H.Vanthuama, the party General Secretary, to go to Shillong to meet leaders and officials of other hills areas to get suggestions on framing the draft and design of the constitution. They asserted that if they are to join India Union, they should have the rights to exercise authority concerning the state's administration and also the customs of the people. The Mizo Union submitted a memorandum on 26th April, 1947 to Bordoloi Committee demanding: 1) All Mizo inhabited areas contiguous to Mizoram should be included in the Lushai Hills District 2) Lushai should be called Mizo 3) Internal administration in Mizoram should be provided liberal financial assistance. This was replied by the Governor's Advisor on 10th February, 1948 (Lalrinchhana 2009).

The years from 1947-1950 marked the process of democratization of the Mizo Society. The District Advisory Committee was put in charge of administration under the Superintendent. The members of the committee should be elected from each C.I division. The Mizo Union won the majority seats in the ensuing election and the number of members from each party was: Mizo Union-7, Chiefs-3, UMFO-1, Hmeichhia-2, and Tribal Union-1, Total-14. The Advisory Committee was given the right to involve or give their opinion in the administration system (excluding civil cases and criminal cases).

What it actually implies is that, the British India Government knew that since the Mizos never had a system of self-governance, it will be difficult for them to, all of a sudden, administer with the new system. Therefore, the committee was given some space in the authority so that they can educate themselves and be prepared for the future. This period could be considered as the "training period".

Advisory Sub- Committee

The Constituent Assembly Committee suggests that the Mizos should form Advisory Sub Committee Council to finalize the terms and condition on the laws of governance. On 14th August, 1947 a meeting of Mizo Political leaders, representatives of the church, representatives of Government servants, representatives of chiefs, representatives of women etc.- more than 50 people was held at Aizawl under the chairmanship of L. L. Peters, the then Superintendent and also the last Superintendent of Lushai Hills. They passed the following resolutions: - 1) the Mizo customary law and land tenure should be safeguarded 2) the special provisions given which concerns the rules and regulation relating to the Lushai Hills District to continue 3) the Mizos will be allowed to opt out of the Indian Union when they wish to do so, subject to a minimum period of ten years. The resolution was submitted to the Governor of Assam and thereafter, the Governor of Assam replied the same under Notification No. 1626-30G of 2.9.1947, which says as follows: (i) There can be no question of Lushai leaving the Indian Union as in law, the Lushai country being an excluded area was already part of Assam (ii) That the Lushai must remain with the Indian Union and cannot join either Pakistan or Burma (iii) In view of the Constitutional position stated above, the question of opting out after 10 (ten) years doesn't arise.

On 4th July 1947, a meeting was held in Assam Assembly Committee room headed by G.N Bordoloi. The meeting was attended by the co-opted members of the Advisory Sub-committee from Mizoram, Khasi, Nagaland, North Cachar Hills and Nagaland. The hill areas were given "self-governing" authority within the Indian Union. Lushai Hill was granted "Autonomous District Council". The council shall consist of not less than 20 and not more than 40 members out of which three-fourth shall be elected on

the basis of adult franchise. The District Council shall have the power to make laws for the areas within its jurisdiction and for its administration. The Bordoloi Committee also suggested the constitution of Village Council for village administration. The Sub-Committee also proposed the creation of the Pawi-Lakher-Regional Council in the extreme south of the Lushai Hills. The Pawis and Lakhers were incorporated into Lushai Hills in 1924. Before their inclusion, they had little or no connection with the Lushai people in the North. They are purportedly different linguistically from their Lushai neighbours (Hermana 1999; Vanthuama 2001).

However, as there would be a long gap for establishment of District Council, the latest meeting of the Constituent Assembly on 4th July, 1947 proposed formation of Advisory Council. The first meeting of Advisory Council was held on 16th August 1948. The meeting was chaired by the Superintendent. Disputes arose between the Mizo Union leaders and the Superintendent over "voting rights". The Mizo Union accused Peters, the Superintendent, as bias and showing favouritism to the chiefs. The "Draft Regulation" for the future constitution of Lushai Hills put forward by Peters was objected by Mizo Union, saying that they need sufficient time to think it over. Not only that, since the draft was written in English, it had to be translated into Lushai and distributed to the members for their comments. The "Draft Regulation" was put up for discussion in the next meeting on 23rd August. Again, the Mizo Union refused to participate. Peters was backed by the chiefs, but a strong opposition from Mizo Union forced him to refer the matter to the Governor of Assam (Zorema 2007).

To settle the matter, Nari Rustomji, Advisor to the Government of Assam for Tribal Affairs was sent to Aizawl. Rustomji had a series of meetings with the leaders. Though he was successful in convincing the Mizo Union leaders to look at the drafts, he failed to change their attitude towards the chiefs and the Superintendent. Rustomji was successful in clearing up the deadlock but without any real further implications. The important outcome of Rustomji's visit was, Government of Assam handed over certain powers to the Advisory Council in matters relating to Primary Schools, markets, cattle, ponds, fisheries, roads and waterways. The Mizo Union sees the Superintendent as 'an

upholder of the chiefs, a symbol of traditionalism and an obstacle to any process of modernisation' (Zorema 2007:158).

Problems within the Committee

The following years witnessed the decline of the Superintendent's and the chief's authority. In the old District Conference, the chiefs enjoyed equal membership with the commoners and the support of the Superintendent. However, in the Advisory Council, the chiefs only had ten members in the house out of 35 members. Peters tried to break up the Mizo Union by offering lucrative government jobs to their leaders which was, however, not successful (Hermana 1999). On 27th December, 1948, the Mizo Union launched civil disobedience movement, demanding the dismissal of Peters, the District Superintendent. On 18th January 1949, a large number of people gathered near the Superintendent's office and shouted slogans "Go Back Peters". In reaction, Peters recalled the three Assam Rifles platoons from Agartala, established four Assam Rifles outpost at important locations, posted a Sub-Divisional officer at Lunglei and arranged detention facilities. He arrested a large number of leaders, [6] in reaction to this; the movement became violent in some parts of the area such as Lunglei where *lathi*-charge resulted in a number of casualties.

Once again, to settle the disputes, Nari Rustomji was sent to Lushai Hills. Rustomji was able to convince the Mizo leaders by assuring them that the recommendation of Bordoloi Committee would be implemented soon and all the political prisoners would be released. On 1st March, the District Superintendent Peters was replaced by Satyen Barkataki. The Mizos' constant attack on their authority and the whole process of democratization threatened the position of the chiefs. The chiefs were aware of their declining power. As such, in October 1949 meeting, the chiefs sought to safeguard their privileges in the impending constitutional changes. Their demands included reservation of one seat in the District Council for *Lal Upas*, reservation of six seats in the District Council for the chiefs themselves, exemption of all the sons and brothers of the chiefs from coolie labour and reservation of a seat for *Khawchhiar* or

[6] Leaders such as Vanthuama, V.Rosiama, Lalbuaia, Chanwghnuaia, Kawnga, Lalsawia, Chhunga, Sangkunga, Liankunga, H.Khuma, R.Thanhlira and Hrangaia who had just returned from Shillong, were arrested even before they could reach their home.

village writer in the village council. Apart from this, the *Upas* or chief's elders also formed "Chief Elders Association". They submitted memorandum to the Superintendent, demanding one seat each in the Village Council, in addition to what the chiefs had sought. However, their demands were not successful. With the inauguration of Indian Republic on 26th January 1950, the Lushai Hills, for the first time, had representation in Parliament when Ch.Saprawnga was nominated as a member. The Advisory Council which was created during the interim period was dissolved on 21st November 1951 (Vanthuama 2001; Hermana 1999; Chaltuahkhuma 2001).

Lushai Autonomous District Council

Under the Sixth Schedule of the Indian Constitution Lushai Hills got an Autonomous District Council on 26th April, 1952, and the Pawi-Lakher Autonomous Regional Council was also formed in 1953 to satisfy the aspirations of the minority Lais and Maras in Mizoram. The Assam government fixed the date for the first election of Mizo District Council for the 4th April, 1952, and 5th April was also fixed for the elections of Member of Parliament and Members of Legislative Assembly. In the election, the Mizo Union against UMFO swept off almost all the seats. The Mizo Union won 15 seats out of the total 18 seats. Not only that, they also captured all the Assembly seats. Ch.Saprawnga was elected as the first Chief Executive Member (CEM) in the Lushai Hills District Council. But, since he was appointed as the Parliament Secretary in Assam Government, Lalsawia was elected in his place on 16th April 1952. Dr Rosiama was elected as Chairman and Tuikhurliana was elected as Deputy Chairman. The CEM nominated Hrangaia and Sangkunga as Executive Members (EM). Thanhlira was nominated as Member of Parliament in May 1952. The Lushai District Council was formally inaugurated by Bishnuram Medhi, Chief Minister of Assam on 25th April 1952 (Vanthuama 2001).

One important change that came along with the District Council was the establishment of Village Council Courts at every village. The system of litigation became more systematic. The Village council court was made responsible for settlement of disputes at the village level concerning family matter etc. Every case has to be recorded

by the village secretary with the signature of President of the Village council court and should be kept properly. However, the District council made some restriction in which they considered to be too big or too important such as: 1) criminal 2) rape 3) sexual harassment of minor 4) *mawngkawhur* (homosexual relation). If such cases happen, the village president should immediately report to the higher court.

Abolition of Chieftainship

The first bill moved by the Mizo Union was "Abolition of Chieftainship" which the District Council passed in its first session during 23 June-10 July 1952. The Abolition of Chieftainship Act, 1952 striped off power and authorities previously enjoy by the chiefs and his *Upas*. The Act provided withdrawal of the chiefs from 1st January 1953. However, the chiefs were allowed to continue their office under the District Council until the Village Councils were formally inaugurated. On 20th June 1953, the District Council passed a Bill for implementation of Village Councils in every village, which was approved by the Government of Assam. Accordingly, elections were held in July-August 1954 (Zorema 2007).

In 1954, the *Lushai Hills* district was renamed as 'Mizo Hills district" and chieftainship too was subsequently abolished (B.B. Goswami & Mukherjee 1982:136). After the Acquisition of Chief's Rights Act, 1954, the Mizo District Council became responsible for any changes in legal system as well as enacting new legislation. The most notable act passed by the Mizo Autonomous Council is Inheritance of Property Act, 1956.Under this Act, a person may be disposed of his/her property by will. But in case of the absence of such will, the property shall devolve in accordance with the customary law. The District Council was vested with the power and authority under the Sixth Schedule of the Indian Constitution (Lalrinchhana 2009).

Formation of Mizoram State

Another important factor which led to the political movement among the Mizos was the deplorable economic condition of the Mizo Hills during 1960s. And to make the matter worse there was a great famine popularly known as *Mautam* in 1956, which was

caused by the flowering of bamboos and the consequent multiplication of rodents which ate almost all cultivations. The lack of sympathy from the Assam government and the general attitude of apathy from mainstream India angered and hurt the feelings of the Mizos. The situation gave birth to the emergence of a political party called the Mizo National Front in the 1960s. The party's ideology was to achieve a sovereign and independent state of Mizoram. And from midnight of 28th February 1966 the MNF declared Mizoram a sovereign and independent state and began to attack important government installations and security camps at various places. This insurgency lasted for almost 20 years (Chaube 1982; Goswami at el 1982). After much struggle and political manoeuvrings, the MNF was negotiated into accepting the status of statehood for Mizoram. And, in 1987 Mizoram became a full-fledged state of the Indian Union.

After Mizoram gained full-fledged statehood in the year 1987, the applicability of the central laws to Mizoram and the continuation of the existing laws were governed by the constitution (Fifty –Third Amendment) Act, 1986, the state of Mizoram Act, 1986, Article 371G of the constitution and the Mizoram Adaptation of Laws and Orders, 1987. By virtue of Article 371G, from 20.2.1987, no Act of Parliament in respect of religious and social practices of the Mizos, Mizo Customary Law and Procedure, administration of civil and criminal justice involving decisions according to the customary law, and ownership and transfer of land, if made after the stated date, shall apply automatically to the state of Mizoram unless Legislative Assembly of Mizoram so decides by resolution.

The District Council Court, Sub-District Council Court tries all cases at different levels when litigation is within tribal areas and parties involved are both tribals. The judge and Additional Judge of the courts of District Council are conferred with the powers for the trial of offences, punishable with death and transportation for life under the penal code or under any applicable law. The District Council Court is under the direct supervision of the High Court of Assam. In the present scheme of things in Mizoram, there are parallel systems of courts, each functioning within its own orbits (Lalrinchhana 2009).

The Exclusion of the "North-East India"

This section discusses the Sixth Schedule of the Indian constitution and review on the "District Autonomous" in the North East India. The section provides an overview of tribal politics within the Indian Union.

Since the British occupied the North East India, the region was always a matter of concern for the British government because of their "distinctiveness" from mainstream India (Zorema 2007). Certain issues were raised in respect to tribal development; Verrier Elwin was one such person who regards himself as a "British born-Indian" who pressed the government to consider tribal issues especially of the Hills-men. Elwin urged the national movement to pay attention to "Hill and forest tribes", who were a "despised and callously ignored" group. Their problem was as urgent as eradicating untouchability. Elwin is of the opinion that, Indian national workers and reformers 'have neglected the tribes shamefully'. The Congress, the Liberals and even the Khadi workers has neglected them (Guha 1996).

The British parliament passed the Government of India Act of 1935, whereby declaring North East areas with predominantly tribal populations, were to be known as "Excluded" and "Partially Excluded" areas. This Act means the laws made by the legislative assembly (India) would not extend to these states. And it remained to be governed and administered by the Governor of Assam. According to Ramchandra Guha, this is part of the colonial hegemony. He writes,

> Some British politicians saw the provisions as vital in protecting the tribals from their Hindu neighbours. Conservative MPs, supporting the clauses in the House of Commons, said they would save the tribes from being converted from good Nagas or whatever they are into bad Hindus. But the tribals were not to be deprived of the decencies of Christian civilisation. As one member, Colonel Wedgwood, puts it, the best hope for backward tribes everywhere are the missionaries. The missionaries and the British government together gave these people a chance (1996:2375).

According to Guha, the creation of "Excluded Areas" was strongly critiqued. A meeting of the Congress, held at Faizpur in September1936, condemned it as, 'Yet another attempt to divide the people of India into different groups, with unjustifiable and,

discriminatory treatment, to obstruct the growth of uniform democratic institutions in the country'. When the Congress formed provincial ministries in 1937, it tried hard to abolish or dilute these provisions. As stated by Guha, the Bombay legislative assembly, in a unanimous resolution, it was said,

> ….outrageous to suggest that a constitutionally irresponsible Governor, almost certainly a non-Indian, can better administer these areas than a responsible Indian Cabinet can". The concept- of Excluded Areas was even mocked as a device of anthropologists to protect aboriginals as museum pieces for their science (1996:2375).

In the run-up to India's independence, the need for the discussion of the "Excluded Area" such as Lushai Hills and Nagaland's (Backward Tract) future was crucial.

The Sixth Schedule of the Indian Constitution

In 1947, the British India Government suggested that Constituent Assembly & Advisory Sub- Committee for North East Frontier Tribal & Excluded Areas Committee should be formed to think about what kind of administration they would want to adopt when India attain Independence. The constituent Sub- Committee was headed by G.N Bordoloi, Assam Premier of that time and other members includes:- Ramadhyani I.C.S, J.M Nicholson, A.V Thakur Babba, Tenjamaliba (Naga) Sir.B.N Rao. The leaders of the tribals asserted that if they are to join India Union, they should have the rights to exercise authority concerning the state's administration and also the customs of the people. On 4th July 1947, meeting was held in Assam Assembly Committee room headed by G.N Bordoloi, the meeting was attended by the co-opted members, Advisory Sub–committee from Mizoram, Khasi, Nagaland, North Cachar Hills and Nagaland. After the discussions and going through all the regulations, it was accepted and incorporated within the Indian Constitution; this is called "Sixth Schedule" after the formation of Indian Constitution (Hermana 1999; Vanthuama 2001; Zorema 2007).

Sixth Schedule [Articles 244(2) and 275(1)]

The Sixth Schedule of the India constitution contains provisions for administration of the hills in the state of Assam, Meghalaya, Tripura and Mizoram. The aim of the Sixth Schedule is to protect these hill areas and tribal communities from the control and exploitation of the "plain" people, who are more "advanced" and "civilized" than the tribal. The provisions under the Sixth Schedule to the Constitutions were historically evolved to administer the tribal majority areas in the States of Assam, Meghalaya, Mizoram and Tripura through the district council or the regional councils. Under the provisions of Sixth Schedule, the Councils are vested with legislative powers on specified subjects and are allotted certain sources of taxation. They are also given powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc.

The Sixth Schedule is regarded as a mini-constitution within the main constitution; the objective of the Sixth Schedule is to give greater autonomy to the tribal areas of the North East India. The application of the Sixth Schedule to the Constitution has not been extended to any other State of India besides the North-Eastern States. District Councils and Regional District Councils were formed under the provisions of Sixth Schedule and they are empowered to constitute court of trial of cases between parties belonging to schedule tribes. The District Council Court for each District Court consists of qualified judicial officers, designated as judges and magistrate are appointed by the Executive Committee with the approval of the Governor. The Sixth Schedule also provides conferment of the authority on district council courts or cases under CPC and Cr. Pc and the power to exercise judicial authority (Bakshi 2007). In all these states, cases which are considered related to family matters, such as marriage, divorce and inheritance are adjudicated in accordance with their Customary Laws.

Politics of Sixth Schedule and "Districts Autonomous"

According to Sanjay Barbora (2005:37), 'The autonomous districts in Assam, formed under the auspices of the Sixth Schedule of the Indian Constitution, are a showpiece for the State's capacity to address indigenous ethnic aspirations in the north

east'. While Sanjib Baruah sees it as the continuation of the work of colonialists. He argues that, the Sixth Schedule can be traced back to colonial efforts to create protected enclaves for "aborigines" where they be allowed to preserve their "customary practices" including kinship and clan-based rules of land allocation. The successful political incorporation of dissenting minority groups by giving them significant levels of political autonomy and a major say in public policy is 'not necessarily the result of an enlightened policy. It is rather the somewhat reluctant continuation of colonial policy, which emphasise the protection of vulnerable indigenous people from their more crafty neighbours' (Baruah 1989:2087; 1999).

Sanjay Barbora stated it is not "uncommon" to hold the colonial responsible for the conversion of the area into one administrative unit. However, he argues that there are more issues involved, and the birth of autonomous districts council within the Sixth Schedule runs much deeper than territorial boundaries. It has to do with ethnic politics and cultural Identity. He proposes three factors such as 1) the construction of frontier 2) negotiations of political space and 3) aspiration for "autonomy". He presents his argument through the analysis of the Karbi Anglo and Bodo experiences in Assam-1980's. He writes, 'The product of years of systematic mobilisation of political resources of the community that sees its position of marginalisation as a failure of institutions of representation and Participation' (Barbora 2005: 37). [7]

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Sanjay Barbora's argument is that, the establishment of such autonomous districts council by the Indian central government does not pave the way for "a successful experience of institutional autonomy" for the indigenous people of the hills. Not only that, this arrangement was gradually challenged by the emerging educated classes. The challenge resulted in sporadic outbursts of anger against the arrogance of the valley-based, caste Hindu power brokers. He argues that the birth of such autonomous districts

[7] The Boro (or *Bodo*) are classified as a "plains tribe" and the demand for their separate homeland incorporates territories of western Assam. The territory is also home to various other ethnic groups, each with their own claims of being "indigenous" to the area. In addition to such groups, there are also others who trace their place of origin to central India; the sub-Himalayan foothills of Nepal and Bhutan; the Gangetic plains and from neighbouring parts of Bengal (including Bangladesh) (Barbora 2005:37).

council and field areas are not "coincidental", he points out, both Karbi Anglong and the recently created Boro (land) Territorial Council offer a "longitudinal contrast in the application of the Sixth Schedule to specific territories and people". He states, 'The administrative logic that decreed the creation of these "autonomous" entities/ territories, shows an almost naïve faith where complex (and contentious) issues centred on identity, are seen to be resolved' (2005:38-39).

Though the colonial policies of "excluded" North East certainly contributed in the approach and policy making of "mainland India" towards North East, the demand of political autonomy within the Indian nation also echoed the people's concern over their ethnic and cultural identity. In fact, movements in North East can be understood in the context of negotiation of 'greater social, political and cultural spaces, the spaces in which the ethnic communities were not hitherto represented' (Biswas and Bhattacharjee 1994:232-242). Barbora argued that, the contestation in North East presents the issues of the "other". The colonial policy in the political structures of north-east region may only account for one aspect of the "ends" to which governments strive – that of political and territorial unity. The Indian state's inclination to give them autonomy might suggest that it is more "tolerant" of ethnic aspirations. Barbora states, 'Their subsequent declaration for separation from a "mother body" is based on an implicit declaration of *people-hood* based on genealogy and descent ties function' (53). Murray (1997:11) states, 'not only as other sub-national units do in, say, the assertion of ethnicity, but point to the history of pre-contact and raise questions about legal and moral legitimacy of the present national formation' (cited in Barbora 2005:53).

Building of Nation-State

Perhaps, this may lead to a serious discussion of nation-state building. Theoretically, there is no universal definition of nation and state. What we called nation is actually combined by the idea of nation and the idea of state. Both are controversial terms. The term nation denotes a certain unity among the people that includes language, certain historical background, customs, cultures, shared religion etc. Being a nation is a subjective belonging and therefore what we call nation is also a cultural entity. By

contrast, the state is a political unit occupying a certain geographical territory and controlling it under a single jurisdiction. There are some scholars who think that nationalism is the product of the underlying national reality, some see nation as a political association and others see it as a cultural community (Balakrishnan 1996; Hastings 1997).

A state can create a new nation in the sense that it can accelerate, while a nation may constitute itself into a state, it could include federation, republic and sovereignty. One possibility is that, we can have one nation, one state although it is very rare and difficult (e.g Japan). Secondly, we could have parts of different nation coming together to constitute a state for various reasons such as geographical. Thirdly, we could have one nation divided into two states for ideological reasons (e.g Korea). Fourthly, we can have parts of a nation constituted into one state and the rest affiliated to another state (e.g. Bangladesh, West Bengal). Lastly, we can also have a set of multiple nationality coming together to create a state (e.g America) (Bailey 1998; Chatterjee 1994; Balakhrishnan 1996).

According to Benedict Anderson (1983), the nation is an "imagined community". Anderson traces the origins and spread of nationalism to the modern industrial age of the Enlightenment in Western Europe. Anderson's conception of the nation is one of a community that is socially-constructed, or "imagined" into being (Nelson 2007). The question is not whether the nationalism is true or false, but rather how the imagined community is different from other community imagined. Barbora points out,

> Ethno-nationalist identities are important categories of identity formation in North East India. They constitute a peculiar version of a process that Benedict Anderson terms as an "Imagining" of constituent members of a political activity. This process, however, is bound to be contested by the modern nation states which see the persistence of ethnicity, though sometimes a vital link to the nation-building process, as a strategy of resistance to the control of the state. One of the reasons for the formation for such identities is the geo-political construction of "frontiers" in the 19th century and the manner in which the "frontiers" were incorporated within post - colonial nation states (2005:198).

Within the realm of nation state ideology, we cannot neglect the rise of new elements and their consequences. The new element is the assumption that citizen of the nation state of a community whose members are united by some common origin or ethnicity or some common language, it is the idea that the citizen of the nation state ought to form a homogenous population (state). The dangerous element is that citizenship tends to get defined by nationalism (Chatterjee 1994; Hastings 1997).

Nationalism

Earnest Gellner (1983) sees nationalism as borne out of "modernity". It is "modern" in the sense that it is almost seen as natural for every people who formed cultural entity must have a state. Gellner is of the opinion that, industrialism brings rapid continuous changes, it involves a complex division of labour and this requires a rather unique and specialized system of education, standard language literacy which will produce important tools for the industrialist and also universal education system. Gellner points out; to have such a centralized education system we need a centralized state. According to him, nationalism does not just develop in response to the breakdown of tradition; rather, nationalism also develops in relation to new pattern of social movement, mobility, and social activity, cultural and intellectual innovation. Gellner argues that, the development of standard cultures clearly promotes and makes possible identity and Industrialism encourages the thought of nationalist (see Hall 1998).

One can argue with Gellner's view, saying that development promotes national ethnic sentiments and also can raise ethnic tension. Also, nationalism can develop particularly at an ethnic level. Scholars have pointed out, another problem of theorizing nationalism is that, there is a problem of how to move from the idea of a cultural community as a set of relationship to an idea of cultural community as a set of consciousness. There seem to be a gap between the structural changes and imperatives association with industrialism and the actual construction of a sense of nationality (Hall 1998; Chatterjee 1994).

Self – Determination

Now, the question is why nations should become states? Nations have to become states in order to rule themselves; however, nationalists have complicated the idea of independence leading to believe that the only road to self-rule is self-determination. The political demands for self-determination are centrally linked to the idea of a distinct identity of an ethnic group. This ideology is sometimes seen as a threat to the building of nation-state. The question we may ask is how are we to see a political community wishing to establish a correspondence between nation and state.

The demand of self-rule government cannot be granted to every nation. In fact, it would be a tragedy if every cultural community group demands their own self-rule government state. The idea of having self-rule or self- determination is not an adequate answer to the problems. If all cultural community achieve their demand of self- rule government and create their own state, the cause could lead to theoretical incoherence and practical unreliability. However, with all considerations, it is very important that the government may grant special concession for those who regard themselves as having different identity, their distinctiveness should be recognized, and also give them special treatment and negotiate their demands and could include federation. The cultural community group can later emerge as the political community. They can of course demand for empowerment, autonomous district council, protection of their cultures, languages etc. But the idea of having self-rule government state is totally different. Hence, provisions like the Sixth Schedule, Article 371 are seen as an effort to ensure the minority rights and "self autonomy".

However, these provisions are not adequate to solve all problems, Barbora points out, autonomy and autonomous institutions have not delivered justice in north east India. His argument suggests that, "autonomy framed within a statist discourse"- does not adequately address the issue of control of resources, finances and costs of running autonomous territories in a comprehensive manner. Rather, as in the Sixth Schedule, they seem ineffectual and burdened with contradictions that make the 'principle of custodianship appear more like a managerial policy'. In his words, 'As long as autonomy

arrangements are seen as a tool to manage the political demands of people in the region, there will always be problems with its implementation' (2005:53). Though this may not solve all the problems especially the complex situation in the North East, it provides "limited" security to the tribe people, enabling them to be able to protect their customs and cultural practices. However, the women's rights question will be addressed in the next chapter.

CHAPTER - III

MIZO CUSTOMARY LAWS AND THE DISCOURSE OF WOMEN'S RIGHTS

In this chapter, I will discuss the history of the written form of Mizo Customary Laws, and how it went through different stages until the formation of *The Committee on Mizo Customary Laws* (CMCL) in 1980. The chapter also discusses the demand of reform of Mizo customary laws by *Mizo Hmeichhe Insuihkhawm Pawl* (M.H.I.P) (United Organisation of Mizo Women), largest women's organisation in Mizoram. The response to women's demands, issues and debates within CMCL will be examined. The question of reformation and codification of tribal customary laws will be discussed.

The role of the state and the church in upholding the customary laws will be examined. The study also looks at how women seek protection from constitutional laws, and the idea that the state offers an arena for emancipation of women will be addressed. The chapter will talk about the question of minority women's rights within the community, the issue of custom and tradition, identity and cultural practices. The question of how women's rights are seen as opposed to minority rights and how certain customs and practices discriminate women will be examined. Impact of cultural relativism and the implications of human rights will be discussed.

Mizo Customary Laws

As seen in Chapter-II, the Mizo customary law is based on patriarchal ideology which discriminates women. According to Mizo Customary laws, women do not have inheritance rights, and they also cannot claim maintenance after divorce. Pautu (2006:98) states, 'Women in marriage are continued to be seen as economic liability to the other family, in divorce, burden to their family and in inheritance nondescript others'. The deliberation of Mizo women's subjugated roles and denial of rights is considered "natural", and the idea is that it must stay that way. For instance, a widow can inherit her dead husband's property only by virtue of her children and for promised fidelity to the

dead husband. There is no security for a widow within the bounds of the customary laws unless a will is written.

Mizoram is the first state to have written customary laws among the states of North East India. The first written form of Mizo Customary law was compiled by N.E Parry, '*A monograph on Lushai custom and ceremonies'* was published in the year 1927 by FIRMA KLM Calcutta.

Lushai Autonomous District Council (1954 - 1972)

When Lushai Hills was accorded District Council status, they had to draft new rules and regulations, and a customary law was one of them. The District Council immediately took up the task of reforming the *Mizo Dan* or Mizo Customary Law. In 1954, Sub-Committee on Mizo Customary Board was formed which was headed by Hrangaia, MDC i/c Village Council. In the 7th sitting of District Council Session 15-5-1954, Hrangaia reported to the then Chairman of the District Council Dr.Rosiama, that the Sub-Committee had already gone through a copy of Parry's monograph, and it was decided that each member should give their thought and ideas and later to be submitted to Sainghinga, who would make the final draft. On 29th September 1954, the issue of whether to make the Mizo Customary Law as a statute law or to remain as monograph was discussed. Majority felt that it would not be wise to keep the customary law as statute law. In this session, the power and authority invested on Village Council Court was discussed and debated. It was decided that petty cases like theft should be presented before Village Council Court, and only serious cases should be brought to Sub-ordinate Court. During debates, Hrangaia states that 'Even during British rule, only serious cases were presented before the Superintendent, all the petty cases were tried by the chiefs, and the system worked well'.

The question of who are the Mizos was raised because the Lushai customs and ceremonies are in fact the composition of the *Lusei* Clan. Since it was adopted as the *Mizo Dan,* there was protest from non-*Lusei* groups. What was then decided was that the *Mizo Dan* would not be applicable to tribes such as: - Mara and Lai who occupy the

southern part of Mizoram, and who have their own Autonomous District Council. In the year 1957, the first customary law compiled by the Mizo District Council was published. But there were no changes relating to marriage, divorce and inheritance.

One of the most notable changes brought by Autonomous District Council was, Mizo District (Inheritance of Property) Act, 1956. Apart from this, there were no changes. In fact, the question of women's rights was not even brought up at all. According to this Act, women can get property if they are included in the will. But, it has been contested that a will by itself is not a 'right'. Moreover, in many cases a will can be contested by the husband's family. Pi Sangkhumi, ex-president MHIP and women's rights campaigner in Mizoram, said '*A will is unreliable, and in many cases, a widow would be accused of forging the will or ruled over on the basis of lack of witnesses. At the end it is the Mizo customary laws that actually rules*'. Even if women (married or single) holds personal valuable assets/ properties in their name, since the Mizo Customary Laws does not accommodate how a woman property should be distributed, these have to be deliberated in the civil courts.

The period from 1972 to 1986 can be termed as one of the most important periods in Mizoram, due to the intensification of MNF (Mizo National Front) movement. Since 1966, MNF movement was fighting for independence of Mizoram from Indian Union. It was in 1972 that Mizoram was accorded Union Territory. Under Union Territory, changes in regard to customary laws were primarily absent. However, one notable point is that in 1980, *the Committee on Mizo Customary Laws* board was appointed to continue from where it was left and to reform, if necessary. After Mizoram gained full-fledged statehood in 1987, most of the laws which were enacted during the Autonomous District Council were adopted without modification, and even to this day, it remains almost the same (Sailo 2006).

Formation of Mizo Customary Law Board Committee

In 1980, *The Committee on Mizo Customary Laws* (CMCL) was formed, and in the year 1982, the Mizo Customary Laws Compiling Committee was formed. Even

though CMCL formed in the 1980's, the actual work started only after Mizoram gained statehood. The difference between the two is that, after discussion at Customary board meetings, the "Compiling Committee" usually makes final conclusion or decisions. Five members were appointed: Robert Lalchhuana, H.T Thanhranga, Pi Rozami, C.Sangzuala and Rev Z.T Sangkhuma. Right from the beginning, the Mizoram state government took active role. The members appointed for the customary law board committee were headed by the then Minister of State, Law and Judicial Department, Government of Mizoram.

The committee on Mizo Customary law took 20 years to complete the task and to come up with the latest version of *Mizo Hnamdan* or Mizo Customary Laws in 2006. The explanation for the delay, according to the members that I interviewed, was mainly because whenever the government changes, the new party which formed the government always changes the members, except for the "Compiling Committee" members. From *People's Party* (P.C) till *Mizo National Front* (MNF) regime, too many members were appointed that even they themselves cannot remember each other. In the appointment letter, the duration or term or condition and period is not mentioned. There are representatives from the church, NGO's, and also women's association. Whenever a new party comes to power they would appoint new members and the old members' term is considered automatically terminated. Within those 20 long years members of the committee has been changed as many as six times. Apart from the members of the customary law committee, opinions of NGO'S such as *Young Mizo Association* (YMA); *Mizo Hmeichhe Insuihkhawm Pawl* (MHIP) (United Organization of Mizo Women); *Mizoram Upa Pawl (*MUP) (Mizoram Elder's Organisation) were also sought. The members of Committee on Mizo Customary Laws comprises of Mizo Elders, intellectuals, and Pastors. Majority of the members appointed were well known personalities in Mizoram.

In 2006, the first edition of *Mizo Hnam Dan* or Mizo Customary Laws was published by Law and Judicial Department, Government of Mizoram (See Appendix III). Most of the laws which were enacted during the Autonomous District Council were adapted without modification and even to this day it remains almost the same (Sailo

2006). The MHIP, founded on 6th July, 1974, the largest women's body expressed deep resentment over the "male friendly" Mizo customary laws. During the process of "codification" of the customary laws, various demands have been made with regards to women's rights and status, MHIP lobby for the reform of Mizo customary laws relating to divorce, inheritance and *sawn-man*. '*Our efforts to change the Mizo customary laws to make it more favourable for women went in vain*'' says Sangkhumi.

Issues and Debates within Mizo Customary Law Board Committee

The main intention for forming the customary board committee was to revise/reform the Mizo customary laws attuned with the present society. The interesting thing is that, the aims and objectives of the Mizo customary committee are expressed differently by the committee members. Some members maintain that they are to make changes and some insist they are not. Members like Sangzuala said they are to "re-draft" the Mizo law while Chawngtinthanga, ex-Secretary of CMCL and Rev Z.T Sangkhuma, member of the 'Compiling Committee' said they are to "compile" the Mizo law. There seems to be a debate among the members whether the committee was responsible for making changes and reform the laws. The term "reform" is also consciously avoided by the committee members for some reasons especially with regard to women's rights. The two main arguments at that time were whether customary laws can be changed. Before the publication of the first edition in 2006, Mizo Customary Law was first notified in *Mizoram Gazette* in 2005 (Notification No. H.12018/119/03-LJD/62, the 4th April, 2005), at the time of notification, Lalrinchhana writes,

> It remained two schools of thought, one school of thought opined that Mizo Customary Law can be changed, amended from time to time along with the fast changing socio-economy. Another school contended that customary law can not be notified, altered and changed as it is solely based on customs. Thus, Mizo Customary Laws 2005, compiled by *the committee on Mizo customary laws* became like a white elephant, costly due useless or purposeless in law courts (2009:125).

MHIP Demands

Mizo Hmeichhe Insuihkhawm Pawl) (MHIP), lobbied for the reform of Mizo customary laws relating to divorce and property rights. MHIP raised three important

issues during the compilation or re-draft of Mizo customary laws, such as: - 1) inheritance rights for widow property rights 2) according to Mizo Customary Law, when a man lost his wife (if the wife died) he can re-marry without any circumstances or problems and even if he had sexual intercourse with women it is considered alright. But for women this is not possible, when her husband died the widow may have no sexual intercourse with anyone at least for three months and even then not until she had performed *thlahual*. Until this is done she should remain in her husband's home; after she follows all these processes than only she can re-marry. The respondents' women feel that this is not fair when men can remarry easily the same is not extended to women. 3) Increase of *Sawnman* - illegitimate child's price given to women. (See Appendix II).

According to the Mizo Customary Laws, an illegitimate child is never a man's problem; the custom is that if a woman is pregnant with illegitimate child *Sawn*, she is entitled to receive Rs 40/- which is called '*Sawnman*' from the *Sawn's* father. If the *Sawn's* father refused to pay the price, he cannot claim the father's position. But, there are no laws of punishment if he refuses to pay. If he pays the price, the father gets the custody of the child, after the child reaches 3 or 4 years old. If a woman has any sexual intercourse with another man while pregnant it would be considered infidelity and would have to fine Rs 40/- to the *Sawn's* father. On the other hand, the customary laws do not extend any punishment to the man who had sexual intercourse with a pregnant woman. A woman with a *Sawn* is considered an outcast by the society; suffering severe image damage which destroys her future prospects. Men are never blamed nor made to suffer and they hardly take any responsibility (Pautu 2006).

The members of *the Committee on Mizo Customary Laws* (majority of them male) argue that even though the intention for forming the customary board committee is to revise the Mizo customary laws attuned with the present society, the committee's aim is not to "reform", instead the aim is to "revise" some of the old laws. For instance, to remove laws which are no longer "relevant" or no longer used in contemporary Mizo society. Majority of the members consider MHIP demands as "illogical" and

"unreasonable". A female respondent and also member of Mizo customary law points out,

> *Men members were really not happy about our demands especially increase of sawnman, one particular member (name withheld) accused us that if we increase sawnman to say Rs 10000/- or as per with the present economic value, many women would use it for business.*

However, all the male members I interviewed claim that they understand women's "plight" and "condition". They also agreed that customary laws did not put women at the same level with men. However, they rejected women's demands based on the notion that it is "outside the preview of the customary laws" and which is held as something impossible. One of my respondents points out, '*We cannot reform customary laws; it is our custom, if we reform then it will no longer be our custom. The chairman of the customary law board committee clearly warned us that any attempts to reform should be confined within the existing laws'*.

In response to MHIP demands, a male member of the customary committee also said,

> *I feel they asked for something impossible, we have to explain to them that customary laws cannot be changed. If it is reformed or changed then it would no longer be custom. We debated this issue for so long. In between, new members were inducted in the committee and the newly appointed members from the women's group would demand the same thing. We had to explain again and again. (Note: he uses 'we' and 'them' to refer to MHIP)*

However, this standpoint extends only to women's rights. What actually happens is that, there have been reforms in the customary laws as well. One example is *Tlangchil* (*Tlangchil* is one of the social practices and which is also one of the customary laws of the Mizo. This law implies that if a person misbehaves or does something wrong the people/fellow villager can take action, sometime they beat up people and even ransack their home) (See Appendix II)[1]. At present, Mizo people have started to protest the brutality of the nature. The Customary Committee states that there are some laws which

[1] There are some members who argued that *Tlangchil* is not the common practice of Mizo, it is only practiced in some few villages. However, they did not deny that, it is considered one of the Mizo customs.

are considered no longer relevant for the present society; therefore, it has been omitted. They maintained that the demands made by women are radically different from existing Mizo customs, and they cannot make that kind of drastic change. To quote one of my respondents, he states,

> *Tlanchil is no longer used now that we have agency such as police, Village Council Court, District Council Court etc. We don't need Tlangchil any more - where members of the community can take actions against a person who violates the rules and regulations of the community.*

There are some reforms that have happened within customary laws but only those with the interest of the larger section of the society. *Tlangchil* is banned because majority of the Mizo felt it is good for the Mizo society. As for the women's demands even intellectuals, elders and majority feel that it is not possible, because it is too diverting from the existing laws. As one of the members stated, *'We intended to make changes only if it's in accordance with the Mizo customs. In fact, Mizo elders and especially the intellectuals present at the committee cannot digest the demands made by women'*. Not only this, women's representatives in the customary law committee faced various kinds of discriminations such as being denied a chance to speak at all. There was even a time when the chairman of the committee asked all the women representatives to leave the room. One of my female respondents shared her experience as committee member, she expressed,

> *During the committee, we were not taken seriously. Whenever we tried to talk they would not listen. So we decided to ask some men who are sympathetic towards our cause. So when those men spoke on behalf of us the other members would listen, but when we women speak they don't want to listen.*

Based on the study, it seems that when it comes to women's rights, members of the CMCL (mostly male) consciously avoided the word "reform". The question of customary law as representing Mizo identity and more significantly symbolizing Mizo cultural values is deeply rooted among the people. Opinion varies, but, one thing I observed among my respondents and people I met during my fieldwork is that, majority feels that Mizo customary laws should not be reformed nor can be changed. However, out

of these majority, few people acknowledged the limitations of the usages of Mizo customary laws, for example, in terms of punishment or penalty fine, they said the amount is too less. However, with regards to women, most common responses are: -

> *Mizo women's position within customary laws may not be satisfactory, but since this is our custom, there is nothing we can do about*'. There is also another interesting point made mostly by the male members of the customary committee that is, '*If MHIP feels that women need certain rights, they should seek state provision*'.

In a way, the state is held responsible for women's rights while justifying the discriminating nature of the customary law.

Though reform and modifications of the customary law was the aim and objective of the formation of the committee, changes with regards to women's rights were overlooked. They rejected women's demand based on the notion that it is outside the preview of the customary laws and regarded as something impossible. Based on the study, we may say that the members of the committee reflect the patriarchal social order of the Mizo society. In a sense, customary law springs from the people it purports to govern. In essence, it is found in the consensus of the socio-political group (Bennett and Vermeulen 1980: 206-219).

Issues of Codification and Customary Law Reform

The major main question is the issue of codification which still remains in ambiguity. Majority of the members of *The Committee on Mizo Customary Laws* (CMCL) have stated that it is "codified" and accepted by the Mizoram State Legislative Assembly. Meanwhile, senior lawyers like Thanga (name changed) vehemently opposed the claim by saying that 'customary law cannot be codified'. He along with many others argue that the CMCL merely "compiled" the Mizo laws, and being a member of the committee does not give them the authority to make laws or turn customary law into a statute law.

In the issue of codification of customary law, Bennet & Vermeulen, in their study of *The Customary Law in African Societies* (1980) proposed two interesting theories: The first approach, according to them is, codification usually takes place at the aftermath of revolution in order to establish a new legal system, and it arises out of the necessity to "bringing up the law up to date and removing uncertainties and contradictions" or in other words "establish a new legal order to assist in modernising the nation". The best example given is Ethiopian codification project which presents the "radical reform" of the whole legal system including the almost total abolition of customary law. The second approach advocates a "code in close conformity with customary law". The Second theory suggests that customary law is 'The best system adapted to the needs of the people and, thus, in accordance with their traditions and social values'. They argued that the Malagassy code provides a good example of this approach. This approach states that to ensure the acceptance of the customary law by the people whom it was intended to rule, the code should take customary law as its basis. In this context, 'Modification of the customary law would be required where the question arose out of reconciling conflicting rules of customary law, of attempting to amalgamate customary and civil law or of abolishing what might be felt to be undesirable or outdated rules' (Bennet & Vermeulen 1980:207-209).

The second approach seems applicable in the context of Mizoram. The Mizoram Government formed the customary law so that it can be updated to the present society. Certain law which seems "redundant" in the "modern" Mizo society was abolished. Robert Lalchhuana, a member of the CMCL points out 'we were to bring the old customary laws in attune with the present society'. However, the status of Mizo customary law as codified law remains uncertain. The CMCL members also voice differently in this regard. Whether it is codified or not codified, Mizo Customary Law is used in all family matters, especially with regards to marriage, divorce and inheritance. If a case falls under the purview of the customary law, judges in modern courts consult the written customary book before making judgments. But, this is not to say that just because the customary law is in written form it has the codification status, Bennet & Vermeulen writes,

> Codification in the case of customary law implies far more than the mere provision of a written description of existing unwritten rules. Customary laws which are reduced to writing and then applied in court necessarily undergo change; this change may result in disregard for the codified version (1980: 211).

The CMCL's main reason for compiling the Mizo Customary law was very similar to Mizo District Council period, which means it is mostly based on Parry's Monograph on Mizo Custom. My respondent Rev .Z.T Sangkhuma says,

> *It is inevitable for us to use Parry's monograph on Mizo customary laws. But, we also did research of our own in some cases; we talked to elders and people who are expert in customary laws. (i.e mipa in 'luhkhung' or 'fan' issue). Since there are many practices among the sub-tribes of Mizo it is more difficult for us, and the north Mizoram and South practices are also not the same. In such cases we try our best to maintain the balance, and tried our best to find out more from different sources.*

Majority of the committee members feel that the Mizo Customary law written by Parry is "authentic" and presents the "true" social order and customs of the Mizo society. Prominent Mizo historian like Thangliana (name changed) who is also a member of CMCL, has stated that it is the "correct" Mizo custom. This is contrary to what had happened elsewhere in other colonized country. Beckmann (2001: 31) points out 'What is often thought to be authentic customary law, in the sense of untouched by the western influence, in fact has been fundamentally influenced by colonial rule'. But, the question of how much colonial administrators have "filtered" the Mizo customary law seems un-important, as majority of the Mizo readily accept what is in the written form.

Interaction of State and Religious Authorities

Women seek the state intervention for rights and provisions, not only in Mizoram, even in the mainstream India, women's movement have always considered legal reform as a tool to empower women (Nair 1996). According to Rajni Kothari (1994), the state in modern times has been a source of both law and legitimacy, of authority and monopoly over coercive power, a source also of security for the people, of systems of justice, equality and accountability, and through them all, of conditions for freedom and creativity, the arts and the pursuit of excellence.

Since the state promised equal rights to all citizens, naturally, it is considered that the state should ensure fundamental rights to every individual. This leads us to believe that state's intervention is crucial for social reform especially concerning women's rights. But feminist studies have pointed out how the state is responsible for the continuation of patriarchal system and in reproducing patriarchal social relations. Women, as a homogenous group, are often oppressed by a centralized state (Haney 2000:641).

In Mizoram, MHIP recognizes Mizo women's subjugation and denial of their rights by customary laws, therefore, they ask for state intervention for protection of women. On 27th June, 1997, MHIP submitted an application to the Secretary to the Government of Mizoram, Law and Judicial Department, demanding that 'The Christian Marriage Bill, 1994', 'The Christian Adoption and Maintenance Bill, 1994' and 'The Indian Succession (Amendment) Bill, 1994' should be applied in Mizoram as well[2]. The MHIP feels that since Mizo women are subjugated and being denied their rights by customary laws, if these proposed laws are adopted women would have certain provisions such as maintenance rights. However, the proposal was opposed by the Church leaders of different denominations – *Zoram Kohhran Hruaitu Committee* (ZKHC). They feel that though these laws are meant for the Christian population in India, it is unsuitable for Mizoram Christians. They rejected saying, '*If these laws are adopted, it would create problems to our existing system, since there are different denominations in Mizoram, and each have their own systems and practices'.* And the Government of Mizoram took a stand saying that it cannot go against the church's will.

This refusal from the church is not surprising at all. The functioning of legal and religious institutions has often been criticized by feminists. Religious prescriptions on gender roles are often criticized as being too patriarchal. Rosemary Reuther suggests that religion is the most important and an enforcer of the image of the traditional role of women in culture and society (Reuther 1974). The Church, being one of the most

[2] Application submitted to Shri Chakraborty, Secretary to the Government of Mizoram, dated 26.6.1997, Aizawl.

important religious organizations, played an important role in maintaining community and shaping and moulding the members towards "Christian ideology" and maintaining Mizo "customs" and "traditions". The patriarchal structure of the Mizo church is such that till today, the Presbyterian Church of Mizoram still denies ordination of women, even though issues were raised against this. The notion is that women should not ask for ordination, but prove their commitment through their action while men are given ordination (Lyn et al 2005).

The church interference in the state government is extremely observable. Recently, the church was against the idea of official marriage registration order by the Indian Supreme court for 'fear of being stripped down of their power which they have enjoyed so far' (Lalruatfela nu 2006). The church seems to possess a kind of non-interference and indifference when it comes to Mizo customary laws especially issues concerning women's rights.

Since Mizo women are legally deprived and, the governing law Mizo customary laws are "consciously repressive", MHIP seeks out state intervention with the hope that the state would provide provisions for women. In 2006, MHIP made another demand to Mizoram state government. Their demands were: - Mizoram state government should adopt the Act passed by India parliament which concerns women such as; - Indian Christian Marriage Act, 1872 and Protection of Women from Domestic Violence Act, 2005. If this is not possible, the state government should enact laws such as: - The Mizo Women's Inheritance Act/The Succession Act and The Mizo Divorce Act/The Mizo Women's Right to Property Act. However, all the demands remain unsuccessful.

According to MHIP leaders, they demanded Christian Marriage Act, 1872 because this would at least ensure certain provisions for women, however limited it may be. The church's refusal to this Act is also seen as "fear" of being stripped of their authority. One respondent says, '*According to the Indian Christian Marriage Act, 1872, the government shall appoint marriage officer, even ordained minister such as pastor needed approval from the government'*. At present, in Mizoram the church has absolute

authority. The church does not require the government's approval for marriage officer. Usually ordained pastors and church elders (in exceptional cases) act as the marriage officer. According to one of my respondents,

> *The main reason for not adopting Indian Christian Marriage Act in Mizoram is because of the church leaders, especially the Presbyterian Church. I feel that if the Indian Marriage Act is adopted, the church's power over the whole marriage might remotely change and it is possible that the church may not like that change*.

Another respondent also pointed out, *'It is possible that if the Indian Marriage Act is adopted, the church's power and authority over marriage could be reduced*'.

However, the church leaders denied this accusation saying that the reason is rather to do with Mizo "customs" and "traditions". If we are to adopt Indian Christian Marriage Act, Mizo customs will "fade" away. Besides, they see the present system as best suited for the Mizo society. In spite of MHIP demands, no notable changes have happened so far. The only positive thing is that in October, 2008, *Mizo Divorce Ordinance Act*, 2008 was passed by the Mizoram government.

The much anticipated Mizo Divorce Bill (Ordinance), 2008 did not protect women or give rights to shelter or separate residence if the husband is cruel. Her only relief is a petition for divorce (this will be discussed in Chapter-V). Though the *Mizo Divorce Ordinance Act*, 2008 opened some scope for Mizo women, as it is not yet passed to become an Act, it could not function as of now. In the context of Mizoram, women's right is seen as less important than any other social issues. Women's rights were ignored while compiling, modifying and codifying the Mizo Customary Laws. When it comes to 'rights' women seek protection from the constitutional laws, hoping that they would achieve what is rightfully theirs, Upendra Baxi states 'A more promising arena for emancipation of women than is offered in the domain of the people's laws' (Baxi 1986:54). But the idea that the state offers an arena for emancipation of women can be contested as the state itself is guided by patriarchal ideology.

Issues of "Equality" and MHIP

MHIP was formed on 6th July, 1974 at State Social Advisory Board office. The motive behind the formation of MHIP was that, when Mizoram was accorded Union Territory status, it was necessary to form a large organization in order to carry out various development schemes. MHIP was formed with the intention to include all women in Mizoram, when it was first formed, it was named "*Mizoram Hmeichhe Insuihkhawm Pawl"* (United Organisation of Mizoram Women), which was later changed into "*Mizo Hmeichhe Insuihkhawm Pawl"* (United Organisation of Mizo Women) on 20th Aug, 1998. After the new name, there was a feeling that women who are not of *Mizo/Lusei* tribe are not within MHIP. However, MHIP is the largest women's organization in Mizoram and all other women's organization such as *Mizo Hmeichhe Tangrual Pawl* (MHTP) (Mizo Women's Organisation), *Mara Chano Py* (M.CH.P) (Mara Women's Organisation) at the southern part of Mizoram are all affiliated to MHIP.

According to the leaders of MHIP, some of the main aims and objectives are: - empowerment and women's welfare and to protect women and children as they are weaker sections of the society. In the initial stage, MHIP slowly built up their focus on women's welfare. In 1987 it was declared "*Hmeichhe Kum"* (Women's Year). However, during this period, MHIP did not have much voice. Since the late 1990's MHIP decided to focus more on women's empowerment. For the first time in 1997, "Women's Empowerment Year" was declared amidst the criticism from society especially male members. Sangkhumi said,

> *I suggested that we should declare the year 1997 as "year of women's empowerment". The then president Pi Lalnipuii supported me, however, other executive committee members were very nervous and scared, and they said 'we should not add the word empowerment, lets just say women's year'. They fear that if we include the word empowerment we will be facing too much criticism especially from the men. However, it was decided that by any means we should announce as 'year of women's empowerment'. We organized conference based on the empowerment theme and other related issues. When it was time to speak up, nobody wanted to be the first speaker, MHIP members were all scared to be hated by society and men, they fear that talking about women's empowerment would provoke such feelings. I stood up and deliver the first ever speech on Mizo Women's Empowerment.*

MHIP leaders faced various criticisms from the beginning. Lalnipuii points out, '*there are many male members who hated her*' because of women's empowerment. Because of the strong patriarchal mindset of the Mizo society, it was very difficult for MHIP to stay forceful and strong. Lalsangpuii said majority of women do not support MHIP, she states, *'The sad thing about Mizo women is that, majority of them are not aware that they are being subjugated and that the customary law discriminates women'*.

As mentioned before, MHIP is reluctant to talk about "equality" of men and women and instead of "equality" MHIP focus more on empowerment of women through "men's sympathy". My respondent Rozami states,

> *Mizo men don't like it if we say women are equal to men. They accuse us of trying to overtake men's authority. In fact, we MHIP does not talk about taking over men's authority. We don't want to challenge male's authority but we want empowerment since we are less privileged than men. As we see in the Bible 'a woman's head is her husband' we do not challenge male's authority. But we do need empowerment as our position is much lower; we feel that we should be partners with men.*

This reflects how women take an active part in transmitting patriarchal ideology. Mizo women can be categorized into three groups, first, women who would no longer tolerate and sit quietly, these women feel that they are the victims of patriarchal system and they should do something about it, but they are very few (e.g. Mizo theologian women). Second, there are others who feel that their position is lower than men but it's just how it should be, it's natural (e.g. majority). And third, there are women who feel that their position is not good and they should raise certain questions, but they do not want to question patriarchal system. According to these women, women empowerment should take place only at 'certain level' – they state that 'they don't question male's authority'; most of the MHIP leaders I met fall under this category.

MHIP leaders though demanding women's empowerment and even reform of Mizo customary law, also endorse patriarchal ideology. For instance, among the MHIP leaders who demand Mizo women's empowerment, they insist that they only demand

empowerment for women who 'deserved', who have been "victimized". In terms of widow property rights, prominent MHIP leaders told me *'We only ask to reform customary law for widows who deserve to inherit her husband's property, a true Mizo woman who is faithful and fulfilled all her duties to her husband'*. The question of daughter's inheritance rights was not brought up at all. Also, all members of MHIP representatives in the Customary Law Board Committee did not ask for reform of Mizo customary law. Within the MHIP the members were divided on this issue.

Contentious Traditions

It is a well known fact that women are discriminated in the name of custom and tradition. In every society, women bear the burden of keeping the tradition alive, and in most cases, women also take part in transmitting those "traditions" from one generation to the next generation (Rayaprol 1997). What really is worth considering is; is tradition really representing the old social order? What is the difference between custom and tradition? And how are these two related? In the study of Sociology, custom is 'any standardized and more or less a generally expected pattern in a group life'. In other words, custom denotes established patterns of behaviour which includes the routines of daily life, and to the distinct features which mark off one culture from another (Marshall 1994). Customs are often rigid, tyrannical, burdensome and difficult to escape. They enforced "traditional values" irrespective of the benefits or advantages derived. Sometimes they invent ingenuous explanations and justifications for customary practices (Bennett and Vermeulen 1980; Zechenter 1997).

The Oxford dictionary of Sociology defined tradition as 'A set of social practices which seek to celebrate and inculcate certain behavioral norms and values, implying continuity with a real or imagined past, and usually associated with widely accepted rituals or other forms of symbolic behaviour'. An example is, the distinct Highland culture (of kilts, tartan, and bagpipes) of Scotland were a late 18th and early 19th century creation. The indigenous political and economic traditions of many African societies were also in fact invented by the colonial authorities in order to make the necessary

connections between local and imperial political, social and legal systems (Marshall 1994:672).

According to Eric Hobsbawm (1983), there is probably no time and place which has not seen the "invention of tradition". He argued that invented traditions occurred more frequently at times of rapid social transformation when "old" traditions were disappearing. He is of the opinion that a large number of "new" traditions are invented over the past two centuries. Traditions which claim to be old can be quite recent in origin, and sometimes traditions are invented. However, he also states the term tradition need not be used either as a broad nor imprecise sense. It includes 'both traditions actually invented, constructed and formally instituted'. But the important thing is some tradition which emerged in recent time but however establishing themselves with great rapidity, e.g the royal Christmas broadcast in Britain, which was first instituted in 1932. Hobsbawm explained,

> Invented tradition is taken to mean a set of practices normally governed by overtly or tacitly accepted rules and of rituals or symbolic nature, which seek to inculcate certain values and norms of behaviour by repetition, which automatically implies continuity with the past. In fact, where possible, they normally attempt to establish continuity with a suitable historic past (1983:1).

He further said, the peculiarity of the "invented traditions" is that the "continuity with its largely factitious". They are responses to 'Novel situations which take the form of reference to old situations, or which establish their own past by quasi-obligatory repetition". Hobsbawm distinguished between three types of invented traditions which each have a distinctive function: a) those establishing or symbolizing social cohesion and collective identities b) those establishing or legitimizing institutions and social hierarchies, and c) those socializing people into particular social contexts; the first type has been most commonly referred to and often taken to imply the two other functions as well (9). He also mentioned the adaptations and new uses of "old tradition" for new purposes.

Hobsbawm argued, 'tradition in this sense must be distinguished clearly from customs; which dominates so called traditional societies'. According to him, the object of

tradition is "invariance" and they are "repetition". Whereas customs does not lead up innovation and change up to a point, though it is obvious of the requirement that is- 'it must appear compatible or even identical with precedent imposes substantial limitations on it'. Hobsbawm further explained 'by custom from time immemorial' does not necessarily express a historical fact. He drew an example of British Labour movement, he states that the labour movement were aware of the fact that 'the custom of trade' of the shop may represent which was not necessarily tradition, but rather whatever right the workers have established in practice which could be recent. The important thing is, however recently, they now 'attempt to extend or defend by giving it the sanction of perpetuity'. He writes,

> Custom cannot afford to be in invariant, because even in traditional societies life is not so. Customary law or common law still shows this combination of flexibility in substance and formal adherence to precedent….custom is what the judges do; tradition (in this instance invented tradition) is the wig, robe and other formal paraphernalia and ritualized practices surrounding their substantial action. The decline of 'custom' inevitably changes the 'tradition' with which it is habitually intertwined (1983: 2-3).

Hobsbawm argued that "invented traditions" use references to the past not only for the cementation of group cohesion but also for the legitimating of action. In this context, he states that historians in the present should become much more aware of such political uses of their work in the public sphere (12). This point can easily be extended to include in modern political contexts such as the negotiations of national and ethnic identities. What we can emphasize from the above theory is that, since custom and tradition co-exist side by side, a decline in one level eventually led to a change in another level.

For instance, the Mizo marriage tradition has changed after Christianity in Mizoram. Marriage was seen as civil-contract which is now coupled with religious duties. Now, marriage solemnized in the church has become the "invented" Mizo tradition along with wearing white gowns, the way marriage are solemnized in the church represent not of the earlier Mizo "tradition" but rather of the "western" tradition. This may be because of the decline of traditional Mizo customs, which perhaps is not considered applicable in the 'modern' society. This automatically led to the 'invented' new tradition, majority of

the Mizo accept that marriage solemnized in the church is part of the Mizo-Christian tradition.

This is echoed by a respondent, who said '*As a Mizo, it is unthinkable to get married outside the church, we are Mizo and Christian, and this is the Mizo Christian tradition*'. Even if a couple decides to elope, eventually recognition /solemnized from the church is usually conducted later. Another example could be in the system of bride-price. According to Mizo customary law, bride-price is given to the bride's father, brother and her maternal uncle usually blood relatives. However, at present, bride-price is given to any relatives whom they favour. These relatives however are not necessarily blood relatives. One of my respondents, and also a member of the CMCL said,

> *Today, people don't follow Mizo customary law at all, some family distribute their daughter's brideprice among friends whom they think could contribute for the bride's thuam or dowry. Some family give bride-price to people who are rich and powerful. Though it's too early to say this is the new tradition, majority of the modern Mizo seems to follow this pattern and soon this could become a new tradition.*

"Authentic" Tradition

Lata Mani in her essay brought the debates on what 'constitute authentic cultural tradition'; she presents her argument through the analysis of the debate of sati during the 19th century. She argued that, 'the conception of tradition Rammohun contests and the orthodox is colonial discourse'. She writes:

> Tradition was re-constructed under colonial rules and, in different ways, women and Brahmins scripture become interlocking grounds for this rearticulation. Women become emblematic of tradition, and the reworking of tradition is largely conducted through debating the rights and status of women in society…these debates are in some sense not primarily about women but about what constitute authentic tradition cultural (2006:90).

Lata Mani mentioned how the Brahmanic scriptures are seen as the locus of this "authenticity". She argues that the privilege given to Brahmanic scriptures and 'the equation of tradition' is an effect of colonial discourse on India. Mani argued colonial

discourse as a means to legitimate the colonial state. She mentioned that the indigenous male elite, though subordinate to British colonial officials, actively participated in representations of sati and in constituting 'woman as the site for the contestation of tradition'.

With regards to women's rights, studies show that traditions are created and new forms of patriarchy can exist. For instance, Partha Chaterjee in his essay *The Nationalist Resolution of Women's Question* argues that the mid nineteenth century attempts in Bengal to "modernize" the condition of women was over taken by the new politics of nationalism which 'glorified India's past and tended to defend everything traditional'. Partha Chatterjee argues that the main resolution was built around material and spiritual. The material sphere was where the dominance of the western civilization was most visible such as, Science, technology, rational forms of economic organization, modern methods of statecraft etc. To overcome this domination, the colonized people must learn these superior techniques of organizing material life and incorporate them within their own cultures'. This was one aspect of the nationalist project of rationalizing and reforming "traditional" but they were burdened with the limitation to which they can imitate the west, because they were aware that they could not copy everything as that would erase the difference between the 'east' and the 'west' (2006: 234). Partha Chaterjee's point is, in every case, there was a problem of selecting what to take from the west and what not to take. So, in the course of that 'liberation' certain ideas from the west were taken in as well as certain areas such as the 'spiritual' area was felt necessary to be guarded from the west.

Partha Chatterjee also points out, in the course of social reformation, adjustments have to be made with the material level, but, what was equally important was to retain inner spirit of indigenous social life. The idea was that changes in the external conditions of life should not let women lose their essentially spiritual (i.e.Feminine, virtues etc). They must not, in other words, "become essentially westernized". The result is, as Chaterjee writes,

> The new woman defined in this way was subjected to a *new* patriarchy. In fact, the social order connecting the home and the world in which nationalism placed the new woman was contrasted not only with that of modern western society; it was explicitly distinguish from the patriarchy of indigenous tradition (2006:244).

Many times "tradition" is used as political strategy especially in the context of women's rights. For instance, the social reform of 19th century was followed by the "nationalism era'" where it was felt that everything traditional needed to be protected especially the "spiritual". The nationalists now moved away from the social reform and emphasized the importance and preservation of Indian identity and tradition (Chaterjee 2006). The "public" / "private" distinction was the basis of the colonial law. As mentioned earlier, the "private" or "spiritual" was seen as the space for women who would protect the family from the external forces. Women then became the custodians of the culture of politics, religious and tribal groups (Jaising 2005; Nair 1996). Since women have been socialized in such a way that they are led to believe that they are custodians of these very laws, rituals and practices. Not only that, women in many society perceived that their dignity is 'Intricately linked to the identity of the group. Any identity attack is seen as an assault on their own dignity (Coomaraswamy 2005:28).

This is extendable in almost all societies especially among minority groups in India. Coomaraswamy (2002:7) also highlights, tradition is full of contradictions and alternatives. 'What we choose to highlight from the past often reveals more about our judgment than about our ancestors'. She argued, for example the BJP's choice of Sita over Kali as their role model for women is a modern one, made for what they think the proper wife should be in a modern nation. 'There are no essential traditions, only essential memories that pick and choose from the anthology of the past'.

Customary Laws vs. Indian Constitution

The tension between minority rights and women's rights have been long debated and discussed even in mainstream Indian society**.** This problem lies within the Indian constitution itself. Though giving "equal" rights to all citizens, the Indian Constitution also separately recognizes and grants special provisions to religious minority groups and

tribal communities. This often caused conflict in relation to women's rights. This position has been justified by the State on grounds of non-interference with the right to cultural practices of minority communities and religious communities (discussed in Chapter-I). This approach is most common especially in the interpretation of personal laws. With regard to personal laws, the state gives precedence to religious rights over women's rights to equality (Jaising 2005:5). The same is extended to tribal customary laws.

In *Madhu Kishwar v. State of Bihar*[3] case, the Chota Nagpur Tenancy Act 1908, which provides for succession to property in the male line, was challenged on the ground that this is discriminatory against women and therefore, it violates Articles 14, 15 and 21 of the Constitution. A two member bench hearing this matter was informed that the State of Bihar had set up a Committee, to consider the feasibility of appropriate amendments to the legislation and to examine the matter in detail. The outcome of the committee was,

> [A] meeting of the Bihar Tribal Consultative Council was held on 31 July 1992, presided over by the Chief Minister and attended to by M.P.s and M.L.A.s of the tribal areas, besides various other Ministers and officers of the State, who on deliberations have expressed the view that they were not in favour of effecting any change in the provisions of the Act, as the land of the tribals may be alienated, which will not be in the interest of the tribal community at present[4].

In summary, the committee states, after consulting the opinion that the people of the area, they were not interested in having law changed, and that if the law be changed or so interpreted, letting estates go into the hands of female heirs, there would be a great agitation and unrest in the area among the schedule tribe people who have custom – based living.

The tribal law was justified on the ground that it was necessary to retain the land in tribal hands in order to preserve the identity of the tribe. They argued that, to allow tribal women to marry non-tribals and inherit tribal land which could be alienated, would disintegrate a community's identity. The Supreme Court, by admitting the petition, read

[3] 1996 AIR 1864 1996 (1) Suppl. SCR 442
[4] Madhu Kishwar and others v. The State of Bihar and others (AIR 1996 5 SCC 125)

out the discriminative provisions of the Act and paved a way for tribal women to entitle their rights to tenancy lands along with men. Jaising states,

> In a dissenting judgment, one of the judges ruled that women had full rights of inheritance, referring to international covenants which supported the right to non-discrimination. Again the Indian Supreme Court refused to strike down this obviously discriminatory provision (2005:7).

The clash of minority rights and the equality rights of women is again reflected in the Shah Bano case. In this case, the husband's refusal to pay for maintenance was legitimized by his religion - Muslim personal laws. The Supreme Court held with Shah Bano and declared that there is no conflict between these laws. Jaising argues, the Supreme Court's interpretation of Quran in an 'elaborate manner' did not go well with Muslim religious leaders, because they felt the court had performed a theological function which was exclusive to them, which is "private". They held that it was not part of the function of Supreme Court to interpret and interfere in such matters. Jaising writes,

> There was no attempt by the Supreme Court to deal with the interrelationship between fundamental rights and personal laws; it did not address the argument that Muslim personal law violates the guarantee of equality for women. Even in this case there was no attempt by the Supreme Court to declare the provisions of Muslim as unjust and discriminatory (2005:7).

These two cases reflect the dilemma within the Indian legal system. On the one hand, the constitution is responsible to ensure equal rights to all citizens irrespective of gender. On the other hand, the same constitution plays an important role in the continuation of laws which discriminates women. By allowing this, the Indian legal system gives priority to religious and customary laws over women's rights. Though this is against the principle of the Indian Constitution, at least in theory, reality plays out differently.

Women's rights vs. Minority rights

Coomaraswamy (2005:24) pointed out, fighting group prejudice while struggling for women's empowerment are often faced with the 'Modern dilemma between the Universal Human Rights and the particularity of cultural experience'. For instance,

Sylvia Tamale also points out how the mainstream feminist present the two concepts of "culture" and "right" as distinct, invariably opposed and antagonistic. Her articulation also states how we are made to believe that the concepts "culture" and "rights" are polar opposites with no possibilities for locating common ground where new synergies can be developed for social transformation. She argues that this is especially true in the case of how theorists of African women's rights, where culture is viewed as being essentially hostile to women. She states, 'Narrow interpretations of culture that collapse it with 'customs' or 'tradition' and assumed these to be natural and unchangeable exacerbate the problem' (Tamale 2008: 47-48). Women have to first strip themselves off culture before enjoying their rights.

Women are continued to be seen as custodians of culture and ethnicity. Why women's rights have to be considered contradicting with the minority rights? How can women fight for rights without being seen as against cultural rights? These are questions that need to be addressed. In the context of women rights especially of north east India, where customary laws are the governing laws, women's rights often clash with cultural identity. This seems to be unfair, if we put women to choose between her community and her individual rights, we put her in a very difficult situation. The Shah Bano case reflects how a woman in spite of all discriminations still feels loyal to her community.

Liberal feminists have attacked customary laws because of their patriarchal nature. Therefore, they look upon customary laws as "traditional" and compare it to the modern legislation. Nandita Haksar illustrated that there could be a false dichotomy between women's rights versus tribal people rights. She says,

> At a superficial level this stand is absolutely correct from the tribal women's point of view and this is also true that some of the tribal women facing anti-women customs which deprive them of their basic rights have also joined in the demand that customary law must go (2008:279).

This view indicates that the demand of Uniform Civil Code by some women's groups in mainstream India might not be applicable to tribal areas. The tribals may not welcome

that which is "alien" to them. Since the customary law is the tribal jurisprudence for them. Haksar raised the question as to whether it is fair to brand all the customary laws as "traditional" and against "modern". In states like Mizoram and Nagaland customary laws are used to effectively dissolve many cases etc. Haksar mentioned how human rights jurisprudence and liberal and radical feminist place a great deal of stress on individual rights and the primacy of individual rights over all kinds of human rights. She argues that this may not work out well as already western feminist have found the limitation of this. She drew her theory from Carol Smith's (1989) writings which say, though the language of rights was important in challenging the conservatives order, the rhetoric of rights has become worn out, and may even be disadvantageous. Haksar comments,

> This is especially the case where women are demanding rights which are not intended (in an abstract sense) to create equal rights with men, but where the demand is for a "special rights" (e.g women's rights to choose) for which there had been no masculine equivalent (2008: 284).

She suggested that instead of debating the dichotomy of individual rights versus indigenous right, we should think of a third model. She talks of the need to build a movement on tribal socio-cultural traditions but insists that 'An alternative to a movement cannot be a petition….we should resort to the law only when the movement is strong enough to carry the law reform forward'. In almost all such cases, a legal battle should only supplement the political battle outside the courts. She also points out the need to build a movement for creating a new jurisprudence which draws on human rights law and certain feminist legal critiques (284).

However, in the context of northeast, it is inevitable to escape the debate of dichotomy of individual (women) versus indigenous rights. Since the identity politics plays a very important part, preserving tribal traditions are all too important for the people and women are the site of such traditions. To quote one of my respondent's view, she states, '*Mizo customs and traditions are established by our forefathers in accordance with Mizo society structure- which is best suited for the functioning of the Mizo society, I don't think it is a good idea to forsake what our forefathers have built'*.

At present, especially in Mizoram, women's issues are hardly recognized as social issues. Studies have also proved that women play an important part in transmitting socio-cultural traditions, and women are the site for continuing tradition. Aparna Rayaprol, in her study among the South Indian immigrants in Pittsburgh, USA shows how women play a crucial role in keeping the customs and traditional practices. She states, 'South Indian Immigrant women who frequent the temple play a crucial role in this process of reaffirming their cultural heritage and in shaping the identities of their children' (Rayaprol 1997:63). This is applicable even in the context of Mizoram, where women are considered to be the "bearers" and "transmitters" of socio-cultural traditions, which is also manifested in daily lives.

Cultural relativism

It is important to discuss cultural relativism and its implications on women, and the discourse on international human rights. The protection of human rights of individuals was considered as a sovereign prerogative of the state and therefore as a domestic rather than an international concern. However, the atrocities of the Second World War create debates among the scholars and politicians. In the discussion, it was brought out that individual's rights cannot be left alone at the mercy of domestic legal system. This agreement was expressed in the creation of the United Nations and the enactment of the complex international regime of universal human rights. When the Human Rights Commissions was created, the issue of human rights was a central part of its mandate and the Sub Commission on minorities was created with independent experts as a means of ensuring its impartiality and objectivity (Zechenter 1997; Coomaraswamy 2005).

The essence of minority rights as recognized by the international community in Article 27 of the International Covenant on Civil and Political Rights. It gives minorities the right to enjoy their own culture, to profess and practice their own religion and to use their language. The declaration also gives them the right to enjoy their identity, their own culture, religion and language. The state has an affirmative obligation to grant minorities equality and to create conditions for them to develop their culture, language and religion.

Though the formation of CEDAW (Convention on the Elimination of Discrimination against Women) adopted in 1979 by the United National General Assemble describe as an international bill of rights for women. Women's rights provisions had to be read together with the rights of indigenous or cultural rights (Zechenter 1997).

This is more complex for women from minority groups. It is therefore important to examine the applicability of cultural relativism in the context of international human rights regime. Cultural relativism asserts that concepts are socially constructed and vary across cultures. There is no absolute truth, be it ethical, moral or cultural and that there is no meaningful way to judge different cultures because all judgment is ethnocentric (Gellner 1985). Cultural relativism implies that one culture is not superior to another. It is the philosophical notion that all cultural beliefs are equally valid and that truth itself is relative, depending on the cultural environment. Those who support cultural relativism believe that all religious, ethical, aesthetic, and political beliefs are completely relative to the individual within a cultural identity.

Elizabeth M. Zechenter states that, in practice, it is rather meaningless to speak of cultural relativism especially in contemporary society. She argues:

> Since there are several different variants of the theory, ranging from *descriptive relativism* (also known as weak relativism; amounting to a commonsense observation that cultures vary), through *normative relativism* (or strong relativism; positing that since all standards are cultural bound, there can be no transcultural moral or ethical standards), up to the most extreme form of relativism, known as epistemological relativism (or extreme relativism), exemplified by Geertz and his followers – claiming that humans are shaped exclusively by their culture therefore there exists no unifying cross-cultural human characteristic (1997:323).

The most radical version of cultural relativism, known as epistemological relativism emerged in the 1970's. According to this view (Geertz 1973; 1984),

> All knowledge and morality are exclusively culture-bound, and rational thinking and the scientific method are no more than a culturally-bound form of western ethnoscience. In that view, science is not a logically coherent system of verification and falsification, but rather a culturally biased way of thinking that is no different from magic or witchcraft (see Zechenter 1997:325).

According to this view, all cultural views are equally valid such as customs and ethics are relative to the individual within his/her own social context. Relativists declared "there is no absolute truth" meaning no universal standard of morality exists, so no one has the right to judge another society's customs. Zechenter argues, 'By adopting cultural relativism, proclaiming unqualified tolerance of all cultures, and by taking a group-cantered perspective, anthropology has left little room for rational discussion about the rights of individuals, particularly in the non-Western societies' (326). This is extendable especially in the context of women.

In some African societies, the practice of "Female Genital Mutilation" (FGM) also known as 'Female Genital Cutting' or 'Female Circumcision' gained worldwide attention especially of the western feminists. The World Health Organization defines 'All procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons'. FGM is carried out on girls from a few days old to puberty. Studies have pointed out that, it is usually performed, without anesthesia by a traditional circumciser using a knife, razor or scissors. This issue gained international attention. Within the academic discussion, FGM is a site which became a debate on "colonialism and imposed western values". Some even argued that FGM is "being human the African way". African anthropologists reacted to the way struggle against FGM is being fought by western feminist with so much emphasis on morality and self-righteousness. The ban of the practice under Federal Law and giving out loans to African states conditional in order to fight FGM by the United States is not well received. They do not like the fact that FGM has become "the vehicle for 'the arrogant gaze' through which the west looks at and passes judgment on them without contextualizing it (Coomaraswamy 2005:30).

Mohanty critiques representations of "third world" women in writings by "first world" feminists on subjects such as female genital mutilation and women in development. She critiques how most of the texts define women as "object" of what is done to them rather than acting with any agency, and as victims of either "male

violence". Mohanty states, the western feminist writings "ignored" lived experiences, and making certain generalization by assuming about differences between first world and third world. Mohanty proposed a theoretical model involving "intersectionality", which will look at women and groups of women without falling into false generalizations, and acknowledges the contradictions as well as the commonalities in women's experiences (Mohanty 1991:55-65). Chandra Mohanty's (2003) crtitique of 'euro-centrism' within Western developmental discourses of modernity through the lens of racial, sexual, and class-based assumption, Mohanty argued 'gender essentialism over generalized claims about women, assumes that women have a coherent group identity within different cultures prior to their entry into social relation' (Agnes 2011:xxviii).

Another example is sati in India, a practice which is supposedly considered a "heroic death" and sacrifice which is considered "glorifying" women of her selfless act, a cultural and religious embodiment. There are two views on this, some think that women who really want to commit sati should be allowed to do, during colonial period there were even the distinction of "good sati" and "bad sati", "good sati" being women who sacrificed herself willingly and "bad sati" means women who were forced to perform sati (Nair, 1996). In recent times, an 18-year old Rajput woman named Roop Kanwar committed *Sati* on 4th September 1987 at Deaorala village of Sikar Distrcit in Rajasthan. At the time of her death, she had been married for eight months to Maal Singh Shekhawat, who had died a day earlier at age 24. This case gained national headlines, and it was all over the newspapers. Several thousand people attended the sati event. After her death, Roop Kanwar was hailed as a *sati mata* or "pure mother". The event produced public debates on "modern Indian ideology" versus "traditional Indian thinking". After this incident, the state also took steps in order to prevent such actions, The Commission of Sati (Prevention) Act was passed.

Another cultural practice is the "honour killing" practiced in some parts of India and Arab countries, Turkey, northern Pakistan and countries with a Mediterranean heritage etc. All these are conducted in the name of cultural practices, and it usually

falsify in the name of tradition, family values and respect and not losing face in front of other community members. Radhika Coomaraswamy states,

> Though the mythology of sati depicts a poignant story, the actual fact is that is it practiced in the area where a female life is greatly undervalued and where violence against women and the girl child is widespread. The practice is a reflection of this misogyny and not an isolated belief (2005:34).

Critique of Cultural Relativism

Many people reject cultural relativism by observing that societies do indeed change their customs or habits in conjunction with the growth of the social, economic, technological and scientific capabilities. They believe the common denominator among different cultures, suggesting the common humanity of people as the basis for cross-cultural morality and ethic that are not completely culturally relative (Zechenter 1997:326). For instance, Gellner (1985) questioned the cultural relativism assertion about the 'inherent incomparability' of different cultures. Gellner argues, though there have been many social scientists who have conducted research in seemingly 'alien culture', the fact is that, no one has ever encountered a culture that was so wholly different and 'un-interpretable'. Likewise, no language was ever found not being capable to understand. The fact that people have been able to migrate from one culture to another successfully also indicates that they are able to 'adopt' or 'modify' other cultures. Modern studies have in fact shown that there is such a thing as universal human nature. 'There is an underlying human unity which allows us to devise minimum universal standards applicable to all human beings regardless of their culture' (see Zechenter 1997:327).

Cultural relativism has many flaws, in many ways it overemphasizes the rights of the groups and marginalizes the rights of individuals and non-dominant groups. For instance, the inhuman act against women in Africa, India or in some other parts of the world, cultural relativism usually provides the justification of those practices. Sati is one such example. Cultural relativism is extended to all societies, as discussed, even in the context of Mizo society, the customary law discriminates women, and the members of the customary law board committee ignore women's movement on the basis of Mizo cultural

traditional identity. However, all the male members in the committee are of the opinion that *'Mizo customary law is discriminatory, but since this is our custom we cannot change'* thereby justifying the unjust done to women. This kind of argument is similar to what Zechenter has discussed, that is by emphasizing solidity and cultural stability of customs and traditions, relativism overlooked the importance of social change. In fact, they ignore the unavoidability of change in every society. They also ignore the fact that some traditions persist while others are selectively discontinued. The fact is that, we should recognize culture as an ongoing historic and institutional process where the existence of a given custom does not mean that the custom is either adaptive, optimal, or consented to by a majority of its adherents (1997: 332).

Zechenter suggests, there is the existence of a genuine difference among cultures, and it may not be that easy to reconcile. But, we must fight the unjust deed done in the name of tradition and custom. She thinks that human rights is worthy of protection against the cultural relative assault. Individuals need to be protected against arbitrary and brutal customs and practice, she states, 'As such, human rights universalism is worthy of protection against the cultural relativistic assault. Despite all its flaws, human rights universalism still offers the best hope of dignified to the world's population' (342).

Are Women's Rights Universal?

The reason cultural relativism often finds expression in the denial of the rights of women lies at the intersection of issues relating to women, culture, and identity. There is always the dilemma of "sameness" and "difference" emphasised by feminist scholars. For some, women's oppression is a universal phenomenon. Catharine MacKinnon interprets patriarchy as being the most basic of all kinds of women's oppression. She critiques the patriarchal nature of the state and capitalism, and the ways in which women's sexuality is controlled. According to her, male dominance is a universal phenomenon, she pointed out the condition of women and a shred sense of expression and exploitation. Women everywhere suffered under the dominance of men (1982; 1989). She would never countenance the belief that cultures or societies cannot be judged. She would in fact argue that every culture and every society should be judged from the

vantage point of sexual equality and oppression. On the other hand, scholars like Carol Gilligan and Martha Minow are more concerned with the world of difference. Seeing women's socialization as different, they see strengths and nuances in women's difference from men. Their aim is to be less judgmental and more inclusive of worldviews and traditions in which many women are differently empowered (Coomaraswamy 2002: 2-5).

As seen in Chapter-I, Crenshaw's point about "intersectionality" where oppression based on gender, class and race produces a collision that destroys the lives of many women. Many women's activists have argued that the right of indigenous women is an internal quest and one not subject to external standards.

The legitimacy of pluralistic and non-state customary laws has been subjected to criticism within the International human rights discourse, under the coinage, 'women's rights are human rights' as the underlying theme. Feminist lawyers like Flavia Agnes are against the demand of universal application of human rights, and are in favor of 'a more nuanced and culture specific theory of women's rights'. Here I find Chandra Mohanty's (1991) critique of 'representation' useful, and I agree with Flavia Agnes's comment, she states, 'Rather than blindly advocating a 'universally' accepted position framed by a first world feminist discourse, women's rights groups need to advance a position which is rooted within third world' (Agnes 2011:xxvi).

Tribal Women

The international human rights discourse is more complex in the context of tribal society. It was only in 2007, for the first time interaction on human rights issues was conducted by Mizoram University (Ete 2008). In Mizoram, human rights workers mostly deal with issues such as sexual violence, child rights, corporal punishment and women who represent 'obvious vulnerability'. Violation of women's rights in terms of property rights or marriage within customary law is considered a "private" matter. Jarjum Ete in her study among the northeast women points out,

> Tribal women look at themselves within the customary set-ups- the traditional councils and their own practices or laws….the state of Mizoram had codified the

> customary laws. They have again reviewed but, unfortunately, the women didn't have much say in it. Not even in the review process, despite the fact that they have a women's commission and the MHIP is supposed to be a big women's movement in the state of Mizoram. Despite the fact that Mizoram is the state with the second highest literacy rate in the country, women's voices from Mizoram are yet to be heard outside the state (2008:74).

The above statements well reflect the position of Mizo women. However, the MHIP which is supposed to be a women's movement in the state does not necessarily campaign for women's equality with men. A prominent MHIP (ex president) in her reaction to my question on Uniform Civil Code and reform of Mizo customary laws said to me "*My identity as Mizo women is most important, if we demand to join the Uniform Civil Code movement, it will endanger our Mizo Identiy. Also, I strongly feel that we cannot change customary law"*. Another example is Chairman of the Human Rights Commission in Mizoram who states *"I support women empowerment but I am not a feminist, and I don't challenge male's authority*".

In this context, Flavia Agnes's argument on UCC is very useful. She states, based on the India past experiences, '…reform within personal laws is better suited to protect women from these communities against their own internal patriarchies, rather than endorsing a majoritarian Hindu agenda of enforcing a uniform civil code as a feminist project' (Agnes 2011:xxvii). As Haksar (2008) also rightly pointed out, the application of UCC is not welcome at all, to quote one of MHIP leaders,

> *I am aware that women from mainstream society have proposed the adoption of UCC. I am against the idea and i don't think it is good for Mizo society. In India, there are different communities and tribal groups, some are more advanced than others, and some are well educated and also economically well established. We Mizo are backward and also minority within India, therefore, we need to protect our customs and traditions.*

Critique of Perceptions on North East Women

In the northeast, women are actually suffering from the false perception which says they are more "free" and "liberated" as compared with women from Hindu or Muslim community. Haksar also points out,

> The positions of women from tribal societies are far better than the position of women in caste society. There is equal availability of divorce to both men and women, there is a right to remarry, absence of religious taboos concerning menstruation and absence of physical seclusion (Haksar 2008: 283).

The general perception is that women from north east have better status than women from caste society. Therefore, why should they need to be empowered? In Mizo society, women's status and position are not measured in relation between men and women, but they will be compared with Hindu/Muslim women, pointing out the practices of dowry and purdah system, and consider that the absences of such practices are an indicator of "better status" (Chatterji 1975). This is clearly not very accurate.

For instance, the tribal customary practice which allows widow to remarry may also need to be looked at from different angles. E.J Thomas in his study among the Mizos makes an interesting point, that is, in traditional Mizo society women were free in the matters of marriage, sex and divorce. Very few restrictions were imposed on them. However, he states,

> This was more advantageous to men for their free-lance sexual activities rather than respecting the freedom of women and there by describing it as higher status rendered to women. In the matter of sex offence men prevailed over women. In the field of economy activity, with minor exceptions, women could not possess property. The freedom in the matter of sex, marriage, and divorce given to women was in order to gain advantage for men than rendering higher social status (1993:16).

In the context of Mizo society, though both men and women are permitted to divorce, because of the social circumstances, men divorcing women is more common. And also, though both can re-marry there is a condition given to women. Unless she fulfils customary prescribed ceremony she cannot re-marry. The ceremony can be done within three months. When divorce takes place women are sometimes left homeless with no income. Therefore, there is problem in making generalizations on tribal women. As Xaxa (2005:356) has pointed out, 'Rather than talking of high or low social status, it is more pertinent to talk of inequality of gender. In the latter case, one can examine the relative position of women and men in relation to their access to equal opportunity, both formal and substantive'. A detailed analysis of divorce and maintenance is in Chapter- V.

Towards Reformation

E.J Thomas conducted a survey among the Mizo with regard to updating *Mizo Dan* (Mizo customary law). The research was based on four criteria, such as:- 1) marriage, family and divorce customs 2) status of women 3) rights of children 4) property and succession rights. The research was conducted among men and women, both were asked to express their opinion on the relevance of the Mizo customary law and whether they are in favour of a change. The following table shows interesting results (1993:44-45),

The Relevance of *Mizo Dan* in Contemporary Society

Sex	Opinion	Marriage, family and divorce	Status of women	Rights of children	Property and succession rights
Men	Relevant	42.02	30.30	37.50	12.50
	Irrelevant	57.97	69.69	62.50	87.50
Women	Relevant	61.90	36.36	28.57	07.93
	Irrelevant	38.09	63.63	71.42	92.06
Total	Relevant	46.66	31.80	35.48	10.48
	Irrelevant	53.33	64.50	68.18	89.51

E.J Thomas in his analysis points out, majority were for new legislations ranging from 53.33 percent in regard to marriage, family and divorce; 64 percent for the status of women, 68.18 percent for the rights of children and 89.51 percent with regards to property and succession rights. He mentioned that the data represents a clear indication of Mizo views on the relevance of Mizo customary laws in present society. People who feel that *Mizo Dan* is relevant today do not "seriously object to change but their anxiety is about the outcome of the change". This is more highlighted in the case of males where the percentage for irrelevance of *Mizo Dan* is 57.97 percent for marriage, family and divorce; 69.69 percent with regards to women, 62.5 percent rights of children and 87.5

percent in terms of property and succession rights. As shown in the table, for women, except in the case of marriage, family and divorce (38.09%), in all other areas the percentage is more than men. Thomas points out how Mizo women quoted the Bible to justify their low status and are happy to continue in the same level (44). Thomas's concluding remark is,

> …It is clear that Mizo society is in flux with regards to customs and norms governing their socio-economic, political and religious life. In the name of keeping identity of culture, they look askance at modern law and social legislation. Therefore they are caught in between tradition and modernity trying to compromise with both making a patch work guilt. A bold step is necessary to make over-all change. At present the attitude is for a change of convenience instead of change for progress. In many areas change is not possible since some of the present conditions are advantageous to the male dominant society (1993: 45).

Eighteen years have passed since Thomas pointed out in his study indicating that the time is ready for initiating legislations in Mizoram. No notable change has happened so far, and the one change that members of Mizo Customary Law Committee observed was towards widow's property rights. According to the Mizo Customary Law 2006, a widow can inherit property and also have the full ownership and authority as long as she remains celibate to her dead husband. Contrary to Thomas's findings, during my fieldwork, majority of the people I interviewed are of the opinion that 'customary law should not be changed', as Thomas has also pointed out, they intend to keep customary law as it is in the name of keeping the Mizo identity and tradition alive.

As Thomas has rightly pointed out, a bold step is indeed necessary to make changes. Instead of a "change of convenience", a "change for progress" is required. It is difficult to talk of what could be the best strategy. Looking at the historical context and also the 'peculiarity' of the tribal community, perhaps, reform within their "indigenous laws" is what will actually benefit women. Because, laws such as 'international law" or "central laws" are viewed as "alien" and a "threat" to their cultures. Therefore, it might be helpful to point out the discriminatory nature of customary law and address issues which need to be addressed. Instead of using culture as the so-called explanation and justification for all social behaviours, we should be asking whose interests are being

served by the traditions and customs, and who benefits from those traditions? Why some 'reform' took place and some remain unchanged and some customs are even resurrected? Who are the agents of these traditions and customs? Which and whose rights are more fundamental than the others? These questions and more discussions might produce new perceptions and create new thinking among the community members on issues such as marriage, family, divorce and inheritance.

CHAPTER -IV
MARRIAGE AND FAMILY: CONTINUITY AND CHANGE

This chapter looks at definitions and understanding of the Mizo system of marriage. The close connection between marriage and family is highlighted, and the chapter analyses the "traditional" view on family and explains how traditional roles of men and women within family & marriage is critiqued by feminist scholars. The chapter reviews different perspectives on brideprice or bridewealth in general and also within the Mizo context. The influence of religion (i.e. Christianity) on marriage is discussed. An attempt is made to present the social context and meaning of marriages and family in contemporary Mizo society, how gender roles and responsibilities are shaped and influenced by both socio-cultural practices and religious ideology.

As discussed in the previous Chapter- III, Mizo society functions according to the patriarchal structure which considers men as superior. Though Mizo women's association such as MHIP made an attempt to reform customary laws, so far, there has not been any significant response. In fact, any attempt to reform customary law is seen as a threat to the Mizo cultural identity. The state is seen as capable of making legal provisions for women and Mizo women are advised to turn to the state government to make laws. However, the Mizoram state government refused to pass any laws relating to women's rights except for passing Marriage Registration Act, 2012 in response to Supreme Court India order (this particular act does not concern women's rights). Marriage and divorce are governed by Mizo customary law. I will highlight Mizo women's position within the institution of marriage, and the role of state and religious institution in perpetuating patriarchal ideology. I will attempt to look at how gender relations are shaped and moulded within this structure.

Definitions of Marriage

Anthropologists and sociologists have proposed several definitions of marriage, and tried to understand the various meanings and social context of marital practices by different cultures and society. In *The History of Human Marriage*, Edward Westermarck (1921:71) defined marriage as 'A more or less durable connection between male and female, lasting beyond the mere act of propagation till after the birth of the offspring'. However, in *The Future of Marriage in Western Civilization* (1936:3), he rejected his earlier definition, instead provisionally defining marriage as 'A relation of one or more men to one or more women that

is recognized by custom or law'. Radcliffe Brown's (1950) definition, which states marriage as an alliance between two kins based on the common interest that is marriage itself. He sees marriage as a transfer of rights to the new spouse and rights to the spouse's labour. He articulated the role that institutions played in maintaining social structure and social solidarity. For Brown, marriage is a cultural creation since it consists of rights and creation rather than behaviour (1950: 11-12). Edmund Leach (1961) argued that no one definition of marriage is applicable to all cultures. He offered a list of ten rights associated with marriage, including sexual monopoly and rights with respect to children, with specific rights differing across cultures.

Debates on Marriage "Legitimacy"

Notes and Queries and Kathleen Gough defined marriage as 'A union between a man and a woman such that children born to the woman are the recognized legitimate offspring of both partners' (Aiyisi 1997; Bell 1997). This view is contested by Bell (1997). Bell questions the construction of offspring "legitimacy" on the basis of parentage. The definition offered by Notes and Queries and Gough indicates a child to be illegitimate if its mother is not married. If we are to define marriage based on the legitimacy of children, Bell writes,

> We are provided with no independent definition of legitimacy, and in the absence of such a definition the statement that marriage is required to produce legitimate children is tautology…. The illegitimacy of a child should be identifiable as a characteristic of the child itself… the data demonstrate conclusively that marriage is neither necessary nor sufficient to define the social position of children in many cultures (1997: 237).

According to Bell, it is not adequate to define marriage based on the legitimacy of a child. He argues an individual's social position is determined by other factors such as: - rights to membership within relevant households, lineage, tribes, nation-states, and similar collectivises. Bell points out United States as an example, he mentioned, even though the children of never-married mothers are considered "illegitimate" in customary speech, but they have the citizenship rights of children, rights to the support of their father (and to his legacy if he dies intestate) and other rights. He argued, in such society, legal fatherhood with rights and responsibilities does not necessarily demand a relationship with the mother. Though a child without a father may suffer from the absence of a physical presence of a father, nonetheless, the marriage between a father and a mother has no relevance for the social position of the child. He also drew an example of Nuer community, where legal

fatherhood and marriage by levirate and by Ghost marriage is different. In these cases, legal fatherhood and the social placement of the children are determined by the person in whose name "bridewealth" has been paid even if that person is no longer alive and the mother of the children is married to someone else (Bell 1997:237)

Bell illustrates the need to define marriage independently and not based on legitimacy of children. He defined marriage as,

> A relationship between one or more men (male or female) in severalty to one or more women that provides those men with a demand right of sexual access within a domestic group and identifies women who bear the obligation of yielding to the demands of those specific men (241).

In Bell's opinion, marriage is "between individuals and not categories of individuals". Bell explained that the husband is the only person with the rights to control the sexuality of a given woman, only the husband has an institutionalised, socially supported right to control her sexuality (239). The criteria by which men are evaluated for acceptance into the category "husband" are different from those that would be used independently by the woman whose services are sought. 'The efforts of males to make claims against the services of females have roots that are ancestral to the evolution of Homo sapiens' (Bell 1997: 238). This reflects the institutionalization of patriarchy which is historical.

Bell further went on to explain the term 'right' as "a socially supported claim" he argues, 'Individual effort does not define a right. Rights are conferred by the action of others. A right or demand right exists only to the extent that there are other individuals who will cooperate in securing access for the individual to the thing or benefit in question' (238). Bell also talks about the contemporary setting, where rights tend to be primarily state-oriented and state supported. However, he argued that this is not really effective as loosening of kin ties, and the increased size and anonymity of residential groupings have reduced the significance of certain informal mechanisms. But, in most cases, "many rights remain to be enforced only formally". Bell points out the need to have a "valid cross-cultural" definition of marriage, he sees marriage as an institution which is of fundamental to the study of culture. He points out the requirement of ethnographic analysis in order to understand marriage. He said,

> We must examine it as a construction in a social space whose dimensions are defined by an articulation of rights and responsibilities, and for the purpose of cross-cultural analysis it is essential that we define the minimal set of rights-responsibilities that may constitute a marriage tie (1997:244).

Critiques

There are many responses and critiques to Bell's argument, to name a few, Burton questioned Bell's attempt to provide "valid-cross-cultural" definition of marriage and in particular the husband's sexual rights to wife. Burton argues, the degree to which marriage provides sexual rights to men and not to women should be an empirical question, and many marriage systems provide rights to women as well as men, with both men's and women's rights varying across societies (Burton 1997:245). Burton pointed out the Masaai marriage system as an example. He argues, in Masaai society, women have no obligation to yield to the demands of the men, possibly not even to the demands of their husbands. Burton argues, although marriage is usually imagined as granting men socially recognised rights of sexual access to women, he offers his own understanding of marriage, Burton writes,

> I would contrast marriage in "classless" societies, where social inequality is commonly organised on the basis of rights in people, with marriage in class-divided societies, where inequality rests on rights in things. In the former, marriage is best imagined as a relationship between "men" in respect to "women". In the latter, it is more appropriately conceived as a relationship between "spouses" in respect to property (1997: 246).

Burton is concerned with Bell's attempt to establish "socio-cultural" rather than "biological-evolutionary" explanations for marriage. Instead of assuming that biology impels males to fight other males for access to females, he argued, men in what he called "bride-service" societies have good socially constructed reasons for imagining "wives" (not women) are a scarce resource.

Another critique comes from Sarah B. Franklin (1997), she questions, if marriage is an institution which establishes a husband and wife, providing the husband with a demand right of sexual access to the wife, who in turn will "bear obligation of yielding" to this demand, then another important question arises at the level of "the women choice [who] may be entirely excluded from the choice process". This is a question many feminists asked of Levi Strauss, for whom the exchange of women provided the link between nature and culture. Levi-Strauss (1969) defines kinship as primarily operating through marriage. According to him, "exchange of women" is the basic phenomenon by means of which kinship is to be

understood. In his elaboration of exchange theory, he demonstrates that all marriages are exchange of women between two groups of men. He presented two models of exchanges; the first is the reciprocal exchange of woman between paired sections which he calls "restricted exchange". The second is the circular pattern of wife giving and wife receiving which he calls "generalised exchange". It permits either the even or odd numbers of groups to participate in the chains and it requires a minimum of three groups. Franklin argues that, more needs to be provided by way of explanation of "husband" and "wife", if marriage resists definition as a matter of socially recognised parenthood or the legitimacy of offspring, and it is in addition so happily various as to elude, so far, definitional stasis, then socio-biology may, as ever, be recruited to do service where sociality alone will not suffice (1997: 248).

Ravindra Jain also questions Bell's theory. Jain (1997:248) presents three main points; firstly, he argues that Bell does 'nothing to mitigate the andocentric bias in the Levi-Straussian view of marriage'. Secondly, Bell builds his arguments based on outdated definition of marriage as a bundle of "jural rights and obligations". Finally, the cross cultural ethnographic data that are used (i.e. the Comanche, the Bedouin, the Saranhua, and the Inuit) raise questions and doubts. Jain expressed, given the current mood of interrogating ethnographic texts, whether this is "macho" ethnography! Jain re-writes Bell's definition of marriage as follows:

> Marriage identifies a mutual relationship between one or more men (male or female) in severalty to one or more women that provides these partners with social space to exercise agency and negotiation within a framework of normative patterning of rights and obligations in the domestic group, supported by law and ritual (1997:248).

In response to the criticisms, Bell defends his theory by stating that his definition of marriage implies the dominations of wives by husbands. He argues that the problem lies not in his analysis but with the formal definition of marriage, that 'access rights to be granted to husbands and that wives yield to those demand-rights'. He dismissed the idea that wives' obligation may not be necessarily oppressive to her and that he placed the obligations of wives with the obligations of parents, with domination implied in neither case. He states, the oppressed individual in the construction of marriage is not the wife, it is the man who must submit to a set of prescribed obligations and limitations within domestic groups in order to gain support from others for his claim upon woman.

Bell also argues that, Jain's approach and his attempt to define marriage as the balance agency of men and women is an "effort to suggest how marriage should be constructed" which is different from the reality and that Jain's approach lack "a dominant ethnographic representation" (Bell 1997:251). Bell also responded to Levi-Strauss's approach, stating that, and Strauss's elementary concept of marriage which involves the "exchange of women among men" would only matter whether it is analytically correct or incorrect, he states, in this case, 'Levi Strauss is absolutely incorrect since families usually hold certain residual rights in married daughters, men seldom exchange women'. However, Bell points out, they may exchange the "fertility of women as a form of wealth for other forms of wealth" (1997: 251-251).

Duran Bell's definition of marriage offers us an alternative way of looking at marriage. He successfully grappled the important question concerning marriage and legitimacy. He effectively argued that marriage cannot be defined based on the legitimacy of children. Rather, marriage according to him is based on men's rights of sexual access to women. Though his attempt to offer a "cross-culturally valid" definition faced certain criticism, nevertheless, Bell gives a wider understanding of marriage and social relations within the study of culture. Bell states, 'It is essential for the purposes of cross-cultural analysis that we define the minimal set of rights-responsibilities that may constitute the marital tie. He offers us a model of allocating conjugal services which is also connected with legitimacy in the construction of social order (Bell 1997:240-244). However, there are problems in his attempt to offer marriage definitions such as, "access rights" given to husbands overlooking women's choice, and render women invisible. Bell seems to give supremacy to husbands where wives are supposed to "yield" to those demands. Although Bell's theory is androcentric, it opens up critical questions, such as the understanding of social relations within a given cultural setting.

Different Theoretical Perspectives on Marriage

For the study, three theoretical perspectives such as Marxist, functional and feminist perspectives on marriage will be discussed.

Marxist Views

Frederick Engel analysed the history of family present by Bachofen in *Mother's Rights*. Bachofen made three propositions; they are 1) in the beginning, humanity lived in a

state of sexual promiscuity, which he designates as "hetaerism"; 2) that such promiscuity excludes all certainty as regards paternity, that lineage, therefore, could be reckoned only through the female line-according to mother right- and that originality which was the case among all the peoples of antiquity; 3) that consequently women, who, as mothers, were the only definitely ascertainable parents of the younger generation, were treated with a high degree of consideration and respect…..was enhanced to the complete rule of women – "gynaecocracy" 4) that the transition to monogamy, where women belongs exclusively to one man, implied the violation of a primeval religious injunction, a violation which has to be atoned for, or the toleration of which had to be purchased, by surrendering the woman for a limited period of time (Engels 1948:10).

Bachofen finds evidence in support of his theory through countless ancient classical literature. According to Bachofen, the evolution from "hetaerism" to monogamy and from mother right to father's right takes place among the Greeks as a consequence of the evolution of religious ideas, such as, the intrusion of new deities, representatives of new outlook and the old traditional pantheon representing the old outlook, so that the latter is more and more driven into the background by the former. Hence, Bachofen is of the view that, it is not the development of the conditions which prompt the changes, rather, it is 'The religious reflection of these conditions of life in the minds of men that brought the historical changes in the mutual social position of man and woman' (cited in Engels 1948:9-10).

Frederick Engels points out the transition of family pattern from the pre-historic stages of culture to the "civilized" culture. According to him, the monogamous family that arises out of the pairing family in the transition period from the middle stage to the upper stage of barbarism is the beginning of civilization. Engels further argued that, the monogamous family is based upon the supremacy of man; 'its express aim is to the begetting of children of undisputed paternity, this paternity being required in order that these children may in due time, inherit their father's wealth as his natural heirs' (1948:62).

Functionalist Perspective on Family

Functionalism was the dominant branch of western Sociology until the 1960s. Functionalists argued that societies consists of interrelated social institutions such as schools, mass media, political systems, the Church and the family each of which contribute positively to the maintenance of stability of society as a whole. These institutions are considered to be

functional for societies as a whole (Carlsson 1962). Functionalists look at marriage and family, they examine how they are related to other parts of society, and especially the ways they contribute to the well-being of society (Adam 1949). For instance, G.P Murdock (1949) conducted a survey of 250 societies and claimed there are four universal residual functions of the family such as sexual, economic, reproduction and education. Murdoch is of the opinion that the nuclear family is useful to society and that it is inevitable and universal. Murdock argued that nuclear family was a universal social institution and it is required for the fulfilment of four basic functions for society such as: - the sexual, reproductive, economic and education functions (Majumdar and Madan 1985). The functionalist theories of the family focus excessively on the nuclear family form and insufficiently on other family forms (Zinn 2000; Fox and Murry 2000).

The Functionalist perspective on the family has been further developed by Talcott Parsons, his theories focusing heavily on nuclear, heterosexual families to the exclusion of other family forms. The main aspects of Parsons' theory as developed in the USA in the 1950s were as follows: - First, he argued that industrialisation resulted in the gradual replacement of extended families by nuclear families because industrialisation demands greater geographical and social mobility. He also pointed out, industrialisation also creates structural differentiation such as new more "specialised social institutions" such as factories, schools and hospitals developed to take over some of the functions previously performed by families. According to Parsons, the nuclear family loses some of its functions but it remains crucial in relation to the two functions namely the socialisation of the young and the stabilisation of adult personalities. Parsons also expressed, within nuclear families, roles are allocated between husbands and wives in accordance with the assumed instrumental characteristics of males (which makes them more suited to paid employment outside of the home) and the assumed expressive characteristics of females (which makes them more suited to childcare and domestic work) (Zinn 2000; Uberoi 2004).

Patricia Uberoi (2004) in her analysis of Parson's theory of family states that, he was responding to the widespread post-war perception which states, the increase divorce rate, declining birth rate, and changes in the sexual morality indicated break-down of the American family. To the contrary, he argued that such changes were part of the period of transition, and "not signs of a trend to dysfunction and disorganisation per se". Rather, Parsons asserted American society was going through the 'Culmination of a long-term

process of "isolation", differentiation, and 'specialization of the nuclear family as a bounded sub-system of society'. Therefore, changes were inevitable. According to Uberoi, Parson's analysis is "candid" and "narcissistic", she writes,

> …candid in its recognition that the functional stability of the American nuclear family was dependent on a supposedly *naturally* given generational hierarchy of authority and sexual division of labour, narcissistic in that the family pattern thus valorized within an evolutionary theory of societal development was both ideally and empirically typical of the white American, middle class family (*father as breadwinner, mother as housekeeper*), delegitimizing other family patterns (2004:278).

Patricia Uberoi argued that Parsons failed to see the "transition" that every American family goes through, and that "America family would be a continuing and open-ended process". Uberoi points out important factors like demographic factors, difference in sexual and conjugal provisions such as gay and lesbian marriages, the legal recognition of live-in relationship, as well as the impact of new technologies have caused changes within the American family. Uberoi stressed, Parsons overlooked other modes of family life, Parsons' main focus was solely on typical family pattern of white, middle class Americans, and he portrayed them as 'the most advanced type of kinship organization, functionally adapted to the requirements of modern society'. Uberoi's argument is that, by focusing only on the typical white American family, Parsons shows that he has little interest in understanding other modes of family life except insofar as these served to validate his general theory (2004:279). Clawson (1989:1-15) states that, Parson's vision of the family no matter how much they take him for "sexism", his "ethnocentrism", his use of white-middle class model, his assumption that "family means mom, dad, two kids and a dog", this view is held by most students and family continues to be seen as quite separate from the "outside" world where as personal life as a free space. It is the functionalist view of the separate gender roles within family which is perpetuated in society and critiqued by feminist scholars.

Feminist Critique of Functionalism and New Perspectives on Family

Though there are important divisions within feminism, all feminists are critical of functionalist theories of the family. They argue that, gender differences in socialisation within the family operate to the disadvantage of female. The traditional allocation of roles within the family reflects not the instrumental characteristics of males and females but the existence of patriarchal power within the family. Structural functionalism advocates the idea that the role and responsibilities allocated to men and women are natural and it is good for the function of the society, Maxine Baca Zinn writes,

> Men's instrumental roles linked families with the outside world, while women's expressive roles ensured family solidarity. Structural functionalism made role differentiation an essential feature of families and the larger social order as well…. structural functionalism made the modern nuclear family a falsely universal construct. It ignored difference, even though race and class differences were at the very foundation of family (Zinn 2000: 44-45).

Feminists profess that the traditional allocation of gender roles restricts female employment opportunities and prospects. Even when women are employed outside the home this may nevertheless mean that they are obliged to undertake the so-called 'triple shift' of employment, housework/childcare and emotion work. The patriarchal power ensures that major family decisions are taken by males rather than females; that the existence of "empty shell marriages", high rates of divorce and considerable levels of domestic violence show that family relationships are often far less harmonious than is implied by functionalist theory (Zinn 2000; Allen 2000; Fox and Murry 2000).

Maxine Baca Zinn also discussed the impact of feminism on the family, focusing on traditional understanding and academic representations of the family. How feminism plays an important role in "unmasking" of the gender-structured family. According to Zinn, though the early family scholars were pro-family, they failed to "endorse" any family form. In fact, the earlier understanding and academic presentation of family was highly influenced by the Chicago school of American sociology and were preoccupied with the transition from traditional to modern social forms. Nuclear family was considered as the "norm" even though there were many varieties of families in different regional, economic, racial, and ethnic groups. Zinn argues that, the early family scholars ignored the economic circumstances and social discrimination that produced distinctive family patterns; they confused "difference with disorganization" (2000: 44). Osmond (1987:113) also points out, 'Early family thinkers were extremely conservative in regard to family'.

Zinn criticised the "mythical family prototype" advocated by structural functionalists, which states that, social order was maintained by a high degree of consensus and a division of labour between the various components of society. The most basic component was the family, and it was considered as "unalterable type of role structured". Since structural functionalism made role differentiation an essential feature of families, the division of society into "public" and "private" and the division of men's and women's roles was viewed as

'complementary' and essential to advanced, industrial societies. The notion such as father as provider and head and mother as care taker and heart was the dominant feature of family framework in the 1950's and 1960's (2000:44-48).[1]

From the late 1960s and throughout the 1970s, feminist scholars unmasked an idealized vision of the family that supported women's oppression. Feminist critiques developed in the context of the social and political upheavals of the times and questioned functionalism's basic premises. They challenged the 'unified family' because it obscured women's experiences. Where the mainstream family model saw the family as a cohesive system resting on integrated sex roles, feminists argued that the family was the primary site of women's oppression. What functionalism saw as role differentiation, feminists identified as the core of family politics. As feminists posed new questions and offered new ways to see family life, they also took careful stock of their own impact on the family field (Zinn 2000). Feminist scholarship takes the social construction of gender as a central concept. Feminists examined the structural, cultural, historical, and interpersonal conditions that create distinctions and perpetuate power relations between women and men (Allen 2000).

Allen (2000:8) rightly pointed out, 'If our goal is to study social structures and processes related to families, we need ways to include more realistic understandings of the diversity of people's lives in our investigations'. Osmond and Thorne (1993) offered five central themes to feminist scholarship in family life: (a) social construction of gender as a central concept, (b) attention to socio historical context in the analysis of gender, (c) commitment to gender equality and social change, (d) centrality of women's experiences, and (e) questions regarding unitary notions of "the family". Osmond and Thorne proposed that, to move beyond symbolism and idealization, family should be distinguished from household. A family is a construct of meanings and relationships; a household is a residential and economic unit (cited in Thomson and Walker 1995:848). Feminists look for an alternative definition of what "family" is. For instance, they pointed out that the concept of family is an "ideological concept", which conceals varied meanings and configurations. Fernandez and Garcia (1990:141) points out, 'Family" designates the way things should be, while "household"

[1] Thompson & Walker (1995: 847) in analysis of the place of feminism in family studies concluded that, though the place has created a legitimate place for feminism, but the place is more often at the margins of family scholarship rather than the center. Feminism moved to the centre only in the domain of housework.

refers to the manner in which women, men, and children actually come together in domestic units'. Feminists also deconstructed the daily activities that take place within domestic units. For example, housework was redefined as work, and concepts such as caring work were introduced to describe many of the unpaid and often unrecognized tasks that women perform for free.

Fox and Murry (2000:1164) expressed that, one of the most important reflections of feminist sensitivities in family research is the distinction between sex and gender. Feminists contributed to the wider understanding of family and provide recognition of gendered standpoint. Feminists also contextualize family relationship and critique the power relation within family institution. In other words, we may say that, feminists pointed out the gender discrimination within family, the roles and responsibilities given to male and female on the basis of sex. Feminists view family as a site where women are restricted, and power relations are divided unequally between men and women.

Feminist Views on Marriage

Simone De Beauvoir (1949:445) stated, 'Marriage is the destiny traditionally offered to women by society. It is still true that most women are married, or have been, or plan to be, or suffer from not being'. Storkey (2000) has pointed out that the 19th century problems of "superfluous women" in British society; an unmarried middle-class woman was a liability. Working-class women could go into domestic or factory work, but those too highly bred for such were always someone's dependent, a father's, uncle's or brother's. So the solution was to marry her off, send her out as governess or companion to elderly widow encouraged her to revitalize religious orders, or to ship her out of the colonies; hundreds of un-married ladies crossed the oceans. Women are always encouraged to get married, getting a good husband is considered as a "good catch".

There have been literature and research studies which show that marriage has different implications for women, while men are given the supremacy women are discriminated in many ways. In modern "civilized" society, monogamy is the most common and considered "appropriate" practice. In the Monogamous family, conjugal relations are determined by patriarchal customs (Engels 1948; Murdoch 1949). The scientific progress of the human society also contributed to changes in relation between men and women. De Beauvoir (1949) argues how economic evolutions have placed women at a lower level of the

society. She highlights that, during the French revolution, some enjoyed a liberty that was anarchic. But when society underwent re-organization, she was firmly enslaved anew (141). During industrial revolution, when men engaged with the new technology and inventions and work outside the household, women were forced to stay inside the household. The notion continues in the modern family set-up where the role of women was within the household. The social structure is such that upon entering marriage institution, she must embark upon her husband's identity.

Marriage in Mizo Society

Marriage in Mizo society is based on a patriarchal system with father as the family master, and the marriage system is based on patrilocal. In patrilocal marriage system, the bride is brought to the family and place of the groom (Levine: 1997). Traditional Mizo marriage is performed purely through a civil-contract, although a pseudo-religious ceremony was performed in solemnizing the union. Polygamy was not restricted, but, most Mizo men have one wife, as polygamy was usually practiced by the chiefs and other rich men. The process of marriage starts with courtship, if the boy wanted to marry a girl whom he likes, he would inform his parents who in turn would take the initiative by sending two *Palai* or negotiators to the girl's parents. The consent of the bride and groom was always sought before the final decision was taken. If consent is obtained from the girl's party, then they can start negotiating the bride price that the boy's family are supposed to pay. The two most important considerations are the willingness of the daughter and the price which the suitor or his family is agreeable to pay at the girl's marriage. Once negotiations were completed, the wedding day was soon fixed. A feast was usually prepared on the wedding day (McCall 1949; Parry 1976; Hminga 1987).

There are also other forms of marriage such as *inru/tlandun* or elopement - couple who get married without the knowledge and consent of the parents. *luhkhung/fan*- If a man marries without the permission of his parents and goes to the girl's house, it is called *luhkhung*, and if a girl goes to the boy's house in order to marry him without the consent of her parents, is called *fan* (See Appendix II). Both *luhkhung* and *Fan* was considered embarrassing especially for a man (Parry 1927). Cross-cousin marriages are not favoured, although a widower may marry the sister of his dead wife for the welfare of the children.

Mizo Customary Practice of Brideprice

Brideprice plays a central role in Mizo custom of marriage. Without brideprice, a marriage is not socially and legally acceptable. Brideprice is not fixed and it differs from one clan to another. In traditional Mizo society, like among the Sumi tribe of Naga society, *Mithun* was considered the most valuable brideprice. Other articles like gongs, guns, beads and *puan* or loincloths are also used. In those days, marriage price was never paid up in full at once at the wedding, because, hardly anyone had enough money to pay up. Usually an instalment is paid on the wedding day and the balance is paid later. Sometimes it takes twenty years or more to make a full payment. Practice of brideprice is also common among Muslim tribals in Arabia which is considered as a mark of respect to the woman, and forms an essential part of a marriage contract. The only difference here is that an amount paid to the father of the bride was converted into *Mehr* (Agnes 2000:108); in Mizo marriages an amount paid to the father remains the father's property.

According to the Lusei-Mizo custom, Brideprice falls into two parts the *Manpui* or main price and *Mantang* or subsidiary price. The *Manpui* goes to the father or brothers of the bride and *Mantang* is divided among the relatives (See Appendix II & III). Those who receive portion of the brideprice are usually those who are being favored among the relatives. If the bride has no father or brothers, the *Manpui* will go to her nearest male relation and if she has been adopted by some person who brought her up from childhood, it will go to him. Failing male relations, the bride's mother might get the price, provided that she has brought her up and has not married again. The bride can let her get the price or she may select someone else to receive it. If the bride, on her mother's remarriage, had gone to live with someone else, the person with whom she has been living and who supported her will get the price. The only case in which a mother can claim her daughter's price as of right is where the daughter is a *falak* that is to say an illegitimate child that has not been recognized by her father.

If a man has brought up a girl from childhood in his house and takes the place of her father, he will naturally expect to get her brideprice and if there is a dispute about it and her relatives refuse to let him get it, he can claim *Chawmman* Rs 40/-, the fees which he can claim for having boarded and lodged a person who is no relation of his house and will be dealt later on. In a traditional Mizo society, the general rate of *Manpui* is four *Mithuns* or Rs

80/- if the girl has no dowry and five *Mithuns* or Rs 100/- if the girl has a dowry. The price is always increased by a *Tlai* or Rs.20/-, if the girl is provided with a dowry or *Thuam.* The value of dowry makes no difference, even if the dowry is worth Rs 100; it only causes the *Manpui* to be increased by Rs.20.

The *Mantang* or subsidiary price consists of the following subsidiary prices: 1) *Sumhmahruai* (Rs 60/-) is decided by the bride's father. It is payable to the Bride's father or brother. 2) *Sumfang* (Rs 50/-) is also more or less the same as *Sumhmahruai*, payable to the bride's father or brother. 3) *Pusum* is given to bride's mother's father. In case, if the bride's mother's father (*Pu*) is dead, the bride-price would go to the wife of *Pu.* If both of them died, then the bride-price would go to the son (mother's brother), who is also the legal inheritor of *Pu.* This is very important and Mizos are very particular about *Pusum.* If it is given to the other person instead of the actual *Pu,* the *Pu* can sue the bride's family and make them pay penalty that is *Pu ban man* sometimes the fine can be very expensive such as one *Mithun.* If the main Pu (bride's mother's father) died, *Pusum* can be given to more than one person that is called '*Pu Phir'*. 4) *Palal* (Rs 30/-). This is extended, only if a bride marries a groom who is not from the same village or from a different locality. The bride may select an adoptive father. *Palal* does not require relative, and it can be given to a person whom the bride selects as her guardian. 5) *Ni-ar (*Rs 20/-), this goes to the bride's father's sister. 6) *Naupuakpuan,* this is given to the bride's elder sister in consideration of her having carried the bride about in her cloth when the bride was a baby.

The Mizo Customary Law explained in detail, the process of marriage and the duties of persons who are an integral part of the marriage. Chapter- 3 clause 36 to 37 deals with marriage price. Cause 38 to 74 give details of the process of marriage such as: - *Palai*-negotiator, *Palai* should not be less than two persons (2006:14-18). Another custom is *Thutphah*, when the bride's family receives marriage price, Rs 20/- is given to the bride by the person who receives portion of the brideprice. *Thutphah* is important when a woman gets old and can no longer work, and if she is divorced by her husband, *Thutphah* will ensure that she can take back all her *Thuam*-personal properties (*Mizo Hnam Dan, 2006*, enclosed in appendix III). If a bride does not have *Thuhphah*, she cannot take back any of her personal properties, it will go either to the husband or her children. In a way, *Thutphah* ensured a woman's security when in times of trouble.

Apart from *Manpui* and *Mantang* there are other optional prices and customs which must be mentioned such as below: -

1) Thianman:- this is paid if the bride so desires to her female friend. It is payable out of the *Manpui* or (main bride price) and does not form a separate subsidiary price. *Thianman* is usually paid by the bride's family. If the bride later on leaves her husband *Sumchhuah* or *Uire,* this price must be refunded by the friend to whom she has given it.

2) *Lawi:*- This *Lawi* is a custom where certain animal *Sial* or *Pig* is killed and is contributed to by the bride's relations and all the people who get a share of her price. The bride and bridegroom's family will divide the meat equally. The bridegroom's family usually gets the head part.

3) *Mo-Lawi*:- On the evening or the night of the marriage day the bride is conducted to patrilocal residence. The husband's family usually appoints a person to go get her from her father's house. In early Mizo society, *Mo-Lawi* was usually completed on the second night. On the first night, *Puithiam* or Priest kills a pullet and sings a chant, wishing the couple long life, many children and that they remain together until they are both old. This chant is addressed to *Khuavang,* who are the spirits of the air. The bride then returns to her father's house, and is brought back the next evening to her husband's house and remains there. However, the practice is no longer there in 'modern' Mizo society, now *Mo-Lawi* is completed on the first night itself.

4) *Lawichal*:- this is purely optional price which cannot be claimed as right and comes out of the *Manpui*. It is only payable when the bride and the bridegroom live in different villages; this is the case when the bride is escorted to her new village by her friends and among them, one man is appointed as leader of the band, known as *Lawichal* and he is sometimes given a reward of Rs.2 in traditional Mizo society. This price also has to be refunded if the bride later on, leaves her husband *Sumchhuah* or *Uire.*

5)Lawi Ar:- This is when the bride goes to her husband's house, she would take *Ar* or hen. Ar is bought by her family or relatives who get a share of her bride-price.

6) *Zawnchawp Pa leh zawmchawp Nuta te:*- Failing close relatives, the bride may select adoptive father or brother not only to act as *Palal,* but whom she can consider as real relatives. The bride's family can decide to let them get the bride-price.

7) *Palai Sa*: Portion of animal killed given to *Palai*-negotiator between the two families- the bride and the bridegroom.

6) *Nu Man:*- If the mother of a girl who is getting married, has been separated from the girl's father, she is entitled to a price known *Nu Man (*Rs 20/-). The price is payable only to the real mother of the bride. This is not part of *Mantang.*

There is also a custom of *Man lova Innei.* This means a couple gets married without marriage price as per the agreement of the family. *Man Bo* is related to a divorced woman by way of *Sumchhuah* or *Uire,* if she remarries without any demands of brideprice or without the consent of her parents, then the bride's family can no longer claim the brideprice and it is called *Man Bo.*

Different Views & Debates on Brideprice

The giving of brideprice or bridewealth as some anthropologists have pointed out, always attracts the attention of anthropologists and feminists for it questions the very nature of the "value" of the human being "exchanged" (Basu 2005). Marriage among many tribal societies is seen as a contract between two lineages or families. The practice is that, the groom has to make substantial payment to the bride's family. This was seen by the missionaries as degrading customs and they tried to suppress these customs. For this reason, the term "brideprice," with its connotation of a woman being sold as chattel came; this is very current and colonial origin. In Africa, the issue was first raised during 1920's by missionaries and administrators who insisted that 'women were chattels in society with bridewealth'.

Anthropologists challenged this view in two ways. Structural-functionalists such as Evans-Pritchard (1931:38), argue that while marriage "price" may operate as payments, they have more "important social functions". Evans-Pritchard proposed that transfers of marriage "prestations" be termed "bridewealth" to express the fact that they largely performed non-payment functions. Secondly, economic view emerged, for instance Gray (1960) and Goody (1973) respectively argued that wives were acquired like other commodities. They see

bridewealth as having negative connotation on women. Symbolic and economic views dominate contemporary understanding of bridewealth (Dalton 1966; Reyna 1984:59).

According to Marcel Mauss, the problem that arises while using the term bridewealth is that, bridewealth is not applicable to a situation where groom wealth is exchanged in return for a man. Mauss in his book, *The Gift* (1970) argues against the economic aspects of gift-exchange, he highlights the necessity and appealed for a renewed emphasis upon its moral and social elements where the relationship between gift-exchanges and social structure was primary. He identifies a type of gift-exchange as "prestations" or "total prestations", which are meant to apply to a type of compulsory gift that falls upon the entire group and all its social phenomena including religious, legal, moral and the economic aspects.

As mentioned, there are differences of opinion with regards to brideprice or bridewealth. There are parallel views, one which see brideprice as a sign of recognition of women's value and their labour power and while others see it as commoditization of women. There has been speculation of brideprice as less demeaning, for women compare to dowry practice where the bride's family has to pay money to the groom's family. But, before we say one system is better than the other and make a sweeping generalization, it is important to first understand the underlying concept of both the practices of brideprice and dowry, to examine the ways it is used and then see the impact it has on women.

Brideprice vs Dowry

M.N Srinivas (2005:3-14) defends dowry by stating that, dowry in its original form was given to the girl as a gift by her parents and he further continued by saying that there is a need to distinguish pre-British dowry and modern dowry. 'Modern dowry is entirely a product of the forces let loose by the British rule such as monetization, education and the introduction of the organized sector' (8). There is an attempt to equate a huge demand of dowry from the bride's kin by the groom to *Dakhina*, which itself is an attempt to legitimize a modern monstrosity by linking it up with an ancient and respected custom into a common and hoary Indian lives. Srinivas sees dowry as a higher caste practice, he states, 'In the context of dowry and brideprice, it means that lower castes tend to give up brideprice and replace it with dowry even when their womenfolk are engaged in productive work outside the home' (11). Srinivas also states, brideprice amount was fixed within an endogamous *Jati*, and the various "prestations" were also specified, whereas, dowry is characterised by 'asymmetry,

uncertainty and unpredictability'. The bride's side may have to bear all the expenditures and there is no rule as to what the groom's kin may ask.

Srinivas points out the importance of how dowry works differently among diverse groups. He compares between hypergamy or hypergamous ideology in the North India and isogamy in South India. He critiques the assumption that dowry is integral to hypergamy and the 'economic interpretation'. In hypergamous areas, brideprice is considered 'inferior' and seek to improve their status by giving dowry. In South India, the practice of brideprice is common and the switch to dowry among the upper castes is post British. In order to understand the distinction between dowry and brideprice, he writes,

> In studying dowry the continuous desire of the bride's kin to improve their family standing or status needs to be kept in mind, particularly in hypergamous areas. Secondly, dowry and bride-price have also to be studied in the context of changing male-female sex ratios wherever the data are available. In this connection, it may be mentioned that demographic history is woefully neglected in India and there is not even awareness of the fact that it is neglected (2005:11).

The Practice of Brideprice among other Tribals: Views and Debates

The practice of brideprice is common among other tribals in India, D.N Majumdar & T.N Madan (1985) show, the tribal society such as the Kharias, living in the various hill-ranges of Orissa, the Ho, from Singhbhum, Bihar and the Khasi from Meghalaya. They talk about the reasons underlying marriage and its nature, various forms of marriages such as exogamy, endogamy, cross-cousin marriage, levirate and sororate, polygamy and hypergamy, and ways of acquiring mate. They tried to explain the social context of marriage system within different communities. They argued, marriage by what has been called purchase is found prevalent all over tribal India. They pointed out, for instance, the Naga tribes pay the brideprice and so does the tribes in Middle India. They write:

> …it nevertheless would be wrong to regard the payment of bride price as indicating sale and purchase. It may be only symbolic of the utility of a woman, and by way of compensation to her parent's family. In case the dowry which is often given to a girl by her parents is considerable the payment of the birdeprice ceases to have an economic significance (1985: 76).

They further argued that, tribal people's contact with external forces is responsible for changing the basic values. They pointed out the Ho as an example, they expressed the economic aspect of the Indian tribe brideprice has assumed huge proportions. 'Their general

economic conditions are not much worse than what they were before they came into contact with the agencies of the urban city culture, but the basic economic values have got completely changed' (77). They mentioned high rise of brideprice brings certain difficulties within the communities. In order to solve the problems some of the tribes such as Gond or Baiga finds himself not in a position to pay the price, he goes to serve in his would-be father-in-law. Majumdar and Madan see brideprice as a positive indicator; they argued how the Rengma Naga pays brideprice, but no economic significance attached to it. They also stressed that, the absence of brideprice among the Ao and Angami Naga has resulted in a lower status for women and prostitution and that 'it is brideprice which has protected the Rengma Naga' (Majumdar and Madan 1985).

The above discussion is somewhat similar to how brideprice is usually viewed and understood in Mizo society. McCall (1949) is of the opinion that "marriage price" tends to celebrate Mizo women's values. In the traditional Mizo society, the price was determined by taking into consideration different factors like the women's capacity for hard work, industriousness, and skills and also by the looks of a woman. Brideprice is not exclusively appropriated by her parents alone and it is usually divided among the relatives. Those who receive portions of the brideprice are usually those who are being favored among the relatives. And usually the chief's daughter fetches the highest price. This could be one reason why birth of the girl child is celebrated. At the birth of a child, if it was male the parent would say, he will become a brave hunter and warrior and will kill animals and enemies, and, if a girl child was born then they would say, 'he will become a beautiful maid and will bring handsome marriage price' (Sangkhuma 2000; Parry 1976; Mizo women today 1991; Sangkhuma 2000).
A girl-child is expected to fetch a handsome price when she's married off. It is said that divorce is less among the Mara's than Luseis. Parry (1976:276) has pointed out, 'The high marriage prices in force strengthen a wife's position, and divorce is far less common than among the Lusheis, neither party being willing lightly to incur the material losses involved'.

Brideprice in Contemporary Mizo Society

In contemporary times, among the Mizo, the general belief is that, the practice of brideprice as opposed to dowry is the sign of Mizo women's freedom, and is the evidence of their better status as compared with Hindu women. Contradictory to son preference in India, it is one of a few parts of India where positive response for the birth of a girl is elicited. However, to say that brideprice celebrates women's value and labour power is far too simply

a formula. In fact, it has been argued that bridewealth is particularly associated with patrilineal societies. Wilken (1883) theorizes bridewealth originated in those societies which were changing from an original matriarchy towards patriarchy. He argues that, bridewealth in its origin would not have been a purchase, but a settlement for the offence caused by abduction of the bride, when patriarchal societies later firmly established themselves, bridewealth became a true purchase (as cited in Jimo 2006:22).

Pautu (2006:22) states that in Mizo marriage 'Brideprice plays a central role in divorce settlements either the husband or the wife or even both would have to pay up, return or share the bride price…it is indeed a security to the marriage bond'. This may be because, if divorce takes place, husbands have to pay back the brideprice and if the price is high, it is considered more difficult to pay back the full amount since the brideprices are usually spent before divorce takes place. However, at present brideprice is Rs 420/- much less than what the traditional bride price would have cost. This is one of the reasons why MHIP demanded the rise of brideprice during the codification of Mizo Customary Law.

When N.E Parry compiled the first written form of Mizo Customary Laws or '*Mizo Hnam Dan'* in 1927, one *Mithun* was equivalent to Rs 100/- which was not a petty amount at all. During the Mizo District Council period, there was debate on whether they should increase the brideprice. In the initial stage, majority of the MDC strongly opposed and stated that it should remain Rs 100/- just as N.E Parry has put it (1960 amended laws). However, it was later fixed at Rs 420/-. When the Committee on Mizo Customary Laws was formed in 1980, one of the issues MHIP demanded was increased of brideprice. MHIP leaders have argued that this 'Women's values are ignored in contemporary Mizo society. And that traditional brideprices celebrate women's value but not anymore'. They argued that brideprice should be increased in accordance with the present economic value, my respondent, who is also a member of the Mizo Customary Committee, said,

> *The traditional bride price (Rs 100/-) was equivalent to one Mithun, We argue that if we are to measure the original brideprice with today's currency it is so much more than Rs 420/-, actually, if we combine with 'Pusum' (brideprice given to mother's brother) it's worth at least one lakh.*

The demand was refused on the ground that "customary brideprice is not to be translated in terms of economic value". This invites speculation that the traditional values of brideprice

have changed. Pautu said, 'Contrast to the traditional Mizo marriage, today it does not carry any economic value rather it has become a customary token' (2006:31).

The argument here is that, the brideprice might be intended to celebrate the value of women or their labour power. In a subsistence economy, it was as likely as not 'women's work' would be considered as more productive and necessary for the survival of the community, and girls would accordingly be favoured and welcomed more than boys (Mahanta 1999:345). But the important point here is, it is shaped and moulded out of patriarchal system. Furthermore, the MHIP feels that women are worth much more than Rs 420/-. One can argue whether this indicates that women are seen only in terms of economic value and that, by demanding the increase of brideprice, MHIP promotes further, the notion of commoditization of womenfolk. And the fact that even if it is used as customary token as members of the customary board insisted, it legitimizes the power of men over women.

In Mizo society, the brideprice often provides sexist jokes and excuses for men, it is common to hear man saying to their wives "I have bought you". When I was interviewing one of the respondents, he used the sentence *hralh toh* or "sold" to refer to his daughter and sister's marriages. Though any positive brideprice can be characterized, generally, as a compensatory payment to the family of the female for the production loss they suffer on her departure (Rajaraman 1983: 276). Studies have proved that, the character of dowry has led to decline in the status of women in addition to it being a threat to their very existence. However, contrary to the popular belief, women do not have a higher status in those communities where brideprice is paid for them it is a commodification (Shalini Randeria & Leele Visaria 1984:652).

Critique of Early Writings on Mizo Women's Position

According to Chatterji (1975:12), the various forms of marriage price, regulations regarding their payment, treatment of the same in case of different types of divorces and the overall customary details indicates Mizo women's high status. Chatterji's argument is contrary to Levi Strauss's theory which emphasise all marriages as "exchange of women" between two groups of men. In Mizo society, marriage was considered as an establishment of a new social relationship which requires the involvement of both men and women equally. Women's ability to reproduce and their role as mothers were highly valued. She states,

‘Womenfolk enjoyed high esteem in their society in clear recognition of their roles for the perpetuation through child bearing ability’.

Part of Chatterji’s argument is based on the fact of the Mizo society’s “social concern” for the *thisenpal* (those who have children) and the *thisenpallo* (barren women or childless ones). Chatterji claimed that, her “careful” examination of the sociological aspect of Mizo marriage finds Mizo women have a high status. She argued that, this can be seen in the practice such as, *Numan* – a form of price payable to the mother of a girl who is going to get married even if she is separated from the girl’s father. She is entitled to get this even if she has again or has been found guilty of adultery and divorced on that account as *uire*. And the second is *sehruichat* (the English equivalent of *sehruichat* is breaking of *Mithun’s* rope) which is a form of penalty price which a man has to pay if he becomes instrumental in dissolving the marriage of a couple by offering himself as the groom and then after being accepted by the girl, refuse to marry her. However, it so happened that sometimes, the girl after having accepted the new suitor refuses to marry him. In such cases, the girl has to pay a penalty of Rs 40/- to the new suitor for the purpose of calling back his previous wife whom he divorced in order to marry again. Chatterji explained the fact that the same amount of punishment and restrictions is extended to both the girl and the boy, this signifies “equality” (1975:12-14).

According to Chatterji, these practices indicate that a man and a woman in a Mizo society had to suffer “no discriminatory treatment” in such important spheres as marriage, remarriage and divorce. Chatterji pointed out, Mizo women enjoyed a “distinctively high status with a lot of freedom for the satisfaction of her natural impulses without being cried down”. In her opinion, a Mizo woman enjoys a large measure of protection against prostitution. She expressed that the “society’s tolerance and easy acceptance of unmarried mothers” as also their issues in the overall social structure bear testimony to the recognition of a place of honour for the womenfolk in their society. The fact that virginity before marriage was looked upon with great respect goes to establish that sober restraint in the premarital relationship was looked upon as ideal. Like Bell (1997) she also claims that a child born out of wedlock does not suffer as he/she is protected by the community (1975:13).

The above argument presented by Chatterji and Bell is the most common understanding of Mizo custom of marriage (McCall 1949; Hminga 1987). Bell (1997) argued

elsewhere "the minimal set of rights-responsibilities that may constitute the marital tie". However, the relation within marriage and to what extent women do enjoy freedom and what really constitute marital ties are hardly highlighted in earlier accounts.

Since the process of Mizo marriage requires mutual consent of both partners, this indicates that women do indeed have certain freedom in choosing their partner, which further means they are not merely "exchanged" materials. Burton(1997:245) argues, whether marriage provides sexual rights to men and not to women should be an empirical question, and many marriage systems provide rights to women as well as men, with both men's and women's rights varying across societies. At a glance, Mizo women seem to have sexual freedom which is equivalent to men. However, another way of looking at it may suggest otherwise. For instance, as discussed in Chapter-III, E.J Thomas (1993) points out, Mizo women's freedom in the matter of sex, marriage, and divorce given to women was in order to gain advantage for men rather than rendering higher social status. The question is, whether a Mizo woman's freedom to choose partner is adequate reason to conclude that she enjoyed higher status as compared with women from other societies.

Marriage is not only as an institution which provides the husband with a demand right of sexual access to the wife, who in turn will "bear obligation of yielding" (Bell 1997). In the Mizo context, it is also equally wrong to claim and define Mizo marriage as the balance agency of men and women as early writers have claimed. Vanlaltlani (2005) points out; Mizo women in traditional society occupied much lower position as compared with men. Pautu (2006) also points out, Mizo customary laws of marriage discriminates women in such a way that she is forced to occupy the subordination position within family as well as in the society.

Marriage in Contemporary Mizo Society

Like any other society, Mizo society has also undergone several stages; there have been external forces such as western education and Christianity which influenced the customs of the people. Therefore, it is important to understand how marriage is perceived by the Mizo and in particular to understand what really constitutes marriage ties. This requires detailed examinations of social roles and responsibilities allocated within the marriage institution. At present, though a certain form of customary practices of marriage remains, there are external forces which influence the system of marriage. In order to understand what marriage really

means in contemporary Mizo society we must look at the influence of modernity (i.e. modern laws) and Christianity.

According to the *Mizo Hnam Dan or* Mizo Customary Law Chang 36(1), a legally and socially sanctioned marriage is 'Between a man and a woman that is regulated by Mizo customary laws, rules and beliefs. The custom involves negotiations from both the parties through mediators called *Palai* (negotiator) including payment of the brideprice, and it should be conducted by any authorised person'. The "authorised" person can be appointed by the government or by any authority. Brideprice is recorded in writing; it shall contain the signature of witnesses. A sample of Brideprice form is enclosed in the *Mizo Hnam Dan* (See Appendix III). However, there is no marriage registration form given or mentioned. The question remains whether the Mizo customary laws of marriage requires registration, if so, it is uncertain as it did not mention where and how. It remains very vague as 'there is no indication of who the "authorized" person is and who or where registration of marriage should be done' (Pautu 2006:21). At present, the marriage register of the church seems to be the only place where marriages are registered. And the question of whether church registration does have legal sanctity is questionable. The relationship between customary laws and church laws is complicated.

Church Law

After the coming of Christianity into Mizoram, the church became the most powerful institution in Mizo society. Mizo society has undergone several changes. One of them is the Mizo custom of marriage which was seen as civil-contract is now coupled with religious duty. There is compromising between the indigenous process and Christian method. Now, it is often branded as 'Christianization of the Mizo Marriage Custom' (Sangkhuma 2002) (See Appendix I). According to Christian views, marriage is considered as a religious sacrament in which man and woman are bound in a permanent relationship for physical, social and spiritual proposes. Marriage is considered as a sacred unity of two people, to pursue their interests, and of course, to reproduce human race. The Presbyterian Church of Mizoram (largest denomination) has certain rules and regulation concerning marriage, including restrictions on those who can and cannot get married.

The Presbyterian Church in Mizoram has complete control over its members. For instance, Special Marriage Act, 1954 and Indian Christian Marriage Act, 1872 are not

recognised by Presbyterian Church. The Church rules and regulations states that, if members of church decide to get married under Christian Marriage Act, they should first seek the church's permission. According to the *Nupa Chungchang Dan* (2006) or (Rules and Regulations Concerning Marriage) published by Mizoram Presbyterian Church, if a couple get married without church's permission, the church will take action. Special Marriage Act is considered "marriage according to the world's law" and action would be taken (2006: 39-40).

In Mizoram, majority of the people prefer to marry according to Mizo customary laws but have it solemnized in the church as it is considered the ideal place for marriage. In the initial stage there was an attempt from the church that the practice of brideprice should be put to an end as it was against the Christian beliefs. As such, in the year 1910, the Presbyterian Church decided that the church should abolish brideprice. However, this did not have much impact on society as till today the giving of brideprice is still practiced, and is still central to the Mizo marriage (Pautu 2006; Sangkima 2004). The influence of Christianity in Mizo society is enormous, though Mizo customary law is used for marriage, the roles and responsibilities attributed to marriage are based on Christian ideology.

There is a distinction made between the legal marriage and an illegal union. In legal marriage, the children born are given definite "legitimate" status in the society. This is in contrast with Chatterji's argument; she states that the Mizo social customs protects children who are born out of wedlock (1975). Also, based on the study, to a large extent parent's marriage status do determine the social rights and legitimacy of the children. As discussed earlier, Bell (1997) argued that marriage should not be defined on the basis of the legitimacy of the children and he pointed out that in United States, though the children of never-married mothers are considered "illegitimate" in customary speech, but they have the citizenship rights of children, rights to the support of their father (and to his legacy if he dies intestate), and other rights. This does not require marriage to the mother. He argued, in such society, legal fatherhood with rights and responsibilities does not necessarily demand a relationship with the mother.

However, in Mizo society, the case of illegitimate child is more complicated as an illegitimate child is never a man's problem. A woman with *Sawn* is considered as an outcast by the society; suffers severe image damage which destroys her future prospects. Men are never blamed nor made to suffer and they hardly take any responsibility. The children of such

"women" often results in different treatment which can sometimes be considered as discriminating. One of my respondents, who is also an illegitimate child says, '*It was very difficult growing up as Sawn, though the Mizo society is tolerant towards such children, I often faced certain kind of discriminations, but I do not want to disclose in details'*. There is also a tendency to assume that children born out of "proper" Christian family has more values than compared with *Sawn*.

To sum up, we may say that Hendrix's definition of marriage is applicable to Mizo society. Marriage involves a series of transactions and formalities in which the kin of both the families are involved, such as, 1) a sexual relationship that is socially approved, 2) reproduction of children socially approved, 3) economic co-operation and sharing, 4) co residence of spouses, 5) expected duration for some years, at least, 6) a ritual or transaction marking entrance to marriage (Hendrix 2003: 74). In other words, marriage is generally accepted as the formal union of a man and woman, legally recognized by law, by which they become husband and wife in order to have legitimate children; one has to go through prescribed customary rituals which will enable him/her to claim the children as their own.

Overall, marriage is considered as an important institution in which the foundation of society lies upon. It is the union between two individuals for social and religious relationship, and of course to reproduce human race. There are many reasons why people choose to marry such as: legal, social, economic, religious and even emotional. Some people marry out of family obligations. The act of marriage provides legal obligations between two individuals involved. Marriage is usually recognised by the state, a religious authority, or both. The system of marriage varies from one society to another. But, in all given society, marriage is expected to be legally recognized (Hendrix: 2003).

The Gendered Subtext

Women are expected to be a good wife, hardworking and have a total loyalty towards their husband. Even after the death of her husband, she is expected to fulfil her roles and responsibilities (Pautu: 2006). The customary law Clause (66) explains '*Inkaichhuak'* which means that a widow who remain chaste after the death of her husband, at the end of three months her family can come and take her back. Since she has not violated any rule she can get married and would not be considered as *Uire*- an adulterer. However, if a wife wants to remain in her ex-husband's household , resume her duty and fulfil her responsibilities, she

can occupy the main bed *Khumpui* and resume her ex-husband's position. Such women can claim their daughter's brideprice and will even get *Pusum* when their grand-daughters get married. The customary law said "these women are considered in Mizo society as the "real" women, who are faithful and chaste. However, if she had any sexual relations with other men, she would be considered as committing adultery.

The Mizo customary law of marriage, which concern women, includes *Man Kiam theih Chin*- this means, women whose brideprice is cheaper than others; those are *Lamthlang rapthla* – widow, *Hringkir*- Divorced woman- childless woman (e.g. mis-carriage a child) thus goes back to her father's house, and *Lengleh*- Married women without a child. The Mizo Customary Law also gives certain responsibility to man to do what is expected of him with regards to women. For instance the custom of *Sebomawh* is a form of insurance to save people from being defrauded especially a girl. *Sebomawh* is paid when unmarried couple had a child and decide to get married eventually; the husband has to pay *Sebomawh* if the *Sawn-man* has been paid. *Hmei* or concubine is not prohibited legally. The customary law states that, Clause (66) 'When a married man, cohabits with other woman who is not his wife, she is called *Hmei*, which is considered as an inappropriate behaviour'. The Customary law does not extend any kind of punishments or strictly prohibits, but merely states that it is not a good conduct.

In Mizo society, women's contribution towards family's economy is very important. It is the fact that when marriage happens, she should contribute more to her in-law's family instead of being a burden to the family. In tradition Mizo society, they were very careful in choosing a wife. A mate selection rather operates like a market, and the rules of selection determine the forms of exchange between partner and their household. C.L Hminga (1987) pointed out how the boy's family investigates the girl they are supposed to marry, they will even inquire such as: whether she has any history of illness in her family, whether she can reproduce, is hard-working and healthy. In a stereotypical sense "healthy women" were preferred because of the heavy nature of work that is involved in Mizo society.

The Mizo customary law of marriage does not explicitly give any provision to women's welfare. Some of the provisions related to women are not actually intended for women's welfare rather it is to ensure the role of the husband as 'protector' and 'provider'. The customary law talks about *Nupui Pawi Khawih*- this particular custom covers all

"mischief's" or "offences" committed by a married woman. The responsibility for a woman's misdeeds is divided between her husband and her brothers and any compensation due to her for offences committed against her is also divided between her husband and her brothers according to the nature of the offence. This also signifies women are not seen as individuals rather they are defined by their marriage status. In the last part of Mizo customary law of marriage, it says that if a Mizo man marries a woman who is from other community (non-Mizo), the marriage should be conducted according to the Mizo customs. However, if a Mizo woman gets married to a non-Mizo man, she has to leave her family and community as she has joined other community.

Marriage is not only a matter for individuals; rather it is a matter of families. This can be seen in the fact that brideprice is paid to the bride's father and relatives who are being favoured. Marriage is used as strengthening ties and kinship. The Mizo Customary Law explains the practice of brideprice as 'brideprice should not be seen in the light of human value, rather it is the tool of keeping families together, strengthening kinship and relationship with relatives'. Relatives who receive portion of the brideprice also have the responsibility towards the bride not only for the wedding, but also, in case if she is divorced by her husband, they are expected to help her.

Family

In order to understand the type and forms of family, we will look at some of the basic definitions of type of family. The Oxford Dictionary of Sociology mentioned three types of family such as: 1) Nuclear family- the term nuclear family is used to refer to a unit consisting of spouses and their dependent children. 2) Conjugal family- refers to a family system of spouses and their dependent children. In such system, because the social emphasis is placed primarily on the marital relationship, families are relatively independent of the wider kinship network. Because of the high rates of divorce, conjugal family has come increasingly to be applied also to partners who are in long term relationship, but who are not actually married. 3) Extended family- this term refers to a family system in which several generations live in one household (Marshall 1994:221).

D.N.Majumdar and T.N Madan have pointed out different forms and types of family in India. They asserted that, the type of family which is more familiar with our own society is a nucleus or spouse and their offspring surrounded by a fringe of relatives called conjugal family and is found among many tribes like the Kharia'. There are also other types of

families such as: *polygynous families* where a man marries more than one wife, a 'common' marital arrangements all over tribal India. And there are also *polyandrous families* in which the husbands are more than one (i.e. among the Khasa of Juansar Bawar, U.P where several brothers marry one wife without any exclusive right of cohabitation for any one spouse). There is also the joint system family, so very "prevalent in India, hedged in and sanctioned by tradition, history, pseudo-history, myths and religion". Joint family is a collection of more than one primary family, on the basis of close bond ties and common residence. There can be two types of joint family, the 'matrilocal joint family' like that of the Nayar community and the 'patrilocal joint family' practiced in central India and all Hindus (1985:48)[2]

Majumdar and Madan argued that family is not to be solely defined with reference to men's biological nature. They see family as a functional unit, functional in the sense that 'It grows out of biological needs, particularly those of the expectant mother and the infant child, who cannot support and live by themselves' (1985:45). They pointed out that, family as an economic unit has a personal and collective aspect. The family as an association can be regarded as 'universal and permanent institutions of mankind'. According to Majumdar and Madan, it is the expectant mother and infant who require familial protection most (47). Majumdar and Madan analysis of family is based upon patriarchal understanding of family, which is also similar to the structural functionalists view which I have discussed earlier. This view suggests that women and child need protection, therefore, family is required. However, it left out men's sexual desire and other societal need which are important traits of family.

Mizo Society

As discussed earlier, Mizo society is highly influenced by Christianity. Majority of the Mizo people will say that Christianity enhanced marriage institution and family. E.J Thomas (1993:14) points out; the patrilineal Mizo family is nuclear in structure with husband, wife and children, mainly girls as its constituents. The youngest son is expected to

[2] Patricia Uberoi (2004:276) argued that, the concept of the "Indian joint family" was the 'Product of the engagement of British colonial administration with indigenous systems of kinship and marriage, notably with respect to the determination of rights in property and responsibility for revenue payment'. She points out, the British while trying to understand the principles of Indian legal systems, they turned to Hindu sacred texts, the Dharmashahtras, and for the Muslim population they turned to the Shariat the rulings of Muslim legalists. This approach which is later termed as "Indological" approach to Indian family studies confirmed the 'joint family; as the typical and traditional form of family in India.

stay with parents and look after the parents. In tradition Mizo society, family structure was based on division of labour focusing mainly on the basis of the sex rather than the skills of the individuals concerned. For instance, household chores are exclusively performed by women whereas men engaged themselves outside the household.

Family acts simultaneously as an educative unit and a socio-cultural agency. Family is used as educational institution, the agency through which the "impressionable rising generations is made familiar with tradition". Most children get their first education in the family, in tribal societies such as the Naga, the Munda, the Oraon and the majority of the Gond, who have the dormitory institution, which might be regarded as an institution for imparted education (Majumdar and Madan 1985). The traditional Mizo society also has dormitory called *Zawlbuk,* but it was only meant for male members, boys were taught how to fight battle, how to live as 'Mizo men'. It was indeed an institution which was purely based on men and celebrates male's supremacy. In modern times, dormitory no longer exists in Mizo society.

Church View on Family

After the establishment of churches in Mizoram, family also underwent certain changes. Christianity is seen as a positive influence on family, it is believed that Christian ideology brought about positive family values. The Presbyterian church, the largest denomination in Mizoram have published books and articles on the importance of family and what constitutes a good relationship, and how to have a good and loving relationship with partners. Other denominations like Baptist Church of Mizoram, Evangelical Church of Mizoram etc have also stressed the value of the Christian family. As a member of the churches in Mizoram, I noted that the importance of building Christian family is one of the most discussed topics in the church, and it is considered one of the most important teachings that are constantly given to Mizo Christian youths. Majority of the Mizo highly considered Christianity as the driving force of the marriage. Marriage with other religious followers or sometimes labelled as "non-believer" is considered inappropriate.

Chhungkua (The *Ecumenical Decade Paper,* 1990*),* published by the Presbyterian church of Mizoram contains important suggestions and church concerns for marriage. The book points out the importance of marriage and how family should be built upon Christian ideology. The book also quoted several verses from Bible, and explains the role of men and

women within the family. The book states, as the Bible is written from the tribe (Hebrew) which emphasise on the supremacy of the male, as a Christian, men and women should be viewed as equal, to strengthen their point Bible verses such as Galatia. 3:26-28 and the book of Rome 15:2 (New Testament) are mentioned.

> Though we believe that no one is greater (i.e men greater than women –vice-versa), this does not indicates that men and women are equal, men are women are given separate role by creator (God). Male are stronger, tougher and more capable, we are given the task of leadership, protector, breadwinner and provider. As for women, as they are the weaker sex, they are given the task of bearing and looking after the child, and since they are created as weaker they should be submissive and should be under the guidance/guardian of male. This does not mean that men and women are unequal, rather this is complimentary and good for the relationship (1990:26) (translated from Mizo).

The above statement reflects the notion of men and women in social life as well as within the family. Patriarchal ideology is deeply rooted in building the family. The church promotes women's submissive role and men's supremacy as beneficial for the society and family! This indicates that anyone who questions this view would be branded as a threat to the 'smooth functioning' of the Mizo society.

Role of "Husband" & "Wife"

Roles and responsibilities attributed to women and men are socially and culturally constructed. Women are the defined "weaker" sex, and they are being exploited by the "stronger" male. Bhasin (2000:32) thus pointed out that, 'Different tasks and responsibilities are assigned to girls and boys, women and men according to their sex-gender roles, and not necessarily according to their individual preference or capabilities'. What it indicates is that men are often placed in the public sphere while women are confined to the private. This means that men are considered as the breadwinner and therefore they are assigned a role outside the household domain, whereas women's primary duty is confined to household tasks. Women are expected to remain in the private sphere while men function in the public. This distinction between "public" and "private" enhanced more opportunities for men whereas women's roles and functions are limited. Gender is constructed by culture and society. To be viewed as "gender appropriate" one must follow the norms applicable to one's sex.

Even in Mizo society, the stereotyped gender roles and responsibilities are visible in all levels of society. Even among the educated and well to do class-gender inequality still prevails and majority believe that it is natural, and majority of women in her study consider

men as the head of the family and women as "supporter" of the husband. It is always the case that for women family always comes before her career (Sawmveli 2005:110). It is very common for women to give up their job and career so that they can fulfil what is expected of her. But this is not to say that women are forced to give up their career, some women are forced and some gave up willingly. One of my respondents, who is one of the first Mizo women with an M.A degree, gave up her career, according to her,

> *I had to give up my career because of my children and also because my husband (IAS officer) was transferred to different places. At that time, I did not pay much thought and thinking that I will not regret later. But now, when I think about it, sometimes I say to myself- I should have kept my job, there are lots of women who are working with pay job and look after the family. But I was young, and in those days, women were mostly confined in the household chores and look after the family. I was totally submitting to my husband. Actually my husband did not even ask me to give up my job, it was my decision, I thought as a woman that what I was supposed to so. I guess I am too submissive. Even though I was a bright student and also among the first Mizo woman with M.A degree, I gave up my career for my children and my husband.*

Since the social norms prescribe marriage for the continuation of the family, individuals must abide with them. Biological difference is universally popular, and it is an essentialist explanation for their difference, but the gendered behaviour labelled as "masculine'" or "feminine", "wife", "husband" vary from one culture to another. A married women's role is important in perpetuating the continuation of the family and society. She is required to enter the marriage institution as deemed by traditions and norms. The importance of women as producers of goods and children is a factor in promoting a more complete institutionalization of marriage. Social support and rights allocated to husband and wife is different, the social support that defines the rights of husband overwhelms women's rights.

In Mizo society, the pressure for marriage is very strong, single mothers and un-married women sometimes become the jokes of the town. When compared to un-married women, a married woman in Mizo society is more respected, as she fulfils her duty as a "woman". The Mizo defines women by her marriage. In contemporary Mizo society, due to external forces such as modernization which includes western education, a Mizo woman now has more options compared to older generations. Sangkhumi said that *'The perception on single women also is not as hard as it used to be but, still it is good that a woman should get married*'. Widows are especially one of the major victims in the Mizo society; they are sometimes labelled with different names, making fun of them and are seen as "incomplete"

(Denghmingliani 1998). The larger population sees women's ultimate role as a mother and a wife. Marriage is seen as a place where a woman gets security, stability and also livelihood where she is provided by the husband-who is considered the "provider". It is very common in Mizo society to find women giving up their career so that they can maintain their household. As one MHIP leader said to me "*No matter what qualification she has, how successful she is, as long as she did not look after the family I considered her a failure*'.

Christianity is known for its patriarchal ideology which considers men as superior to women. The biblical right of married women is one that includes endless discrimination and women were even considered as part of the husband's property (Levine 1997). This notion of Christian patriarchal mindset is endorsed my majority of Mizo Christian population. Married women's role and responsibilities are clearly marked and divided. The Mizo customary practices view men as the head of the family. My female respondents also used to quote Bible to justify male's superior position, a female respondent and also leader of MHIP and member of the Committee on Mizo Customary Laws says, *'As we see in the Bible- 1 Corinthians 11:3, the head of every man is Christ and the head of a woman is man. Therefore, we should not challenge male authority or try to rule over them'*

In Mizoram, Christianity is very influential in marking gender roles and responsibilities. The church plays important roles in the marriage system and also within the marriage institution. Within the institution of marriage absolute authority of the male is justified and legitimized by cultural practices and religious texts. Being a Christian woman is very important, and she must obey her husband in accordance with the Christian ideology. This is also the extension of the traditional role of Mizo women, who were never allowed to participate in village administration, religious ceremony and they were even restricted to have a say in the family decision making. Her freedom is restricted as she has to live accordingly as her husband's wishes.

Widows are especially one of the major victims in the Mizo society; they were labeled different names, made fun of and were seen as 'incomplete' (Denghmingliani (1998). Today, there are men and women who remain single by choice or other circumstances. Sawmveli (2005) in her study on *Christianity and Gender: A Study of Protestant Mizos* pointed out, most Mizo Christians consider marriage as a religious sacrament, and people have a deep concern about marriage. In Mizoram marriage is considered as the most important institution of a permanent relationship between a man and a woman. Its aim is not merely physical

pleasure but spiritual advancement. For instance, missionaries and pastors are encouraged to get married as they need support for their mission works and a wife would help a priest spiritually and physically.

Though traditional views on single women have changed to certain extent, majority of the people still consider marriage as the ultimate destination for women- where a woman gets security. Therefore, the decision taken by many people is rational rather than romantic. Marriage is an obligation, in the sense that women and men feel obliged to get married in order to attain what they desire.Compared to the traditional views, women now have more options and freedom whether to get married or stay single. But overall, the societal norms are still there. Single women are viewed upon as one who has "failed" her "duty", and married women are relatively viewed as enjoying "better" status (Sawmveli 2005:91-93).

Religious Ideology and the Legitimization of Gender Inequality

According to Christian ideology, within the marriage institution, the role of male as a bread winner is glorified, while a woman's role as wife is appreciated as long as she fulfils her "duties". Motherhood is glorified and is considered as the most important role for women. Some may say that this indicates the value and significance of women's role while some may argue that it is just a way of perpetuating male's domination. Christianity specifies the role of motherhood, gender roles and relations that are clearly given within marriage. As marriage is considered secure, concrete and important sacrament more for female, it is a common belief that every woman should get married once they are of the age. To what extent a marriage can fulfil these aspirations is left to the goodwill of individual husbands. A little girl would be taught by her mother to be obedient and perform household duty so that she could be a blessing to her husband-to-be.

The distinct role given to women is much lower than of men, and this is always considered as natural. Karl Berth, one of the most influential theologians in the 18th century has the opinion that, God created humans of two kinds, wanting us to understand the sexual differentiation is the most basic of all human distinctions. He further cited that it is part of our "vocation" to preserve the differences of masculinity and femininity. He criticizes all those attempts to overcome those borders. He says man is the initiator while woman is the follower, man is A and woman is B, he quotes Ephesians chapter with 5:22-24 which says that, wives should submit to their husbands as they are the "head" of the family, and the head of man is

Christ. And this is relevant in the context of the present study; to try to overcome one's accorded gender roles would only mean challenging "nature's order". So, rather the common notion is that difference between the sexes ought to be viewed as complementary. As Menon (2004:85) said, Church's coercive to such tendencies is based on "Biblical Vision" and the "collaboration of men and women" which affirms the differences between the sexes ought to be viewed as complementary rather than competitive or contradictory"

Religious legitimization of the male's authority has further impact even in society, as Collins (1979:246-47) has pointed out "the worst result is the internalization by many women of their own inferiority to men. This limits their life options and their potential, so that they can see themselves as baking cakes for the women's society but not as the head of the boards of trustees or the council on ministries". They themselves see male as the proper inheritor of power and economic resources. As studies have pointed out, in most cases, Mizo women used to justify their lower position by quoting certain texts from the Bible (Thomas 1993). The sanctity of marriage makes divorce a rather difficult entity.

CHAPTER-V
DIVORCE AND DOWNWARD MOBILITY

The chapter discusses different perspectives on divorce. I will discuss Hindu, Muslim and Christian divorce laws, and in particular I will explain in detail the Mizo customary laws. The implications of divorce on women and the issue of wife's maintenance would be examined. An analysis of court cases from District Court Aizawl with regards to maintenances cases is presented in order to understand the intersection, conflict and complimentary between Mizo customary laws and Indian state laws such as the Code of Criminal Procedure, 1973, Section 125.

Perspectives on Divorce

Divorce is the formal legal dissolution of a legally constituted marriage. The conditions necessary to terminate marriage may vary from culture to culture. Functionalists view divorce as a threat to the functioning of the society. The functionalists bestow primacy to family and believe that family "disorganisation" leads to divorce. They also believe that when there is role failure within the institution of marriage or in more traditional views of marriage – husband as provider, with housewife as homemaker and principal raiser of children, partners failing to carry out their roles lead to functional failure. They see that the functioning role of men and women should be separated in order to avoid conflict within family and within marriage institutions. As such, distinctive role attributed to men as "breadwinner" and women as "homemaker" is seen as complimentary to the functioning of the family. They firmly believe a marriage that is dysfunctional must be exceptional, because the family is the bedrock of society (Zinn 2000).

Feminist Perspectives on Divorce

Feminist perspectives on divorce discuss various issues, for instance, liberal feminists believe that it is the gendered division of labour itself which ensures women's subordination to men and that, unless there is a genuine shared responsibility for child rearing, equality is impossible. "Cultural feminists" or "feminists of difference" believe that the major problem is not that women disproportionately care for children, but rather it is the society that under-values child rearing (Carbone 1994:184).

There are feminists who believe that equality requires both greater sharing of responsibility for child rearing and greater support for the child rearing role. Since the gender division of labour within the family has widened the economic gap between husband and wife, she is more vulnerable when divorce takes place. Feminist perspective on divorce, in assessing the impact on women and children, precede from the two important differences men and women experience at divorce: different financial prospects and different perceptions of their relationship to their children (Agnes 1992). In most societies, the rights of men and women in this respect are highly unequal. Divorce has a heavy implication on women socially, physically, economically and even mentally. These implications are the outcome of women's roles within the marriage institution.

Women's work has been under-valued since most of the work is conducted in the private sphere such as child bearing, nursing etc. Burn (2000:97) has pointed out that 'undervaluing of women's labor is both a cause and an effect of women's lower status and power'. Women's work should be respected equally as men. The new widely cited declaration by the UN is that women do nearly two-thirds of the world's working hours, but received only one tenth of the income and own less than 1 per cent of its wealth (Kabeer 1995:167). The study reveals that women's works are appreciated as a good mother, caring and loving wife, it is appreciated mainly in terms of "women's activities". It is considered as less productive, less fruitful as compared to men. The contribution of women in the 'public sphere' is seen as an extension of what they are at home.

Feminist Critiques on Divorce Policy

Holmes (1995:602-603) in her essay *The Double Standard of the English Divorce Laws 1857-1923* highlights the moral standard driving force of the divorce law which assumed that a woman's adultery was a 'more serious offence than a man's'. She pointed out, while a wife's adultery was a sufficient cause to end a marriage, a woman could divorce her husband only if his adultery had been compounded by another matrimonial offense, such as cruelty or desertion. Looking at the Indian Divorce Act, 1869, one may say that, the act highly maintained the moral double standard value. According to the Indian Divorce Act, 1869, if a wife commits adultery her husband can divorce her, whereas for women, she has to prove "two offences" on the part of the husband.

Fineman (1991) is of the opinion that the "unequal" position of men and women in society or within marriage contributed towards widening the gap between men and women even in divorce. Within this framework, she advocates an "instrumental" rather than "symbolic" understanding of equality. She argues that rather than being treated equally, men and women need to be treated "differently" and the divorce act should be based more on "need based" rather than "equality based". Feminists pointed out the gender division of labour within the family which continues to affect women even after divorce. While divorce reduces women to poverty, it improves the economic status of the husbands. Feminist legal theory have gone beyond the concept of equality, the feminist critique of divorce policy, despite the disagreement on objectives, focuses on the ways in which the existing law fails to take those differences into account (Carbone 1994).

Feminist critique of existing divorce policy is that child rearing is important and expensive and that it is an expense borne disproportionately by women. The egalitarian model of husbands and wives holding comparable jobs and sharing domestic responsibilities does not exist. Carbone (1994: 189-191) points out how marital disorder is treated as a rare and tragic-exception to the general order. She states, 'When it happens, the law fails to recognize a continuing obligation from one spouse to the other following divorce and it does not meaningfully enforce the obligation it does recognize-the one to the children'. Women's loyalty and ties towards children is considered as a natural order. In most divorce cases, mothers continue to bear the responsibility of child rearing and caring, fathers bear relatively little of the post-divorce responsibility for the child rearing. The law seems to overlook the fact that, women continue to put more energy and time for child rearing. Once maintenance is granted, the expectation is that divorce represents a clean break with no continuing obligation from the father's side.

Divorce Laws in India

In India, since there is no Uniform Civil Code, each religious community such as; - Hindu, Muslim, Christian, Parsi are governed by their own religious personal laws, while, the tribal communities are governed by their own customary laws. Therefore, Indian women are highly divided within themselves. A divorce law for Hindus is described in Hindu Marriage Act, 1955. Hindu Marriage Act is also used for Sikhs, Buddhists and Jains as they do not have their own separate marriage and divorce laws. The Christians are ruled by Indian

Divorce Act, 1869. Muslims are governed by Muslim Marriage Act, 1939, and for the Parsis - The Parsi Marriage and Divorce Act, 1936. There is also Special Marriage Act, 1954 mostly used in Inter-Caste or Inter-Religious marriages.

Dissolution of marriage is made more difficult if it is regarded as a religious sacrament. For instance, Christianity considers marriage as a religious sacrament; therefore, divorce is not encouraged (Agnes at el 2000). Hinduism regards marriage as necessary in life. A Hindu man cannot enter the *grihastha asrama* without a wife. Besides, without marriage there can be no offspring, and without a son no release from the "chain of birth-death-rebirth". Not only this, 'Marriage has also been designated as one of those body-sanctifying rituals which every Hindu has to perform'. On the contrary, a Muslim marriage is not regarded as a religious sacrament (Majumdar and Madan 1985:79-82).

Hindu Divorce Law

According to the Hindu Marriage Act, 1955, both spouses must be monogamous. Divorce can be initiated based on seven grounds. An amendment of the Hindu Marriage Act in 1976 allows that both partners can seek divorce without having to cite the grounds. However, they must have lived separately for a year at the time of application. The Hindu Marriage Act provides alimony during pending of the disposal and at the time of divorce (Mukhopadhyay 1998:37). According to this Act, after divorce, a woman has no right to an equal share in the income, assets and property unless it stands in the joint names or was gifted to her before marriage or at the time of marriage. Flavia Agnes critiques,

> The codified Hindu Marriage Act did not protect her right to shelter or separate residence if the husband was cruel. 'Under her new act, her only relief was a petition for divorce. The husband could also file a similar petition against her to terminate the matrimonial bond and deprive the woman of her right to residence. Hence, it appears that the Hindu woman has battered away her right of economic security to her rights of divorce- and consequent destitution (2000:135).

Muslim Divorce Law

According to Muslim Personal Law, 'Women must be monogamous. Men have the right to four wives simultaneously, under certain conditions' (Parashar2005:287). According to Muslim Marriage Act, 1939 women can seek divorce on the grounds specified in the Act. Men have the right to pronounce unilateral. Extra-judicial divorce, the Hanafi and Shia rules

differ. The Shia rule requires that man has to pronounce triple *talaq* at the presence of two witnesses.

A Muslim law does not grant marriage alimony. When Shah Bano was granted maintenance by the Supreme Court, there was hue and cry from the Muslim leaders (see Chapter I and III). The judgement was a great deal of controversy; the Muslim religious leaders argued that the Supreme Court judgement interfered with the provisions of the Muslim personal law. This incident led to the introduction of the Muslim Women's (Protection of Rights on Divorce) Act, 1986. This law ensured that Muslim women would be ruled only by Muslim laws. When the Bill was being processed, the Muslim religious leaders welcomed the Bill but there were others who critiqued the Act saying that the act denied Muslim women their constitutional right to equality (Parashar 1992:185).

Christian Divorce Law

Christian Personal Law is intended for the Christian community in India. The law provides how marriage and divorce should be conducted among the Christian population in India. The law relating to divorce among Christians is contained in the Indian Divorce Act, 1869 and the law relating to marriage is contained in Indian Christian Marriage Act, 1872. Both these enactments are based on the law 'as it then stood in England'. Based on these enactments, marriage ties were almost in-dissolvable (Massey 1963; Agnes 2011).

As mentioned, divorce is governed by the Indian Divorce Act, 1869. According to this act, a husband can obtain permission for divorce if his wife has committed adultery. As for the wife, she must prove two offences on the part of the husband, i.e., incestuous adultery, bigamy with adultery, adultery with desertion, conversion from Christianity and re-marriage, rape, sodomy or bestiality (Parashar 2005:288). The Indian Divorce Act, 1869 allows maintenance rights both in *pendente lite* (temporary) and permanent maintenance.

A feminist perspective on marriage suggests that marriage is seen as a source of women's subordination. Flavia Agnes states,

> To perpetuate the economic subordination of women within marriage women's role as a housewife is glorified which gives a false sense of security to married women. But neither the law nor the society recognises the role of women as home makers in concrete monetary terms. So, irrespective of the fact that a woman has looked after the home and

> brought up the children with love and care for several years, when the marriage breaks, the law recognises only the husband's title to the house. All the family income and assets become the exclusive property of the man (1992:2233).

Since women's role within the institution of marriage is already limited by certain social norms and values, women do not have much say. And, because of her involvement with the household chores she is unlikely to produce money or earn.

Mizo Customary Law of Divorce

Divorce can be initiated by either party. However, in the case of men, divorcing their wives was more common than vice versa. There are different ways for divorce. *Mak* is a form of divorce where the husband expels his wife from his household. If such a case happens, the wife can take back all her personal belongings and her dowry. *Sumchhuah* is a form of divorce where the woman divorces her husband; in case of *Sumchhuah*, the wife and those who receive a portion of her bride price would have to return the bride price in full. *Sumlaitan* is a form of divorce, initiated by both parties based on mutual agreement. In this type of divorce, usually the husband pays the full bride price out of which the wife's family has to return back half of the price. And the wife can take back all her *Thuam*. Divorce due to *Zangzaw* is when the woman divorces her husband because of infertility or impotence. *Atna* is a form of divorce where a man can divorce his wife due to mental illness. However, before the final divorce takes place, the husband must perform sacrifices for a year for his wife. And, if after this the wife is still found to be mentally infirmed, the husbands can then send her back to her natal family. (See Appendix II & III).

Mizo customary law allows a widow to remarry, an act which is seen by many as Mizo women's "freedom". Women were considered free in the matters of marriage, sex and divorce, only few restrictions were imposed on them. However, this may not necessarily indicate women's "freedom" as was discussed in Chapter-III.

Adultery is considered a serious crime. If a woman is adulterous, she would be driven out of her home by her husband, and would have to repay her whole bride price to her husband. Mizo society considers it natural for a marriageable widow to remarry. In case of death, if the husband dies, the wife's family can take her back within three months that is called *inkaichhuak.* However, if the wife remains in the home she can occupy her deceased husband's place/position; she would be entitled to get her daughter's bride price and even

pusum. But, if she had any sexual intercourse with any other man it would be considered as adultery and she can be driven out of her home by either her children or deceased husband's family. However, if her children want her to stay she can remain but would not be entitled to *Khumpui* or the privileges that are mentioned earlier. Therefore, there is a significant control on female sexuality.

The traditional Mizo law permits men to have a concubine. Therefore, men were never considered committing adultery even if he had sexual relationship outside marriage. One of my respondents, almost 74 Years old told me '*Mizo men can never be tried for adultery*. *However, this view point has changed to a large extent, the change is mainly influenced by Christianity and of course modernity*'. The Mizo customary law, 2006 is silent on the issue of adultery with regards to men. My respondent, also a member of the Committee on Mizo Customary Laws told me that '*We have not included hmei (concubine) in the new Mizo law compilation, because, now that we are Christians it is not the right conduct, besides, and we don't practice anymore, therefore, it is really not necessary to put that in written form*".

Divorce is easy among Mizo. Men can divorce women anytime they wish, once divorced, men are not responsible for the wife's maintenance. In fact, the children usually stay with the mother. Husband is free again to marry someone else. When divorce takes place, women suffer the worst setback as they are sometimes left homeless. Women have no legal protection, the Mizo law does not give maintenance and the church is silent on the issue of divorce. As Lalnipuii put,

> *We don't have anything which we can claim as our own; no security, and no rights at all. In a Mizo household, not a single thing is considered as belonging to the mother; everything is considered as the father's property. Mizo men find it very easy to say 'Ka Ma Che' (I divorce you)…and women are sometime left homeless*.

This is similar to Muslim divorce, where men can easily divorce their wives by saying triple *Talaq.*

Mizo Divorce Ordinance, 2008

As discussed in Chapter-III, MHIP put a draft for *The Mizo Divorce Ordinance Act,* 2008. The first chapter of *The Mizo Divorce Ordinance Act* deals with laws for marriage. A Mizo

can marry in either- Marriage solemnized in the church or according to the Mizo customary laws or any other law in force. The second chapter deals with dissolution of marriage, here both equal provisions are given to husband and wife. A divorce decree may be granted on the ground of adultery, if any one of them convert into another religion or sectarian groups, due to reconcilable incompatibility, cruelty, incurable unsound mind or if the other spouse is absent/ or not heard for more than seven years or by mutual consent. However, this ordinance does not give much space or the kind of rights one would wish for. There is no special provision for women at all; moreover, it left out one important issue, which is maintenance for women after divorce.

According to *The Mizo Divorce Ordinance Act,* 2008 both husband and wife are given equal provisions. This is similar with the Hindu laws where provisions are equally given to both spouses, Flavia Agnes (2000:135) in her elaboration on Hindu laws argues that 'With a duty cast upon the wife to maintain her husband under an absurd notion of legal equality between the spouses the seemingly liberating aspect of divorce can only release the sexual bond but not protect her economic rights'. *The Mizo Divorce Ordinance Act, 2008* gave full authority to the court to settle property as they deem to be just. And if either of the party at any time after divorce settlement, the party in whose favour an order has been remarried, it may, at the instance of either party, varies, modify or rescind any such order in such manner as the court may deem just. One of my respondents also leader of MHIP comments,

> *I don't think The Mizo Divorce Ordinance Act, 2008 benefits women. In fact, if we really think about it, the people who prepared and discussed this act are all male. Do you think they really care about women? Will they know what is good for women? Even if they know, what makes you think that they will implement? Even if this Ordinance is made an Act, I don't think they will implement at all.*

Another respondent also states, '*No one really has used this 'Ordinance Act'. The meaning of Ordinance is just to use it for emergency purpose, and stays only for six months. At present, Mizo Divorce Ordinance Act is useless'.* As of 2012, this act has been annulled.

The Church Laws: Restrictions on Divorce

As discussed earlier, the churches in Mizoram play an important role in society and family matters such as marriage and divorce. For instance, the Presbyterian Church, the

largest denomination in Mizoram has their own rules and regulations with regards to marriage and divorce,[1] listed in the book titled *Nupa Chungchang Dan* or Laws Relating to Marriage (2006). The Mizoram Presbyterian church pointed out several rules, I will highlight some of the rules:-

(I) Clause (1) states, if a couple can no longer live together, and when the wife takes her belongings from the husband's house as per Mizo Customary Law, it will be considered a divorce.

II) When divorce happens, if they are currently holding church's position or involved in church's activities (i.e. Sunday school teacher, choir member, choir leader etc.), their responsibilities should be stripped off. But if divorce is due to adultery or different beliefs (religion) they would be exempted from such actions (25-26).

The Church considers divorce as undesirable and, if possible, it should be avoided at all cost. The Church makes it clear that if an active member or ordained minister (i.e. pastors, elders, deacons) are in the process of divorce, their church's position would be taken off. The Church also controls what type of divorce can be given RC (Revocation Certificate) and RL (Re-marriage Licence). RC is usually given before issuing RL certificate, if RC is given to either of the spouses, it is considered enough for the two. The Presbyterian Church lays out certain grounds on which RC and RL certificates can be given Clause (III)

(a) The church should try their best to convince the couple not to get divorced, however, if it fails, the Church will issue RC and RL only after three years of divorce.
(b) If divorce occurs due to sexual disorders, RC/RL can be issued after 6 months of divorce.
(c) If either of the spouse refuses to perform "sexual duties", while RC/RL will be given immediately to the spouse, the guilty spouse will be given only after three years.

Clause (III) E, F, G and H provides other forms such as, infidelity, divorce on account of madness etc. Sub J deals with domestic violence, if either of the spouses is found cruel, and endanger the lives of his/her partner, the church will try their best to discipline the person, however, if the person fails to obey and divorce happens, RC will be given to the victim after

[1] The Baptist Church of Mizoram, Evangelical Church of Maraland (ECM), the Salvation Army and other denominations in Mizoram also has their own rules and regulations regarding marriage and divorce. However, they are more or less similar since it is based on Christian Ideology.

one year of divorce. However, the culprit will get RC/RL only after five years of divorce. The Church is very strict on adultery, in Clause (III) K adultery and its impact is pointed out. If a couple divorces because of adultery, RC will be given immediately to the other spouse while the adulterer would have to wait three years to get RC or RL.

The Church pointed out several grounds for divorce; however, it is silence on the issue of wife's maintenance. One may ask whether the absence of Divorce Law caused increased rate of divorce. According to C.Sangzuala, ex-Chairman of *The Committee on Mizo Customary Laws*, this is not the case. He said,

> *Mizo society views marriage very lightly thus divorce is easy, in our church synod-Presbyterian divorce is hardly granted, the church always seeks for solution, if a couple gets separated for three years, then only divorce is granted by the church which we call 'Marriage Revocation'. Even with all that precaution, there are still divorces happening, we cannot really control the divorce rate by having Act of being strict. I just feel that we, the Mizo might be responsible for this*.

Though the above statement indicates that the Divorce Act cannot prevent people from getting divorced, one may argue that at least, women would have the provision of maintenance which would limit the men's freedom of divorcing wives without any burden. Since there is no customary laws or Church laws which gives provisions to women including that of custodial rights of children, MHIP demands[2] that Indian Christian Marriage Act, 1872, The Christian Marriage Bill, 1994, The Christian Adoption and Maintenance Bill, 1994 and The Indian Succession (Amendment) Bill, 1994 should be adopted by Mizoram state government.

The proposal was refused flatly by the Church and Mizoram state government. Recently, the church was against the idea of official marriage registration order by the Indian Supreme court for fear of being stripped down of their power which they have enjoyed so far (Lalruatfela nu 2006). The church seems to possess a kind of non-interference and indifference attitude when it comes to Mizo customary laws especially issues concerning women's rights.

[2] It is important to note that The Indian Christian Marriage Act, 1872 has provisions only for tying the knot (marriages). A Christian divorce is settled by Indian Divorce Act, 1869 (Massey 1963; Parashar 1992).

Implications of Divorce on Women

Women bear the burden of social values, tradition and customary practices which is coupled by patriarchal religious ideology. When a woman gets married, she is expected to fulfil the gender roles assigned to her by the society which involves child rearing, household chores and labour work within the family (Agnes 1992). However, these contributions do not count when divorce takes place. Studies show that women experience a drop in their standard of living during the year following the divorce. Men, on the other hand, fare neither in terms of the financial effects of divorce. Not only this, society looks differently at divorced women (Carbone 1994).

One of my respondents says, 'In Mizo society, a divorced woman suffers certain damage of reputation and they are sometimes discriminated'. Within the institution of marriage, women are controlled by the patriarchal ideology. Her roles and responsibilities were mostly confined within the household. She hardly has any time of her own, let alone earns extra money so that she could save. Even after divorce, her role as primary care giver and child rearer continues (Pautu 1997). Another respondent stated,

> *Mizo women are very hard working, they are active in looking after the household, taking care of the family though they do not have any rights, and once divorced their condition becomes even worse. In my opinion, the worst thing about Mizo women's position is- a husband can divorce his wife anytime he wants. Once divorced, a wife cannot claim property rights even if they divorce due to husband's infidelity. In most cases, wives continue to look after the children even if they have no economic income.*

Women's position in Mizo society and implications of divorce is best explained by one of my respondents, a leader of MHIP, and who is also one of the first few educated women among the Mizos, she states,

> *I used to live outside Mizoram because of my husband's job. I used to feel very uneasy among my Hindu and Muslim friends and colleagues, because they have laws which give certain rights and protection for women, such as: - Hindu Women Property Rights, Divorce Act etc. On the other hand, I who seem to have lots of freedom and also the wife of a very important man- do not have actual rights at all. The fact is that my husband can divorce me anytime he wants without having to pay maintenance. Even though I was living in a good house, eating and dressing like the way i wanted. I know that I do not own a single thing, everything belongs to my husband. I feel insecure knowing that I am powerless.*

Since, the Mizoram state government and the church refuses to adopt central laws concerning marriage and divorce, Mizo customary law of marriage is the prevailing law in this matter. Though the church stresses upon the importance of marriage, it remains silent in the issue of divorce. The limitation of the customary laws is found especially with its failure to secure rights for women with regard to divorce settlement. Since 1987, Criminal Procedure Code (Cr.P.C) was applied in Mizoram. Cases filed under section 125 have been increasing. Under the Cr.P.C Section 125 provisions are made for maintenance in case of divorce, and even in cases of illegitimate child. At present, the only law by which Mizo women can claim maintenance is under this Act.

Maintenance/ Alimony

Under matrimonial law, the term alimony is also used to denote maintenance. The term is derived from English law. In the event of separation, the wife could sue her husband for alimony if the husband refused to make a financial arrangement to enable her to live a life corresponding to her husband's social status. The law of maintenance in its origin is based on the ancient English principal of unity of a person within marriage (Agnes 2011:121).

The issue of maintenance with its economic implications has raised several issues such as whether a woman is entitled to get maintenance. On the other hand, because of the social duties placed on women to look after her husband and family, roles and responsibilities, the rights obtained by the wife in fulfilling her duties are presented in obligations that the male must assume. De Beauvoir (1949:447) states, 'He cannot break the conjugal bond at his pleasure, he can repudiate or divorce his wife only when the public authorities decide, and even then the husband owes her compensation in money'. It is unlikely that women who had been home-makers over the course of marriage which could be half of her lifetime could become self-sufficient right after divorce. Carbone (1994) pointed out, women generally earn less than men, marriages increase the economic gap as married women, who bear the overwhelming task or child rearing and household responsibility earn less. Married men increase their earning over single men while married women earn less than single women. This affects women when divorce happens and her position is more vulnerable as she cannot actively involve herself with work, outside the household.

Flavia Agnes (1992: 2233) discusses three factors; the first, whether the maintenance provided by the courts is adequate to maintain the women and their children. Second, whether

it is possible to enforce these rights within the existing legal system where the burden is on the woman to prove the husband's income. Third, the burden of enforcing the order is thrust on the woman. She further says that practical experiences prove that the legal system is inadequate to meet the challenge of saving women and children from destitution. At the third level, propagators of equality wonder why men should be saddled with the duty of maintaining the wives who are supposedly equal partners in the marriage. Also, the issue of whether maintenance perpetuates economic sub-ordination of women. The present underlying notion of maintenance refers only to women with the aged, the minors and the handicapped persons all of whom are incapable of maintaining themselves.

Code of Criminal Procedure 1973 Section 125

Since the Mizo customary laws do not give any kind of provision for a divorced woman, the only law by which a woman can claim maintenance for her and the children is Cr.Pc Section 125. Cr.Pc is a state law, passed by the central government of India. Cr.Pc Section 125 is the most widely used act for wife's claiming maintenance, mainly because it is considered less complicated and also consumes less time. It is written that for the interim maintenance and expenses for proceeding under the second provision shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person[3]. Before 2001, the maximum amount of maintenance granted was fixed at "not exceeding Rs.500". The words "not exceeding five hundred rupees in the whole" is omitted by Act 50 of 2001, sec.2 (w.e.f. 24-9-2001). Since then, some states have made amendments, such as in Maharashtra, the words "not exceeding five hundred rupees" the words "not exceeding fifteen hundred rupees" shall be substituted, in Tripura, for the words "five hundred rupees" the words "one thousand five hundred rupees" shall be substituted. And In West Bengal, for the words "five hundred rupees" the words "one thousand and five hundred rupees" shall be submitted. Mizoram did not make any amendment in this regard.

[3] According to 125 (3), If any Person so ordered, fails without sufficient cause to company with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

According to the act, a Magistrate of' the first class may, upon proof of such neglect or refusal, order such a person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such a monthly rate which magistrate thinks fit, the Magistrate may from time to time order the father of a minor female child referred to make such allowance, until she attains her puberty. The act explained that a) minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority; (b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

Maintenance Cases in Mizoram

In order to study the legal process and how the Maintenance act is carried out, and whether it really gives relief to women as promised, my data is based on court's records - District Court Aizawl during April and May 2010. In Mizoram, though Section 125 Cr Pc was used since 1987, court records are available only from 2002. Based on the court cases available, these are following figure of maintenance rate in Mizoram during 2002-2009.

1.1 **Case Profile**

Sl/No	CASE DETAILS	TOTAL
1.	Maintenance Granted	177
2.	Maintenance Not Granted	2
3.	Amicable settlement with the help of judge	7
4.	Dismissed Case	10
5.	Non-Mizo Case	5
6.	Case Withdrawn	16
	TOTAL CASE	217

1.2 Nature of the Case

1.	***'Mak'* (Divorce by the Husband)**	**88**
2.	**'*Sumchhuah'* (Divorce by the Wife)**	**5**
3.	***'Sumlaitan'* (Divorce by Mutual agreement)**	**29**
4.	***'Sazumeidawh'* (Husband leaving wife and children)**	**7**
5.	**Divorce due to Husband's infidelity**	**40**
6.	**Divorce due to wife's infidelity**	**1**
7.	**'*Sawnman'* (illegitimate child)**	**16**
	TOTAL	**186**

1.3 Economic Profile of the litigants

1.	**Husband with monthly salary (government employee)**	**177**
2.	**Husband Daily Worker/Labourer**	**6**
3.	**Wife with monthly salary**	**3**
4.	**Wife daily Worker/labourer**	**Nil**
	TOTAL	**186**

1.4 Nature of Work (Husband)

1.	**Grade 1 level (officer, lecturer etc)**	**12**
2.	**Grade 11 level (UDC, LDC, Primary Teacher)**	**51**
3.	**Grade 111 level (Gov't Driver, Peon, IV Grade etc)**	**51**
4.	**Army/Force (IR, Excise, MAP)**	**66**
5.	**Daily Worker/Labourer**	**6**
	TOTAL	**186**

1.5 Maintenance Amount (2002-2009)

Below Rs.1000	**102**
Rs.1000 (fixed)	**39**
Between Rs.1000-Rs 1500	**25**
Above Rs.2000	**20**
TOTAL	**186**

Out of 186 total cases, 95 % are granted maintenance. The economic profile of the litigants' shows husband with government job comprising 95%, Daily labourer 3.22 and wives with monthly salary around 2%. Within this, their occupation differs, 27% of husbands are grade II government employee, and another 27% are grade III which comprises driver, peon, fourth grade etc. Majority 35% are from force (Mizoram Police or Excise etc) nature of work.

Reasons for Divorce

According to the data, marriage and divorce is mainly governed by the Mizo Customary Law combined with the "Church Laws". Marriage solemnized by the church is accepted by Mizoram court. If a couple can produce a certificate from the church it is considered sufficient evidence (See Appendix I). Majority of the cases show that divorce is initiated by the husband. It is considered "un-natural" or "un-accepted" when divorce is initiated by the wife. Majority 47 % of divorce is due to *Sumchhuah* (husband divorcing wife), which is second to divorce due to husband's infidelity 21 %. There are 15 % divorces due to *Sumlaitan* or mutual agreement. There is only one case of wife's infidelity.

When a wife claims maintenance, she has to prove and provide evidence: 1) Marriage Certificate, her marriage was valid 2) nature of Divorce 3) birth Certificates 4) that she is unable to support herself (with the help of witnesses) 5) that she had fulfilled her role as a wife and mother 6) proof that the husband has a stable source of income and that she has not

been living in adultery. The decree of maintenance obtained by the wife is terminated if she remarries or if she is found living in adultery [4].

In all cases, a wife has to state she was divorced by her husband and not the other way round. In few cases, they produced letters in which the husband writes he 'divorced her', and in the letter they also mention the nature of divorce, whether it's mutual consent, infidelity or *sumchhuah.* The "divorce letter" is usually cross signed by members of the Village Council Court in which the couple resides. A senior judge told me that, *'Only few women are wise enough to get this kind of letter which confirmed her husband divorced her'.* In some cases, witnesses were called to confirm that the couple are divorced. In some cases, a husband and wife's interpretation of the incident differs. In such cases, sometimes relatives were called in to give their account of the story.

If the divorce is initiated by the wife, it reduces her chances of getting maintenance. In one case[5], the judge dismissed the case because of the nature of divorce. The story of the case is, the complainant married her husband, also the defendant, in 2001, and they divorced in 2007. They had two children a boy (5 years old) and a girl (2 years old). She alleged that she was divorced by way of Mizo customary law; she said that since her ex-husband is scared of giving her maintenance he has taken away the kids and kept them in the village Thingsulthliah. In her written application, she claimed she is medically unfit and has no economic source and hence, she cannot look after herself, in this regard, she had prayed for Rs.2500/-

The respondent argues that he did not take away his children due to fear of maintenance; rather he took away his children as a result of the agreement made between himself and the complainant's father at the time of divorce. The respondent is a government servant serving under the 3rd Mizoram Arm Police (MAP) Battalion. He submitted that he is

[4] The act is applicable,
If any person leaving sufficient means neglects or refuses to maintain-

(a) His wife, unable to maintain herself, or
(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
(d) His father or mother, unable to maintain himself or herself,

[5] Real name of the litigants and case record number are not shown to maintain confidentiality.

maintaining his two minor children. He argues that as per the provision of Cr.Pc Section 125, under which the case is based, the complainant is not eligible to receive maintenance since the said section of law states maintenance is not tenable under law if the separation of divorce conducted through mutual consent of both the parties, and since the divorce was by way of '*Sumchhuah*' (wife initiates the divorce), she is not entitled for anything. He prays for the dismissal of the case. The judgment read as,

> *I have examined both the parties and as per the statement of the respondent, and as per Annexure-1 of the written objection and found that the alleged divorce had taken place by way of 'sumchhuah' and hence, the provision in Cr.Pc Section 125 would be liable to be invoked since the term, 'sumchhuah' could be more or less interpreted as divorce by mutual consent. On examination of the complainant herself, she has also admitted that she had sought a divorce by way of 'sumchhuah', and in the light of the following revelation, it is humble opinion of this court the present case is not maintainable in its present form, therefore it is dismissed.*

The above case indicates limited provisions given for women, Section 125 (4) says that, no wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent. However, the divorce which has the nature of mutual consent is usually caused by husband's behaviour which compels his wife to agree to divorce him. Though 125 (5) explanation states that if a husband has contracted marriage with another woman or keeps a mistress, it shall be considered a just ground for his wife's refusal to live with him. The act, however, seems to allow that having mistress is the only justified ground of wife divorcing her husband and hence, leaves out other forms of discrimination.

Legal Status of Wife

The court cases show that, "legal status" of wife is one of the determining factors in deciding the case. If a woman is unable to produce a marriage certificate (usually issued by Church) the court will not grant her maintenance. There are cases where the issue of legally married has been debated. A marriage certificate from the Church and "brideprice form" with the signatures of *Palai or* mediators used during the negotiation of marriage is required. (See Appendix III).

One such example can be seen through the application written by a young woman from Mizoram to the Commandant 19, Assam Rifles C/0 99 A.P.O, where her husband is posted. She wrote, '*I don't want to leave him anyhow because I am a woman and I lost everything only due to him, and there will be many problems for me from my society and also for my parents, it will be hard to accept me again*'. Here the young woman got married according to the local custom and rites in the presence of the witnesses. After marriage, she had a miscarriage and she was living with her in-laws, while her husband was away where he was posted. When her husband came home for vacation and before he left for his post in Manipur, he took his wife and left her with her parents, he told her to stay there. However, after he reached Manipur he refused to stay in touch with his wife, and told her that 'she is not legally married to him' and that she should not consider him as her husband anymore. The woman so distressed by what the husband said tried all her best to keep the marriage going. After everything failed, she did what she considered was the best option available that is she wrote direct application to the commandant of Assam Rifle, she asked that her husband should accept her as his "legal wife".

There are many more like her who feel that a "legal wife" means protection and security from any kind of social pressure. The court usually refused to grant maintenance (even if it is for children) if the wife's "legal status" is not proved or accepted by the husband. In case of illegitimate child-*Sawnman,* maintenance is granted only to the child whose father had paid the customary amount Rs.40/- *Sawnman*. He is not responsible for *the Sawn's mother*, since they are not legally married. As expressed by one lawyer, '*The best thing for a woman is to get married and stay married, because that is the way she can have security and a peaceful life'*. This reflects the general opinion about women in Mizo society. Women's ultimate role is of a wife and a mother.

In Mizo society, the notion that a woman who opts for divorce should be able to look after herself and that the husband is not responsible for her wellbeing is generally accepted. A 25 year old young woman with two children, Sangi (name changed) got divorced when she was just 20 years old. She is from a small village in rural Mizoram. She rents a house in Aizawl and works as a waitress in small tea stall (owned by one of her distant relatives) and looks after her children. Her salary is Rs.1500/- per month. Since her children attend school, she can hardly meet the expenditures. There is no one to help her or her children, she already lost her mother and her father is an alcoholic. She works from 6:30am to 6pm and since she

has to go for work in the morning, her neighbours look after her children while she is away at work. She told me, she cannot go back to her father's house because he is already remarried; she is 'no longer his responsibility'. Her ex-husband has a secure job with a monthly income. I asked her why she did not claim maintenance, since she is aware of the Act, she says, '*My ex-husband would not allow it since I was the one who initiated divorce, I divorced him because of his habit of drinking. After divorce, he does not care about the children at all; besides, he has re-married and got his own new family to look after'.*

The concept of "legal wife" is that, any woman who dares to leave the marriage institution should be prepared to face the consequences. Flavia Agnes writes,

> ...the legislature has so structured divorced that the economic security which a marriage promises is retained as the more attractive proportion. If a woman is wanton enough to opt for divorce then she should be brave enough to opt for poverty seems to be the underlying concept (Agnes 1992:2233).

Considering this, it's no wonder that women opt for divorce only when all other means fail. A woman especially without independent income knows that breaking away from marriage would only cause her poverty. The legal wife's status is upheld by the state and society; women are forced to accept that divorce offers social and economic insecurity.

Male Bread Winner Status

Maitrayee Mukhopadhyay (1998) in her study shows how male bread winner status is taken into more consideration and has more legitimacy than that of dependent wife. The court case study in Mizoram shows male bread winner status is highly emphasised, the case is usually that it was her husband's status as bread winner which determines the amount of money she receives, not what the children needs or wife's requirement.

In majority of the maintenance cases, male bread winner status is the determining factor for the judgment. To highlight one such case, a couple got married by Mizo customary law and also got divorced by *Sumchhuah* (wife divorcing the husband). The reason for their divorce is however caused by the husband's extra marital affairs which compelled the wife to divorce him. After divorce, she moved back to her parent's home and is looked after by her father. She claims maintenance for Rs.1000/- per month for their daughter.

According to Cr.Pc, this kind of case is sure to get maintenance as Section 125 (5) explanation states that if a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him. Besides, the wife's maintenance claim is only for her baby and not for herself. However, the husband states in the court that he is currently in Army and that though his salary is Rs.5909/- after deduction for certain scheme such as AFPP etc, his actual pay is Rs.3530/-. Moreover, he is posted in Umroy District 20 km from Shillong, Meghalaya and he has to send money home every month apart from his own expenditure. He looks after the family of seven members including his mother and father, he states that, '*I can give maintenance to my daughter, but not for my wife, but be it the lowest rate since I look after the family of seven members'*.

The judge decided Rs.1000/- is too much for the opposite (husband) and most importantly since he is also the main bread winner of the family, it will be impossible to grant Rs.1000/- though the prayer for the petitioner cannot be neglected. With this in view, the maintenance was granted but at a lesser amount of Rs.700/- per month. It seems the judge here is sympathetic towards the wife's claim for maintenance specially because it is for her daughter, but he is more influenced by the male status as bread winner which he used as the determining factor for deciding the amount at Rs.700/-. Both the parties in this case are from Aizawl, and will not even meet her monthly school expenses let alone providing the other needs.

Wife's dependant status is also another crucial factor in maintenance case; a wife has to prove that she is completely dependent upon her husband. Though this is advantageous in terms of getting maintenance; one may also argue that this is another way of legitimizing male's domination. My study shows that women's appearance in the court also plays an important part in shaping the judge's decision. A woman who looks poor, has no confidence and portrays vulnerability touches the judge's heart as told by a senior magistrate.

Another example is that this case was filed by complainant (wife) against her-ex-husband. The couple got married on in October, 1993 and has one daughter born in April, 1994. During marriage, she got SLE disease and was hospitalized for a very long time; she was referred to New Delhi hospital for medical treatment. While she was away, her husband started an extra marital affair with another woman. Her husband is a middle school teacher

with a monthly income Rs.10,559/-. He divorced her in 2003 and he promised to give her Rs.1500/- per month for maintenance but eventually did not. Instead he took out all the money in the medical bills (M.R. Bill) and deprived her of reimbursement. She claimed for maintenance and also for repayment of the medical expenses which came to Rs.30,369.

The defendant (husband) rejected all the accusations, saying that they got married in 1993 and divorced in 1994 and not 2003. The proof is that the petitioner took all her belongings in 1995, and afterwards they were living together in mutual consent and she is no longer his wife, and as for the M.R Bill he said he knew nothing. The court frames the following issues, a) whether the party got married? B) If so, how divorce took place and c) whether the petitioner is entitled to receive maintenance. The court ruled that the time of divorce may take place, at difference time like 1994, or 2003, but it is clear that the defendant divorced his wife.

Here, the judge is convinced by the appearance of complainant (wife) that she is sick and was unable to do any work. The court states that "the petitioner has no employment or has no source to earn her daily bread as she is suffering from SLE, and sometimes she cannot even move her hand and she is unable to maintain…in respect of her disease of SLE the court is satisfied while looking at her face which seems to be black, no need for medical certificate. Hence it is decided in favour of the petitioner" Payment was fixed at Rs.1000/- for his daughter and @ Rs.1000/- for the petitioner. The notion of male as a bread winner and a woman as dependent on the bread winner is the underlying notion throughout Cr.Pc Section 125. Mukhopadhyay (1998: 62) pointed out, 'The withdrawal of the breadwinner leads to loss of support, resulting in the need for state intervention to prevent the dependent becoming destitute'. In every single case this dependence has to be proved. Agnes also points out,

> A popular myth prevalent in society is that liberalised divorce laws will drive all women to a life of freedom (read 'easy-virtue') and thus corrode the moral fibre of the society. In order to protect the moral fibre of the society, the legislature has so structured divorce laws that the economic security which a marriage promises is retained as the more attractive proportion. If a woman is brave enough to opt for divorce then she should be brave enough to opt for poverty seems to be the underlying concept (1992:2233).

"Male's Obligation"

The maintenance case filed in the Sub-District Council Court also shows the subservient position of women. The case is as follows; the couple got married in 1979 and had one son, after 22 years of marriage they got divorced in 2001. The opposite party (husband) remarried in 2002. The wife could not work due to a major operation at Civil Hospital, Aizawl. She stated that since she could not do any other work she sells liquor. Their only son refused to stay with her because he is ashamed that his father got married with another girl, so he lives with some relatives. She claimed maintenance for Rs.2000/- out of her ex-husband's salary Rs.5000/-. The husband however, did not want to give maintenance because he stated that he already left the building for the petitioner, he took nothing from the house except his clothes. He is now remarried with one child whom he has to support too. As for his son, he states that he used to give financial assistance for his education; he had to borrow G.P.F twice for his son's education and deduction from his salary is still going on, after deduction from his salary and paying off the house rent etc. he hardly gets Rs.4000/- per month, which is hardly adequate even to look after his 'own family' therefore, he could not give maintenance to the petitioner-his wife.

The lower court judgment states that 'in view of the monthly income of the defendant, and deduction therein, and family member, I could not find O.P having sufficient means as stated in the Cr.Pc Section 125 for his present time'. The judge further states since he had left his Assam type building for his ex-wife "it can be imagined how difficult to construct even Assam type building at Aizawl for those persons who have a monthly income of only Rs.4000/-" pm. The court therefore, finds that the husband is not bound to give any more maintenance to his ex-wife. However, if she is in distress he may help her in money or in kind.

Unhappy with the lower court decision, the wife again re-appealed the case in higher court- in the court of Addl. District Magistrate (J), her statement remained the same. However, in the higher court, the husband blames his wife for the cause of divorce stating that he was addicted to liquor and used to sell liquor, being Excise personnel, it was obligatory for him to divorce his wife and that the applicant can maintain herself and the divorced woman is not the wife and prayed to dismiss the appeal. The Additional Magistrate however passed the order against the lower court's order stating that the husband has

sufficient means to support his wife, leaving the building is one thing and paying maintenance is another thing therefore, he should pay allowances Rs.700/- per month.

The Magistrate comments in the judgement order states, '*This is a rare case in Mizo society, and considering wife getting maintenance even after her husband had given the house to her*'. However, though the wife got custody of the house, the underlying concept throughout the case is that, not for once, it was considered that the house could have been jointly built; women's economic contribution was not considered at all. It was taken for granted that the house belongs to the husband and out of goodwill and he 'gave' it to her. Secondly, the Magistrate decision of granting maintenance and giving the house to the wife is not so much to do with wife's rights; rather it is her subordinate position that convinced the judged, he said "I feel pity for her". Last and the most important factor is, as mentioned in the case, the complainant (wife) used to sell liquor, which is so highly condemned in Mizo society.

Mizoram is one of the few states in India where total prohibition of liquor is implemented by the state government strongly supported by NGO's and Churches in Mizoram (Mizoram Liquor Total Prohibition Act 1995). One of the main concerns for the church and NGO's like YMA is to stop people from selling liquor. In Mizo society, people who sell liquor are considered 'creating problems for society' and they are almost outcastes. Naturally, the judge being an active member of Mizo society, and most importantly as a male member of the Church feels that if maintenance is granted, it may help her stop from "wrong-doing" like selling liquor. When I asked him about his judgment, he said,

> *I looked at her and I really feel pity, I always feel pity for women who are forced to sell liquor, the society doesn't understand that they are being forced. I feel that it is my duty to help her by granting her minimum amount of maintenance, which will help her get by.*

This shows that, women's rights were not on the judge's mind but his decision was based on his sense of duty as a male who felt pity for a woman in distress and to abide by the conscience of a good Mizo Christian.

Institutionalization of Patriarchy in the Legal System

Rayaprol and Ray pointed out that the patriarchal culture of courtroom put women at a very uncomfortable position, they state,

> The courtroom is hostile and intimidating to women. There is lack of a friendly and comfortable atmosphere in the courtroom where the majority are men. The approaches of the defence lawyers and even the judges are often hostile, questions asked are humiliating and the procedures followed are beyond the comprehension of the victim. The opposition lawyer can make the victim's condition more miserable. For instance, a woman accused of adultery is ostracised. There is so much indifference towards the plight of the victim and the victim is further persecuted by corruption (2010: 353).

This is relevant in Mizoram court as well. The institutionalization of patriarchy can be seen in judgements of the court, legal persons' attitudes towards women and the gossip around the courts.

Gender Stereotypes in Legal System

According to Bhasin (2000:1), 'Gender refers to the socio-cultural definition of man and woman the way societies distinguish men and women and assign them social roles'. Sociologists define gender stereotypes as- generalizations about gender attributes, difference, roles and responsibilities of men. This indicates that gender is socially constructed and rooted in the cultures. This is extended even in the legal system, the gender stereotypical which states that men are "tougher" and women are "feminine" and "weaker" is expressed and practised in Mizoram legal system.

During my field-work, I observed that even judges and lawyers have maintained gender stereotypes. It is very common to hear from a legal person (lawyers/judges) how a wife should behave, how a husband should be respected, and to be a "good wife" and "home maker". The expected role of Mizo mother is not so different from the patriarchal notion of motherhood, where she is the care giver, looking after the household and submissive to her husband's demands and needs. Not only this, for example, what the lawyers called "the real battle" that is "actually arguing", or "fighting cases" in the court room is considered difficult and tough for women. A lawyer told me that, '*This is one of the many reasons why male lawyer gets more cases as compared with female lawyers'*.

Majority of the court cases are handled by men, of all the court cases in my studies only four female name appear irregularly. Many people who work in the court (High Court and District Council Court) express that women may be more suitable as 'Magistrates' rather than as a lawyer, but this has nothing to do with a woman being a good judge or her ability, rather as one respondent, a male lawyer said '*It is easier to convince a woman judge compared to a male judge, because women have more sympathy and understanding'.* This statement clearly reflects the gender stereotypes- which see women as the ultimate care givers.

However, contrary to the above statement expressed by a male lawyer, a female judge/magistrate does not share that view. The assumption that women legal persons especially judges or lawyers are more sensitive towards women is contestable. Rayaprol and Ray find that,

> All the lawyers believe that sensitivity does not depend on one's gender but on one's attitude to gender issues. Women themselves may be the transmitters of patriarchal social practices. The lawyers also maintain that one can come across women lawyers and judges who are very insensitive to women clients and on the other hand male lawyers and judges who are sensitive enough. So the entry of more women lawyers will not automatically make the system more sensitive to women clients, but women may feel freer to talk about their problems and sufferings to them rather than to their male counterparts (2010: 355).

I find that it is relevant in the context of Mizoram, there are very few "active" female lawyers, and most of them are not concerned about gender issues. When I tried to interview female lawyers, I usually get the response that "I am not interested in this issue" or "this is law, men and women are equal, there's nothing to talk about' etc. Also, in my experience, I actually find it easier to talk to male lawyers and discuss about gender related issues.

However, among the female Magistrates, there are a few of them, who actively participated in fighting cases related to gender justice especially rape-case related. But they are very few. K.L Liana, a senior judge told me, '*Few female judges have contributed successfully and gave severe punishments to rapist'*. In this context, MHIP also plays an important part, my respondent, ex-president of MHIP told me,

> MHIP's most notable work is regarding rape cases in Mizoram. We fought hard for rape victims. We organized bandh and protests etc. We also succeeded in getting life imprisonment to the rapists. We demand that the state government and the court must give heavy punishments. There were cases where men got away without any punishment

> especially men who belong to influential family. Now because of MHIP, no family dares to bribe judges or officials.

However, this is not to say that, a female judge gives preference to women. When I asked whether more female legal persons would help women and bring gender justice, a female senior judge replied,

> *I don't think so, because when you are in court gender identity should not get in the way. Just because I am a woman does not mean women will have more advantages in my court/judgments. I do not make distinctions like that and I believe all the Judges will tell you the same thing. Everything will be decided accordingly by the Constitution, we as legal persons remain neutral to both the parties.*

Similar to Rayaprol and Ray's (2010) findings, majority of the lawyers were of the opinion that existing legislations, if interpreted properly, can actually address all kinds of violence women face. They also shared the views that Mizo Customary Laws cannot be changed, and most of them insisted that one of the major problems faced by Mizo women is because, 'they are not aware of their rights'. They see no problem in the existing legal system and they all believe that there is nothing wrong with the laws. To quote my respondent, a senior judge, *'Mizo women face many problems because we are not aware of laws and our rights. There are many things which can be handled well if only they are aware of their legal rights'.*

Ignorance of law is used as a basis to justify women's disadvantaged position, while overlooking the fact that constitutional laws are written in English and it is very difficult for women especially from rural areas to understand. Besides, as discussed in Chapter-I & III, based on India legal system, awareness of rights does not necessarily bring out gender equality.

Is Maintenance Law Useful for Women

In Mizoram**,** only a few section of women claim maintenance and a larger number remains helpless. In general, the belief is that men are not responsible for their ex-wife's well being. Also, maintenance law is unheard of in most of the Mizoram rural areas, now MHIP with the help of Mizo Women Commission and Legal Aid Service started to campaign and give awareness to women from villages with regards to maintenance. In Mizo society maintenance of the wife is seen as 'extra', not the duty/obligation of the husband. Women who claim maintenance are sometimes labelled as 'greedy', who want to live a luxurious life

at the expense of their husbands. In some cases, women are portrayed as greedy. In one such case, a wife is charged as greedy though she claims only for the children. She was hardly criticized since she has an income, though she is not working (monthly salary) she has a five-storey building, she eventually withdrew the cases. Majority of the court cases show that the husband is usually reluctant to pay maintenance, even if it is only for his own children. Sometimes there are bitter quarrels between the couple even in the court room.

Out of 186 cases, there are only two cases in which maintenance is granted to the wife. The rest are maintenance for the children. In most cases, women look after the children and men's non-involvement in the process are seen as natural. The cases where maintenance is granted, tell a story of women without any source of income, unable to support herself and her children. She has to prove her low economic position with documents and certificates; she has to convince the court that she is a woman who is totally dependent upon her husband.

The amount granted for maintenance is usually between Rs.500-700/- (55%) per head, those who get more than Rs.2000/- (shown in the table) are those who have two or more children. Therefore, it can hardly be considered as adequate for living a good life. Carbone (1994) has argued that, children usually stay with their mother after divorce. Women's role as mother does not stop after divorce; even after divorce, she is expected to fulfil her "duties". This is true even in the context of Mizo society. Her role and responsibility for child rearing is seen as "natural" and what she should do, any other forms of expenditures or work involved are seen as part of the job she is supposed to do. This amount is hardly adequate for anyone; the amount granted for child maintenance is hardly adequate for school monthly fees in Aizawl. To quote Agnes,

> While enacting this provision, the concern of the state has been more towards prevention of social evils such as vagrancy and prostitution rather than any real concern for the dignity of women. The maintenance dole is kept at a minimum so that divorce does not become a more attractive proposition, so that the institution of marriage can be preserved and strengthened (1992:2233).

Cr.Pc Section 125 stipulates conditions to be fulfilled by the wife. The applicant must prove that her marriage is valid, and most importantly that the husband has sufficient means to maintain her. It should be established that the husband-respondent refused or neglected to

maintain his wife. It must be determined in court that the wife is unable to look after herself (Mukhopadhyay 1998).

Since women are aware that they are powerless to lay claim on the husband's property or income once marriage is terminated (mostly men divorcing women), they often turn to the state believing that the state at least is more powerful than the husband and will support her. However, the maintenance law such as Section 125 prevails upon the idea of supporting those who are more degraded and less privileged such as old age parents, women and children who are incapable of maintaining themselves. Also, the meagre dole promised by this law is far too less and inadequate to help women live comfortably. The state attitude towards maintenance is such that women are barely 'maintained' just to save them from destitution. However, In India, studies have shown that practical experiences have proved that the legal system is inadequate to save women and children from destitution (Agnes 1992).

According to the Maintenance Act, a wife will not be entitled to maintenance if she refuses to live with her husband without "sufficient" cause or is living in adultery. Lina Gonsalves (1993:36) critiques, 'Economic sanction is imposed on a women and she is required to lead a chaste life even after separation…this reflects a man's complete control and power over the woman even after the breakdown of the marriage'. The concept of maintenance is linked to sexual control and economic subordination of women. Therefore, only a chaste woman is entitled to maintenance; remarriage or active sexual relations with others results in the denial of maintenance. The underlying notion throughout Cr.Pc Section 125 is that the male is the bread winner and the female is dependent on the bread winner. This assumption in the Cr.Pc compliments to the Mizo customary laws. In all ways, it is women who experience domination both within the institution of marriage and family and the state.

CHAPTER –VI

PROPERTY AND INHERITANCE RIGHTS

The chapter examines laws relating to property rights and inheritance in Mizoram, in particular, women's property rights within Mizo Customary Law. The chapter also discusses theoretical approaches to property rights and the feminist critique of the existing laws on property rights. National and international strategies relating to women's property rights will be discussed.

As discussed in previous Chapter-V, Mizo women's disadvantageous position within the Mizo customary law of marriage and divorce is legitimized by Mizo customs and traditions. Institutionalization of patriarchy in the legal system promotes inequality between genders. In this chapter, I will discuss how lack of property rights affects women economically, socially and politically. The complex link between property and gender is discusses along with an analysis of High Court cases on property and inheritance in Mizoram.

Property Rights

A property right in the simplest form refers to being able to have ownership, authority and control over the property. Carruthers and Ariovich (2004:23) define it as, **'**Ownership involves socially recognized economic rights. Property is that over which such rights obtain, and owners are those who possess the rights'. It also means property owned by a person which is also legally recognized. There are many ways in which a person can have property rights, the most common practices are 1) Inheritance – this kind of property is acquired through hereditary 2) self-acquired 3) gift (in modern society, sometimes, the government gives land or housing to citizen who contributed to the government e.g. sportsmen etc). While it is easy for men in most societies to have property rights, the same right is not extended to women.

"Property-less" Women

The idea that women's economic subordination is the genesis of all kinds of women's oppression is strongly advocated by Marxist feminists. Ownership of property is considered the beginning of class inequality by Marx. The much critiqued, but still relevant essay is Engels's *The Origin of the Family, Private Property and the State (1948),* where he

emphasized the importance of the property status of the households to which women belong, and their participation in the labour force. Engels points out that the "unequal" relation between men and women is inevitable as long as men own the property. He pointed out, there would be difference even among women who do not go out to work and who participate in the labour force. Total abolition of "private property" is the only way women's rights can be ensured (Engels 1948). The husband has the "ownership" and the wife remains "property less".

In relation to the Marxist's view on property, Bina Agarwal writes,

> ... by advocating the abolition of all private property as the solution, Engels by-passed the issue of women's property rights altogether, and left opens the question: what would be the impact on gender relations in propertied households if the women too were propertied as individuals? Entry into the labour force is not the only way to reduce economic dependency; independent rights in property would be another, and possibly the more effective way (2005:100).

Similarly, Catherine MacKinnion points out, 'Marxist theory has traditionally attempted to comprehend all meaningful social variance in class terms'. In this respect, Marxists normally extend class analysis to cover women. According to feminists, Marxists were "male defined in theory and in practice". Feminists argue that, everything could not be reduced to the class relations. If we analyze society exclusively in class terms, that ignores the distinctive social experiences of the sexes, obscuring women's unity. Feminists raised the question, what is class for women (1982:518- 520). Ania Loomba points out, though Marxists paid a great deal of attention to the oppression of women, they failed to theorize the specificity of gender oppression. Women oppression was under-theorized within Marxism (Loomba 2007:26).

Feminist Views

The stratification between men and women has always existed in almost all the societies, and women had less access to economic resources and power. Females and males have been given different jobs, everywhere in the world. The workplace is segregated by sex, and gender job segregation is one reason why women earn less than male (Burn 2000). Men's control of economic power is thus associated with political power, status, privileges and decision making in both the macro as well as the micro level. Bina Agarwal (1996) argues that male dominance of household decision-making results in an unfair and burdensome allocation of labor to women, which consequently forces them into subordinated roles.

Women's low economic power sometimes brings inequality within the household. Marxist feminists view women's economic dependence on men as the primary basis of patriarchy (Burn 2000:99). Economic dependence on men often results in the husband's complete control over his wife and the household, and this economic inequality further justifies the notion of male's absolute authority over property. As Blumberg (1989:163) says 'Relative male/female economic power is the most important of the major independent "power variables", affecting overall gender stratification'.

Property rights are closely linked to economic, political and social status of women. Since women are considered dependent on men, their status is also defined though their relationship with male members (e.g. husband, father, brother, son). It is generally assumed that a woman does not need independent "right" to own property. Agarwal (1996:27) highlighted the importance of women's independent property rights and direct control to property. Bina Agarwal shows a link between gender inequality, low productivity, and poverty in agrarian societies. Agarwal argues that women's independent rights in land are interconnected to four categories such as: - welfare, efficiency, equality and empowerment. She points out, direct control of land may contribute to improved welfare effects; such control may provide an incentive for women to invest more in their land, which would increase productivity.

Since women's property rights may not include actual control of the property, Agarwal emphasized the importance for women's direct control over the property, and in order for the land to be productive women need equal access as men. She advocates that women not only own land, but also exercise direct control over it. Agarwal suggests that the basic unit of economic analysis the household should be re-evaluated in terms of gender dimensions within the family. She argues that male dominance of household decision-making results in an unfair and burdensome allocation of labour to women, which consequently forces them into subordinate roles (42-44).

Gender and Development

Women's economic subordination is seen as an obstacle for their development. Property rights are also considered an important tool for women's development, Laura Kramer says,

> An individual's links to the economy have crucial influences on many aspects of the quality that person's life: political power, material well being, access to educational opportunities, and even length of life are closely tied to one's position in the stratification system (2001:115).

Bina Agarwal (2005) pointed out that, in South Asia, the question of 'women's independence rights in land' was not even admitted in public policy. In fact, the idea that women need independent rights in land is itself an arena of struggle. Agarwal further argued, since the demand of women's economic needs requires a specific focus, distinct from those of men, is to challenge a long-standing assumption in economic theory and development policy, namely, that the household is a unit of congruent interest, among whose members the benefits of available resources are shared equitably, irrespective of gender. Demands for women's economic needs in regards to land- 'the most critical form of property in agrarian economies' rights indicates new contenders for a share in a scarce and highly valuable resource which determines economic well-being and shape power relations, especially in the countryside (Agarwal 2005:91).

The most common tool to approach women's economic need is, to incorporate gender equity within the development policies. In India, women's economic need was overlooked until the "Towards Equality" in 1974 exposed the gender gap between men and women. Since then the Indian government has come up with several schemes and policies to bridge this gap. Women's groups play an active role in highlighting the gender gap between men and women. There is still no consensus on the causes of the gender gap on how it could be bridged (Agarwal 1996). But development policies now try to incorporate gender.

International Level- Relating to Women's Property Right

At the international level, the UN declared 1974-85 as a "Decade for Women". This was a stepping stone for women, gender-gap in social and economic spheres gained was highlighted and women's issues became visible in the international arena. In 1979, CEDAW (The Convention on the Elimination of All Forms Discrimination Against Women) was

adopted by UN General Assembly. CEDAW defines what constitutes discrimination against women and set up an agenda for national action to end such discrimination; it consists of a preamble and 30 articles. India is also a signatory to CEDAW, and ratified it on 25-6-1993. Article 1 (1) states, CEDAW is against,

> Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

CEDAW highlights many other points such as women's access to health care, resources, equal opportunity, family benefits etc. Article 15 (1) states, 'States Parties shall accord to women equality with men before the law'. This indicates any form of discrimination based on gender would violate CEDAW. However, women's property rights still need to be examined especially of widow's property rights.

Property Rights of Widows

Kate Young (2006:207-208) highlights the plight of widows worldwide is now being increasingly recognized, but more as victims of wars and the HIV/AIDS disease, rather than as victims of age-old discrimination. Though CEDAW is an important tool for challenging the discrimination that women and girls suffer, and campaigning to bring gender equality and the advancement of women, but they are 'largely silent on the very specific discrimination that only widows, whether old or young, suffer. They are silent, too, on the notorious differences in the treatment of widows and widowers'. Article 16 of CEDAW does include some specific questions about widows' rights to inheritance, the custody of children and purification rituals, as well as whether there are clear differences between the treatment of widows and widowers. However, Kate Young argued, since 'discriminatory practices cover a much wider terrain than this, so this is inadequate'. She proposed that the widow's perspective should inform all policy developments and decisions, because they play a key role in the economic and social development of their communities. A widow's property right is crucial especially in the tribal society where daughters do not have inheritance rights, and in some cases, widowhood is the only way a woman gets property.

In the context of India, Flavia Agnes mentioned the three phases of women's lives, those are: - maidenhood, coverture and widowhood. She pointed out; in every stage women are given an 'inferior status' and the worst phase was coverture. She argued that in each stage women were placed under men, for instance, under the Romanian (continental) and English (common law) legal systems women were placed under 'the tutelage or guardianship' of their husbands, and they were deprived of any control over the property. Widowhood was the only way to end the period of coverture since divorce was not recognized (2000: 108). Flavia Agnes critiques matrimonial laws as being "narrow" and "archaic" and the definition of marriage defined as "mere marital conjugality" and the presumption of divorce as a termination of this conjugality.

Women's Property Rights: India

Bina Agarwal explained the formulation of contemporary inheritance laws on property, especially landed property, that involved 'a complex and contentious process of interaction between the colonial and post-colonial state and different segments of the population', this is coupled by interplay of varying ideologies and interests including that of religious ideologies and local customs. During the late 19th century and early 20th century India, large numbers of Indian women participated in a campaign to advocate women's legal rights, including property rights. Many Indian men supported the cause but majority vehemently opposed it. 'The question of women inheriting immovable property, especially arable land, however was constantly side-stepped'. By 1930, several women's organizations such as Indian Association (WIA) in 1917, the All India Women's Conference (AIWC) in 1927, and the National Council of Women in India (NCWI) in 1925, all these organizations worked for social reform legislation, especially on women's rights to divorce and to inherit and control property (1995:A41-42).

The demand for legal reforms continued till in the 1940's and 1950's. There was a demand to reform personal laws, women's organizations have actually succeeded in passing the Hindu Bill, and the issue of Muslim personal law was also discussed at length. However, the women's movement mainly focused on personal laws such as Hindu women's property rights and Muslim women's issues. The question of tribal women's property rights was completely absent from the mainstream women's discourse. When the demand for UCC (Uniform Civil Code) was initiated in 1950's, the Bill was seen as inclusive of all tribal communities as well. However, the government refused to enact the Bill (discussed in

Chapter-III). Parashar (1992) pointed out, among the communities in India, Hindu women have benefited most with regard to legal reform, and the Muslim community have also reformed their laws but still only at marginal level. In the meantime, there is almost no reform at all for the Christian personal laws, and reform of customary laws is even more absent.

In contemporary times, property rights are vastly divided based on personal laws and customary laws. With the failure to enact Uniform Civil Code, there is no single body for property rights of women. Every religious community has their own laws and within the different religious groups there are sub-groups and local customs and norms with their respective property rights. For instance, Hindus, Sikhs, Buddhists and Jains are governed by one code of property rights codified only as recently as the year 1956, while Christians are governed by another code and the Muslims have not codified their property rights, neither the Shias nor the Sunnis. In the tribal community, customary laws are the governing laws for property rights. The property rights of women are stratified and one rule cannot be applied to all women. Shruti Panday (2005) states,

> What unifies them is the fact that cutting across all those divisions, the property rights of the Indian women are immune from Constitutional protection; the various property rights could be, as they indeed are in several ways, discriminatory and arbitrary, notwithstanding the Constitutional guarantee of equality and fairness (2005:4).

Though women have constitutional rights, in most cases, their rights are overlooked for the sake of customs, tradition and religious beliefs.

Hindu Women's Rights

The Hindu Women's Right to Property Act of 1937 gave the Hindu widow, who had previously been excluded from inheritance by the son, grandson and agnatic great-grandson of her husband, a right to intestate succession equal to a son's share in separate property among those governed by Mitakshara, and in all property among those governed by Dayabhaga. It also gave her the same interest as her deceased husband in the undivided Mitakshara coparcenary, with the same right to claim partition as a male coparcener, but she could hold this share only as a limited interest. The widow's share was only a limited estate which she could enjoy during her lifetime, after which it went to her deceased husband's heirs, it was subject to forfeiture on remarriage; and, most importantly, it explicitly excluded

agricultural land (Agarwal 1995: A43-45). Women's organizations, lawyers and social activists campaigned and demanded for reforming Hindu law.

The property rights of the Hindu women depend upon several factors such as: - the status of the woman in the family and her marital status, whether the woman is a daughter, married or unmarried or deserted, wife or widow or mother. It also depends on the kind of property one is looking at: whether the property is hereditary/ ancestral or self-acquired, land or dwelling house or matrimonial property. Property rights under Ancient Hindu Law, *Shastric* (Hindu Canonical) and customary laws that vary from region to region. Consequently in matters of succession also, there were different schools, like *Dayabhaga* in Bengal in eastern India and the adjoining areas; *Mayukha* in Bombay, *Konkan* in Gujarat in the western part and *Marumakkattayam* or *Nambudri* in Kerala in far south and *Mitakshara* in other parts of India, with slight variations (Pandey 2005;Patel 2006).

Today the property rights of Hindus are governed by the Hindu Succession Act of 1956, applicable to all states other than Jammu and Kashmir and covering about 86 per cent of the Indian population. The Act has special provisions for Hindu matrilineal communities; customarily governed by the Mairunatkkatavan and Alivascanitainai systems, as well as for the Nambudari brahmins. Under the Act, in the case of a Hindu, daughters and sons have the same rights to claim property. However, under the new Act, Agnes (2000) points out, 'collective ownership was more notional than actual as the property was alienable and was controlled by the head of the family, the *karta*, for the benefit of the entire household'. This indicates a person's share in ancestral property can be determined with certainty. Women did not have a right to demand partition of the property.

However, women had a right to maintenance from the property. As mentioned, since most property was immovable and inalienable (e.g. land), male members of the family could not easily deprive women of their right to maintenance out of the income of the joint family property or the right of residence. Women's right to maintenance also included the right to demand marriage expenses out of the earnings of the joint property and the right to be maintained for life if unmarried. After marriage, the bride was physically transferred from her natal family into her matrimonial family and she lost her right of residence and maintenance within her natal home. The husband and his family were entrusted with the legal obligation of maintaining the woman during coverture and widowhood. The ancient Hindu Law

Smiritikars, from the time of Gautama Buddha and Manu recognized a concept of women's property called *stridhan*. There are six categories recognized as women's property by Manu, those are: - gift received from father, mother, brother, husband and in-laws, gifts at marriage. *Stridhan* could be both immovable and movable (Agnes 2000; Parashar 1992).

Muslim Women's Rights

As for the Muslims, the Islamic law was the first legal system to release women from the concept of coverture and recognized women's right to property during marriage. The Muslims consider marriage as consensual, contract unions. This concept was later adopted by the Continental legal system, from where it spread to England and subsequently incorporated into Hindu law. Since the Islamic system did not subscribe to the notion of coverture, the legal status of a married woman was not suspended during coverture. The position of a married woman in respect of her separate property was no different from that of a single woman. A woman has the right to own her separate property and the husband could not access it without her consent (Agnes 2000:108).

Indian Muslims broadly belong to two schools of thought in Islamic Law: the Sunnite and the Shiite. There are four sub categories under the Sunnite such as: - Hanafis, Shafis, Malikis and Hanbalis. The vast majority of Muslims in India, Pakistan, Afghanistan, and Turkey are Hanafis. The Shiites are divided into a large number of sub schools, the two most important of which, so far as India is concerned are the Ismailis and the Ithna Asharis, but they form a smaller section of the Indian Muslim population. Till 1937 Muslims in India were governed by customary laws which were highly unjust. After the Shariat Act of 1937 Muslims in India came to be governed in their personal matters, including property rights (Pandey 2005).

Christian Women's Property Rights

Christians are governed by the provisions of Indian Succession Act, 1865 (Re-enacted in 1925). The Act gave equal rights to daughters and sons in the parental property. The concept of ancestral property or coparcenary is also not recognized by this Act. Lalramzaua 2010 states that, hence it granted better right to women than the Hindu legal system as well as the Muslim and the Parsi legal systems. Under Sec. 33 of the said Act, where an intestate has left a widow – (a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants. … (b)

save as provided by Sec. 33 A, if he has left no lineal descendant, but has left persons who are of kindred to him, one half of his property shall belong to his widow, and the other half shall go to those who are kindred to him, … (c) if he has left none who are kindred to him, the whole of his property shall belong to his widow.

Tribal women

Tribal communities in India are governed by their tribal laws and local customary laws, which are large, remain 'un-codified' and guided by patriarchal ideology. Pandey (2005: 7) writes,

> …. as far as property rights of the tribal women are concerned, they continue to be ruled by even more archaic system of customary law under which they totally lack rights of succession or partition. In fact, the tribal women do not even have any right in agricultural lands. What is ironical is that reform to making the property rights gender just are being resisted in the name of preservation of tribal culture!

All tribal laws are not uniform, for instance, the laws prevailing among the tribes of the North Eastern regions are significantly different from those of the rest of the country. In the entire hills area of the North East region, tribal women are governed by their customary laws which prohibits women from inheriting property especially land. Customary laws of inheritance and property rights in North East directly or indirectly, deny women access to familial/ancestral property, agricultural land.

Mizo Women's Property Rights

According to the Mizo customary law of inheritance, women do not have any property rights (See Appendix II). The laws of inheritance goes through the male line, only in exceptional cases where there is no male to inherit the property then can women inherit the property. If there are several sons then the youngest son is the formal inheritor. And he is entrusted with the responsibility of looking after his parents when they grow old. If there is no son, the property goes to the nearest male relative. If there is no male relative then the daughter; if there is no daughter; then the widow might inherit.

Women's position in relation to her deceased husband's property may be summed up by Parry (1927:83-88) thus: As a rule property cannot descend to a woman except in trust for her children but if there is no male with a better claim, a woman may inherit and she would

do so before people merely belonging to the same clan as the deceased, unless they had some other claim to the estate beyond mere clan relationship. Women are given no privilege and the widows are left destitute. There are no laws strong enough to safeguard the interests and the well being of women, since inheritance always carries along the package of obligation. In traditional Mizo society gender hierarchy was maintained through social conduct, and women were expected to obey their father or brother or husband in every sphere of their lives.

According to the Mizo customary law, a daughter's right is considered only if there were no other male members. As for the widow, even after the death of her husband, she is still liable to male members of the family. Even though she was considered the proper candidate to remain in the deceased husband's house, she would do so only under the guidance of male relatives. During Mizo Autonomous District Council period, for the first time the issue of women's property rights was addressed by the first Mizo women's organization named *Hmeichhe Tangrual Pawl* (HTP) lobbied for inheritance rights for women. In 1956, women were included in "Inheritance rights by will" which means if she is included in the will then she can inherit under The Inheritance of Property Act, 1956. But in case of the absence of a will, such property shall devolve in accordance with the customary law. However, since the customary laws do not grant inheritance rights to women, this Act is not really effective as it should be. In many cases a will can be contested by the husband's family. Pi Sangkhumi, ex-president of MHIP and women's rights campaigner in Mizoram, said, '*A will is unreliable, and in many cases, a widow would be accused of forging the will or ruled over on the basis of lack of witnesses. In the end it is the Mizo customary laws that actually rules*'. Even if women (married or single) hold personal valuable assets/ properties in their name, since the Mizo Customary Laws does not accommodate how women's property should be distributed these has to be deliberated in the civil courts. According to the Mizo customary compile by N.E Parry (1927), daughter's inheritance is discussed under Chapter V11 (6) as follows:

> *HMEICHHIA IN RO A KHAWM* or inheritance by women: As a rule no woman can inherit property but if no other heirs are available a woman might inherit. Thus, if a man dies without any other heirs his widow or his daughter might inherit his estate. A man's daughter would inherit before a mere fellow tribesman.

Mizo customary law of inheritance of property as shown above would clearly indicate that no female members of the family would have right of inheritance over the intestate properties as long as there are male members.

Widow's Rights

According to the Mizo customary law, a widow cannot claim property as her 'right'. According to the Mizo Law Chapter 7 (5)

> When a man dies leaving adult sons the mother may say 'so long as I am alive you cannot divide up your father's property', and under certain conditions is entitled to take up this attitude. A mother often does this if she has an unmarried daughter or a widowed daughter or grand children to support and in such circumstances, would continue to occupy the 'Khumpui' and look after the household affairs instead of her late husband. Her sons cannot object to this and must let their mother look after the estate. If, however, the mother proceeds to waste and dissipate the estate, the sons can object and divide up the estate among them. A widow, left with small children, can claim to succeed to the estate on their behalf and often does so. More often, however, she has to get her husband's brother to take over the estate and look after her and her children.

This indicates that a widow alone can never claim nor inherit property. Even if she claims property, she did on behalf of her son or with certain conditions imposed upon her. However, she can have her own property, which was given to her at the time of her wedding, which is called *Thuam.*

***Thuam* or Women's Personal Property**

Among other religious communities, Islam was the first legal system to recognize women's personal property and her right to property during marriage. Among tribals in Arabia, an amount paid to the father was converted into mehr, which was considered a mark of respect to the woman. Mehr could take the form of money, gold coins, or movable and immovable property, once stipulated, "The woman's power over it was absolute". In Hindu marriage, the ancient law givers or Smritikars, recognised a concept of women's property called *stridhan.* Manu laid down the following six categories as women's *stridhan,* those are:- gifts received from father, mother, brother, husband and in-laws, gifts at marriage, and a marriage fee on the occasion of the husband's subsequent marriage (Agnes 2000: 109-112).

The Mizo customary law also talks about women's personal properties such as: *Hmeichhe Bungrua* and *Thuam* or Dowry. *Hmeichhe Bungrua* is a certain property, which is considered by Lusei as belonging exclusively to women. It covers *Pawnpui* –ordinary cloths,

Thul- basket used for keeping cloth in, *Thembu*- a weaving machine and *Zawlkenpuan*- this is intended to be kept for wrapping the body of a woman's husband in when he dies and it is held to be very disgraceful for a woman if she fails to wrap her husband's body in *Zawlpuan.* If a bride fails to bring *Pawnpui* her bride-price would be reduced by *Tlai* (Rs 20/-). If a woman dies without a child then her family can take back *Pawnpui* along with the rest of her property (*Thuam* such as *zawlkenpuan* is not for her use, it is intended for her husband).

At the time of marriage whatever materials or ornaments given to the bride by her father or family members is considered as *Thuam* or Dowry. However, if it is lesser than *Thival hrui thum, Thifen, Thihnah,* and amount of Rs20/- it will not be considered as *Thuam*. If a Woman has *Thuam,* her brideprice would go higher by Rs 20/- which is called *Tlai*. *Thuam* is divided into two categories - movable and immovable. *Thuam* can be paid even after the wedding day, but, at the time of giving they should say clearly that it is the bride's *Thuam*. The *Thuam* belongs to the woman and not her husband and he may not dispose of it without her consent. If, however, a woman commits adultery, her husband is entitled to keep her dowry.

The Mizo Customary Law, 2006 Chang (51) states that, if a couple fall on evil days and have nothing to eat, owing to a famine or any other cause, they sometimes agree to sell the woman's dowry and devote the proceeds to buy food. There is no objection to their doing this, but unless there has been a specific agreement beforehand that the husband shall afterwards replace the dowry, neither the woman nor her relations can afterwards make a claim against the husband for its value. However, if *Thuam* is spent on other things and if divorce occurs, the husband has to pay back money to his ex wife, even if it was spent with the consent of his wife. If the wife is the owner of the land where the couple jointly builds a house, though the house belongs to the husband the land still belongs to his wife. If they get divorced, the land will go to the wife and she will pay back expenditures spent by the ex husband for building a house. In any case, if the husband used his wife's land to get loan (from government) or others, he may use his name but the ownership of the land still belongs to the wife. Likewise, if the husband wants to get hold of the house, he has to pay money which is worth the value of the land.

At present, because of modernization and with the influence of external forces, the nature and characteristic of *Thuam* has changed. Even though it was never a burden for the

bride's family in traditional Mizo society, it has become a burden now. Lalthangmawia (2008:144) states that 'The practice of Mizo marriage has changed so much; it has become more expensive especially in regards to *Thuam* or Dowry. The Mizo are beginning to copy the dowry system practiced by the Hindus, which is very bad and detrimental'. Today, at the time of marriages, parents try to show their status through giving lots of *Thuam* to their daughter, and there is some kind of competition going on in terms of more *Thuam*.

Mizo Women's Property Rights: Issues and Challenges

As discussed in Chapter-III, MHIP movement lobbied for reform of Mizo Customary Law, some changes in the law of inheritance have been proposed, they proposed that a widow should inherit husband's property as long as she promised fidelity to the dead husband. And fulfilled her role as a mother and able to act and be the 'man' of the household. The Mizo Customary Law 2006 published by Mizoram Government recorded these changes and also stated that in the absence of sons, a daughter may inherit property. This was notified in the Official Gazette on 6.4.2005 as Mizo Customary Law. In this regard, there had been lot of debates and criticism, for instance, Lalramzaua (2010:6) comments:

> ….such proposals, not being part of the customs and practices in the Mizo society, cannot be regarded as part of the customary law and as having any force of law as the same does not have the stamp of legislation. For instance, what has been stated in Clause 184(5) that *"a chaste widow shall occupy the position of the deceased husband as provided under Clause 181; however, if the widow and the children of the deceased cannot live together, the properties of the deceased shall be apportioned, and the widow shall have the share not of fatlum, but of the other sons"*, is not and was never the custom or practice amongst any of the Mizo tribes. At best it can be taken as the desire and aspiration of members of the said Committee for giving a share of inheritance in the property/properties of the intestate.

According to the members of Mizo Customary Committee, to grant property rights to a widow who remain chaste and faithful, perform all motherhood "duties" and who look after the husband's property is only fair. MHIP representatives in the Committee on Mizo Customary laws pointed out the difficulties in convincing male members of the committee even though it was intended for a widow who "deserves" to be rewarded in recognition of their unfailing services. Because of these changes, it is considered that MHIP (see Chapter III) have somehow championed women's property rights. Leaders of MHIP and also members of the Customary Law consider this as a stepping stone for Mizo women. One of my respondents stated, '*The problem with Mizo women is that we are not even aware of our*

rights, we do have property rights-which is we can consider our husband's property as our own as long as we remain a good wife'.

There are many ways in which one can critique this change, first, majority of the society members (lawyers, judges and active social members) shared the view which is expressed by Lalramzaua (which I have quoted above), secondly, this "limited" rights given to widow is linked with control of women's sexuality and women's economic subordination. Thirdly, according to the findings in the study, I want to argue that, this change is influenced by Christian ideology where women's chastity, faithfulness, motherhood and all duties are glorified. According to this law, a widow should earn her "rights" only if she performs all the gender roles and responsibilities allocated to her. We will look at whether this change has benefited women, how women and especially widow's rights are settled in 'modern' court, and the response of legal institution towards property rights of women.

Contemporary Scenario: Study of Court's Records on Property and Inheritance Disputes

At present, with the establishment of modern legal system in Mizoram (e.g. court, family court, Lok Adalat), several cases and disputes are presented before the court. However, considering the population of the state, there are very few cases especially with regards to property disputes. Majority of the people still feel that family disputes should be settled within the household, as elders (mostly males) are entrusted with those responsibilities. As many of my respondents pointed out, '*It is really shameful for the family to go to court. There are many divorced women who would not go to court for fear of giving a bad name to the family'.* A senior judge also commented,

> *The problem in Mizoram is that, majority of the family wanted to decide or take cases on their own, they hardly approach the court and this is why laws cannot be implemented as it should be. For instance, in many cases such as rape, thefts etc criminals are forgiven in the name of God –without approaching the court. This is very common and it is considered as noble and a Christian thing to do. Especially in the matter of family disputes, court is seen as the last resort.*

In order to examine women's property rights I have looked at court cases on property and inheritance disputes. In this chapter, I will analyze the cases of High Court records on inheritance and property disputes.

Property Disputes: Analysis of High Court Cases

Year: 1990-2008

Sl/no	Nature of Cases	Number
1	Widow property rights	20
2	Daughter inheritance	1
	Divorced woman	1
3	Between brother and sister	4
4	Paternal family vs maternal	1
5	Mother –law vs daughter –in law	3
6	Mother vs son	3
7	Others (between sister & sister, brothers, 1st wife & 2nd wife etc)	9
	Total	42

According to the data, majority of the property disputes cases presented in the high court are settled in accordance with the Mizo customary law. Majority of the court cases are widow property rights. Out of the 42 cases analyzed, there is only one case which deals with daughter's inheritance. Majority of the widows have children, and widows are aged between 40-75 years old. Some of the widows are with government job and majority of them have no monthly salary. The court record shows that High Court usually upheld the practices of the people. There are analytically several themes emerging from the court records, they are as follows:

Property Rights of Widows

Being a widow is usually considered one of the worst things that could have possibly happened to women. She not only loses her life partner but also she loses economic stability and 'security'. In some cultures, a widow is liable to lose all the possessions acquired during the duration of her marriage, including access to the means of making a livelihood for herself - and her children, if, as is often the case, the widow is young and her children are still unable to fend for themselves. To avoid destitution, she may be forced to marry one of her husband's close kinsmen - a younger brother, perhaps many years younger than herself, or an older brother, who already has one or several wives, who may not welcome yet another set of mouths to be fed from the collective landholding. The belief that a widow brings bad luck can

last for her entire lifetime. A widow cannot avoid standing out, if the culture demands that she wears conspicuous clothing (e.g. white colour in some parts of India) - and prohibits remarriage even for young widows. The widow may be required to adopt a particular lifestyle - such as fasting, eating only certain foods or dedicating hours to religious rites promoting the well-being of the dead spouse (Young 2006).

A widow is usually a woman who has fulfilled all, or many, of the expectations of society; she has married, borne children, nurtured and educated them, cared for her husband, and often many of his close kin as well. Yet, a widow is in an anomalous social position; she is feared as a potential danger to social stability, because she is a single adult woman, whose sexuality is no longer contained within a marital relationship, to be controlled by her husband. In Europe and North America, where sexual morals are more liberal, women have relative economic autonomy and equal rights in law; widows nevertheless often suffer from a considerable diminishment of their social life after the death of their husbands (Young 2006). In some cultures of South Asia and sub-Saharan Africa, widows are more vulnerable to ill-treatment because of their comparatively lesser bargaining power in society. In India, widow remarriage act was enacted during the colonial period. But till today, in many parts of the country, widows are forced to marry off to their dead husband's brothers or relatives for fear of losing economic control by the family.

Though there are several myths commonly attributed to widows, it is impossible to brand widows as a homogenous group. Each and every widow has their own lived experiences. As Gwako (1998) has pointed out, widows form a distinct category, they are neither homogenous nor necessarily victims, who accept the inevitability of patriarchal maintenance. For instance, even in a modern society that is caught between customary and modern values, some widows consent to accommodate, ignore, resist, or protest, sometimes all at the same time. Widows' decision to claim maintenance or inheritances are shaped by many factors, some of which are unique to their specific conditions. In this regard, Gwako states,

> "…. the behavior of bereaved women towards widow inheritance is influenced by many factors and is in particular shaped by how members of a cultural group ascribe meanings to the practice and by whether the widows themselves embrace or disown such meanings. Knowing how widows adapt to the challenges and circumstances surrounding them will

> help us understand them as dynamic individual actors who constantly strategize within their cultural contexts" (1998: 174).

Literature shows, widows who are economically secure are more likely to resist widow's inheritance. Some widows' resistance may also be enhanced by their increasing and/or assertive bargaining power which may be derived from the substantial resources they control. Thus, bargaining power theory leads to the prediction that some widows have the power to resist widow inheritance because they can 'withstand the consequences of violating a social norm'. Gwako also argues that the economic security of women plays major part in women's need for widow inheritance. Women without economic security are sometimes forced to claim the property.

In Mizo society, widow remarriage is permitted, a practice which many people consider as a sign of tribal women's 'freedom and liberation'. However, like many women from other society, Mizo women do not have inheritance rights. As already discussed, the traditional Mizo customary law does not permit widow to inherit property rather widows are considered to be looked after by the male members. *The Committee on Mizo customary laws* (CMCL) redraft the laws by stating that widow can inherit husband's property as long as she promised fidelity to the dead husband. And fulfilled her role as a mother and able to act and be the "man" of the household. The members of CMCL were very adamant that the property should go to only a widow who "deserve" by fulfilling her roles and responsibilities. The distinction between "good" and "bad" women were made and discussed. As discussed in Chapter-III, even female members in the committee think that this distinction should be made. One of my respondents, a member of the customary committee and also MHIP leader states, '*We speak only of women who are being badly discriminated, who have been divorced by their husbands with no faults of theirs and who have no homes and no economic income'.* Another respondent says,

> *There are many women who do not deserve to inherit property. There are some cases where we feel reluctant though we wanted to help because they don't deserve to inherit the property. For instance, there are women who re-married within just one year after the death of their husband; such women are difficult to help.*

In the court, property rights are mostly settled according to the Mizo customary laws. To quote one my respondents and also a senior judge, she states, '*Indian constitution such as fundamental rights do not cover inheritance/property rights. Therefore, a Mizo woman*

cannot claim property based on fundamental rights. For the Mizos, customary laws are the governing laws and no other laws can be imposed by the central government'.

The argument presented in the high court and judgment with regards to property rights is largely influenced by the changing 'modern' thinking. The so called 'modern' thinking includes Christian ideology which demands women should fulfil their role as a wife and a good mother. And most importantly one who does not create a rift between family members and who is also a "good wife". Many times, a widow's demand to inherit property creates tension within the family.

As Gwako has rightly pointed out, all widows do not necessarily claim the husband's property, some widows resisted. In this study, the widow's 'consent' or 'resistance' of inheritance of the property is largely shaped by cultural and social constraints and also the socio-economic condition of the widow. In most of the cases, widows forfeit property rights to their son.

Widow as 'legal guardian' not owner of the property

In most cases, when a widow approaches the court to settle the property, usually the court issues heirship certificate, however, the certificate is to recognize women as the legal guardian of the property and not the owner. A widow can remain in the house and take care of the property until the son reaches of age. The court cases suggest that, women's role as care giver and care taker is reaffirmed. A widow's rights to her husband's property is limited, she has no authority to dispose any property on her own.

Misra and Enakshi (2005), conducted a study of "Widows and Property Rights: A Study of Two Villages in Bihar", their findings suggest that the widows from these two villages pretty much reflected the societal perceptions. Irrespective of caste or economic background, they shared the same perception, that is, a widow is considered to be the rightful heir to her husband's share of property after his death; all her rights in her marital home. A widow has no property rights in her father's home. The study shows that all widows held the same opinion that after the death of their *malik* (guardian), they had the right to his share of the property. However, despite the women's perceptions of their rights to property, they did not have real control over the property. Various factors such as; the age of the widow, whether she had children, the sex and age of the children, the status of her parental family,

the attitude of her in-laws, whether the land had been partitioned before the husband's death, whether the widow remarried, and where she lived. They also pointed out that, widows with adult sons typically forfeit their property rights to their sons, widow with minor sons are generally able (with some difficulty) to claim rights over their husband's share of property and widows with daughters only are often able (with significant difficulty) to claim rights over husband's land; but childless widows are less likely to claim rights over their husband's share of the land (140). A woman widowed at an older age with adult sons generally has no control over the property. Her son manages it and takes all the decisions himself.

In the present study, based on the court cases, majority of women themselves claim property for their son, legal heirship certificate are issued in the name of a widow but with a certain condition that is, acknowledging her as the legal care taker of the household till the son become of age. This indicates that, widow with infant sons still don't have the right to control and get full ownership of the property. Not only in High Court, most of the court cases filed before the Sub District Council Court and District Court, Aizawl where a widow claims a husband's property is not for control or ownership of the property; rather it is just merely a certificate stating the widow as the legal care taker and guardian of the property. A son is the ultimate inheritor of the property. One of my respondents and also a senior Judge stated, '*The most common problems arise in the case of inheritance disputes. This is because we follow the Mizo customary laws which are quite traditional. According to the Mizo laws, only male members of the family can inherit the property*' Therefore, there is little attempt to fight for gender justice.

Widow Rights: A Complex Situation

I will now discuss distinct cases in the study.

Case#1 (the case was filed in Sub- District Council Court in 1996, and it was re-appealed in District Council Court and then High Court. The High Court judgement was passed on 7.11.2007)

This case is between a daughter-in-law and a mother-in-law. Ralliani (daughter-in-law) the appellant is the wife of Sangkhuma (L) who was the only surviving and youngest son of D.H (L) who died a few years earlier. Ralliani and Sangkhuma (L) have two daughters and no sons. After her husband died, Ralliani claimed property based on the ground

that, since her husband died, she and her two daughters are the legal inheritors of the property. The case was opposed by Kapthangi, her mother-in-law and wife of D.H (L) and her three daughters (sisters-in-law of Ralliani).

When D.H (L) died, his only surviving son Sangkhuma (L) (husband of Ralliani) applied for heirship certificate. The properties included lands and Buildings (with high economic value). His claim was based on the Mizo customary law which provides that a son will inherit the property. But, before the said application could be disposed, Sangkhuma died. The court then dismissed the case due to the death of the appellant. His wife then applied for heirship certificate. However, her mother in-law counter claimed to issue heirship certificate and the Sub-District Council Court dismissed the case by granting the property to the mother-in-law. It is interesting to see how the court used the same law to interpret differently that one widow gets the property and another one does not.

The SDCC in passing the judgment in favour of the mother-in-law (who is also a widow) based on the Mizo customary laws, the law states,

> *If, however, the deceased's wife is ready and willing to remain in the house occupying the main bed and discharging the duties and functions of the mother, nobody should disturb her especially where there are un-married daughters or divorced daughter or other grand children of the deceased living with her*.

And it is only fair that the property goes to the mother Kapthangi since her son never inherited the property formally (he died before the case was settled).

The judgment was challenged by her daughter-in-law, widow of Sangkhuma (L), the case was brought to District Council Court, and the appellate court proposed that the property should be divided equally. The appellate court decided that property should be divided between the four daughters of Kapthangi, the mother-in-law and the appellant (wife of Sangkhuma(L) and her two daughters. Again it was contested by the other party, and Ralliani and her daughters were denied any rights to inherit the property.

The DCC judgment was challenged and Ralliani filed the case before High Court. The High Court Judgment read as follows: The High court makes three interesting points 1) the inheritance or title to the properties of a person does not stand or hand on his death. It starts to

flow automatically with the death and rests on the person who is the legal heir in accordance with the law applicable. It does not depend on issue of any heirship certificate. Such a certificate is issued only to formally recognize, modify and update the records of rights in the change after the death of the owner of a property. 2) The authority by issuing heirship certificate does not confer any rights of inheritance. As Sangkhuma was the only son, title passed to him automatically after his father died. Heirship certificate does not confer title. It only recognizes a person who has inherited 3) the widow mother had the limited rights to enjoy the property, she had enjoyed till her death, though ownership remained with her son. As Sangkhuma came to be the owner of the said property to the exclusion of others, with his death his two daughters inherited the same, and the younger daughter inherits the property if she supports her mother or else both daughters will inherit.

First, High Court judgment is based on the Mizo customary laws; the case was passed in favor of Rallliani (wife of the only son of D.H). When DH died his property was automatically passed to his son, though his mother Kapthangi claimed property and was given heirship certificate, but, for a widow, heirship certificate does not mean ownership of the property. The case shows that the son is an 'automatic legal heir', even after his death, the property shall go to his children. The case is interesting as both the appellant and respondent are widows. Kapthangi's rights are passed on in favour of her son, whereas, Ralliani's claim is granted but only for her children, she can act as legal guardian but not the owner of the property. During the trial, a widow's right as 'independent right' was not even mentioned at all. A widow's right was discussed only in relation to her husband/son/nearest male relatives and lastly daughters.

Another point is, a widow is considered an "outsider" by her husband's family. This further shows how a woman's identity is seen only in relation to her father or husband. Once marriage breaks (divorce or husband's death), tension arises within the family. In a tribal family, giving properties i.e. houses or land are almost impossible, there is a fear that a widow may get re-married and give away the property.

Divorced Women Rights

There are only very few cases of divorced women, as one of my respondents said *'most divorced women would not necessarily ask for the husband's property'.* The court's decisions are usually based on the customary laws of the people. However, the interpretation

of the law is not always the same by the court, there are cases where the lower court judgment is set aside by the High Court however based on the Mizo customary law.

Case #2 (This case was disposed in 2000 by the High Court).

The wife Thangi is the present appellant of the case. According to the petition, the appellant married Kunga also a respondent in the case according to the Mizo customary law. They had two sons and five daughters. The appellant and respondent married in 1962. The appellant had submitted a petition in a trial court stating that, her husband had deserted her by way of *Sazumeidawh,* and started having relationship with another woman. Therefore, she should be given the property as per the Mizo customary law. However, the husband replied stating in the petition that he had not divorced her (appellant), the woman he is living with at present is just a 'temporary mistress'. Since he has not divorced her, he stated that property cannot be distributed. The property in question includes two houses, landed property etc. The appellant stated that the property should be distributed equally and demanded her share. The lower court passed judgment in favour of the appellant and ordered that property should be distributed between them.

Aggrieved by the court's judgment the husband appealed the case to a higher court Sub-District Council Court. In his petition the husband again stated that 1) he did not divorce his wife and that he is just temporarily living with his mistress. 2) And also the main house and rice fields were willed by the appellant to his younger son and it cannot be changed. 3) According to the Mizo customary law, having mistress is acceptable, he is presently living with his mistress but that does not mean he has abandoned his wife and children. The husband also states that it is wrong for the trial court to forcefully separate the couple instead of trying to get them together as per CPC. Also, the parties being within the jurisdiction of one V/C it is illegal for the sub-court to adjudicate the matter by passing the V/C court, and it should not be upheld.

The judgment and order of the District Council court dated 18.7.2000 set aside the Addl. Sub-District Court order stating that, there was no abandonment made by the respondent of his wife and children as per 55 of the Mizo customary law…..that rule 14(a)[1]

[1] Rule 14(a) of the Administration of Justice, 1953 states that, " a village court shall try the following suits and cases of the following nature in which both the parties belong to a schedule

and Rule 21[2] of the Administration of the Justice Rules, 1953 had been violated in as much as the parties within the Jurisdiction of the Champhai Venglai V/C court and the Addl. Sud-District Council Court could not have the adjudicated over the matter in the first instances as it should have been the first court of appeal.

The case is important as it discusses the issue of legal wife and also what is considered as abandonment of the husband. As mentioned in the District Council Court order, as per 55 of Mizo customary law,

> *'Abandonment of family': if a man abandons his wife and family, and if that has been accepted as such by a court, his house, property and children shall go to his wife who will receive the marriage price of the female children performing all the duties of father when they marry. If the husband returns after three years, the wife can refuse to take him back and in such case she is entitled to have the house, the property and the children of her husband. Abandonment implies to turn away from and also to stop taking care of the wife.*

The DCC judge passed the order stating why the husband cannot be considered as abandoning his wife. The order further reads, '*Abandonment is an act whereby a person gives up his ownership without creating proprietary rights in another person. There are two elements of abandonment, namely: the intention to abandon and the act by which effect is given to the intention'* The court referred to the cases of Kanhiya Shankar Vs Mohabat Sedhu Air, 1960, Punj. 494:62 Punj. L.R.494. The court judgment further shows another case quoting from Gur Prashad Vs Asafri Devi, AIR. 1956 Punj, 143- '*Abandonment is a voluntary positive act. A man must expressly say that he gives up his right. If he remains quiet, it cannot be said that he is forsaking his title to property or his interest'*. The court states again quote from another case kallooar vs R (1964) 50 WWR. 602. Saying, '*Abandon does not signify merely 'leaving' but 'leaving completely' and finally given up all concern'*. Therefore, the DCC finds that the claim by Thangi that her husband abandons her is not valid as he is merely living with his mistress in a separate household. The District Council Court's judge said,

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tribe or tribes resident within its jurisdiction: cases of civil and miscellaneous nature falling within the purview of village or tribal laws and customs".

[2] Rule 21 states that, 'A Sub-ordinate Court or Addl Subordinate District Court shall have original jurisdiction in all suits and cases in which both the parties do not fall within the local jurisdiction of the same village court, but within the areas under jurisdiction of the Subordinate District Council Court or and Addl Subordinate District Council Court or courts and also in cases and suites referred to it by a Village Court under Rule 18'.

After deep thought and consideration and double thinking, the question that comes to mind is whether this can be abandonment of wife and children. It can never be...after looking carefully at parties, their houses and properties, their social standing and their grievance, it does not seem that they will be any final or permanent divorce (sic). This court hopes that they will find reconciliation and all the lower court judgement is set-aside.

Aggrieved with the DCC order, the wife Thangi appealed to the High Court, again the same argument was presented by her husband. After careful examination of the case and also thorough study of the Mizo customary law, The High Court judgment set aside DCC judgment, the final judgment of High Court read as follows:

… 12. If we go by the provisions of the customary law of abandonment the question of marrying a second wife appears to be irrelevant in that context. What is needed to be proved in a case of abandonment is an act of desertion. Since the word abandonment has not been defined it is to be understood as per dictionary meaning…abandonment means act of leaving a person, thing or place with no intention of returning; to stop supporting or helping somebody in addition to other meanings…

…15. The Mizo customary law of abandonment, quoted earlier, provides that after lapse of three years of abandonment if the husband returns the wife may refuse to accept him. Since 1998 almost five years have elapsed and there is no evidence that the parties ever tried to reconcile, attempts of relations notwithstanding. It has been clearly mentioned in Section 59 of the MIzo Hnam Dan…that abandonment implies to run away from and also to stop to take care of wife. This exactly is the case here as per the evidence on court record and partly from the admission of the defendant.

The order and judgment passed by the District Council Court seems to suggest that, a man is allowed to have a mistress, and no matter how much damage it does to the families especially the wife, he can get away with it since he 'did not voluntarily give up' his property. The court's judgment also reflects the patriarchal legal system where women's rights are so often overlooked. According to the court order, it is ok if the husband goes away and lives with his mistress, and the concept of 'abandonment' is twisted in such a way that the husband's action is legitimized and justified. The above case indicates different interpretations of the Mizo customary law and also the way in which a divorced woman can claim property. It shows that only if she is divorced by her husband then only she will get the property. So in all ways women have had a very unfair deal.

As one of my respondents said, '*Majority of Mizos are hesitant to approach court especially concerning family matters'.* From 1990-2008 there are only few cases on inheritance and property disputes in High Court (see the table), especially cases filed by

divorced women are rare. However, this does not mean that divorced women are happy with their situation and do not feel the need to approach the court. There are many divorced women who wanted to approach the court but because of the legal system and the laws, they feel they have no chance of winning the case, to quote one respondent who is dealing with such cases on a regular basis,

> *In Aizawl there are many women who face problems. Most landed property are kept in the husband's name, even though women contributed to the building of the house, since the land is kept in the husband's name she cannot claim ownership. We have this problem in our family, it happened to my sister-in-law. My sister-in-law used up all her savings and also took loan from the bank to construct a house; the site where the house is built is in the husband's name. After completion of the house construction, her husband started extra marital affairs with another woman, and soon he divorced her. The ex-husband gets everything and she is left homeless and came to stay with us.*
>
> *We went to court to file the case, but the court informed us that since the house is built in the land which is in the husband's name, there is nothing they could do. Since it seems that she is unlikely to get her money and properties back, we advised her to claim for maintenance, however, as she is a working woman with monthly salary, even though her job is only temporary. A senior judge told her that she is not entitled to claim for maintenance. As of now, she is living with us. This is one just example, there are many divorced women who have problems. The divorced women's position in Mizo society is bad. In my opinion, we women should be more wise and on guard right from the beginning, such as, we should keep our earnings and whatever property that we have separately. We should have separate bank accounts as well.*

Divorced women's rights are more restricted in a way that, a widow may get her husband's property if she fulfils all the requirements set by the Mizo laws. Whereas divorced women are usually left with nothing and become homeless. This is not to suggest that a woman's position during marriage is better when compared to after divorce. Women continue to experience different forms of discrimination during and after marriage. One of my respondents Lalrinsangi (name changed) states,

> *Children especially sons can be really disrespectful to their mother, it is very common to hear sons reply back to their mother and says, "Everything belongs to my father, you cannot say anything" thereby disrespecting their mother. This is the result of the husband's behaviour towards his wife, suppose, if my husband beats me up, saying I don't own anything, my son will eventually disrespect me. Naturally, the son knows that when his father dies, he will be the sole inheritor of the property and not the mother. Even in my locality, there are families where mothers are being discriminated badly, recently, a widow who lives in my locality was kicked out from the house by her son.*

Now I am happy that the Mizo customary laws 2006 allows widows to inherit property as long as she remains faithful and remains chaste, at least this will ensure that she cannot be kicked out by her sons anytime they wanted.

I also observed that, in many cases, divorced women and widows are blamed as being "unaware of their rights", "too submissive" and being "careless". In this regard, one of my respondents said, *'In Mizoram there are lots of property disputes between mothers and sons. I feel that this kind of cases should be avoided if a woman makes sure that her husband leaves property in her name before he died or the husband should be wise enough to make a will during his lifetime*'. Another female respondent and also a judge said, '*Mizo women are very weak in this regard, we never know when to put pressure. There are many women who actually put their own personal property in their husband's name, and when divorce happens, since the property is kept in the husband's name, he gets everything'.*

The Issues of *'Indang'* or Separate Household

When a widow claims the husband's property, the court sees whether the property claimed by the widow is of joint family property or property acquired after a man is *indang* (separate household). If property is acquired when they still live with parents (husband's family) a widow has no right to claim. The issue of *indang* is brought up very often in most cases. The argument of the several cases indicates that women, especially a widow, cannot claim joint family property.

The court decisions are also not always the same; there are exceptional cases where a widow without any children is given the right to inherit the property. The case story is as follows:

Case #3

This case was first registered in 1988; it was first registered in the Subordinate court, and then District Council Court. Not happy with the lower court judgment, the case was again registered in 1998 in Guwahati High Court, Aizawl Bench, it finally got disposed by High Court in 2001. In High Court the case was filed by the appellant Sanga (younger brother of the late Hrangkima). The respondent (widow) is the wife of the late Hrangkima. This is how the case was argued and presented in High Court.

Hrangkima died/expired on 22.4.88 and his wife Thani applied for heirship certificate which was objected by the appellant. The appellant case was that the said Hrangkima had not

made ‘indang’ or settled separately. He went to Aizawl for business where his brother was in government service. He was there when he got married. The respondent (Thangi) lived together with his brother who was in government service, Hrangkima died without executing any will and was also issueless. Learned counsel appearing for the appellant’s case strongly contended that the appellant’s case is covered by sec.109 (7) Hnamdan- Mizo Customary law. Thus the sole question that arises for consideration is whether on facts as found by the courts below, it is clause 7 or clause (4) of rule 109 is applicable in the present case. Both these provisions under section 109 relate to Mizo customary law on inheritance clause (4) reads: -

> *PAMI RO KHAWM”: (Inheritance by one’s father’s brother). If a person dies without any issue his father’s brother will inherit. If a man dies without issues leaving behind him only his wife, the court may take a share of the deceased’s properties in favour of the widow as it deem fit and proper.*

And clause (7) reads as follows:-

> *FA RO KHAWM”: (Inheritance from one’s so. If a person dies without issue, his father will inherit to the exclusion of his brothers. The father may also inherit from his brother’s son if he dies childless. ‘A’ and ‘B’ are brother, and ‘B’ has a son ‘C’. ‘B’ dies ‘A’ inherits ‘B’ and he supports ‘C’ also.*

Lawyers appearing for Thangi (respondent) argued that, the court below have rightly decided the case in view of concurrent findings as no interference at this stage is called for. It was also pointed out by the learned counsel of the appellant that clause (2) of 109 were not properly interpreted by the courts below. This clause (2) of 109 speaks of inheritance and qualify clause (10) which ordinarily excludes women from inheriting property. The following three issues were framed by the lower court: 1) whether the appellant had any contribution towards the property in dispute, 2) whether Hrangkima was separated from his father’s family 3)whether the judgment of the lower court is to be accepted or not?

The High Court judgment reads:

> *The findings of the courts below is that on perusal of statement of both the parties it was clear that the deceased Hrangkima had left his father’s house in Manipur way back in 1969 when he was penniless. It was not the appellant’s case that they monitorily helped him to settle in Aizawl and get married. The respondent’s marriage was not attended by any of the family members. It was Hrangkima who paid the price of his bride. Till 21.4.88 the appellant did not figure or appear at the scene. It was only after his death that they come to grab the property left by Hrangkima and the property was his self-acquired*

property. It was not in dispute that Hrangkima had a step-mother when he left for Aizawl. There was absolutely no contribution made, as is customary, by supplying utensils, cooking materials and even constructing a house from the joint family fund. Nothing of the sort was done in the instant case.

Now, coming to Clause (4) of section 9 as quoted above, merely provides that when a person dies without any issue living behind him only his widow, the court is conferred with the discretion to give share to the deceased's widow from his property and this is what has been exactly done in the instant case. And this discretion has been properly exercised in making a provision for the widow. The courts below have rightly applied Section 109(4) to the facts of the case as established in the case.

It may be noted here that when the respondent applied for heirship certificate, the courts below distributed some of his property amongst the appellants although they were not legally entitled to it. Thus, the appellant had in fact his share. In any case, the discretion exercised by the courts below is well supported by the Mizo Customary Law. It is not only just and fair in the circumstances of the case, but also well supported by the Mizo Customary Law under Section 109 (4).

This is an exceptional case where a widow is granted complete ownership of the late husband's property. Since the property was self-acquired and also she herself contributed, it was decided that judgment should be in favour of her. But judgements in favour of women continue to be rare.

Customary Obligatory: Inheritance as a reward

As mentioned, according to the Mizo Customary Law, male is the legal heir of the property, if there are many sons, the youngest son is the inheritor. However, the youngest son is also entrusted with certain responsibilities such as looking after the family or aged parent. If he failed to do so, inheritance can be passed off to his nearest male relative member, who would then look after the family.

Srimati Basu (2005:161) pointed out 'an alternative paradigm to viewing inheritance as the transmission of family over generations is the commonly recurring standard of elder care - that elderly parents give children property as a reward for tending to their physical, financial and emotional needs'. In her study among the Haklenewali- Indian women, it shows that women have actually received mother's property in exchange for elder-care onwards across generations. She pointed out that, given the gender division of labour whereby women are responsible for domestic work, including the management of intimate body fluids as part of child and elder care; it is not surprising that women had the advantage in getting

unexpected elder-care awards. However, these women did not inherit either natal or affinal property**.**

This notion of looking after the parents and taking care is considered very important. A senior judge said to me *'The one who looks after the parent must get the property, at least some portion of the property'.*

Case #4

The case was first filed in 1999 and disposed off in 2001. The case is dismissed by the High Court based on the ground that they '*find no merit in the appeal'*. This case is a property dispute between the appellant Kunga son of late Zara through first wife of late Zara and respondent Thartei, sister of Dengi (wife of late Zara). In short, the case is between the step-son and his aunt (sister of step mother). Zara through his first marriage had also another son named Tlanmawia. Late Zara left behind a plot of land namely 0.7 Bighas with a dwelling house standing thereon. After the death of Zara the matter was taken up by SDCC (Sub-District Council Court). Before the SDCC, Dengi stated that, it was difficult for her to stay with son Tlanmawia, who was supposed to look after her. But, Dengi prefers to stay alone and to retain money of the house, which she had sold to one Khumtira and also a small house standing nearby another house should be hers with frontage of 20ft. She had prayed for cancellation of Heirship certificate already given to Tlanmawia and also extension of the frontage of the house by about 10ft.and stated that the property should be inherited by a person who looks after her.

When Zara died the present appellant (younger son of Zara) and his brother both applied for Heirship certificate. However, Dengi has been appointed to look after the property as long as she did not re-marry and did not appoint any heir to the property left by Zara. Later on, Tlanmawia applied for Heirship certificate with the approval of Dengi, in the meantime the present appellant also wanted to apply for Heirship certificate so that he could apply for rehabilitation loan. The SDCC issued certificate in the name of the second son Tlanmawia since he is the one who looks after Dengi. However, later on, as Dengi did not get on well with her step-son, she applied for cancellation of the Heirship certificate and to give her the right to look after the property. However, this was not agreed to which led her to file her case before the District Council Court, Aizawl. The appeal was partially allowed, she was granted

all the sale money of the house, which was yet to be received from the buyer, she could also occupy the house as long as she did not re-marry. The judgment of DCC read as follows:

> *We have asked the persons concerned whether an amicable settlement between them on the matter could be reached, but they could not reach to such settlement. According to the courts order and judgment dated 16.6.68, the portion sliced out for Mrs Thangi was only for her lifetime and to be given to son of late Zara after her death etc.*

The court order also states that since the persons concerned could not reach amicable settlement and the land in question adjoining to portion of Khumtira, the same shall be included in the L.S.C of Khumtira, 'for convenience sake'. This order, however, does not alter in any way the conditions laid down in the court's judgment and order dated 16.6.68. Unhappy with the DCC judgment, Dengi filed a Revision petition in High Court. Her ground for filing was that, since her step son had not behaved properly, the property shall be allowed to come to the widow as per 109 (2) and (3) of Mizo Hnam Dan. 109 (2) states that, the youngest son in the case of deceased having many sons is the heir of the property. Also, 109 (3) also repeats the same thing stating the youngest son will be the inheritor but included that he is to look after the parent (i.e. mother or father). The High Court also passed judgment stating that she can remain in the house as long as she remains un-married. Dengi stated that even after the High Court's order, her step son Khumtira forcefully tried to evict her. They called the police but Dengi eventually forgave her step-son. The documents submitted to the High Court shows that, at the time of this dispute Dengi was 72 years. When she married Zara her step-son appellant Khumtira was an infant, she brought him up and looked after him well.

The house in question needs to be reconstructed and Khumtira did not pay nor was he interested in construction of the house; in fact, Dengi constructed the house with her own money. Khumtira was afraid that Dengi might give the house to someone else, he repeatedly bothered her. Eventually, Dengi wanted her sister Thartei (present respondent) to inherit the property. The High Court allowed Thartei to inherit the property since she looked after Dengi and also contributed money for the construction of the new house. The High Court judgment states,

> *The respondent, the sister of Dengi, is also stated to have contributed to the construction of the house. It is only a small house which was given to Smt. Dengi and now to her sister*

Thartei. The rest of the property is still with Khumtira (appellant). We are of the view that substantial justice has been done between the parties and call for no interference. We have thought that though Smt. Thartei has no absolute right to the property but because of the aforesaid circumstances we are not disturbing the finding of the courts below. It will meet the end of justice if the present occupant of the house (respondent) pays Rs. 25,000/-to the appellant as compensation for the property.

Here, since Thartei not only contributed money to construct the house but also looked after her sister, she was allowed to inherit the property. As one of the female Judge said to me, '*In the court where I am sitting as a judge, I make sure that justice is done. If it is the daughter who looks after her parents at ill age then the property are equally decided between brothers and sisters, sometimes even a woman can get 'inpui'- main house*'

However, court cases show that sometimes even if a daughter looks after her parent/family, she is denied property rights. An example is given below,

Case # 5

The case story is as follows: This particular appeal has been filed against the judgment and order passed by the District Council Court, Aizawl. The case is that, one Sangthana (name changed) had two daughters through his first wife. They are Lalpanliani (name changed) and the present appellant Thangi (name changed). After the death of the first wife, Sangthanga remarried and through his second marriage he had a son. Sometimes in the year of 1984, Lalpanliani was a government employee, she wanted to take House Building Advance and in order to enable Zopari to get House Building Advance a plot of land belonging to her father Sangthanga was given/mutated in the name of Lalpanliani and giving that plot of land on mortgage she took a loan and constructed a house thereon. After sometime she died and before her death she nominated her step brother and father to receive all her service benefits. Accordingly, they received the service benefits of Lalpanliani (L) and they paid back the loan of House Building Advance. The house which was constructed on the land was given on rent and the rent was collected by the father. When the case was appealed in High Court the father (Sangthanga) was dead.

The present appellant/plaintiff is the elder sister of Lalpanliani (L). She was "given" in marriage and she is living with her husband. But her only claim is that when her younger sister fell ill, she looked after her and on that count she claims the property. The Magistrate First class, Subordinate Court allowed the claim of the plaintiff and declared that plaintiff

will inherit the property of Lalpanliani. There was an appeal being made to No.16 of 1996 before the District Council Court, Aizawl and the learned Appellate Court by Judgment dated 17/7/2000 allowed the appeal and dismissed the claim of the present appellant. The District Council Court found that under the Mizo Customary Law, if a person (lady) died without any issue, the property shall be inherited by the father and accordingly as and Lalpanliani died, the property shall be inherited by her father and after the death of Sangthanga, according to Mizo Customary Law, the whole property will come to the defendant. The High Court judgment states that, *'There is no error in Appellant Court Judgement, and the appellant (sister of Lalpanliani) failed to show that there is any law or customary law which gives the appellant any right to the property of Zopari'.* Accordingly the case was dismissed.

What the case indicates is that, this is again in reverse with the Mizo Customary law where "duty" and "obligation" is entrusted with the heir. In this case, though the sister of the deceased has claimed that she looked after her sister and considered herself entitled to inherit the property, the Appellant Court and High Court overruled on the ground of the customary law. Also the court cases suggests, for a married daughter the chances of getting a share of inheritance is very slim, even if they looked after parents. As we have seen in the above case, though the house was constructed by the respondents and her sister, they had to fight real hard to get legal ownership, also they had to compensate a son, who has no interest in constructing the building and never looked after the mother. This shows that sometimes laws are interpreted differently. As commented by a senior judge, she states,

> *I always say that we should not take Mizo customary laws in its total form, because it will not be right to follow exactly as it is written. We the court feels that some case needs to be given special consideration. Because if we strictly follow Mizo customary laws as it is documented, no matter what the situation is, a son will always get the property and this is not fair at all.*

The two court cases show the restrictions placed on widows with regard to widow remarriage. Though tribal women are seen as having more freedom as they can re-marry, as we have discussed, if a widow re-marries she loses her right to claim the husband's property. Therefore, the notion of Mizo women's freedom to remarry does not really bring freedom.

Daughter's Property Rights

As discussed earlier, according to the Mizo customary laws, daughters have no inheritance rights and this is reflected even in the court as there are hardly any daughters who come up and claim for inheritance especially ancestral property. A daughter may have a better chance to get the property if she had look after her parent. One of my respondents who is also a judge in DCC states, '*Women who look after the parents are given the rights to inherit the property, in this context, a daughter's position is not that bad'.* This indicates that for sons inheritance and property rights are considered their 'legal rights' whereas women must earn it through nurturing and caring of the parent. Though this may seem advantageous for daughters to a certain extent, but one can also argue that this is the extension the gender division of labour where women are considered more "suitable" for domestic work and care givers.

Another important point is it is not the case that all daughters who look after parents and family get property. There are several daughters who contributed, looked after the parents, took care of the family's welfare but were still denied property rights. One of my female respondents who is also a senior Judge said, '*The problem is when the parent died; they would forget the daughter's huge contributions and give supremacy to the Mizo customary laws which favour sons. In my opinion, those who did not look after their parents should not even claim property at all'.*

The Supremacy of Customary Laws: Interaction of the State, Community and Women's Right

Bina Agarwal (1996:80-81) points out how the household/family, the community and the state can be characterized as three principal arenas of contestation. Gender relations get constituted within and by each of these, she states, 'the community, and the family are also interacting arenas', in a way that embodies "pulls" and "pressure" which may, at times re-enforce, contradict or complement each other. For example, a state may pass laws, defining policies and promoting programmes which favour women's interests, while the community may resist the implementation of such measures. Bina Agarwal also points out that,

> Essentially, the local communities can also be seen as playing an intermediate role between the State and the individual or household, in defining and enforcing people's obligations and rights in different areas, including appropriate forms of social behaviour, economic activity and sometimes even dress (1996:81).

However, Agarwal insists, it is not necessary that all members of a given community need 'conform to what is specified by the community's', in a way the state as a whole may maintain a 'relatively gender-progressive position in policies, legislation and implementation, it can also provide space to individual women or individual households.

In Mizoram, as discussed in chapter-III, the interaction of the state and community may have been contradicted or re-enforcing in certain areas. But, in the matter of gender – progressive position, both the state and community are complimentary to each other. This can be seen through the state's refusal to pass any laws relating to women, and the penetration of Mizo Christian community ideology within the state administration. This is also reflected in the legal system. For instance, in my study, all property disputes were settled in accordance with Mizo Customary Laws. Even cases where the 'Inheritance Rights By will-1956' is in question, the ultimate decision is usually based on customary laws. Though Indian Legal System (i.e. Modern Court) is supposed to be based upon equity, justice and equality, customary laws are given precedence over individual rights. In one case, a woman requested the court whether she can claim property right based on Indian Succession Act 1865- (Act which applies to the Christian population in India) as she is also a Christian member, which the court refused, stating that tribal must be ruled by tribal laws. The court's decision to uphold the customary laws is interpreted as state recognition of minority communities and their customs and practices. However, I would argue, the state is also responsible for individual well being. In fact, the intersection of state, community and religious ideology reinforces the subjugated status of women by conferring hierarchical structures.

Property Rights and Women's Sexuality

Flavia Agnes (2000) has pointed out that property is an integral weapon used to regulate marriage contracts and control female sexuality. The court cases show that women's chastity and fidelity are important factors in determining whether a woman can get heirship certificate. There are certain court cases where a widow is accused of being unfaithful and commits adultery (even though the husband is dead), thus losing her property.

Both church Mizo customary laws control women's rights. The church plays a crucial role in reinforcing patriarchal ideology regarding women's chastity, fidelity, purity and motherhood. The inclusion of women's chastity, motherhood in Mizo Customary Law 2006,

184(5) reflects traditional Christian ideology. With regard to widow remarriage, the customary laws are more liberal when compared with the church laws. Mizo customary law is more liberal towards widows whereas, the Church propagates women's chastity, fidelity and purity. The study shows how people are often socialised into dominant gender ideologies, and sexuality is used as a basis for discrimination.

CHAPTER-VII

CONCLUSION

In this study, I have examined the ways in which law, religion and gender intersect with each other. I have studied the ways in which different gender roles are perpetuated by legal and religious institutions which in turn create inequalities between men and women in Mizo society. I also discussed how legal processes and customary laws in Mizoram are influenced by religious ideology. The study also looks at the relationship between "state laws" and "non - state laws" with regards to women's rights; both "state laws" and "non-state laws" are guided by patriarchal ideology and are complimentary to each other. The study clearly highlights the influence of religion in transmitting cultural and traditional practices in the social sphere, and the domination of "church laws" in regulating matters such as family, marriage and divorce.

In the first chapter of the thesis, I have made an attempt to point out the intersections of law, religion and gender. I have also discussed how legal and religious institutions discriminate women. I discussed "intersectionality" as a means to address relationships within social categories, and the importance of acknowledging how each category can result in distinct experiences is examined. I discussed concept of law, legal tradition and the approach of legal pluralism. I further explained how feminist legal studies exposed the absence of women and women's issues from the agenda of legal studies, and also highlight the discrimination of laws based on gender. I have described the methods along with a self-reflexive account of my experiences as a researcher.

The second chapter provides the geo-political and historical background of Mizoram. The Mizo society in pre-independent India and the transition from colonial to post colonial period is discussed. The chapter highlights legal changes and development during this period. The chapter also discusses development of political forces and shows how political developments have contributed to the changes within the legal system. The issue of political autonomy in North East India, and the Sixth Schedule of the Indian Constitution is also analyzed. The construction of the written form of Mizo customary law is discussed. The study clearly delineates that Mizo Customary law is the handiwork of the Colonial "masters" and which in turn is the culmination of the exigencies of enforcing modern administration in

what was otherwise considered “tribal” and “uncivilised” territory. The moot point here is: can a design enacted to tackle administrative demands be sufficient to shoulder socio-cultural problems?

The third chapter discusses the question of women’s rights and Mizo customary laws. The study examined the formation of *The Committee on Mizo Customary Laws* (CMCL) in 1980, and how MHIP demanded the reformation of Mizo customary laws. The study clearly highlights the double standards of male members of the Mizo Customary Law Board Committee, how women are seen as the locus of custom and tradition, and how Mizo women’s rights get lost within the minority rights and tribal identity discourse. The study shows the active role of the state and church in upholding Mizo customary laws.

The fourth chapter discusses the concept, meanings and sociological perspectives on marriage and family. The chapter highlights that the functionalist perspective on marriage and family is still relevant in Mizo society. The chapter also shows how women’s subjugated role is crucial for the smooth functioning of social institutions like family and religion. The church laws and teaching legitimizes gender inequality within family. Women continue to be seen as “homemakers”, “care givers” and “supporter” of their husbands. The gender roles and relations within the community, the ways in which members of the Christian church understand gender roles and relations are determined by patriarchal ideology.

The fifth chapter examines the system of divorce, and how divorce has different implications on men and women. The study has shown the double standards in the legal system and also church laws. The study also reveals restrictions on Mizo women’s right to divorce, and the failure of Mizo customary law with regard to maintenance. The study helps in understanding the relations between state law and customary law, how these laws intersect, compliment and conflict with each other.

In the sixth chapter, the issue of property and inheritance rights of Mizo women is discussed. The study highlights how economic subordination further perpetuates gender inequality, and how Mizo women are denied basic rights. The chapter looks at how widows are seen as merely “legal guardians” and not the owners of property. The complete absence of daughters inheriting father’s property is seen. The chapter exposed the culture of patriarchy in the legal system and how often legal processes are guided by misogyny.

Legal and Religious Restrictions on Women

The study has shown that Mizo customary laws are largely disadvantageous for women, and it is these laws which governed family matters such as marriage, divorce and property rights. Article 371 (G) of the Indian constitution as well as the Sixth Schedule gave special provision to Mizoram, and reaffirm that customary laws will continue to govern the people. There has been an attempt to reform Mizo customary laws, but there is a deep rooted sense of Mizo identity associated with these laws among the people. Many respondents stated that Mizo customary laws should not be reformed or changed. However, the state is held responsible for women's empowerment while at the same time justifying the discriminatory nature of the customary law.

The MHIP argued that Mizo women are subjugated and being denied their rights by customary laws and seeks state intervention for protection of women. MHIP demanded that the Mizoram state government provide special provisions for women by adopting certain laws (e.g Indian Christian Marriage Act, 1872). This was opposed by the leaders of the Mizoram Church Association. The Mizoram state government rejected women's demands on the ground that they cannot go against the church leaders. Therefore, the Mizoram church plays a role in upholding customary laws and legitimizing gender inequality within society.

The Church, being one of the most important religious organizations, played an important role in maintaining community, shaping and moulding the members towards Christian ideology while preserving Mizo customs and traditions. Christianity is considered "good", "understanding" and "better" when compared with other cultures. Religious identity plays major role in the development of the Mizo psyche. Christian doctrine is often referred to in the court room, and some lawyers' even quote the Bible while arguing cases. Lok Adalat is considered positively, because many people feel it has characteristics similar to Christian teaching. One of the members of Lok Adalat pointed out,

> *Lok Adalat is very Christian, because we tried to bring both the parties to settle their disputes with mutual agreement and understanding, we don't want to punish anyone, we tried to forgive or overlook each other's faults so that peace can be restored, just like Christian ideology is teaching us*.

According to the study, the Church laws and Mizo customary laws control women's rights. The church also plays active role in reinforcing patriarchal ideology about women's chastity, fidelity, purity and motherhood.

Church Laws vs Customary Law vs State Laws

With regard to domestic violence or any act of cruelty towards spouse, unlike the Mizo customary law, the church extends the same punishment to men and women (i.e. adultery RC/RL). With regards to widow remarriage, Mizo customary law is more liberal towards widows, whereas, the Church propagates women's chastity, fidelity and purity. Both the state and the church are influential in upholding customary laws.

Although Mizo women are governed by Mizo customary laws, the only constitutional law that is available is the Maintenance Act under Cr.Pc, Section 125. The Maintenance Act is quite complimentary to Mizo customary laws as far as the discrimination of women is concerned. While claiming maintenance the male bread winner status is emphasized along with the wife's dependant status. The concept of maintenance is linked to sexual control and economic subordination of women. Therefore, only a chaste woman is entitled to maintenance. Remarriage or having sexual relations with another person results in the denial of maintenance. The underlying notion throughout CrPc Section 125 is that the male is the bread winner and the female is dependent on the bread winner. This assumption in the Cr.Pc echoes the Mizo customary law.

With regard to the property rights of women, Mizo customary laws are the governing laws. The High Court usually takes a decision in accordance with the Mizo Customary Laws. The court's decision to uphold the customary laws is interpreted as the State's respect for minority customs and practices. However, the state is also responsible for individual well being. The intersection of state, community and religious ideology reinforces the subjugated status of women. Women's right to property is also linked to sexual control. The court cases show that women's chastity and fidelity are important factors in determining whether a woman can inherit or acquire property.

Institutionalization of patriarchy in legal, family and religious spheres, and legal spheres is apparent. The idea that the state offers an arena for emancipation of women is problematic as the state itself is guided by patriarchal ideology. Gender stereotypes within the

legal institution are clearly visible. For instance, what the lawyers called 'the real battle' that is 'actually arguing', or 'fighting cases' in the court room is considered difficult and tough for women. Majority of the cases are handled by male lawyers. The area of law, especially legal practice is somewhat seen as more suitable for men. There are only very few active women lawyer and absence of women is considered natural.

Customary law is often used as a cultural artefact, and since state-enacted laws are different from the customary laws of traditional societies, it is often seen as imposed from outside. The close connection between law and religion, and the relationship of women to the state and legal machinery is complex. A historical analysis, starting with creation of the nation state and acknowledging question of gender, is important in recognizing complex issues of inequality and the representation of women.

The study also shows that both men and women play an active role in transmitting patriarchal ideology. For instance, majority feel that women's position is lower to men but consider it "natural". Even the women's association like MHIP avoided the issue of 'equality' while demanding for reform of Mizo Customary Law. In fact, majority of the MHIP leaders are of the opinion that, women's empowerment should take place only as long as they do not question male authority. With regard to women's property rights, it is generally accepted by MHIP leaders and male members of the Committee on Mizo Customary Laws that only women who 'deserved' and who have been "victimized" should get the property. This shows how men and women play an important role in fulfilling the dominant patriarchal ideologies and essentializing gender.

Generalizations about North East Women

Because of the geographical location, different ethnic and cultural practices, mainstream Indian women's movement issues had little impact on North Eastern states. It is usually argued and generally believed that Northeast women (e.g Mizo) enjoy relatively high freedom, and have better status when compared with women from other society. This view has been critiqued and questioned by a few but is still endorsed by majority including that of feminist scholars from mainstream Indian society.

A systematic critique of the universalization of all women from the North East as a single monolithic entity is attempted. There are seven states in the North East and each of

them have their own customary laws. There is little camaraderie or a sense of a single Northeast women's movement. However, in mainstream India, the North East is often seen as a single entity. There is very little comparative work between North Eastern states among scholars. My study argues that perceptions of women from North East as "free" and "liberated" as compared with women from Hindu or Muslim community is often exaggerated. The so-called "better" position is based on the right to divorce, a widow's right to remarry, and absence of religious taboos concerning menstruation and absence of physical seclusion (Haksar 2008: 283). The general perception even within the tribal society is that women have better status than women from caste society, so they do not require further empowerment. This assumption is based in comparison with Hindu/Muslim women, the practices of dowry and purdah system. Even these comparisons are based on stereotypes rather than systematic argument. Women's rights are not seen in comparison with men but with women from other societies.

Perhaps, it is important to look at it closely and try to understand the lived experiences of women from North East. I would like to argue that, the tribal customary practice which allows widow remarriage may also be looked at from a different angle. For instance, E.J Thomas (1993) in his study among the Mizo makes an interesting point, that is, even in traditional Mizo society women were free in the matters of marriage, sex and divorce. Very few restrictions were imposed on them. However, he is of the opinion that, the freedom in sex was 'more advantageous to men for their free-lance sexual activities rather than respecting the freedom of women.

Based on the study, though both men and women are permitted to divorce, because of the social circumstances, men divorcing women is more common. And also, though both can re-marry there are conditions imposed upon women. Unless she fulfilled customary codes she cannot re-marry. The ceremony can be performed within three months. At present, with the influence of Church, widow remarriage is not encouraged, rather Christian women are encouraged to show fidelity and living a chaste life to honour her dead husband- and be an example of a good Christian woman. Remarriage takes away the right to property from the woman.

I agree to some extent with Haksar and several others who have had the idea that tribal woman especially from the northeast might enjoy certain freedom. However, tribal

women may have greater "autonomy" rather than "equality" with man. Equality refers to women's access to opportunities and resources, as compared with men's. Autonomy focuses on the individual woman's freedom within personal relationship (Lovenduski and Randall, 1993:23). Women seem to be able to maintain agency as far as decision-making goes, however, their roles as primary homemakers and caregivers seem to be more important than their careers or jobs. Also, I want to highlight that those tribal women and Mizos in particular have freedom in certain areas but are restricted in others. For instance, Mizo women seem to have "greater freedom" or "better status", however, till today, in spite of women's organizations' constant demands to the state government, not a single act has been passed in favour of women. On the other hand, women of caste society, who are looked upon as "less free" or "worse status" have championed several Bills and Act (the implementations is not an issue here). The fact that women's movement has achieved something is an indicator of women attaining certain voices in political administration. On the contrary, in states like Nagaland and Mizoram women's representation in Legislative Assembly is almost negligible.

Therefore, I find it difficult to make a conclusive statement on the "status of women" of tribal women especially of Mizoram. One might speak of the liberated women; it is also possible to speak of the oppressed women in Mizoram. One has to question the "status of women" and also has to problematise the very category "women," as many feminist historians and thinkers like Joan Scott, Denise Riley and Judith Butler have done. Re-reading history, one observes that the diversity of language, ethnicity, geographical location and tribal identity dominates gender identity. These contradictions are reflected in different realms such as cultural, religious and social where women are both visible and invisible.

Uniform Civil Code and Tribal Women

Tension between minority rights and women's rights have long been debated and discussed even in mainstream Indian society. Till today, there is no adequate answer as to dissolve this tension. The demand of UCC in India by some women's organizations receives mixed views. Some who advocate UCC are saying that the Uniform Civil Code will put an end to women's discrimination. However, it was a failed project as various minority and religious groups are against this, and consider the demand of UCC as the ideology of Hindu majority.

As I have argued before (see Chapter-III), rather than blindly advocating UCC, it would be more applicable if women's rights groups advance a movement which looks at the diverse and marginalized positions and examine "intersectional experience" of women. For instance, Mizo society, being a minority within India also shapes the members to be more loyal and very protective of their cultural identity. In the process of this ideology of keeping the Mizo tradition alive, men and women play active role. There have been a lot of debates on the way Mizo women dress, behave and even the way they conduct themselves especially with outsiders. A Mizo woman's identity as a member of the marginalized group, and her experience as a "woman" member within that community, brought different experiences which may not be of the same as women from mainstream India. Therefore, the allegiance to tribal identity might take precedence over her gender identity.

Challenges/Suggestions

There is a need to look at gender relations within the larger context of Mizo society, especially in the social, religious and legal spheres. At present, Mizo women continue to be governed by Mizo customary laws, and it is considered that it should remain that way. The concept of Uniform Civil Code and adopting central laws are not welcome. The women's movement in India has failed to effectively address the issue of "personal laws" and to see intersections of identities that personal laws represent. This in fact is reflected in the reluctance of minority women to join mainstream women's movement. Minority women fear that the majority would not understand their problems.

We need to develop a strategy which will look at the relationships within socio-categories, intersections of identities and addressing diversity within groups such as "poor" and "marginalized" groups. I feel that "intersectionality analysis" could be useful to address those issues. This would help in understanding the experiences of different women belonging to different social strata. It is well generally known that women are marginalized within minority groups regardless of their contribution to the society. This study cannot make broad generalizations about Mizo women and in particular North East women. As mentioned, tribal society is hardly culturally homogenous, even within Mizoram there are different Mizo tribes with different cultural practices. Therefore, the study cannot speak for all the tribal women from the North East but provides a microcosm into the relations between law, religion and gender.

I argue that instead of a "change of convenience", a "change for progress" is required. Considering the "peculiarity" of the tribal communities, perhaps, reform within their indigenous laws is what will actually benefit women. Therefore, it might be helpful to point out the discriminatory nature of customary law and address concerns which need to be addressed. It is important to examine how patriarchal system is seen as a value system, where women's rights are denied and disposed by social mechanism and institutions. More discussions at public forum are also necessary. Instead of using culture as the so-called explanation and justification for all social behaviours, we should be asking whose interests are being served by the traditions and customs, and who benefits from those traditions? Why some 'reform' took place and some remain unchanged and some customs are even resurrected? Who are the agents of these traditions and customs? Which and whose rights are more fundamental than the others? If customary laws are the law that is to govern the people, should it be better if we reform in accordance with the modern society? These kinds of questions and more discussions might produce new perception and create new thinking among the community members.

Relevance and Implications of the Study

Scholars conducting research on their own communities or places which are closely related to them are often suspected to be biased in their judgment. I have conducted the research work among my own community. The study was mostly conducted in Aizawl, capital of Mizoram. During the fieldwork the research was conducted using mainly Lusei (Mizo) and English. Being an insider and also a Christian member makes it easier for my study though there were great chances of being blind to many aspects, but on the other hand it is easier to build good rapport with the respondents. I found it extremely useful my being close to the people I studied during this fieldwork.

It is admirable to see how a large number of Mizo women struggle every day, and their economic contribution in the society. The Aizawl bazaar is dominated by women, some of them earn more than men and support their family (whether they have a say in what they earn is another thing/not my point at present). I realised that Mizo society is so different from the mainstream Indian society therefore; the yardstick to which we measure women's freedom or rights could not be the same. One thing I realised 'again' from this field work is that 'economic independence' is really important for Mizo women. I feel women who are economically independent or secure could have more freedom, at least at the personal level.

I realised only a few sections of Mizo women claim maintenance and a larger number remains helpless. I wonder how interesting it must be if one can conduct research at the grass root level, interacting and meeting particularly women from rural areas, understanding their day to day struggles. I feel that kind of study or research could help Mizo women in many ways.

There is very little work done on gender and law. There are few writings which talk about Mizo customary law, but, most of these writings deal with the Mizo customary laws in general and not particularly focus on gender relation. Therefore, it is important to try to understand the legal system in Mizoram, the customary laws of the people and how law, religion and gender intersect, conflict or compliment with each other. My thesis is a contribution to the lack of sociological research on women's issues in Mizoram. My wish is that my research work would at least make a small contribution in the study and understanding of law and women's rights in Mizoram.

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APPENDIX-I

Marriage Certificate

MIZORAM PRESBYTERIAN CHURCH

(Presbyterian Church of India)

Certificate of Marriage

'Let marriage be honoured among all.'

This is to certify that

_____ _____ s/o _____

of _____ _____

and

_____ d/o _____ _____

of _____ _____

were joined together in Holy Matrimony on _____

in the _____ in accordance with the Mizo Christian Custom on their solemn pledge to live together for life in mutual care, comfort and honour, nourishment in health and in sickness and to uphold and tend each other in purity of life and chastity according to the ordinance of God.

'Whom God has joined together let no man put asunder.'

Solemnised by

Regd. No. _____ (Seal)

Date _____

Signature _____

Full name _____

Designation _____

APPENDIX-II

A MONOGRAPH ON LUSHAI CUSTOMS AND CEREMONIES-1927

(N.E PARRY)

CHAPTER 1

THE CHIEF AND THE VILLAGE (Page no. 17)

36. TLANGCHIL and SAWI-

These two customs are very similar. They are practically extinct but are worth describing as an occasional case may crop up. In the old days, *Tlangchil* was the usual way of punishing a man who behaved badly in the *Zawlbuk* or was unable to carry his drink propery and made anuisance of himself in the drinking place or who made himself generally unpopular in any other way. The young men would wait for their chance till they got the man to be dealt with in the *Zawlbuk*, they put out the fire so that it was impossible for him to see who has attacked him and seized him and beat him and kicked him and finally probably pulled down his his house. An attack of this sort by a number of people on a fellow villager is known as *Tlangchil.*

I have heard of a case of *Sawi* which took place about thirty years ago st Thenzawl. A young man had gone to court a girl, taking with him a small boy as *Puarak.* The young man was courting a girl and the boy was lying on the ground nearby when the girl's father came and found them and proceeded to trample on them and kick them all over the body. This was a gross breach of the custom, allowing men to court girls freely, so the injured lover went off to the *Zawlbuk*, collected all the young men of the village and took them to the house of the man who had committed the assault. They turned out all the inmates of the house and pulled it down. The next day, the man whose house had been pulled down *pemmed* to another village. The chiefs do not seem to have inflicted much if any punishment for the *Tlangchil* or *Sawi*, presumably, because, they thought that the man assaulted had only got his desserts. The man assaulted always found it advisable to remove himself to another village as soon as possible. *Tlangchil* is very similar to the raging that might be inflicted on an unpopular person at school or in mess.

Sawi is less drastic than *Tlangchil.* If a man was to be *Sawi* for an offence, it was usual for all the youths in the *Zawlbuk* to go to his house, sit down and sway to and fro until the house on the verge of falling. This would be "*Sawi*". They might also pull down his house, but he would not be severely beaten.

CHAPTER II (pp 21- 42)

MARRIAGE CUSTOMS.

1. Courting or *Nula-rim*

Among Lushais great freedom of intercourse is allowed between the young men and girls. No penalties are inflicted on young man and girls who sleep together, unless the girl gets pregnant when the man responsible will have to pay *Sawnman*. One of the chief amusements of the young men is courting the girls as they may do so with or without serious intentions. As a rule, a young man is courting a girl goes off about 6 or 7 P.M to the girl's house and they sit down and talk. If the man decides that the girl is desirable he will most likely to suggest that they should in future help each other in their work with a view to getting married. If the girl agrees, they come to a definite understanding on the matter and henceforth help each other in their respective fields and the man will escort the girl when she goes out to carry wood or water. While they are engaged in these occupations, the man is deligently courting the girl and making advances to her. The girl, has, by this time had an opportunity of judging if the suitor is likely to make her good husband or not and if she thinks that he is likely to be a satisfactory husband, she yields to his advances and they sleep together. Once this has happened, the young man will visit the girl in her house every night after her parents have gone to sleep and the girl will leave the door open for him and sit up and wait for him on the verandah. If the girl's parents get wind of what is going on, however, they will wait up one night and catch the man as soon as he gets on to the *Khumpui* and will claim *Khumpuikaiman.* The man will either have to pay *Khumpuikaiman* or else, marry the girl. As a matter of fact, if a man and the girl are reasonably careful, they can go on for a couple of years like this, without getting caught.

a. When a youth is going courting, he usually takes with him a boy, who is known as a *puarak.* The *puarak's* job is to act as an intermediary between the lovers and also to see them actually sleeping together. The object of this is to enable the *puarak* to give definite evidence on the point if later on, the girl finds that people are saying that she and her lover have been sleeping together and consequently brings a suit against him for defamation. If a case arises, the *puarak* steps in and says he actually saw the lovers sleeping together and where the fact of intercourse can be so proved the girl can get no compensation. Where, however, there was no *puarak* and no eye witness to the intercourse, if it is shown that the man has been saying that he slept with the girl and he afterwards cannot prove it, the girl is entitled to Rs. 40 from him for having defamed her.

A *puarak* is usually given some sort of a reward for his services by his friend, generally, a good cloth. In spite of the freedom of intercourse that is allowed, a girl who is still a virgin when she gets married is more highly esteemed than the one who is not. A virgin is known as *tawnsabawp.*

b. In some villages, the *Pathlawi* or young married men court girls in the same way as the unmarried youths do. This is considered perfectly correct and in no way disgraceful. Girls often prefer these young married men to the unmarried youths, as they have greater experience and are more well versed in the arts of love. The girl's parents are also less suspicious of them as they are apt to think that they have come to see them and not their daughter. The girls consequently, are less shy of *pathlawis* and

yield more readily to their advances. A *pathlawi,* however has to be more careful than an unmarried youth need be, as although, between unmarried youths and girls, an agreement to marry or to pay certain sum in default is invalid and cannot be enforced, an agreement between *pathlawi* and unmarried girl is valid if it can be proved; so an unwary *pathlawi* may find himself let in for a fine of a mythun,if in order to get his way with a girl he has promised to marry her and to pay her a certain sum if he fails to do so.

2. Marriage-

When a man wants to get married, he must first of all, approach the girl's parents and settle with them about the daughter's price. The parents will then ask their daughter whether she is ready to accept her suitor or not. If the girl accepts the proposal, the parents inform the suitor and from that time, the couple is considered to be betrothed. The betrothal is not in itself binding and if between the date of the betrothal and the marriage date, either party wish to breach off the engagement, he or she is liberty to do so without incurring any penalty. This custom is the same whether the parties both reside in the same or different villages.

a. As soon as the weeding day has been settled, the bridegroom's people and the bride both prepare *Zu* for the marriage feast and when all has been prepared on the day fixed for the wedding, the bridegroom sends two representatives known as *palai*, whose duty is to settle finally about the price and to pay over to the bride's parents whatever amount it has been agreed shall be paid down on the marriage day. On this day, the marriage agreement must be put into writing by the village writer and he must record the total amount of the price, the amount paid and the amount still due in the presence of two witnesses and the copy must be given to each party. The *palias* are always the best witnesses if there is afterwards a case about the marriage prices they are the people who have finally settled the price and have made the initial payment.
b. Marriage prices are practically never paid up in full at once at the time of the wedding; for the reason that hardly anybody got enough money to pay up a price at once. Usually, an installment is paid on the wedding day and the balance of the price is paid up in easy installments and twenty years or more not infrequently elapse before a marriage price is paid up in full. No hard and fast time limit can therefore be laid down requiring marriage price cases to be brought within a fixed date from the date of the marriage, as to do, so would not only upset an established and well recognized custom, allowing payment in very easy installments but would also result in a large proportion of marriage prices, never being paid up in full at all.

3. *The Marriage price—*

A marriage price falls into two parts, the *Manpui* or main price and the *Mantang* or subsidiary prices. The *Manpui* goes to the father or the brothers of the bride, the *Mantang* is divided among a number of persons and is explained in detail further on. If the bride has no father or brothers, the *Manpui* will go to her nearest relation and if she had been adopted by some person who has brought her up from childhood, it will go to him. Failing male relations, the bride's mother might ge the price, provided that she has brought her up and has not married again. The bride can let her get the price if she likes or she may select someone else to receive it. If the bride, on her mother's re-marriage has gone to live with someone else, the person with whom she has been living and who has supported her will get her price. The only

case in which a mother can claim her daughter's price as of right is where the daughter is a *Falak* that is to say, a bastard that has not been recognized by its father.

If a man has brought up a girl from childhood in his house, and has taken the place of her father, he will naturally expect to get her marriage price and if there is a dispute about it and her realtives refuse to let him get it, he can claim *Chawmman* Rs. 40. *Chawmman* means the fee which a man can claim for having boarded and lodged a person who is no realtion of his in his house and will be dealt with later on.

a. The general rate of *Manpui* is gour withuns or Rs. 80, if the girl has no dowry and five mithuns or Rs. 100 if the girl has a dowry. This is the most prevalent rate and is considered by the chiefs and people consulted.
b. According to custom, the price is always increased by a *Tlai* or Rs.20, if the girl is provided with a dowry or *Thuam.*

The value of the dowry makes no difference, even if the dowry is worth Rs. 100, it only causes the *Manpui* to be increased by Rs. 20. A dowry, however, is not treated as a regular dowry or *Thuam* unless its value is at least Rs. 20 as will be seen further on. A dowry need not necessarily be provided o the marriage day, though as a rule it is, but if the girl's people prefer it, instead of providing a *Thuam* on the marriage day, they can promise to purchase one out of part of the price paid to them and in such a case, the price will be increased by a *Tlai* or Rs. 20, in the same way as if the *Thuam* had actually been provided at the time. If on the death of the girl or any other time, her prople take back the *Thuam,* the balance of the price due isreduced by a *Tlai* or Rs. 20.

4. The MANTANG

The *Mantang* consist of the following subsidiary prices:-

Sumhmahruai Rs 20- payable to the bride's father or brother.

Sumfang Rs. 8- payable to the bride's father or brother.

Pusum Rs. 6- Payable to the bride's *Pu,* who is her mother's father or failing him, her mother's brother.

Palal Rs. 5- Payable to any person the bride may select as an adoptive father. The man who gets *palal* will give the bride a fowl and a *Zubel* as *Lawi.*

Ni-ar Rs. 2- This is payable to the bride's paternal Aunt.

Naupuakpuan Rs. 2- this is paid if the bride's elder sister in consideration of her having carried the bride about in her cloth when the bride was a baby. The above are all the integral parts of the *Mantang.* There are two other optional prices, which must be mentioned.

1. *Thianman Rs. 2 or Rs 3*- this is paid if the bride so desires to her female friend. It is payable out of the *Manpui* and does not form a subsidiary price. If the bride later on leaves her husband *Sumchhuah* or *Uire,* this price must be refunded by the friend to whom she has given it. The payment of *Thianman* is purely optional and cannot be claimed as of right.
2. *Lawichal Rs.* 2- This is also a purely optional price which cannot be claimed as of right and comes out of the *Manpui.* It is only payable when the bride and the bridegroom live in different village, as when this is the case, the bride is escorted

to her new village by her friends and among them, one man is appointed as leader of the band and is known as the *Lawichal* and is sometimes given a reward of Rs. 2. This price also has to be refunded if the bride later on leaves her husband *Sumchhuah* or *Uire.*

5. The total price, therefore, including both *Manpui* and *Mantang* works out at Rs. 123, if the girl has no dowry and at 143, if the girl has a dowry. The total will be increased or reduced in cases of *Fan* or in other special circumstances which increase or reduce a price. Any payment in excess of the ordinary rate of four mithuns, if the girl has no dowry and five mithuns if she has a dowry come under the operation of the Lushai custom of *Fanghmanoei* and are not recoverable by the husband if his wife divorces him *Sunchhuah* or if he divorces her *Uire.* A chief's price is usually ten mithuns but has not been dealt with in detail here. The following terms used in connection with marriage prices require explanation:-

	Rs.
Tlai … … … …	20
Tlai Sial … … …	20
Sepui means a big mythun … …	40
Seding means a big mythun … …	40
Senufa means mythun and calf … …	60
Puikhat … … …	2
Puisa wmsial … … …	20

6. *Puanpui and Thul-*

A *Puanpui* which is a thick cotton blanket and *Thul* which is a basket for keeping cloths in, forman essential part of a woman's possessions and it is considered very disgraceful if a bride has not got these things to take to her husband's house. If her husband has to buy a *Puanpui* and *Thul,* or if after marriage, the bride makes them in her husband's house, her price is reduced by a *Tlai* r Rs 20. If the woman dies before she has finished making the *Puanpui,* no reduction can be claimed on her price. The mere fact of a woman having no *Puanpui* and *Thul,* when she marries does not involve any reduction in her price except where the husband buys *Puanpui* or the woman makes one in his house.

When a man's wife dies, her relations can take back her *Puanpui* but unless her husband is quite a young man, who, on his wife's death goes and sleeps in the *Zawlbuk,* they cannot take it away until the man has married second wife; if they take the *Puanpui* away by force before the man has married again, Rs 20 is to be deducted from the balance due on the deceased wife's price.

7. HMEICHHE BUNGRUA

Hmeichhe Bungrua, is certain property, which is considered by Lushais as belonging exclusively to women. It covers *Puan* ordinary cloths, *Puanpui* thick blanket made

out of unspun cotton, *Puanfen* the cloth used as a women's skirt. *Puanrin* the cloth used by a young woman, *Thul,* the Basketused for keeping cloth in, *Thenbu,* a weaving machine, *Hmui* spindles, *Phurhlan* various kinds of basket used for a women's everyday work and *Thi-nghawng-thlun* bead necklace and also blue threads or *Tingduang* cash would not ordinarily be included among women's property. The only xash a woman can own is, cash given to her as a dowry or *Thuam.* Cash earned by a woman in her husband's house occurs to her husband. Nowadays, it is possible that a woman might have separate earnings, such earnings, however, will accrue to the husband, unless there has been a definite agreement him and his wife that shall keep her earnings. Such an agreement between husband and wife could only hold good where a woman held a salaried post or keep, all ordinary earnings from a husband's house must accrue to him.

A woman's possession can be divided into two parts. First, her ordinary possessions which have been detailed above and secondly, her formal dowry or *Thuam.* The word *Thuam* is used loosely to describe all a woman's possessions, but strictly should only be applied to the formal dowry, which is separate from the rest of the women's property and is governed by different rules. A women's property belongs to her and not to her husband. If the couple separate, the woman takes all her property with her, unless she has been dicorced for adultery, in which case, the husband is entitled to confiscate all her property, including her formal *Thuam* or dowry. When a couple separate on agreement, such as by divorce *Sumlaitan* or *Peksachang,* the womanwill often give her husband some of the cloths. If this is done, however, it is only done as a matter of courtesy and friendliness, the husband cannot claim any of his wife's property as of right. When a woman has been divorced or has left her husband *Samchhuah,* she would certainly take all her property with her.

8. *THUAM or DOWRY-*

A woman's *Thuam* is her most important property and it may consist of anyone or more of the following.

1. At least three strings of old *Thival* beads.
2. At least one string of *Thifen* beads and one string of *Thival.*
3. At least one string of old amber beads worth at least Rs.20
4. At least Rs. 20 cash.

People sometimes try to give new *Thival* beads as dowry but as these are of very little value, being worth only about our annas a string, they ate not considered sufficient for a dowry and are refused. The possession of a dowry cause a bride's price to be increased by a *Tlai* Rs. 20. The *Thuam* belongs to a woman and not to her husband and he may not dispose of it without her consent. If, however, a woman commits adultery, her husband is entitled to keep her dowry. If a couple fall on evil days and have nothing to eat owing to famine or any other cause, they sometimes agree to sell of woman's dowry and devote the proceeds to buying food. There is no objection to their doing this unless there has been specific agreement beforehand that the husband shall afterwards replace the dowry, neither the woman nor her relations can afterwards make a claim against the husband for its value. Likewise, suppose the woman is divorced for adultery, her husband cannot claim from her the value of the dowry, which, if they had not jointly disposed of it, he would in such a circumstance has been entitle to. If, however, the dowry has been sold with the wife's consent to meet expenses incurred in performing *Chawng* or *Sechhun* and afterwards, the husband divorces the wife *Mak,* the wife can claim back from him the value of the dowry. This is the only exception to

the above custom and where the dowry has been disposed of to buy food during famine or to meet expenses incurred owing to the illness or death of the member of the family, the value of the *Thuam* cannot be claimed back, evenif the husband has divorced his wife, unless there has been a specific agreement between the husband and wife, entitling her to claim. If there has been a specific agreement on the part of the husband to replace the dowry, he must replace it either in cash or in kind and if the husband dies before he had replaced it, his wife can claim it from his heirs.

a. When a woman dies, her brothers or whoever has taken her price can take back her dowry, but if they do, the balance of the price due, is to be reduced to a *Tlai* Rs.20 or if everything has been paid up except the *Thutphah*, the *Thutphah* cannot be claimed. The term *thutphah* requires explanation. It is the last Rs. 20 of the price which is always kept pending with the idea that if a woman in her old age falls on evil days, she can claim it and use of it herself and also to counterbalance the dowry. If the *thuphah* is paid up, the people who get the price cannot claim back the dowry, which will then go to the woman's husband or daughters. It is considered very bad form to insist on the *Thutphah* being paid up, though the person entitled to the price can insist on its being paid if he likes. It is only claimed, however, in cases of great need and I have only come across one case in which it was actually claimed while the claimant was still able-bodied.

The only time practically when the *Thutphah* must be paid up is when a husband divorces his *Mak*, when he must pay up the whole of the price including the *Thutphah* and the woman is entitled to take her *Thuam*. Even if the *Thutphah* has been paid up prior to the divorce *Mak*, the woman is entitled to take her *Thuam.*

b. A woman must not divide her *Thuam* or formal dowry in her lifetime, she may, however, if she is sickly and does not expect to live long, divide up her property other than her dowry among her sisters or children. She can however only divide such articles as she has brought it from her parents' house and not anything she has acquired in her husband's house. When a woman dies, her daughter can divide up her property known as *Tingthil* among themselves but they cannot touch her formal *Thuam*, which is at the disposal of the person who gets her price.

9. *Lushai cloths and their uses-*

The *puandum* is a cloth used by the man. It is woven out of red, blue and yellow thread and is one of the better kinds of cloths made by Lushais. The *pawnrin* is a cloth made out of blue and white thread and is used by the women. Formerly, it was considered very disgraceful for a woman who was going to get married if she did not possess *pawnrin.* Nowadays, however, less importance is attached to the possession of *pawnrin* than formerly and the custom of providing a woman with one before she gets married is gradually dying out.

The *puandum* and the *pawnrin* are used in many ways. When a man dies, his body is wrapped in a *puandum* and he is buried in it and the wrapping of the body in the *puandum* is regarded as a mark of respect to the deceased. A woman's body should similarly be wrapped in a *pawnrin.* If a person, who is no close relation of the deceased, gives a *puandum* or a *pawnrin* to wrap the body in, is considered a very praiseworthy act.

10. *ZAWLPUAN* –

If a *puandum* is included in a women's possessions when she gets married, this cloth is known as *zawlpuan.* The *zawlpuan* is intended to be kept for wrapping the body of the woman's husband in when he dies and it is held to be very disgraceful for a woman if she fails to wrap her husband's body in a *zawlpuan.* As a matter of fact, it is very rare to find a woman who does not possess a *zawlpuan.* If the woman does not possess a *puandum,* when she gets married, two ordinary cloths can be taken instead of the *puandum* to act as *zawlpuan.* If a married couple get divorced on any other ground than adultery, the woman is entitled to take with her, her *puandum* and *zawlpuan.* If, however, a woman is divorced *uire* on account of adultery, her husband is entitled to keep all her cloths. Even though a woman possess no *zawlpuan,* the people who gets her price must give her husband one *tingduang* or skein of blue thread if they fail to do this, the balance of the woman's price is reduced to a *tlai s. 20.*

11. *LAWI-*

On the evening or night of the marriage day, the pride is conducted to her husnabd's house by her men and women friends. On this occasion, one of the men always calls out *fanu fapa kan lawi pui e,* or "we are taking along the bride to have many sons and daughters." As soon as these words have been uttered, everybody starts throwing mud and water at the bride. I cannot discover any particular point in this custom and it would appear to be merely an example of the horse play that formerly habitually took place at weddings in our own country. When the bride reaches her husband's house, the *puithiam* or priest kills a pullet and sings a chant wishing the couple long life, many children and that they may remain together until they are both old. This chant is addressed to the *khuavang,* who are the spirits of the air. The sacrifice of the pullet and the chant are known as *arzangtuak.* The bride, then returns to her father's house and is brought back again the next evening to her husband's house and remains there. The couple do not cohabits until the second night.

12. *LAWI-*

This must not be confused with the *Lawi* described above, though spelt the same. The word is pronounced differently and has a different meaning. This *lawi* is really a wedding feast and it is contributed to, by the bride's relations and all the people who get a share of her price. Any animals may be used for the feast but usually pigs and fowl are killed. The meat contributed by persons who have has a share of the *mantang* is handed over to the bridegroom's friends for their feast. The meat contributed by those who will receive *manpui*, goes half to the bride's relations and half to the bridegrooms. This feast is voluntary and is not an integral part of the marriafe ceremony. The price remains the same whether a feast is held or not. The *palai* are given a pig's leg between them.

13. *NUMAN—*

If the mother of a girl who is getting married, has separated from the girl's father, she is entitled to a price known as *numan.* This price is Rs.4 or an article or animal of that value. A mother is entitled to get this price, even if she has married again or *Uire.* The price is payable as soon as the daughter gets married. A girl's aunts have no claim to this price, if the mother is alive, she gets the whole of it and if she has died before he daughter gets married, her sisters, girl's aunts cannot claim to get it instead of her. The *numan* for her daughter even if the latter is a *sawn*. If the daughter is a *falak*, and is married from her mother's house,the mother cannot claim a separate *numan* as she is entitled to get the whole og the price for a *falak,* who is regarded as having no father and as belonging wholly to the mother. *Nyman* is repayable if the daughter is *sumchhuah* or *Uire.*

14. *SEHRUI SATCHAT-*

If, when the couple are betrothed and everything has been got ready for the wedding, before the couple are actually married, another man comes along and says to the girl that he will marry her and that she should not marry the man she is engaged to, and on this account, the marriage already arranged is cancelled, this is known as *sehrui satchat*. If a man who proposed in this way and so cause the marriage already arranged to be cancelled, then refuses to marry the girl,he has to pay fine of Rs. 40. The exact meaning of the term *sehrui satchat* is "the breaking of the mythun's rope." If the man who caused the engagement to be broken was a married man and had divorced his wife in order to marry this girl who was engaged to someone else, and if eventually, the girl refuses to marry him, she must pay him a *sial* or Rs.40 in order to call back his divorced wife.

15. KHUALKAI-

When a girl marries a man who lives in another village, it is known as *Khualkai.* The only difference between such a marriage and a marriage between parties resiing in the same village is that the man in whose house the bride puts up on the day previous to the marriage can claim a fee of Rs 5 for putting her up. This is kown as *thlenin man,*and it is payable out of the *manpui.* The *law,* as already explained, may get Rs. 2 also payable out of the *manpui.* A further slight difference is that if any four legged animals such as mythuns or pigs are killed by the bride's people for their feast in their village, the bride with take with her to her husband's house, a foreled and the head of each animal. Instances of *thlenin man* being claimed are very rare, the bride usually puts up with friends or relations and they probably get part of the *mantang* and would not claim *thlenin man.*

16. *CHHUATKIL KAIMAN-*

If a woman gets married from the house of some man who is no realtion of her's, no matter whether he actually has any brother or other relations, the owner of the house from which she gets married is entitled to a fee of Rs. 5 and this is known as *chhuatkil kaiman.* This fee is not returnable in case of *sumchhuah* or *Uire.*

17. *DAWN PUAN PHAH-*

This term means the spreading of a cloth for sleeping on. The customis that if a boy and a girl fall in love, the girl sometimes persuades her parents to allow them to sleep together in her parents; house. For this purpose, a cloth is usually laid out on the floor in the separate place from the usual sleeping place for the couple to sleep on. If after this, the boy refuses to marry the girl, he is liable to a fine of one mythun or Rs. 40. It is not essential for the cloth to be spread out. If the parents' have actually consented to the boy and girl sleeping together in their house, that is sufficient and the fine can be claimed if the boy fails to marry the girl.

18. *FAN-*

When a man marries a girl without complying with the usual marriage customs but just goes and lives in her house as her husband, he is said to be *fan.* It is considered very disgraceful for a man to be *fan* and as compensation to him for the disgrace incurred the girl's price is reduced by a *tlai* or Rs. 20. Insuch a case, if the man dies before the marriage has been regularized and the woman is *thisen pallo,* that is to say, has had no child, her people will get no price for her at all. If the wman is Ithisen pal, *that is to say has posthumous* child by the man who married her *fan,* her relations can claim the ordinary marriage price from the deceased husband's relative, less Rs.20 *fanmani*. If the woman dies beforethe marriage is

regularized, her relative can claim nthing. If a man is *fan* and subsequently the girl refuses to marry him, she must give him a *zawlpuan.*

19. *LUKHUNG-*

Lukhung is practically, the same as *fan* but here is the girl who goes and lives in the man's house as his wife before they have got married accrding to custom. This is considered disgraceful fir the girl and her price is consequently increased by a *tlai* or Rs. 20 *Lukhung man.* If the wman dies before the marriage is regularized and the woman is *thesin pallo,* all that they can claim is Rs. 20 *Lukhung man.* Supposing, a woman is *Lukhung* and subsequently, the man refuses to marry her, he must pay her a *tlai or Rs 20,*but this not payable unless the girl has slept a night in the man's house.

20. *TLANDUN-*

Tlandun is an elopement. When a yung man and a girl run away to another village and get married without the consent of their parents and without any f the usual formalities, it is known as *Tlandun.* An elopement of this sort is considered very disgraceful for the girl. When the marriage is regularized, the girl's price is increased by Rs. 20.

21. *CHARSUT PHAWI-*

If a man has daughters and the elder daughters find it difficult to get a husband and the younger daughter gets married first, the man who marries the younger daughter has to pay additional *tlai* or Rs 20 for her, as her married the younger sister before the eldest sister has got married.

22. *NUPUI NEIH KHALH-*

When there are two brthers and the elder is getting married, on the eve of the weeding, the bride's father can say "*inau sial in ka khal*", "you must pay me at least one mithun before your younger brother can get married". If the brothers agrees to this, they will say so. They need not agree unless they like but if the bridegroom wnts to marry the bride very badly, they will probably do so otherwise the bride's people may call the match off. If they agree, as soon as they get any money, they must pay up at once a *sial* or Rs.20 and until this is paid, the younger brother cannot get married. The bride's father "*khalh*" in the hope of getting part at any rateof the price paid up quickly.

23. *MAKPA HNAMHRUAL CHAT-*

If a man's wife dies before he has paid up the whole of her price, he is entitled to marry again and his wife's relatives cannot prevent him from paying the first installment of his new wife's price on the marriage day. After this initial payment, however, he must pay off his deceased wife's price in full before he makes any more payments for his new wife and meanwhile his new wife's relatives cannot claim the balance of her price. If the man makes further payment to his new wife's relative prior to payment for his old wife in full, the old wife's relatives can seize his property in satisfaction of their claim and the custom of *kutzalatla* will not apply and they will not lose anything on account of the seizure.

24. *MANBO-*

In certain circumstances, a woman can marry without any price. This sometimes happens when a woman has left her husband *sumchhuah* or has been divorced by him for adultery.

The kind of case arises is as follows. A woman leaves her husband *sumchhuah*, her whole price is refunded by her relatives. After a while, she misses her children, so she asks her husband to take her back and agrees that if he does, she will demand no price. In this circumstances, a woman is entitled to do this and her relatives cannot claim her price. All that the relatives can do is seize the woman's property and dowry and sever all relationship with her *intuithlar*. They may try to claim Rs.40 *banman* but they cannot get it, as the only person entitled to *banmas*, according to custom is a *Pu.* Cases of this sort are not very common and often, after a while, the husband makes it up with his wife's relatives and pays them her price. When they do this, the *iutuithlar* ceases and relationship is resumed

25. SAZUMEIDAWH-

Sazumeidawh is a form of marriage in such a marriage, the contracting parties agree that they will get married and that the woman shall not claim her usual marriage price and that the man shall be at liberty to leave her and divorce her at any time without incurring any penalities. Marriage of this sort are very rare but are more common with daughters of widows than with girls with both of whose parents are alive, as the father is generally sufficiently wide awake to prevent an arrangement so disadvantageous to the girl and her family. For a marriage of this sort, *palai* are required, a mere agreement between the parties is sufficient.

A is a widow with a daughter and B wants to marry her daughter but he does not want to pay any price. If A is very hard up, she may say "very well, come and live in my house and you can marry my daughter and you need not pay me any price." B agrees and goes and live in A's house and marries her daughter. After a year or two, B gets tired of his wife and leaves her. B's wife can claim nothing from him. If however, B has taken any property of his own into his mother-in-law's house, he cannot take it with him when he goes but must leave it with his mother-in-law.

In a marriage of this sort, a woman is equally entitled to divorce her husband at any time and he can claim nothing. Each party, in fact, is at liberty to leave the other whenever he or she likes without incurring any penalty.

The only instance of a marriage of this sort that I have come across was in a case where a woman had had a *sawn*. The father of the *sawn* claimed it and as the woman was very reluctant to be parted from her child, she persuaded the father to marry her *Sazumeidawh* and he agreed to do s and she went and lived in his house. After a bit, the man got tired of the woman, and turned her out and she brought a case in court. As however, it was clearly proved that it was a *Sazumeidawh* marriage, she could recover nothing.

26. *SEBOMAWH*

This very difficult word to translate. It really means that payment f earnest money to ensure as so far as possible that a man will do a certain thing that he is contracting to do. It is explained by examples.

1. A young has made a girl pregnant, and as he does not want to pay the *sawnman*, he says that he wants to marry her. The girl's parents, however, are suspicious of his *bona fides* and are afraid that if he married her, he will merely pay up a small installment of the price and say Rs10 or Rs 20 and will divorce her, having thus, evaded paying half of the *sawnman.* To ensure against this, they can lay down a condition of the marriage that the bridegroom must first pay up a *sepui or s.40 as*

sebomawh. This *sebomawh* does not form part of the price and is not returnable if the parties divorce each other.

2. A well-to-do man in a good position wants to marry a spinster who is getting on towards middle age and has never had a husband before and is a good deal older than her suitor. The parents have not ill-founded fears that the marriage between the parties is not likely to be of a very lasting nature and that the husband will probably divorce his wife before he has paid up very much of the price. In such a case, the parents may insist of *sebomawh* and the suitor will then have to pay up to Rs, as earnest money in the way described above.
3. A young man goes into girl's house at night and gets caught by her parents and is therefore liable to pay the *khumpui kaiman*. He know this and to avoid having to pay *khumpui kaiman*, says he will marry the girl; if the girl's parents are suspicious of his intentions, they can insist on *sebomawn* before allowing the marriage. They thus ensure themselves of getting at any rate not less than the amount of the original fine they could have claimed for *khumpuikaiman.*

   It will be thus be seen that *sebomawh* is really only a form of insurance to save prople from being defrauded by unscrupulous person who wants to avoid paying his dues. I know of a case where a married man wanted to have a girl. The girl refused to have anything to do with him unless he agreed to divorce his wife and marry her. He did not want to divorce his wife, but in order to get the girl, he said he would do so. He, at the same time, made an agreement with his wife that he would pretend to divorce her but that after, he had got hold of the girl and kept her a short time, he would take his wife back again. Accordingly, he divorced his wife and the girl, believing that his intentions were genuine, married him and he paid an installment of Rs.20 only for her. He kept her for less than a month and then divorced her and took his old wife back again, having had all his fun for only Rs. 20. This is the case in which, if the girl's parents had had any suspicions, they would have insisted on *sebomawh.*

   The nly circumstances in which *sebomawh* can be claimed back by the party who paid it, is if he paid for is wife and has had to divorce her adultery.

27. *HMEI-*

A *hmei* is a concubine and according to Lushai custom, anyone may keep a *hmei.* As a matter of fact, nowadays, as the real wife and a *hmei* always quarrel, it is practically, only chiefs who keep *hmei* , though a few rich man do so also. The price of a *hmei* is the same as that of a regular wife and if a *hmei* gets divorced or otherwise separated from her husband, she is governed by exactly the same customs as regular wives. As a matter of fact, chiefs generally do not pay full price for their *hmei,* but give the father something and help him and as a chief's friend gets very easy in a village, fathers are generally quite willing to give their daughters as *hmei* at a low price.

28. *THISENPAL-*

A woman is *thisenpal* when she has had children with her husband, whether they have survived or not. A woman wh has no children with her husband is *thisenpallo.* If a woman who is pregnant with a *sawn* marries the father of the *sawn* before it is born and it is born in her husband's house, after the birth of this child she is *thisenpal.* If, however, the *sawn* is

born in the woman's parents' house, and sometimes after its birth, she marries its father and after their marriage, they have no children, she is *thisenpallo,* her relations cannot claim the balance of her price, also, if a woman who is *thisenpallo,* is divorced, *mak* she cannot claim the balance of her price. When a woman who is *thisenpal* is divorced, her husband must pay her up the whole of her price. If a woman is divorced *mak* while pregnant, she is regarded as *thisenpal.*

29. *NUPUI PAWIKHAWIH-*

The term *nupui pawikhawh* covers all mischief or offences committed by a married woman. The responsibility for a woman's misdeeds is divided between her husband and her brothers and any compensation due to her for offences committed against her is also divided between her husband and her brothers according to the nature of the offence.

If a married woman steals *Tingthul,* which terms covers anything regarding as being the property of a woman her brothers or parents have to pay the fine or if her husband pays it, he can deduct from her price. If a married woman steals paddy or rice or anything not covered by the term *Tingthul,* her husband has to pay the fine. If a married woman is defamed of having committed any sexual offence and the person who defamed her is fined, the fine goes to her brothers. If a man is fined for the offence of *Lawithlem,Thlim,Zen, Puanfenzar or Hnute deh* against a married woman, her brothers gets the fine. If a person is fined for defaming a woman by accusing her of theft or any other offences other than sexual offences or if a person is fined for beating a woman or for any offence against her that is not sexual nature, the fine goes to her husband.

30. *MAN ALAINCHAWM-*

A man sometimes agrees to support a relation of his wife's, generally, her mother or sister, instead of paying his marriage price. The contract is that the person who is to be supported, will be supported for the rest of her life and that when she dies, the marriage price will be considered to have been paid in full. This method of paying up a marriage is rather a gamble, as if the person who is being supported lives a long time, the man may have to pay quite a lot for his wife, while if she dies soon, he may get his wife very cheap.

> If the husband and the person he is supporting cannot gets on and he turns her out, if he has supported by her for three years, his marriage price will be reduced by Rs.40 and he will have to pay up the balance but if he has supported her for less than three years, he will to pay up the full customary price. If the person who is being supported leaves of her own accord and does not return when called, she cannot claim any payment of the price. When a man who has married on these terms divorces his wife *Mak,* if his wife is *thisenpal* and has supported her relative for three years, he will have to pay up the whole of her price less Rs.40, which he can deduct for having supported the relative for three years. If he had not supported the relative for three years, he will have to pay up the whole price. If the wife is *Thisenpallo,* and he divorce her *Mak,* he will have nothing to pay.
>
> If the wife dies *Thisenpal* prior to the death of her relative who is being supported, the husband will have to continue to support his late wife's relative until she dies. If he fails to do this, he will have to pay the whole of customary price less Rs. 40 if he has already supported the relative for three years. If the wife dies, *Thisenpallo,*he need not continue to support the relative and she claim any of the price from him. If the wife leaves her husband *Sumchhuah* or *Uire* after he has supported her another three years,

she will have to pay him Rs. 40 and if she is *Uire,* her husband can keep her *Thuam* and property.

31. *NUPUI TLAN KOHNA*-

If a married man falls in love with a girl and agrees to divorce his wife and marry the girl and if after he has divorced his wife, the girl refuses to marry him, he can claim Rs. 40 from her, with which to call back his divorced wife. This Rs. 40 will be sent through a *palai* to the man's former wife and if on being thus recalled she refuses to return to him, she is divorced *Sumchhuah.* This Rs.40 must be paid down at once in cash or in kind and is in addition to the marriage price and is *Fanghmanoei,* that is to say irrecoverable by th man if he and his wife subsequently separate.

32. *MANKIAMNA*-

According to custom, the marriage price of woman who have already been married once is to be reduced by *tlai,* which is Rs. 20. Lushais have several names for women who have been married and have lost their husbands by death or divorce.

A *Nuthlawi* is a woman who has been married and has separated from her husband by any form of divorce.

A *Hingkir* is the same as a *Nuthlawi*

A *Lengleh* is a woman who has left her husband after spending only one night in his house.

A *Lusun* is a widow after her husband's death.

A *Lamthlang Rapthla* is the same as *Lusun.* If any of these women get married, their price according to custom is to be reduced by *tlai.* This statement, however, must be qualified as the amount of price a man is ready to pay, depends on the qualities of the woman. If a woman is very attractive and industrious, the reduction will probably be waived by her would-be-husband. If a woman who is capable of bearing one or two children gets married, her price will be not less than *Sepui* or Rs.40. if an old woman past child bearing gets married, her price will not be less than *Tlai* Rs. 20.

33. *HMEITHAI PASAL NEI or remarriage of widows*-

There is no objection to the widow remarrying. If a childless widow remarries, her price is to be Rs. 20 less than it would have been if she had not been married before. Her price will be taken by her relatives in the same way as on the occasion on her first marriage. . if she has no relative who can claim her price, she can either adopt a brother for this purpose or she can, if she likes, take her price herself and utilize it as her dowry. A widow's price will be reduced in the *Manpui* or main price. So far as the price goes, a widow with children is dealt with in the same way as a childless widow, her price will be R.20 less than the customary price. A widow with children, however, is expected to consult her children, if they are grown up, before she gets married again and if they do not agree, she cannot get married from their house, but will have to get married again from her own relation's house.

The children of the widow who marries again can go and stay where they like. They can either continue to live with her or can go to their father's relations or to their *Pu,* their

maternal grand-father. The people to whose house they go to live cannot afterwards claim *Chawmman* from them unless they are not related to them at all.

34. *KUTZALA TLAK*-

Kutzala Tlak is said to take place when a man to whom maney is owing in the relative's marriage price, goes to the house of his debtor and seize his property to satisfy his claim. When *Kutzala Tlak* arises, the balance of the marriage price due is forfeited.

If, however, before going to the house of his debtor and seizing some of his property, the creditor has gone to the chief and explained the circumstances and asked to be allowed to seize some property in satisfaction of his claim and the chief has allowed him to do so, it is not the case of *Kutzala Tlak* and only the value of the article taken is to beset off against the amount of the claim.

The following is an example:-

A married B's daughter and after a number of years, still ows B Rs. 60 for his wife's price. B goes to A's house and seizes a brass pot worth Rs. 15 without A's permission.

In the consequence of this act of violence, B loses all his claim to the balance of the price. This is a very good custom as it discourages the use of violent methods.

35. *REMAR TALH CHHAN*-

It sometimes happens that a man who wants to get married has absolutely nothing with which to pay even an installment of the price. In these circumstances, if the girl's people agree, the man sacrifices a fowl and solemnly promises before witnesses to pay a fixed sum, say Rs 40 or Rs. 20 as soon as he possibly can. This sacrifice and promise is known as *Remar Talh*. When this sacrifice has been performed, if the man and his wife separate before he had paid the sum stipulated, he must pay up that sum, whether his wife is *Thisenpal* or not

36. *IN KAI CHHUAK—*

If, when a woman's husband dies, her relations take her back to live with them before the expiry of the three lunar months of *Milthi Chawpek*, they cannot claim the balance of her price. During these three months, a woman must remain in her deceased husband's house

CHAPTER III.(pp. 43-49)

DIVORCE

1. *Inthen* means divorce. There are eleven ways of divorce *MA or Mak, Sumchhuah, Sumlaitan, Peksachang, Pasal Awmloh Hlana Chhuak, Kawngka Sula Mak, Zangzaw, Chhuping, Atna Vanga Inthen, Nupui Tlansan, Uire.*

2. *MA or MAk*-

When a man divorce his wife in this form, he simply say, "I *Mak* you" and the woman is then divorced. If the woman is *Thisenpal* that is to say, if she has had any children with her husband whether these are still alive or not, the husband has to pay up for the whole of the balance of the woman's marriage price, including the *Thutphah.* If the woman is *Thisenpallo,*

that is to say if she has had no children at all with her husband,the man will not have to pay up the balance outstanding of the marriage price, he cannot, however, claim the repayment of any part of the price that he may have already paid. A woman who has been *Mak* can take with her all her personal property and her *Thuam* or dowry.

3. *SUMCHHUAH-*

A woman who refuse to live with her husband and leaves him is considered to have divorced him and this form of divorce is known as *Sumchhuah.* A woman is at liberty to divorce her husbandin this way whenever she likes, but the whole of the price that her husband has paid to her relatives must be returned to him. When a woman divorces her husband this way, she is entitled to take all her personal property and also her *Thuam.*

Sumchhuah and *Mak* are the two commonest form of divorce and it is not easy to discover whether a given case is of *Mak* or *Sumchhuah* as a woman will always try to make out that she has been *Mak,* while her husband will try to make out that she is *SUMCHHUAH*

4. *FANGHMANO EI-*

It sometimes happens that a man divorce his wife *Mak* and then changes his mind and wants to call her back. The woman will very likely reply that she will return if her husband calls her back with a certain amount of money, say Rs. 20. The payment of this sum is known as *Fanghmano Ei* and the money paid is addition to the price and is separated from it and is not repayable if afterwards a woman divorces her husband *Sumchhuah.* Again, sometimes, a woman will leave her husband *Sumchhuah* because he has beaten her or abused her in filthy language. The husband fins he cannot get on without his wife and sends *palais* to ask her to return. The wife replies that in consequence of his ill-treatment, she cannot return to him unless he pays her Rs. 20 *Fanghmano Ei* literally translated means, "the eating of a cucumber", once a cucumber has been eaten, it has gone forever, in the same way, the money paid in cases given above can never be recovered.

5. *MAN ATAN A PEKKIR LEH or return of articles given as part of price-*

When a price is paid partly or wholly in kind, e.g., when a gun or a mithun is given as part of the price, if the woman goes *Sumchhuah,* the return of the very same article that was given cannot be claimed unless it is still with the recipient. If it has been sold or otherwise disposed of only the amount at which it was valued at the time it was given can be claimed.

6. There was an old custom that when a husband and a wife separated by divorce or when the relations of the deceased wife were collecting her personal property, if by mistake, anything belonging to the husband was taken with the woman's things, the woman or her relations were liable to a fine of Rs. 40. This custom has been dropped in a number of villages and there is a general consensus of opinion that it is a bad custom and should be dropped, as it gives an unscrupulous husband the opportunity of placing some petty article of his own in the woman's basket and then saying she has taken it and claiming Rs. 40. It has been decided, therefore, that in cases of this sort, if, afterwards, anything belonging to the former husband is found among the woman's effects, it will simply be returned and no fine can be claimed. Of course, if there is an obvious case of theft of anything important, it will be dealt with as such.

7. *SUMLAITAN-*

This is a form of divorce by agreement. Neither party can claim to divorce the others by this form as aright. When this form of divorce has been agreed on the price, will be shared equally by the two parties. This applies to both *Manpui* and *Mantang.* Thus, if a husband has still got to pay the largest part f the price, he will deduct what he has already paid fromth half price that he has to pay under the agreement and will pay the result. Thus, if the whole *Manpui* were Rs. 120 and he has already paid Rs. 40, he will have to pay another Rs. 20 to make up the half price he has to pay. If the husband has paid up the whole price, he will get half of it back. The *Mantang* will be treated in exactly the same way.

8. *PEKSACHANG-*

Peksachang is another form of divorce by agreement. If a husband and wife agree to separate, they can agree that the amount of the price already paid up will suffice, that is to say the man will not claim the return of any part of the price, he may have paid and the woman on her side will not claim any outstanding price that many still be due.

9. *PASAL AWMLOH HLANA CHHUAK-*

The term *pasal awmloh hlana chhuak* is used to describe a separation between a married couple owing to the man having left the country or being confined in jail or for any other cause being away from home for a long period. In these circumstances, a wife is expected to stay in her husband's house and awaits his return. If she does not do so, she is treated as *Sumchhuah*. If however, a wife cannot get on with her husband's relations and prefers to stay with her own people while her husband is away, she is entitled to do so and cannot be treated as *Sumchhuah.* If while waiting for her husband, the woman dies, her relative can claim the balance of her price from her husband on his return. If the husband dies while away, they can claim the balance of the price from his heir.

10. ATNA VANGA INTHEN or divorce on account of madness-

When one of the parties to a marriage goes mad, the custom is as follows:- when a man's wife goes mad, he must look after her for three years and if after that period, she has not recovered, can divorce her *Peksachang*, but if he leaves her or divorces her before three years have expired, he has divorced her *Mak* and must pay up her price in full, provided that she is *Thisenpal.* If she is *Thisenpallo,* the ordinary custom regarding *Thidenpallo,* woman is followed and he will not have to pay up any balance due on the price.

If a woman's husband goes mad, she also must look after him for three yeard and if he does not recover within that period, can leave him *Peksachang.* If a woman leaves her husband before the expiry of three years, she is *Sumchhuah* and will have to refund all the price she has received.

11. *HMEICHHIA A PASAL CHHUNGTEN AN MA THEILO or woman cannot be divorced by her husband's relations-*

It sometimes happens that when a man is away from home, his brothers or possibly, his parents will try to divorce his wife, if for any reason, they do not they do not like her. This is contrary ad a woman can only be divorced by her husband and not by any of his brothers or other relations. For a divorce to take place, the husband must himself say formally, 'I divorce you' or '*Ka Ma A Che',* and unless he actually does this, no divorce can take place. If while a man is away from home, his brothers turn out his wife and say she is divorced, as soon as the husband returns, he ought to call his wife back. If a wife who has been turned out by her husband's brothers does not return when called, she will be *Sumchhah.* If, however, the

husband fails to call her back, he has divorced her *Mak* and will have to pay up the balance of her price. Cases of this sort are not uncommon and even when a man is at home, it is not unusual for one of his brothers to attempt to divorce his wife for him, if he and the other members of the family do not like her.

12. *NUPUI TLANSAN or Abandonment of Wife-*

If a man abandons his wife and family and goes away, the house, field and all his property belonging to him become his wife's property. His children will also go to his wife and she will get the marriage price of their daughters. If after a year, he tries to return to his wife, his wife can take him back or not as she likes; if she refuses to take him back, she is entitled to keep the house, the property and the children.

13. *KAWNGKASULA MAK-*

When a man finds a girl he prefers to his wife and divorces his wife and the same day or the next day, marries the girl, the divorce is known as *Kawngkasula Mak.* In a divorce of this kind, the divorced wife is entitled to a share in certain property known as *Buhbal* as well as to her full price *Buhbal* covers paddy, and rice, maize, millet, and also *Kochus.* It also covers all earthenware household pots. A woman who has been divorced in this way is considered to have been very grievously affronted and for this reason is entitled to a share in the *Buhbal.*

If the couple have children, the children can go either with their father or their mother, whichever they prefer. The father cannot stop the children from going with their mother and if they do so, they are not regarded as having diowned their father. The father, however, will get the marriage price of the daughters, if there are any. If the couple prior to the divorce were living in the same house as the husband's parents and if the husband's parents were occupying the *Khumpui* or big bed and the couple the *Khumnai* no division of *Buhbal* will take place, as the house is regarded as belonging to the husband's father and all the *Buhbal* are therefore, the latter's property. The literal meaning of *Kawngkasula Mak* is that the old wife goes out of the door as the new wife comes in.

14. *ZANGZAW or impotence-*

If a man is impotent and is unable to have intercourse with his wife, according to old custom, the *Puithiam* or priest will kill a pullet and perform incantations and if after a period to be agreed upon by the parties or if there is no agreement, after three months, the man is still impotent, the woman is entitled to a divorce *Peksachang* and to keep her price. If however, the woman fails to live with her husband during the period upon, she is *Sumchhusah* and if, during the period agreed on, she takes another husband or has intercourse with another man, she is *Uire.* This custom is still followed today, the only difference, being that treatment in hospital has in most cases taken the place of treatment by the *Puithiam.*

If the woman accuses her husband of being impotent and he denies it, the custom is for a man to be placed to sleep near the couple what really happens and to report. If the woman's claim is found to be false, she has to pay her husband Rs. 40 or a *Sepui.* This custom seems rather strange but it is still actually followed and I have dealt with cases in which it has been resorted to. In a case which occurred in Aijal a few years ago, the man appointed to watch a couple was accompanied by the mother of the bride, who had claimed that her husband was impotent, both these witnesses that the husband was fully competent and the case was decided by the Thakthing *Panchayet,* who fined the wife Rs, 40. The wife appealed to the superintendent who confirmed the *Panchayet's* decision and dismissed the appeal.

15. *CHHUPING-*

If a wife owing to physical peculiarities is unable to perform her duties to her husband, the husband is entitled to a divorce and get back all the price he has paid, the woman leaving him *Sumchhuah.*

16. UIRE-

Uire is adultery and it is considered a great disgrace for a woman to be caught in adultery. If a married woman commits adultery either while her husband is alive or after his death while she is still living in her husband's house, she is *Uire.* There are two kinds of *Uire,* which are governed by different customs. The first kind is *Uire* during the life time of a woman's husband, and the second *Uire* after the husband's death. If a woman commits adultery during the husband's life time, the whole of the price must be returned to her husband and he is entitled to keep his wife's *Thua* or dowry and other property such as cloths, beads, etc.. a woman, who commits adultery after her husband's death while still living in her husband's house, is equally *Uire* but the punishment is less. The custom to be followed varies according to the circumstances of the case as stated below-

(1) When a woman's husband dies, she performs the *thlaichhiah* ceremony and also, *thlahual* in her own house, and then for three lunar months, she has to put aside the rice she eats at each meal for her dead husband. This is known as *mitthi chaw pek.* If within the three months during which she has to put aside food for her deceased husband the widow commits adultery, she is *Uire,* in the same way as she would have been if she had committed adultery in her husband's life time, and will have to return the whole of her price, will lose her *Thuam* and property and will be turned out of her husband's house.

(2) After the three months during which the woman has to give food to her husband's spirit have elapsed, she usually returns to her parents' or brothers' house and they perform *thlahual,* she then returns to her husband's house to look after her children. If after performing *thlahual* in this way, she commits adultery, she is *Uire,* but as she has performed the *thlahual* ceremony, she will not have to return the price she has already received but cannot claim any balance outstanding. Her children can turn her out of their house but she is entitled to keep her *Thuam.* If her children keep her and allow her to remain in the house, they must pay up the balance of her price.

(3) If a woman has no children and after the three months of *mitthi chaw pek,* she returns to her parents' house and perform *thlahual* and then returns to her husband's house to live and there commits adultery, provided that she is *thisenpal,* she can keep the price she received and can claim the balance of her price if any and can keep her *thuam* or dowry. If she is *thisenpallo,* she cannot claim the balance of her price. She can be turned out of her house but can keep her *thuam.*

(4) whether a woman has children or not, if she has failed to perform *thlahual*for her husband and commits adultery, she is to be treated in the same way as she would have been if she had commited adultery while her husband was alive and will have to return her whole price and will forfeit her *thuam* and property.

(5) Sometimes it happens that a woman has remained for many years after her husband's death in his house and has brought up their children and married off some of them and then commits adultery. In such a case, even if she has not performed the *thlahual* ceremonies,she will not forfeit the price she has received, but cannot claim the balance of the price. She will be *Uire* in name and her

children can, if they like, turn her out. If they do not turn her out, she can claim the balance of her price or if her children like, they can *chawm* her instead of paying up the balance of her price. She can keep her *thuam.*

(6) Even if the widow who built herself a new house r the village has moved to a new site after her husband's death, if she is living with her children in the new house and is looking after them instead of their father as her husband's widow, she is still *Uire,* if she sleeps with a man and will be dealt with, in one of the ways described above, according to the circumstances. It is considered a more serious offence if a woman who is looking after her late husband's children is *UIre* than if a woman who has no children is *Uire,* hence, a woman who has children more severely than the one who has not, vide cases (2) and (3).

17. According to Lushai custom, the correspondent in an adultery case is not liable to be fined and no compensation can be claimed from him.
18. If a woman has been accused of adultery and has been found not guilty by the chief or court, her husnabd must take her back at once or he will be considered to have divorced her *Mak.*

CHAPTER IV(pp.49-57)

ILLEGIMATE CHILDREN AND SEXUAL OFFENCES

1. *SAWN and SAWNMAN-*

A *sawn* is an illegitimate child. A girl who bears a *sawn* is entitled to Rs. 40 or *sepui* from the *sawn's* father and this is known as *sawnman. Sawnman* can be claimed as soon as the girl has been pregnant for three months and is payable even if the child is born dead or deaf and dumb. *Sawnman* is not payable if the child is born without all its hands and feet, as Lushai consider that a child born without hands and feet is not human. If a girl causes herself to abort, no *Sawnman* can be claimed. If the girl has had intercourse with more than one young man within two or three months and it is impossible to establish satisfactorily the paternity of the *Sawn,* the *Sawn* is treated as having no father and is known as *falak*. No *Sawnman* is payable, the child belongs entirely to its mother and if it is a daughter, she will get its marriage price when she grows up.

2. A girl, who, while pregnant with *Sawn* has intercourse with another man, cannot claim *Sawnman* and if it has been paid, she must return it. The child in such a case belongs to his father if he likes to take it but if he refuses to own it, it will be a *falak.*

(a) If a man has made an unmarried girl pregnant, he marries her, the *Sawnman* will be only Rs.20. this Rs. 20 does not count towards the marriage price but is in addition to it and will be retained by the woman, even if she afterwards leave her husband *Sumchhuah.* If the parties do not marry, the amount of *Sawnman* is Rs. 40. The child belongs to its father and he is entitled to take it when it is three years old. Until it is three years old, the mother is bound to keep it and if she refuses to do so, and the father has to take it and look after it before it is three yeard old, the mother must return Rs. 40 *Sawnman* she has received. If a *Sawn* is not taken by its father or his relations and grow up with its mother's people, the latter cannot claim any *chawmman* if it later on leaves them. If a man offers to marry the mother of his *Sawn,* and she

refuses to marry him, her refusal of the offer of marriage in no way impairs her right to get Rs. 40 *Sawnman*, she is entitled to get all the same.

If, before taking charge of his *Sawn*, a man dies, leaving no heir, who are prepared to look after it, the mother will have to lok after her *Sawn* and can keep it even if she marries. If the *Sawn's* step father treats it as his own child, he will get its marriage price if it is a girl, while a boy would be entitled to the same right as his step-father's own children. In the absence of a specific agreement entitling him to claim, a step-father cannot claim *chawmman* from his wife's *Sawn* whom he has brought up in his house.

If the mother of a *Sawn*, on getting married, does not take the *Sawn* with her to her husband's house,but hands it over to the care of her parents or brothers, these persons will be regarded as the *Sawn's* parents and if it is a girl, will be entitled to get its price when it gets married. They will not, however, be able to claim *chawmman* from the *Sawn* if it leaves their care.

3. *SAWNNAWN*-

If a girl has two *Sawn*, by the same man, she cannot claim any *Sawnman* for the second one, if she had a third *Sawn* by the same man, she will get Rs 40. For it, as for the first. The custom is this, first *Sawn* s. 40, second *Sawn* nil, third *Sawn* Rs.40, fourth *Sawn* nil, fifth *sawn* Rs. 40.

4. *SAWNBEL*-

A man who gets a *Sawn* by a girl has to provide a clay *zu* pot full of *zu*, which is known as the *Sawnbel.* The girl can give this to any of her relations she likes. If the *Sawnbel* is not provided, the father of the *Sawn* must pay Rs. 1 instead.

5. *KHUMPUI KAIMAN*-

The term *Khumpui Kaiman* mans, literally "the fine for getting on the *Khumpui* or big bed". The unmarried girl and small children of a Lushai family sleep together with their parents on the *Khumpui* or big bed. If there are so many that they cannot all find room on the *Khumpui*, some of the elder girls sleep on the floor, close to the *Khumpui* and the place they sleep on is treated as part of the *Khumpui*. It often happens that a young man will come to the house at night to make love to one of the girls and if he is caught within reach of the *Khumpui*, he is liable to a fine of Rs. 10 and *Salam.* It makes no difference whether the girl and her lover have merely been love making or whether they have had sexual intercourse, the fine is the same. The reason for inflicting a fine is not because the parties have been making love,this, they are at liberty to do as much but partly because there is always a danger that in the dark, the lover may mistake the house holder's wife for her daughter and partly to compensate the parents for the shame they undergo by the girl and her lover, making love on their *Khumpui.*

If a young man who has got caught in a girl's house at once says to the girl, "I want to marry you", the fine cannot be claimed even if the girl refuses to marry him or her parents refuse to let her marry him. Unless the girl wants her lover to get caught, he generally gets away all right. Sometimes a girl just in order to get the fine, lets her lover get up on to the *Khumpui* and then pinches her father and wakes him up andcatches her lover. Girls who do this are not regarded with favour, however. Again, whrn a man and a girl have been making love for sometime and although the girl has asked the man to marry her, he refuses to do so, but

continues to come and sleep with her on the *Khumpui,* the girl will get him caught in the hopes of either making him marry her or pay her the fine.

6. *KHUMPUI TIHBAWLHHLAWH MAN-*

This means the fine for defiling a man's bed. If a young man and a girl sleep together in another man's *Khumpui.* The young man so sleeping with a girl is liable to a fine of Rs. 20 and *salam.* It does not matter whether a *Khumpui* is actually there or not, if the place slept in is the place used as the *Khumpui,* the man using it is liable to the fine just the same. No fine is levied if the bed belongs to the girl's parents.

7. *FA TIHBAWLHLAWH MAN-*

If a husband and wife separately, by any form of divorce while the woman is with child; and if before the child is born, the woman has connection with another man, she is liable t pay a fine of Rs. 40, and *salam* for having defiled her former husband's unborn child. When the child is born, her former husband can take it if he likes when it has reached the age of three years, he is however entitled to refuse it, in which case the child will be a *falak* and will belong to its mother. If a woman commits adultery while with child, she is liable to fine of Rs. 40 in addition to the ordinary penalties for adultery. The child can be taken by its father if he wants it or he can refuse to own it and it becomes a *falak.*

8. *LAWI THLEM-*

If a man induces a married woman to let him sleep with her by pretending t be her husband, it is known as *lawi thlem.* Such cases occur generally when the woman's husband has gone to friend's house to drink *zu* and another man comes in, pretending to be her husband returning home. More cases occur than come to light as the culprit generally escapes and even if the woman finds out her mistake, she often considers it more discreet to keep silence, in the old days, a man caught at this game would have had his ears and nose slit, nowadays, he has t pay to the woman's husband the whole of her marriage price. This punishment is very suitable as it enables the aggrieved husband to divorce his wife *Mak,* if he does not want to keep her, without any pecuniary loss being inflicted on either himself or his wife.

9. *THLIM-*

Thlim is very like lawithlem. If when her husband is away, another man comes while she is asleep at night and sleeps with a man, the offence is known as *thlim.* The fine is the same as for *lawithlem.* Both *lawithlem* and *thlim*

Are of very rare occurance and are regarded as disgraceful to the man concerned.

10. *INTIAM-*

The term *Intiam* means an agreement. In Lushai village, free sexual intercourse is allowed among the unmarried youths and girls and a youth is allowed to have intercourse with any girl, provided that she is agreeable and the girl cannot claim any payment on that account. Thus the girl cannot plead that the man prior to intercourse taking place had agreed to make her a present or pay her a sum of money if dhe allows him to have intercourse with her. Such agreements are contrary to custom and cannot be enforced. If as a result of such intercourse, the girl gets pregnant, the case is governed by different custom, but unless pregnancy results, in no circumstances can a girl claim a fine from her lover.

An agreement of this nature between a married man ans a girl, however, can be enforced. If a married man or as he is called in Lushai, *pathlawi* makes an agreement with a girl that he will either marry her or pay her the sum of money if she allows him to have intercourse with her and then fails to marry her, he must pay her the sum agreed on, provided it is not more than Rs. 40. An agreement to pay more than Rs. 40 cannot be enforced. If, on the other hand, the man in pursuance of the agreement made with the girl has divorced his wife and the girl then refuses to marry him, a mythun or Rs. 40 to enable him, call back his wife.

11. *ZAWN*-

This custom has been put a stop to; but as it is still possible that cases of alleged *zawn* may be brought forward, it is as well to describe it. In the old days, if a girl was known by the villagers to be a common prostitute and bad character, they used to *sawn* her. The young men would carry the girl either outside the village fence or into the village street or into the forge and would all rape her in turn. Sometimes, some unfortunate woman who had no relatives was also *zawned* by the young men, just out of sheer wickedness. This disgusting custom for many years, nut it sometimes happens that a woman comes in and says that she has been *zawned.* The circumstances will on investigation generally to be found to be more or less as follows:-

A lady of rather light virtue goes on to visit another village, one of the young men finds out about her and after he has paid her a visit, informs his friends and a whole number of them visit her in turn. Next morning, the woman gets frightened , lest herpeople find out what she has been doing and to save her face, comes in and says that she has been *zawned.* There is usually no difficulty in finding out the true facts of such cases. The whole village will know all about it and chiefs are much too careful nowadays to allow any real case of *zawn.*

12. HNUTE DEH-

Hnute deh means touching of woman's breast by a man. As a rule, when a young man and girl are concerned, this is not treated as an offence and no fine is inflicted. Young men frequently do this to girls with whom they are friendly, to see how far they can go and as a rule, the girls do not object. Occasionally, agirl may get annoyed however and complain to the chief. If it appears that the young man merely touched the girl's breast, thinking that she liked him and with the idea of finding out whether she really did or not, the case is dismissed. If, however,a young man of loose character, who is notorious for annoying girls indiscriminately is accused of an act of this sort and the chief and *upas* find him guilty, they would probably fine him Rs. 10 and *salam.*

13. *PASALNEI HNUTE DEH*-

This means the touching of the breast of the married woman by a man and it cinstitutes a definite offence. A man found guilty of toughing the breast of the married man is liable to a fine of a *tlai sial* or Rs.20 and *salam.*

14. *PUANFEN ZAR:*-

Any person who takes up and opens out a woman's skirt (*puanfen*), that a woman has folded up and put away is liable to a fine of RS. 20 and *salam.*

An occurrence of this sort is not likely to take place anywhere except in a *jhum* house. When the women go to the *jhum,* the first thing they do id to straight to the *jhum* house and change

the cloths they are wearing for their working cloths. The skirt that they take off is folded up very carefully and placed at the bottom of the owner's basket or hidden in the roof of the *jhum* house. If after the cloth has been put away, someone comes along and take it out, and shows it to other people, he or she is liable to a fine of Rs. 20 and *salam.* If, however, a cloth had not been properly put away, but had been left lying about and someone comes in and shows it t other people,no fine can be claimed. This is a curious custom, but women are very shy about showing their cloths and it is considered disgraceful for a woman's cloth to be opened out and shown to people, hence the fine.

15. *RAIZEP*-

This term means concealing of pregnancy. A woman who is already pregnant gets married to a man other than the man to whom her pregnancy is due without telling him about her condition. After she has been married for a short period, her husband discovers that she is with child and know that the child cannot be his. In this circumstances, the husband can either turn the woman out and will get back the whole price he has paid. If for any reason, the husband likes to let his wife remain in his house until the child is born, he will inform the chief and *upas* and as soon as the child is born, will turn his wife out and will get back any price he has paid. In a case of this sort, when a girl knowing herself to be pregnant has concealed the fact and has married other man, she cannot claim *sawnman, e*ven if she knows who is the father f her child. The child will be treated as a *falak*, unless father admits that it is his and wishes to take it, when he can do so, if he likes, he cannot however any *fatihbawlhhlawhman* from the woman's husband.

16. *ZEN*-

When a young visits by night the house of a girl whom he has not courted previously and come to an understanding with and tried to sleep with her, the offence is nknown as *zen.* It is not rape nor does it even amount to attempted rape, but accrding to Lushai custom, it is an offence and is punishable with a fine of Rs. 20 and *salam.* No sexual intercourse is necessary for case of *zen.* In fact, if sexual intercourse took place, the presumption would be that it had taken place with the consent of the girl. It would be quite impossible for a man to rape a girl in the Lushai house at night, as there are certain to be at least five or six other people in the house. If a man who has been courting a girl for sometimes goes into her house by night and ask her to let him sleep with her, it is not *zen,* but if he goes straight into the house and without saying anything, tries to sleep with her, it would be *zen.*the following is an example of *zen:*- A is a young man, who has met a girl B once or twice but has never courted her. One night, he goes off to B's house and tries to get her to allow him to sleep with her. B refuses to have anything to do with him and turns him out. Next day, B complains to the chief that A has *zenned* her, if it is proved, Awill be fined Rs, 20 and *salam.*

17. *PAWNGSUAL*-

Pawngsual is rape. All genuine cases of rape have to be reported to the superintendent. Rape, however, is very rare indeed in these hills. Cases of alleged rape are occasionally brought to court, but enquiry generally reveals that the girl has been caught out with the young man and is trying to save her face. A genuine case of rape is unmistakeable, as the girl would at once rush to the chief and complain and he would send her straight into court. *Pawngsual* generally takes place in the jungle or down in the *jhums* as it would be practically impossible for anyone to commit rape in Lushai village or in a house as there are always numbers of people about and if the girl wan an unwilling party, she would have no difficulty in getting help.

18. *MAWNGKAW LUK*-

This is sodomy. All cases of sodomy have to be reported to the superintendent to be dealt with by him. In the old days, thr pathicus or his father hsd the right to kill the sodomite or the sodomite had his nose and ears slit open. The father of the pathicus could go and shoot any mythun in the village, the meat was eaten by the villagers and the sodomite had to pay for it. Sodomy is rare in these hills.

19. *PUITLINGLO MUTPUI*-

This is the offence of having sexual connection with a girl under age. According to Lushai custom, if the girl was unwilling, the man is to be fined Rs.40 and *salam,* but if the girl was willing, no fine is inflicted. Nowadays, all such cases have to be reported to the superintendent to be dealt with him. The offence, however, is very rare.

20. MI NU THLEM, or attempted seduction-

If a man makes advances to a married woman with a view to inducing her to commit adultery with him or to abandon her husband and live with him, it is an offence and if the woman complains, the man has tried to seduce her, is liable to fine of Rs. 20, and *salam.*

21. *INCEST*-

According toLushai custom, no fine is inflicted for incest. If incest takes place, however, it is believed that the village crop for the year will fail.

CHAPTER VII (pp.81-88)

INHERITANCE.

1. ROLUAH-TURA SIAM or FAROLUAH

This custom is akin to adoption but Lushais cannot adopt a son so completely as to succeed to his adoptive father's property to the exclusion of his natural heirs, except with the consent or in certain special circumstances. If a man adopts a son without the consent of his natural heirs, he will have disowned them and all relationship between them will cease. It very happens that a man who is getting on in years and has no children, fearing that he will have no one to look after him in his old age, gets an orphan to come and live in his house as one of his family on the understanding that this orphan shall inherit his property when he dies. If the adoptive parent has no natural relatives, there is no difficulty at all and provided that the adopted son lives with his adoptive father and looks after him and supports him till the latter dies, the adopted son will inherit all the property. It may happen that though a man has no children, he has brothers or cousins. His brothers or cousins are unable or refuse to help him in any way, and he therefore takes an orphan into his house, to help him look after his fields etc., on the understanding that he shall inherit his property. To safeguard his position, the adoptive father would probably go to the chief and say that his brothers refuse to help him and so he has adopted an orphan and wants this orphan to inherit his property. The chief will then enquire into the matter and if he finds that the man's relation really do refuse to help

him, will recognize the orphan as his adoptive father's heir. The extent to which an adopted son can inherit property in such a case depends on the particular circumstances. If the relatives of the adoptive father have refused to help him at all and after his death attempts to oust the adopted son and take all the property, this would not be allowed but their claims could not be entirely barred and they would probably get two-third of the property and the adopted son would get one-third. It is impossible to lay down a clear rule in the matter to cover all cases. The only thing that can be said definitely is that a man cannot debar his natural heirs from inheriting his property by adopting a son unless of course, the natural heirs have formally disowned him. If, however, an orphan had lived for a number of years with his adopted father and has worked for him and supported him, the orphan is according to custom entitled to some share in the estate which will usually be one-third. He might, however, get more or less according to the circumstances of the case.

2. ROKHAWM or INHERITANE

Rokhawm means inheritance and is rather a complicated subject. Cases about inheritance are common and are not always easy to decide. Except in the case, explained in paragraph 10 of this chapter, no Lushai can make a will. All property devolves through male and generally speaking, a man's heirs, she usually has to get one of her husband's male relations to take over the estate on behalf of her infant sons, for the reason that she herself is unable to keep her household together with a man to hold her, as a woman is unable to build house or *jhum* house or cut a *jhum* without male assistance. Unless they get the control of the estate her husband's relatives are unlikely to be willing to help her and so she is obliged to ask one of them to take over the estate. If the deceased's brother or other relation takes over the estate in such circumstances, he will have to support the widow and bring up the children as his own. When the children grow up, he will have to buy wives for the sons and will receive the marriage prices of the daughters.

3. There are cases of women who take over the estate of their deceased husband and bring up his children by themselves but they are rare and as a rule, a woman who is left with small children has to have recourse to her husband's relatives. As a rule, property cannot descend to a woman except in trust for her children, but if there is no male with a better claim, a woman may inherit and she would do so before people merely belonging to the same clan as the deceased, unless they had some other claim to the estate beyond clan relationship.
4. Every Lushai has an heir of some sort, as will be shown later on. Inheritance carries with it, obligations as well as rights and anyone inheriting an estate, inherits all the debts as well as the assets and must pay them; he must also support the widow and depends of a man from whom he has inherited, he may support either in his own house or in a separate house as they may arrange. If the heir and the widow live in separate villages, the widow must come and live in the same village as the heir, as it is impossible to support a person living in another village. If the heir refuses to support the widow and the dependents of the man from whom he has inherited, he will lose the inheritance and the widow may look for someone else who is ready to look after her and her children and this man will get the inheritance. A widow, who is being supported by her husband's heir, is expected to work and assist the household to the best of her ability. There are a number of different ways in which an estate may descend and they require to be dealt with separately.

5. PA ROKHAWM

This is inheritance from a father. A man's direct heirs are his sons and if he has several sons, the youngest son, who is also called the *fatlum*, is regarded as the formal heir. In actual practice, however, a man's property is divided among all his sons, unless anyone of them has quarreled with and separated entirely from him, in which case, he would have no claim. Very often, a father divides his property among his sons before he dies and when this is done, the father's division must be accepted. The youngest son is treated as the heir because he has to look after his parents in their old age and lives with them. If he has failed in his duty, he cannot claim the privileges of the youngest son, when the property is divided up. The youngest son as the formal heir gets first choice of articles he wants out of the estate and say, there were a gun, some mythuns and some cows to be divided, they will be divided into chares and the youngest son would get two shares to one share of each of his brother. It is realy only in this respect that the *fatlum* or formal heir has any advantage over his brothers. An illegitimate son or *sawm* can claim to inherit with his brothers and if he has no brothers, would inherit all his father's property, before any of his father's brothers or other relations. A *hmeifa* or son by concubine comes after legitimate sons and before *sawns.*

When a man dies, leaving adult sons, the mother may say, "so long as I am alive, you cannot divide up your father's property" and under certain conditions, is entitled to take up this attitude. A mother often does this if she has an unmarried daughter or a widow daughter or grand children to support and in such circumstances would continue to occupy the *khumpui* and look after the household affairs instead of her late husband. Her sons cannot object to this and must let her mother look after the estate, if, however, the mother proceeds to waste and dissipate the estate, the sons can object and divide up the estate among themselves.

A widow left with small children can claim to succeed to the estate on their behalf and often does so. More often, however, she has to get her husband's brother to take over the estate and look after her and her children as explained in paragraph (3).

6. PAMI ROKHAWM

Pami rokhawm is inheritance from the father's brother. It is very similar to inheritance from a father but has slight differenced. The examples will illustrate the case :-

1. A and B are husband and wife. A dies having been predeceased by his children and his nearest heir is his brother's son C. C will inherit the estate but he must support his uncle's widow B. If C refuses to support B, he will lose the inheritance which will go to the nearest heir who is prepared to support her. If B prefers to goand live with her own relatives, she is at liberty to do so.
2. A dies, leaving very small children behind him, his widow goes to his nephew B and ask him to take over A's estate. B, then, inherits A's estate and will have to support A's widow and children. He may support them in his own house or they may live in their own house as they like and B will support them there. If, however, B lives in a different village to A, A's widow and children will have to come amd live in B's village as he cannot be expected to support them in a different village. When A's children grow up, B will get their marriage prices if they are girls. If they are boys, he will have to buy them wives. If A or his children have any debts, B will have to pay rhem. If B refuses to pay up A's debts, he will lose the inheritance and will have to return anything he has received out of the estate.

3. A dies, leaving dependents, whether a widow or very small children or both. These dependents are unable to look after themselves, but A's nearest male relation whose duty it would be to look after his dependents and take over his estate, lives in another village and delays a long time before he comes to look after the estate. Meanwhile, A's dependents have got someone else to look after them or have gone to live with A's widow's relations. Eventually, A's nearest relation arrives and wants to take off A's dependents to live with him in his village. If A's dependents do not want to go with him, they are entitled to do so and may retain A's property. The heir by failing to carry out his duty to A's dependents, lose his claim to the estate.

7. UNAU-ROKHAWM-

Unau-rokhawm is inheritance from a brother. If the deceased leaves no children, the case is simple, his brother succeeds to the whole estate. If however the deceased has left small children, his brother must support them and cases similar to that given in illustration which follows are not uncommon.

A dies, leaving a widow and infant children. The widow finds that she cannot keep her household going by herself, so, she goes to A's brother and asks him to take over A's estate and to look after her and her children. If A's brother agrees, he inherits the estate. If, however, A's brother finds himself unable to undertake the duty of looking after A's widow and children, he cannot inherit the estate and the widow is at liberty to find someone else who is ready to inherit the estate and support her and her children. In such a case, there is no breaking off of relationship between A's family and his brother.

If a widow claims to administer her husband's estate on behalf of her minor sons, she is entitled to do and her husband's brother cannot object. If however the widow proceeds to dissipate the estate, her husband's brother can object and claim to administer the estate on behalf of the minor sons of the deceased. If the widow before her sons grow commits adultery, she is *uire* and the deceased's brother can take his children and estate and turn the widow out. If after the sons grow up, the widow commits adultery and sons rais no objection, no one also can do so.

8. UNAU-BUL TAKTAK LO BOKHAWM and LAICHIN ROKHAWM

This means inheritance by distant relative or fellow clansmen. These persons only come in failing any nearer heirs and inheritance by such persons is governed by same rule as inheritance by a full brother. The heir may be a distant relative or a friend of the deceased, who had lived with him and helped to support him for a long time and who succeeds to the estate failing a nearer heir. A men succeeding in this way would have to look after the deceased's widow and children in the same way as any other heir. The widow, if she has sons, can claim to administer the estate on their behalf and if she does so, the deceased's friend cannot object but the widow is debarred from claiming *chawmman* from him if he then leaves her house, no matter how long he has lived with the deceased. A fellow tribesman might succeed to an estate in the same way failing any nearer heir but unless he can show a definite relationship to the deceased, the deceased daughter if he had one, would have a better claim to inherit.

9. CHAWMHLUM ROKHAWM

A man who is unable to do any work very often gets someone to live in his house and support him, if his relations are unable to support him or refuse to do so. A man who goes and lives in another's house and support him, may inherit the estate of the man he supported. Thus A gets B to come and live in his house and support him as his own relatives are unable to do so. When A dies, B will inherit his estate. If A's marriage price is in arrears, B will try to pay it up. If A leaves a widow, B will have to support her either in his own or in separate house. Cases like thi are known as *chawmhlum rokhawm.*

10. ZAWNCHAWP ROKHAWM

This is very like the inheritance and is very rare. Only a man with no relations at all can devise his property by will. A man without any relations at all, when he thinks his death is approaching, usually selects a man to appoint as his heir and the man so appointed will come and live in the house of the man who has made him his heir and will inherit his property on his death. The appointed must arrange for the funeral of the man from whom he has inherited.

11. PU ROKHAWM

A man may inherit from his paternal drandfather and great uncles, provided that there are no nearer heirs. The ordinary rules governing inheritance as already explained will apply in this and in the case of inheritance from the people specified below.

Vice versa, a man may inherit from his grand children.

12. NI-ROKHAWM

A man can inherit from his paternal aunt. Thus, if A's aunt is a widow without any children, A will inherit her estate when she dies.

13. FA ROKHAWM and UNAUFATE ROKHAWM

If a man dies childless during his father's lifetime, his father will inherit his property and a father will inherit before the deceased's brothers. A man may also inherit from his nephew. Thus A and B are brothers and B has a son C. B dies and A supports C in his house and treats him as his son. C then dies, A will inherit his estate .

14. RAMHRANGAMI ROKHAWM

The fact of a man and heir living in different countries in no way preclude the heir from inheriting. Thus A has a son B, who is living in Burma and while B is in Burma, A dies, B is entitled to inherit his estate, but if during B's absence A has appointed one C as his heir and C, prior to A's death has looked after A and has buried him, B can only get two third of the estate, the other one third will go to C as recompense for his trouble. Again A and B are

brothers. B has migrated to another village and they have not seen each other for years, none the less, if A dies without any children, B will inherit his property.

15. MICHUANG ROKHAWM

A *Michuang* is a vagabond without any relations and such persons are rarely found in lushai. Cases arise occasionally, however of a man who cannot get on with anybody and who has no relations and who has consequently wanders about from village to village and from house to house, the man in whose house he dies will any property he may have. If he dies in the *zawlbuk* or in the *thirgen's* forge the chief will inherit his property. It may be seen unlikely that a vagabond will have any property but it is quite possible that he would be wearing an amber necklace or have a little cash in his possession either of which would be worth inheriting.

16. HMEICHHIA IN RO A KHAWM or *inheritance by women*-

As a rule, no woman can inherit property, but if no other heirs are available, a woman might inherit. Thus if a man dies without any other heirs, his widow or his daughter might inherit his estate. A man's daughter would inherit before his widow. A daughter or widow would inherit before a mere fellow tribesman.

17. ROKHAWM DUHLO or *refusal of inheritance*-

A man cannot refuse to accept an inheritance which has descended to him as the nearest direct heir. He cannot escape the obligations that fall upon man's heir. Men sometimes try to refuse an inheritance on the ground that acceptance would mean that they would have to pay up the deceased's debts. No one however can refuse an inheritance in this way and debts descend automatically to the nearest heir in the same way as assets. Debts can never be repudiated and man's heir is always liable to be used for his debts and must pay them.

APPENDIX-III

MIZO HNAM DAN

(MIZO CUSTOMARY LAW)

Compiled by the Committee on Mizo Customary Laws,

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BUNG-3

NUPUI PASAL ININEIH THU

(Customary Law of Marriage)

Chang 36 INNEIHNA CHUNGCHANG Hmasang atang reangin Mizote hi, Palai hmangin mipa chhungte leh hymeichhe chhungte an in berem a, Sadawtin Rem-ar a talhsak a. Mipa chhungten hmeichhe chhungte hnenah nupui man an pe a, hmeichhe chhungten an dawng a. Hmeichhia chu a pasal inah a lawi a. Sawdawtin innei chu an sam a suihkaihhlihsak a, Ar-zangtuak talhin a inineihtir thin.

Tun hnuah erawh chuan Sakhaw Puithiamte an ininehtirtu tura thuneihtuten an ruat apiangin an inneihtir thin.

1) **Innei/Nupa** : Hmeichhia leh mipa, puitling, nupui pasal pawm lai nei lo v eve, palai hmanga mipa chhungte leh hmeichhe chhungte inberema, man inhlan a, inneihtir theituin a inineihtir hi **Innei** an ni. Chutianga inneite chuah chu **Nupa** an ni.

Note: 1. Inneihna hi nu leh pate ve ve inbiakremna Sakhuain a nemngheh thin a ni.

2. Inneihtir theitu: Sawrkarin emaw, thuneihtuin emaw a ruat apiang **Inneihtirtu** an ani.

2) Man hlanna: Tun hma chuan hei hi tawngkaa tih a ni thin a, lehkha kan neih chinah chuan ziaka tih a ni, hetiang hian:-

a) Inneite hming v eve;

aw) Inneite kum zat ve ve;

b) Inneite pa hming ve ve;

ch) Inneite khua/veng ve ve

d) Man zat;

e) Man hlan zat

f) Man bat zat

g) Thutphah zat

h) Man hlantute hming keh signature;

i) Man dawngtu hming leh signature;

j) Hriatpuitute hming leh signature;

k) Man hlanna hmun;

l)Man hlan hun lehni.

m) Inneih ni

(Form en rawh)

2) **Nupaa chhiar theih loh**: Inluhkhung eamw, infan eawm, inru emaw, tlan dun emawt te chu eng chen pawh nupa anga awm dunin fate pawh nei hial mah se, chang 36(1) sawi angin innei an nih loh chuan nupaa chhiar theih an ni lo.

Chang 37 MAN LEH MUAL Hmasang atangin Mizo Dana nupui pasala inneihnaah chuan, mipain a nupui man a pek thin chu '**Man leh Mual'** a ni. Man leh mual hi mihringte inleina a ni lo va, chhung leh khata insuihkhawmna turta inremna entirna ani. Chuvangin kawngro nei taka siam a ni.

Man teltu chu pa bert a ni a. Pa ber a awm tawh loh chuan, a aiawha pa chan chang apiangin an tel thin. Man teltu chuan Mo chu a theih angin a lawi ang a, mak chhiat a tawh pawhin a tuam hlawm tur ani.

Man leh mual hi tangkaa bithliah a nih hma chuan ro thil, thi leh dar te leh sial te an lo hmang thin a. Tin, bell eh hriamhrei thleng pawha hman ani bawk thin.

Hetiang huna an pawm dan tlangpui chu Se puitling hi **'Sial'** an ti a, Se puitling lo hi '**Tlai**' an ti a; chu chu '**Sepui chanve'** anga ngaih ani.

Mizovin Tangka kan hman tantirhna a hlutna an chhut dan tlangpui chu:

Sial- Cheng Sawmli

Tlai- Cheng Sawmhnih

Tlai Sial- Cheng Sawmhnih

Tin, '**Tlai'** tih hi Se puitling lo tihna a ni a, Sial hming a lo put ve avang hian Man leh Mual thuah hian '**Tlai nga'** an lo ti ber thin.

1) **Man bi**: Pain a fanu pasal nei tur manbi a thliah ang ang hi **Manpui** ani. Manbi thliahna chu **Tlai** ani a, Tlai chu Rs 20/- hua ngaih ani. Sailo man chu Tlai 10 a ni a,

hnamchawm man tlangpui chu Tlai 4 ani a, a tawng san theih ber chu Tlai 5 ani. Pain a fanu pasal nei tur manbi a thliah bakah amah leh lainate ei tur chi hrang a siam hi **Mantang** ani.

Nun dan leh khawsaknate a lo danglam zel a, tun hnua mani atana hman tlangpui ni deuh bera lang chu, Manpui leh Mantang Cheng Zali leh Sawmhnih (Rs.420/-)_ ani. Man teltu Pa-in man eitute hnena Mantang a sem dan pawh a tlangpuiin a hnuaia bithliah ang hi ani.

a)Sum hmahruai- Cheng 60/- (Sawmruk);

aw) Sumfang- Cheng 50/-(Sawmnga);

b) Pusum- Cheng 40/-(Sawmli);

ch) Palal- Cheng 30/- (Sawmthum)

d) Ni-ar- Cheng 20/- (Sawmhnih);

e) Naupuakpuan- Cheng 20/- (Sawmhnih);

2) Man eitute : Mizo inneihna chungchanga man eitute hi Palal eitu tih chuah lo chu laina bul tal tak an ni vek a, Palal erawh hi chu khualkhuaa pasal nei tan phei chuan hmelhriat tha deuhte zawn chawp a ni fo thin.

3) **Mantang:** Mizo inneihnaah hian hmanlai chuan tangka van avangin man pet la thei hi an vang thei hle a. Chuvang chuan hmeichhe lam chhungte hian '**Manpui'** chu pe thei lo mah sela, '**Mantang**' tal hi chu pe thei turin an phut deuh hram thin. Chuvangin Mizo Inneih danah hian Mantang hi a pawimawh em em tih a lang thei a ni. Mantang eitute chu a hnuaia tarlan ang hi a ni:

a) Sumhmahruai: Sumhmahruai chu Mantang zinga mi, Pasal nei pa chanpual a ni a, a ni chuan a unaute emaw a fapa indang tawhte emaw a teltir thin.

b) Sumfang: Sumfang pawh Mantang zinga mi, pasal nei pa leh chanpual a ni a; a ni chuan a unaute emaw a fapa indang tawh emaw a teltir thin.

c) Pusum : Mo pu, (Mo hringtu nu pa) ei tur a ni. A pu chu lo thi tawh mah sela, a pi (a pu nupui) a la dam phawt chuan a pasal la dam tluka ngaih a ni a, ani chuan a ei tur a ni. Anni nupa an thih tawh chuan a rokhawmtu ziding ber chuan a ei ang. Pu dik tak chuan '**Pu ban man'** Sial a thing thei.Pusum teltu dik ber a thih tawh chuan, a fate zinga mi pakhat aia tamin pusum an tel thei a, chu chu '**Pu Phir'** an ti. Chu bak chu Mantangah phir a awm ngai lo (Mantang eitu zingah pusum teltu chuah hian lawi a kham thei ani).

d) Palal: Khuakkhuaa pasal nei chuan an va innghahna tur '**Thlen in'** an tih thin atan hmelhriat tha leh bul an zawng thin a, mi tu pawh thisen zawmpui kher lo pawh an zawng thei. Chu chu '**Palal'** an ti a, pasal nei khan duh duha chaw a lam ngamna tur a nih avangin '**Chawthleng zenna'** an ti thin. Nu leh pa biak phak loh leh biak hman loh thil engpawh lo thleng sela, pa hminga thil ti thei a ni.

e) Ni-ar: Ni-ar hi a pa farnu (a ni) ei tur a ni. Ni dik an awm loh pawhin a awiawh zawn chawp theih a ni.

f) Naupuakpuan : Mo lawizawn a u ei tur ani. A nausen laia lo pawtu leh awmtleitu a nih avanga eitir ani. U a neih loh pawhin a zawnchawp theih ani.

Note: Pa chuan heng sumhmahruai leh sumfang teltu turte hi a tul a tih loh chuan a siam lo thei. Mantang dang eitu turte erawh hi chu a tlangpui chuan siam ngei tura ngaih ani.

Chang 38 PALAI Inneih buatsaihnaah Palai pahnih aia tlem lo tirh tur a ni. Palaite chian innei turate thu-thlung tih fell eh man hlan hi an tih tur a ni.

Chang 39 THUTPHAH Hmeichhe pasal nei chu, a lo upat a, harsatnain a tlakbuak hunah, a mah a intunun nana hman tur thlavang a neih theih nan leh a pasal nene inthen thulhah pawh a thuam a lakkir theihna tura a man hlan laia a man dawngtuin Rs.20/- (Tlai) a pek kir leh chu **Thutphah** ani.

Thutphah leh **Thuam** inzawm dan cu hetiang hi a ni: Hmeichhia pasal neiin Thutphah a neih loh chuan, lo inthen pawh ni se, a thuam a la kir thei lo va, a pasal emaw a fate emaw chan tur a ni. Thuam a lakkir dawn chuan thuam manah Cheng Sawmhnih (Rs.20/-) a pe tur ani.

Hmeichhia pasal nei, thutphah nei chu, a pasalin a mak chuan, a man ba zawng zawng, thutphah nen lam a pasal chuan a pet la vek tur a ni a, chu bakah a bungrua leh a thuam zawng zawng a chhuahpui vek thei.

Hmeichhia pasal nei, thutphah nei chu a thih chuan a chhungten a thuam zawng zawng an la kir thei; man ba erawh a awm chuan man chu tlaiin a kiam tur a ni. Amaherawhchu thutphah tih loh man dawng zawng zawng chu pek tlak vek tawh a nih a, a chhungten thuam an lak bawk chuan, Thutphah chu lak tur a ni lo.

Chang 40 THIAN MAN Hmeichhiahin pasal a neihin thian a nei thin a; mahse thian man a awm ngei tur a ni chuang lo. Thian man a awm erawh chuan Tlai aiin a tam ngai lo va, hmeichhe lam pek thin a ni. A thian khan pasal a neih ve hunah a thian let ve leh ngei tur a ni a, a thian chu remchang lo sela, a thian chuan a aiawh, a laizawn emaw, midang emaw a hmang thei. Chutiang nil ova mi dang, thian a zawng thar a nih chuan a thian man a ei kha a pe kir leh thin.

Chang 41 LAWI Man teltuin a duh chuan, fanu pasal nei chu ranin a lawi thei. Lawina sa chu moneitu lam nen, zat leh zata insem a ni a, mipa lamin a lu an chang thin.

Note: Mo nu leh pa neinung deuhte chuan lawi nan Sial an hmang thin a; mi tam ber chuan fanau malsawmna atan Vawkpuiin an lawi thin.

Khualah sa ken a harsat chuan, a lu chuah an thawn thin a**.** Lawina chu vak emaw, sial emaw, bawng emaw a ni thin.

Chang 42 MO LAWI Mo a lawi dawnin mipa lamin mo hruai turin laina thenrual thate an tir a, hmeichhe lamin lawichal an ruat a, mo chu a thiante nen lawichal hovin mipa Inah an lawi thin.

Tunhma chuan vawi hnih-lawichhiat leh lawithat a awm a, tuinah chuan lawichhiat hi a awm ta ngai lo va, vawikhat lawiah fihlim nghal a ni.

Chang 43 LAWICHAL Mo lawi tur huraitu ber atan hmeichhe lam nu leh pain an aiawha mi an ruat hi '**Lawichal'** a ni. Khual khuaa pasal neihaah pawh mawhphurtu ber a ni. Mo chu a pasal turte inah tha tak leh him taka a lawi thiehna tura pa chan change hruaitu a ni. Lawichal chuan Tlai aia ytam a phut tur a ni love. Lawichal man hi mipa lamin an pe thin. Tualchhungah chuan Lawichal man hi pek ngei tur a ni chuang lo.

> **Note**: Lawichal chuan Mipa In an luh dawn hian, **"kha fanu kan rawn lawipui e,"** tiin hma hruaiin an au thin.

Chang 44 MAKPA CHUNGCHANG Mipain Nupuite chhungkua belh tum saa inberem a, innei a, a nupuite chhungkuaa a luh chuan '**Makpa Chhungkhung'** a ni.

Inneih hnuah pawh an dinhmun azirin Makpa chhungkhung a awm thei.

Chang 45 ZAWLKENPUAN Inneihnaah hmeichhiain '**Zawlkenpuan**' a nei tur ani. Zawlkenpuan hi Inneihna thil serh tikimtu pakhat a ni a, a pasal a thih hnuah tuam nana tih a ni. Zawlkenpuan chu Mizo puandum pangngai a ni a;Puan thulkhung dang ang a ni lo. Zawlkenpuan nei lo chuan a pasal in atangin a buatsaih thei; amaherawhchu, a senso chu hmeichhe lam tum a ni. Zawlkenpuan chu a fanuin a chhawm thei lo. Inthen thylhah pawh Zawlkenpuan chu a chhawmtuin a chhuahpui thei.

Chang 46 LAWI AR Mo lawi turin **'Lawi Ar'** a laiwpui thin a, chung ar chu man teltu leh man eitute pek khawm a ni.

Chang 47 ZAWNCHAWP PA LEH ZAWNCHAWP NUTA TE

Hmeichhia, Nu leh Pa nei tawh lvin pasal an neih dawnin Palal eitu ang mai ni lo, pa-a vawn tur emaw, nuta-a vawn tur emaw a zawng thei a, chuang a zawnte chu '**Zawnchawp Pa'** emaw '**Zawnchawp Nuta'** emaw ani. Chung mite chu hmeichhe lam chuan man a teltir thin.

Chang 48 PALAI SA Inneihnaah lawina ran talh a awm chuan a dar eawm, a nakruh pahnih hleh emaw palai sa a tan palaite hnena pek tur a ni. Mo lawmnaa ran tlah belh a nih chuan Palaiin palai sa dang a phut tur a ni lo.

Chang 49 NU MAN Nupa inthen tawh fanu emaw, nulat fain emaw pasal a neih a, a nuin a man a ei ve thin hi **Nu-man** a ni a. Mangtang a ni lo.

Nu man chu cheng sawmhnih (Rs 20/-) a ni a, a hringtu, a nu dik tak chuahin a ei tur a ni.

Chang 50 HMEICHHE BUNGRUA Hmeichhiain pasal a neiha a chhawmluh ngei tur chu 'Hmeichhe bungrua' tih thin chu hengte hi a ni- **Pawnpui** te, **Thul** te, **Thingrem** te, **Phurhhlan** te, **Thembu** te leh **Zawlkenpuan** te . Hmeichhiain pasal neiin Pawnpui chhawm tur nei lo sela, a pasalin a lamsakin emaw, a pasal ina a puahin emaw, hmeichhe man chu Tlaiin a kiam thin. Puah lain hmiechhia chu thi sela, man kiam tur a kiam lo vang. A dangte hi chu neih vanga man kiamna a ni lo. Pawnpui chu lo chhia sela, a pasal in atangin puah leh sela, a tira a chhawm anga ngaih tur a ni.Hmeichhia thi sela, fa thihsan a neih loh chuan Pawnpui tih loh a bungruate chu a chhungten an la kir leh thuin a; fa a neih erawh chuan lak kir tur a ni lo. Pasalin nupui dang a neih leh dawnah erawh chuan, Pawnpui pawh lak kir a ni thin.

Chang 51 THUAM Hmeichhia pasal nei, a pain emaw, a man eitute emawni thil engpawh an chhawmtir reng reng chu **Thuam** a ni. Thuam chuziak zat emaw, a aia tam emaw pawh a ni thei a, a aia tlem erawh chu Thuama chhiar a ni lo.

1) Thival hrui thum emaw
2) Thifen hlui hrui khat leh thival tak hrui khat emaw
3) Thihna tangka cheng 20/- man aia hniam lo emaw
4) Tangka fai Rs.20/0 aia tlem lo emaw
   "Thuam" hi chi hniha then theih a ni:

1) Laksawm theih Thuam: Laksawn theih Thuam chuan thil pathum, Incheina lam te, Inchhung chungrua te, pawn lama awm khawih chet theih te a huam.

2) **Laksawn theih loh Thuam:** Laksawn theih loh Thuam chuan **In hmun** te, **Huan te**, **Sangha dil** te leh thil dang khawihchet theih loh Thuam atana an pek chu huam vek.

Hrilhfiahna: Thuam nei reng reng chu a man Tlai (Rs. 20/-) in a pung thin. Thuam chi inneih ni kher lovah pawh pek theih a ni. Pek lain Thuam a ni ngei tih sawi chian tur a ni.

Nupa chu lo inthen sela, uire vang a nih loh chuan thuam zawng zawng a chhuahpui vek thei.Amaherawhchy, Nupui chu a thih a, Thutphah tih loh a man dang zawng zawng chu pek tlak a nih bawk chuan, Thuam zawng zawng kir mah se, Thutphah a kir ve lo.

Thuam reng reng chu thil pawimawh bik, tambarah leh an nupaa pawimawh an tih dun thil dangah te pawh an hmang thei a.Amaherawhchu, in hmuna in sak naneawm, huan enkawl nan eawm, pawisa puk tulna thilah a pasal chuan in hmun chu ama hmingin dah ma se, a hmun kha chu a chhawmtu Thuam a ni reng. Chutiang bawk chuan, Thuam chu tambar thiol ni lo,nawmchenna lam thil atan an nupaa remtih dunin lo hmang pawh ni se, a paslain a nupui chu mak chuan, thuam an lo hman man chu a pasal chuan a rul ang.

Hmeichhiain sum a chhuahin emaw, mipain a nupui a makin emaw, thuam zawng zawng a kir thei.Chuvang chuan, pasal nei chu tupawhin eng pawhin lo thuam se, a thuamtu remtihna tel lo chuan neitu nihna tihdanglam theih a ni lo.

Hmeichhe Thuam, in hmunah mipa in sensovin, in sa sela, hmeichhia chuan sum chhuah leh si sela, in hmun chu a ta a ni reng a; mahse, in chu mipa ta a ni. Hmeichhiain in a neih dawn chuan, a sakna man a pasal hnencha a pein emaw, a pasalin a hmun chu a nei dawn a nih chuan, a nupui hnenah in hmun man chu pein emaw an inremsiam thei. Chutianga an inremsiam theih loh chuan Roreltute thu lo chuan a tu zawk zawk mahin mahni chanpual ni lo chungah thuneihna an nei ngawt thei lo.

Chang 52 INRU Mipain hmeichhia nupuia neih duhin nu leh pate hriatpui lohvin an inah hruai sela, **'Inru'** a ni. Man leh mual thuah inru chu fan anga ngaih a ni. Chang 36 sawi anga insawiremna a awm loh chuan nupui pasala pawm a ni lo. An insawirem hnuah chuan hmeichhe man tlaiin a pung thin.

Chang 53 TLAN DUN Mipa leh hmeichhia, inneih duh, nu leh pate hriatpui lohva, anmahni awmna in ni lo, hmun dangah awm dun sela, **'Tlan dun'** an ni. Tlan dun innei zui chu hmeichhe man tlaiin a pung. Chang 36 sawi anga inneih thatna a awm loh chuan inneia pawm a ni lo.Sumchhuah pawhin tlan dun vanga man punna tlai kha a chhuak ve lo.

Chang 54 LUHKHUNG/FAN Innei tura nu leh pa remtihna awm lova, mipa hnmeichhe ina a pasal nih tuma lut hi **Luhkhung** a ni a, hmeichhia mipa ina a nupui nih tuma lut hi Fan a ni.

Hetiang titu tan chuan mualphothlak tak a nih avangin man leh mual a nghawng thin. Mipain a luhkhung chuan a nupui man tlaiin a kiam a, hmeichhiain a fan chuan a man tlaiin a pung thin.

Chang 55 MAN LOVA INNEI Nupui pasala inneih dawna man leh mual awm lo tura palai hmanga mipa chhungte leh hmeichhe chhungte inbereme innei hi **'Man lova innei'** a ni.

Chang 56 MAN BO Hmeichhia pasal nei tawh, sumchhuah emaw, uire emaw vanga inthen tawh hnuin, a lunglen vangin emaw, chhan dang vangin emaw man pawh phut lovin, nu leh pa remtihna pawh awm lovin a pasal inah lut leh ta sela, **'Man bo'** a ni. Chutianga lut chu nupa dik tak a nil eh a; amaherawhchu hmeichhe chhungten man an thin thei tawh lo. A bungrua chhawm erawh chu an chhuhsak thei a, an tuithlar thei a, an insiamrem leh thei bawk.

Chang 57 MAN AIA MAN TELTU CHAWM Man aia inchawm hi, in khata awm hovin emaw, in hrang atangin emaw a inchawm theih a. Engtikawng pawhin inchawm se, inchawm hlum loh chuan man tlaka ngaih theih a ni lo.

Chutianga inchawm mek chu inngeih lohvin, hmeichhe lam duhna avnagin an nupa inthen sela, kum thum aia tam lo inchawm tawh an nih chuan, hmeichhiain mipa hnenah man zatve a pe ang. Hmeichhia chu uire a nih chuan dan pangngaiin a pasalin Thuam leh Bungrua pawh a hreng thei.

Mipa lam duhna avangin inthen an niha hmeichhia chu a pasal laka thisenpal a nih chuan, kumthum lai an inchawm tawh bawk chuan, a man zatve tluka ngaih tur a ni a,a bak chu cang 37(1) a hmeichhe man bithliah dan chu tehnaa hmangin a zatve a petal tur a ni. Thisen pal lova a thih chuan, chwm zui a ngai lo va, engmah dang sawi theih a ni lo.

Chang 58 MAN KIAM THEIHNA CHITE Hmeichhia pasal nei tur man, Tlaia a kiam theihna chu hetiang hi a ni:

1) **Lamthlang rapthla** : Pasal sun vanga kir leh
2) **Hringkir:** Pasal nei, pasal ina fa sun, nau chhiat emawa kir leh.
3) **Lengleh**: Pasal nei, fa nei lova kir leh.

Chang 59 SEHRUI SAT CHAT Innei tura miin thu an thlun fel vek tawh hnuah mipa dangin hmeichhia chu neih zawk tumin an inneih tithulh sela, '**Sehrui sat chat'** a ni.

Sehrui sat chat chuan a sehrui sahchah chhan hmeichhia chu nei ta sela, a nupui man chu sial (Rs.40/-) in a pun gang. Sumchhuah pawhin sehrui sahchah man chu a chhuak ve lo vang. Mipa chuan a neih duh leh si loh erawh chuan, nupui man zat Sehrui sahchah man a chawi ang.

Chang 60 KHUAL-KAI Nulain khaw dangah pasal a neih chuan **'Khualkai'** a ni.

Chang 61 CHHUATKIL KAI MAN Hmeichhiain a laichin bui ni lo, midang in atangin pasal nei sela, a in neitu chuan chhuatkil kai man tlai, pa chan atangin a tel thin. Sumchhuah leh uire vanga inthenah chhuatkil kai man chu a chhuak ve tur a ni lo.

Chang 62 NUPUI MAN INKHALH Unau inkara upa zawkin man pet la lovin nupui nei sela, a nupui pa chuan inneih dawnin, **"I nau Sialin ka khalh e"** a tih chuan nupui man inkhalh a ni.Chutiang a lo nih chuan a nauvin nupui a neih ve hma ngeiin a u nupui man ba chu pe hmasa ngei tur a ni. Man inkhalhna hi pet la lovin a nau nupui man pe sela, man inkhalhna Sial a nau nupui man tur atang chuan a khlahtu chuan a laksak thei.

Chang 63 CHARSUTPHAWI Tlangvalin nula unau zinga a naupang zawk emaw, a naupang ber emaw, a u te pasal neih hmain nupui sei sela, C**harsutphawi** a ni. Charsutphawia inneihnaah chuan hmeichhe man tlaiin a pung thin. A u pakhat aia tam pawh neih khalh se, a man punna chu tlai aiin a tam thei chuang lo. Hmeichhia chuan sum a chhuah pawhin, Charsutphawi man hi a chhuak ve lo.

Chang 64 THISEN PAL Hmeichhia fa nei emaw, nauchhiat emaw chu **'Thisen pal'** a ni. Hmeichhiain sawn pain, a sawn paina chu pasalah nei sela, inneih hmain anmahni inah a hring emaw, inneih hnuin a pasal inah a hring emaw, thisen pal ani. Hmeichhia, a pasal laka thisen pal lova a thih chuan, man ba a b ova, thisen pal erawh chuan man ba a bo thei lo. Rai lai mekin thi ni sela, thisen pala ngaih a ni. Nau chunga thi pawh thisen pal a ni.

Chang 65 SEBO MAWH Innei lova nula leh tlangval kara fa a lo pian emaw, a lo pian hma pawhin, sawn man pek a nihin emaw, pek ala nih loh pawhin emaw, nula leh tlangval chu an inneih leh chuan mipa lamin man panngai bakah **Sebo mawh**, Tlai (Sawn man chanve) an pe tur a ni. Sawn man pek tawh a nih chuan tlai chu Sebo mawh niin, fanghmano eia ei tur a nia , a chanve dang erawh chu man puiah rin nghal tur a ni. Sawn man la pe lo an nih chuan man panngai bakah fanghmano eia ei turin Sebo mawh 'Tlai' a pe tur a ni.

Chang 66 HMEI Mipa, nupui pawm lai neiin, a nupui tak bakah hmeichhe dang nupui anga a neih hi 'Hmei' a ni. Hmei neih hi Mizo nun danah thil mawi lo taka ngaih a ni.

Chang 67 KUT ZALA TLA Nupui man ba chu man teltuin ama thuin man ba aiah a batu bungrua lo la sela, **'Kut zala tla'** a ni. Kut zala tla hian man ba aia tlem hu pawh la sela, man ba zawng zawng a tibo. Man hu aia tam lak phei chuan rukru anga ngeih theih a ni.

Chang 68 REM AR TALH/ARZANGTUAK/REM AR TALH CHHAN

Mizo inneihnaah chuan palai hmangin mipa chhungte leh hmeichhe chhungte an in berem a, man an inhlan a, hmeichhia chu a pasal tur inah a lawi thin. Chumi zan chuan Sadawtin Khawnthiang a dawntir a. An sam zai nga vel v eve thlang chhuakin, chhamphual chungin a suihkaihhlihsak a. Chumi zawhah chhamphual chung bawkin an sam suihkaihhlih chu a phelhsak a. Chumi zawhah mipa ar leh hmeichhe ar a la a, chhampual chung bawkin buhthlei hman lai ngeiin an zangah a vaw hlum thin. Chtianga Sadawt ar talh chu, **'Rem ar talh'** a ni a **'Arzangtuak'** a ni bawk. Rem ar talh chuan inremna tur a entir a. Arzantuak chuan malsawmna a entir. Chutianga inremna leh Mawlsawmna chu **Rem ar talh chhan** a ni.

Kawng dang a awm leh a. Nupui nei turin man pek tur a zakhamna takngial pawh nei lo sela, engemawzat chu a theih huna peka intiamin, innei turin inremna an siam a. Sadawtin mipa ar leh hmeichhe ar chu a la a, chhampual chungin buhthlei hman lai ngeiin a talh a; chu

chu re mar talh a ni a, Arzangtuak a ni bawk. Chutianga neih huna man inpek tura intiam/inrem chu **Rem ar talh chhan** a ni.

Chang 69 INKAICHHUAK Hmeichhia pasal sun, a pasal thih atanga thla 3 hnua a pasal laka inthen thianghlimna siam chu, 'Inkaichhuak' a ni. Inkaihchhuah hian hriatpuitu, thenawm khawvengte an awm ngei tur a ni. Chutianga kaihchhuah thian hnu chuan pasal dang nei thei a ni a, mipa lakah chesual mah se uire- ngaih a ni tawh lo.

Amaherawhchu hmeichhia, a pasal nena fate nei tawh pasal sun, thla thum hnu pawha inkaichhuak lo chu, Pa dinhmun luaha fater enkawltu a ni. A fate man leh a tute Pusum pawh a tel thei. Chutiang nu chu Mizo nunah nu diki, nu rinawm, nu thianghlim a ni a; amaherawhchu, mipa dang laka a chetsual chuan uire a nit hung.

Pasal sun chu, mitthi chaw pek a ngaih avangin a pasal thih atanga thla thum pumhlum a pasal inah a awm tur a ni a, chumi chhung chuan inkaihchhuah tur a ni lo. Thla thum tih hi ni 90 a ni; chumi chhung inkaichhuak lui chu chang 76-a sawi angin, **'Sumchhuah'** a ni.

Note: **'Pasal in'** tih hian, la indang lova nu leh pa ina awm emaw, pasal pual ina awm emaw, mi in luaha awm emaw, an nupaa an awmna apiang a huam.

Chang 70 MAKPA HNAMHRUAL CHAT Miin nupui a sun chuan, a nupui chhungte nen an inzawmna a chah tak a vangin '**Makpa Hnamrual chat'** a ni. Makpa hnamhrual a lo chah chuan nupui dang a neih leh hma chuan pawnpui laksak tur a ni lo.

An makpa chuan nupui dang neih leh duh sela, a nupui sun taka man chu la ba si sela, a nupui sun taka chhungte chuan, an makpa hluiin nupui that a neih theih loh nan, sumhmahruai leh mantang pe thei lo khawpin a man bat kha an thing tur a ni lo. Amaherawh chu, a nupui thar man a pek tlak hma in a hlui man a la bat chu a rul hmasa tur a ni.

Chang 71 NUPUI PAWI KHAWIH Nupuiin mi pawi a khawihin, a pawi khawih dan a zirin a mawhphurtu a hrang thei. Tingthul leh mipat hmeichhiatna kawngah nupui avanga lei chawi tur a nih chuan, a pasal ni lovin, ama man teltu mawhphurhna a ni.

Amaherawhchu, tingthul leh mipat hmeichhiatna kawng ni lo, kawng dangah reng reng chuan, a nupui chawi tur leh tel tur kawngah a pasal mawhphurhna vek a ni.

Chang 72 NUPUI LAKA PAWI KHAWIH Mi Nupui laka pawi khawiha lei chawi chu a pawi khawih azirin a dawngtu a hrang thei. Tingthul leh mipat hmeichhiatna kawngah nupui lakah miin lei an chawi chuan, a pasal ni lovin, a man teltute dawn tur a ni.

Amaherawhchu, tingthul leh mipat hmeichhiatna kawng ni lo, kawng dangah reng reng chuan, nupui lakah miin lei an chawi chuan, a pasala dawn tur a ni.

Chang 73 FANGHMANO EI Fanghmano ei chu rulh leh tawh loh tura eiral hi a ni. Nupui tlan kohnaah hian, hmeichhe nu leh pain Tlai emaw, a iaa sang emaw an lo phut chuan, chu chu man ba rulh nan hman a ni thin. Man baa wm tahw loh chuan Fanghmano eia ei a ni thin.

Chumi bakah chuan, Sehrui sahchah man te, charsut phawi man te, hmingchhiat man te, inneih nia mipa lamin hmeichhe lam tana a Sensote hi Fanghmano ei a ni vek. Sumchhuah nikhuaa chhuak ve tur a ni lo.

Chang 74 HNAM DANG NENA NUPUI PASAL INNEIH Mizo mipain hnam dang nupuia a neih chuan Mizo Dan angin engkim a kal thin. Anmahni inkarah intiamna bik neih pawh lo duh sela, roluah thu leh fate thuah Mizo Hnam Dan kalhin a ti thei lo. Mizo hmeichhian hnam dang pasala a neih chuan hnam dang chhungkuaah a luta ngaih a ni.

BUNG – 4

NUPA INTHEN CHUNGCHANG

(Customary Law of Divorce)

Mizo zingah Nupa Inthen Dan chi hrang hrang a awm.

Chang 75 MA/MAK Mipain a nupui duh lova a then hi **Ma** a ni. Tupawhin a nupui a mak chuan, a nupui chu a pasal laka thisen pal a ni emaw ni lo emaw, a man ba zawng zawng a tlak vek tur a ni. A nupui chuan a bungrua leh thuam zawng zawng a chhuahpui vek thei. Nupa an nih chhunga an thawhchhuah dun In leh Lo leh bungruate chu chhungkhat lainaten awm an tih ang angin an sem a nga; annin an sem theih loh erawh chuan khawtlang roreltuten an semsak ang.

Hmeichhiain a in lam pan nan sum sen ngai sela, mipain a tumsak vek tur a ni.

Nupa la indang lo, nu leh pate nena la awm chu, an thawhchhuah dun pawh Pa angchhunga la awm an la nih avangin Pa ta vek a ni a, insem theih a ni lo.

Pasal chauh lo chuan tuman nupui maksak theih a ni lo.

Chang 76 SUMCHHUAH Hmeichhiain a pasal a duh lova, a ma thua a then chuan **'Sumchhuah'** a ni. Sum a chhuah chuan man pek tawh zawng zawng chu man eituten an pek kir leh vek tur a ni. Man atana tangka aiah bungrua pek ni sela, chumi ngei chu pekkir leh tur a ni. A awm tawh loh chuan a tira an pawn dan ang hu tawk an pe tur a ni. Hmeichhiain a thuam leh ama pual a bungrua a chhuahpui thei.

Nupui nei laiin nula ngai sela, a nupuiin a pawm duh loh a, a chhuahsan nghal chuan, sumchhuah a ni loving a, a bungrua mipaina a luhpui ngeite chu a chhuahpui thei bawk ang. Man ba a awm chuan pek tur a ni.

Chang 77 SUMLAITAN Ngam leh ngama nupa inthen hi **'Sumlaitan'** a ni. Man zawng zawng pek tlak hnua, sumlaitana inthen an nih chuan man eituten an man ei atangin a zatve an pekir leh tur a ni. Mipa chuan man zatve pawh a la pe lo a nih chuan, man zatve tlinna tur a pe ngei tur a ni. Sumlaitan ni mahse, bungrua leh thuam hi then chi a nih ve loh avangin hmeichhia chuan a chhuahpui vek thei.

Chang 78 KAWNGKA SULA MAK Nupui pawmlai neiin hmeichhe dang nupui atan a hruailuhin emaw nupui thlakna tura hualsa nei emawa a nupui pawmlai a mak chuan, **'Kawngka sula mak'** a ni. Kawngka sula mak hmeichhia chuan buhbal leh bungbel hmun thuma thena hmun khat a chang thei. Buhbal tih hian ei leh bar leh eizawnna tura an lo thawhchhuahte leh inchhung bungrua pawh an pahniha an lo thawhchhuah apiangte chu a

huam vek a ni. Roluahtu, nu leh pa in luahtu ngei pawh nu leh pa an thih hnua an nupaa an thawhchhuah dun chu a huam vek a ni.

Nupa la indang lo, chhungte dang nena la awm chu a huam lo. Hmeichhia chuan a bungrua leh thuam, hmeichhe pual bik a chhuahpui vek thei.

Chang 80 UIRE Pasal nei laiin mipa dang ngai sela, **Uire** a ni. Uirena hi hmeichhe sualna chungchuang tak a nih avangin a man pek tawh zwng zawng lak kir leh vek tur a ni, a bungrua leh a thuam zawng zawng a chan vek bawk ang. Pipute atangin **'vun inhlihsak'** em chu an ti ngai lo va, hak lai an chhuahpui thei.

Pasal sun, inkaichhuak lova pa dinhmun luaha fate enkawltu pawh, mipa laka a chetsual chuan Uire a ni. Chutianga uire chu, a faten emaw, a pasala chhungten emaw, a tu zawk zawk pawhin an hnawtchhuak thei. A faten hnawtchhuak lova awmpui zel an duh chuan an awmpui zel thei a, khumpui erawh chu a chang thei tawh lo.

Chang 81 PASAL AWM LOH HLANA CHHUAK

1) Hmeichhia, a pasal awm loh hlana mahni thua chhuak chu 'Tlan' a ni. A pasal lo hawn a, a kohva a hw duh loh chuan **'Sumchhuah'** a ni. A pasalin a koh duh loh chuan **'Ma'** a ni.
2) Hmeichhia, a pasal awm loh hlana pasala chhungten inngeih loh vanga, a pasala chhungte chhuahtir chu a pasal lo haw leh huna koh tur a ni. A pasalin a koh duh loh chuan a ma a ni. Kohva a haw duh loh chuan Sumchhuah a ni. A pasal lo haw hmain a tu zawk emaw lo thi sela, mahni thua chhuak chu Sumchhuah a ni a. Pasal chhungte chhuahtir chu mak a ni.

Chang 82 ATNA AVANGA INTHEN Nupa tu emaw zawk lo a sela, inthen tur a ngaih a ni lo. Kum thum (thla 36) chhung chu inenkawl ngei ngei tur a ni. Amaherawhchu, kum 3 hnuah pawh a reh loh a, inthen loh theih a nih loh chuan, Peksa change inthen theih a ni. Kum thum hmaa mipain a then chuan a ma a ni a. Hmeichhe chhungten loh theih lohna avang a an lak chhuah chuan Sumchhuah a ni.

Chang 83 NUPUI FANAU CHHUAHSAN Nupui nen laiin nupui atan hmeichhe dang a duh zawk avangin inthenna thu pawtchata, nupui a chhuahsan chuan **'Nupui fanau chhuahsan'** a ni. Nupui fanau chhuahsantu chuan a chhuahsan ni atangin a in leh lo a chhuahsan chu a chan a nga, a fate ta a ni ang. Fa nei, a fate nu chu chang 102-a sawi angin a fate enkawltu a ni.

Fa nei lo an nih a, an in leh lo chu an nupaa an din a nih chuan, a nupui ta a ni.

Nupui fanau chhuahsntu chuan inthenna chu tichiang lo leh pawtchat lova nupui fanau a chhuahsan a, nupui fanau lakah a mawhphurhna pawh engmah ti duh lova kum thum (thla 36) a awm chuan **Nupui fanau chhuahsan** a ni.

Note: In leh Lo tih hian, chhungkuaa thil neih zwng zwng a huam.

Chang 84 NUPUI FANAU TLANBOSAN Nupui nei laiin nupui dang neih duh vang ni kher lovin, chhan awm lova a zinnaah emaw, a hnathawhnaah emaw, eng vang pawhin rei taka wm sela, a nupui fanau laka a mawhphurhna pawh engmah ti lo leh chin hriat lohva kum thum chhung a awm chuan, **'Nupui fanau tlanbosan'** a ni.

Chumi hnuah a lo hawn leh pawhin, nupui chuan a lo duh tawh lo thei. A nupuiin a duh tawh loh chuan a in leh lo a chan ang a, a fate ta a ni ang. A fate nu chu chang 102-a sawi angin a fate enkawltu a ni. An tuten pasal pawh lo nei sela, pusum kh an pu aiah an piin a tel thin.

Fa nei lo an nih a, an in leh lo chu an nupaa din a nih chuan, a nupui ta a ni.

Chang 85 HMEICHHE BUNGRAW LAK Uirena tih lohah chuan, engti kang pawhin nupa lo inthen sela hmeichhiain a bungrua a la kir leh vek thei. Hmeichhe bungraw laknaah mipa bungrua lo tel palh sela, in pek kir leh mai tur a ni a, rukru anga puh thei a ni lo. Bungrua lak hian mipa lam leh hmeichhe lam hriatpuitu fel tak an awm tur a ni.

Chang 86 ZANGZAW Mipa,vanduaina avanga mipa thei lo hi **'Zangzaw'** a ni. Zangzaw chu inenkawl nan thla thum nghah tur a ni. Thla thum thlenga nupui a pawl theih loh chuan, a nupui chu peksachangin a kal thei a, thla thum nghak zo lova kal chu sumchhuah a ni.

Hmeichhiain a pasal chu Zangzawah puh sela, a puhna chu a dik loh chuan, hmingchhiat man chawitir theih a ni. Chumi bakah mipain a nupui chu a pawm duh loh chuan Sumchhuahin a kal tur a ni.

Chang 87 CHHUPING Hmeichhia, vnduaina avanga chhuping pasal pawl thei lo chu, in enkawl nan thla thum nghah tur a ni. Thla thum hnuah pawh pawl theih loh a la nih fo chuan, Peksachanga kaaltir theih a ni. A pasalin thla thum tlin hmaa a chhuahtir chuan a ma a ni. A nupui pawhin thla thum a nghah duh loh chuan Sumchhuah a ni.

Chang 88 NUPA INPAWL DUH LO Inneih atangin mipain a nupui pawl duh lo sela, thla khat chhung nghah tur a ni. Thla khat hnuah pawh a la pawl duh loh fo chuan, a nupui chu a chhuak thei a, a pasal chuan man zawng zawng a pet la vek tur a ni. Chutiang bawkin hmeichhiain a pasal a pawl duh loh chuan, thla khat hnuah a chhuak ang a, man zawng zawng a pe kir vek ang.

Chang 89 NUPUI TLAN KOHNA Hmeichhia, pasal nei lai chu eng vang pawhin a pasal hnena awm duh lovin ama chhungte hnen lamah awm se, **Tlan** a ni. Tlan kohna chu an tlan chhan azirin Rs.5/- atanga Rs.20/- thleng a ni thei.

Chang 90 SAZUMEIDAWH Tlangvalin man awm lovin hmeichhia an chhungte remtihnain nupuiah neih duhin luhkhung sela, hun eng emaw chenah duh lovin chhuahsan leh ta sela, **Sazumeidawh** a ni. Chutianga Sazumeidawh chuan eng pawh lo thawk chhuak mah sela, a luhpui bak chu engmah a chhuahpui thei lo.

Chang 91 NUPA INTHEN FATE DINHMUN Mizote hi pipute atang rengin Pa lam atanga chi kal a nih avangin fate chu pa ta an ni. Nupa an inthen chuan, an fate kum thum tling lo chu Nu hnenah an awm thin. Nu lam chuan hnute hne lai chu pa hnenah an hruai thin. Kum thum tling lo chu pain lakluih loh tur a ni a. Nuin pa hnenah a hruai loh pawhin fa chu pa ta a nih avangin enkawl thuah Pain mawh a phur.

Kum thum tling tawh erawh chu, Pa hnena awm tur an ni a; nu hnena awm zawk an nih pawhin nuin chawm man a beisei thei lo. Fate enkawl thuah erawh chuan, englai mahin pa inthiarfihlim thei lo.

Fatlum erawh chu nuin a tulpui peih chuan pain chuh buai thei lo va, an fa dangte pawh an inbiakrem dan azirin Nuin a awmpui thei.

Duhtlanna hmang thei an nih hnuah chuan, an faten an awnna tur duh an thlang thei. An fate chu khawiah pawh awm se, nupui pasal neih thuah chuan pa chan leh mawhphurhna a ni reng.

BUNG – 12

MIZO RO INLUAH CHHAWN DAN

(Mizo Customary Law of Inheritance)

Chang 176 RO Ro chu in leh lo te, sum leh pai te hi a ni.

Chang 177 RO NEIH DAN Ro inluahchhawn chungchangah **'Ro'** tih hi a hnuaia sawi ang hian kawng thumin a then theih :

1) **Thlahtute atanga neih ro :** Hei hi chhungkaw Pa berin a pi leh a pute emaw, a nu leh pa emaw atanga ro a luah hi a ni.
2) **Thawhchhuah atanga neih :** Ro neituin a pi leh pu emaw, a nu leh pa tee maw atanga Ro a luah ni lo, ama kut khawih emaw, a nupui fanaute nena an thawhchhuah liau liau emaw atanga an neih Ro te hi a ni.
3) **Chhungkaw ro awm thei dang :** Ro neitu nupuiin emaw, a tu leh fate leh a mote emaw, pa ina awm khawm chhunga anmahni hminga ram leh thil dang chi hrang hrang an neihte pawh ro a ni vek a. Amaherawhchu, chang 50 leh 51 –a a sawi hi chu hmeichhe ro bik a ni.

Chang 178 RO NEITU Mizo hi pate lam atanga thlah kal zel leh ro inluah chhawng zel kan ni a, chuvangin chhungkaw pa ber chu ro neitu a ni. Chang 177 (3)- a ro pawh hi chang 50 leh chang 51-a a sawi, hmeichhe bungrua leh thuam tih loh chu, pa ina awmkhawm chhung chuan, pa ro vek a ni. Chhungkaw pa ber ro neitu tih hian, hmeichhia pawh chhungkaw pa ber dinhmunah a din chuan a huam a ni.

Chang 179 RO NEIH THU NEIHNA Ro neitu chuan a ro chungchangah a hnuaia sawi ang hian tuneihna a nei :

1) Ro neituin a dam laiin, tawngkain a ro a sem thei.
2) Ro neituin a dam laiin thurochhiah a siam thei.
3) Ro neituin, a ro thenkhat chu pian leh murnaa ro luahtu tura a ngaih ni lo, midang hnenah emw, pawl hnenah emaw pawh a pe thei. Mahsela, hengtianga ro changtu hi ro luahtu a ni chuang lo. Ro thenkhat a chang ve mai chauh a ni.

Chang 180 RO LUAH THEITU INDAWT DAN

1) Mizote hi chang 178-a sawi angin Pate lam atanga chithlah kal zel leh ro inluah chhawng zel an nih avangin ro neitu chu pa a ni. Pa a thih chuan a nupui chu chang 181 (8)-a sawi angin, ro neitu, pa dinhmun luahtu a ni. Ro neitu a thiha ro luah theite indawt dan chu hetiang hi a ni : fate leh mahni bulbal dik tak, thisen zawmpuite chauh ro luahtu tak tak an ni thei. Mahni bulbal tak tak te chu : fate, pa te, pianpui unau te, pa unau te, pu (pate pa) te, tupa (fapa fate) te, fanu leh tunu (fapa fanu) te leh an thlahte an ni.

2) a) Ro neitu ro luah tur hian, nu leh pa awmpuitu, fapte an lal ber a, chumi zingah pawh chuan fatlum, chhungpui fa (nupui dik tak fa) hi nu leh pa chawmhlum tura ngaih a nih avangin a lal ber a ni. Fatlum pawh ni se indang tawh, nu leh pa awmpui lo a nih chuan, afapa dangte chuan a naupan dan indawtin chumi dinhmun chu an rawn luah ang a. Fapate zingah chutianga nu leh pa awmpuia, chawm hlum thei an awm loh chuan, awmpuitu leh chawmtu chu fanu pawh nise roluahtu a ni thei. Fapa mal chu hnathawhna leilet emaw, huan emaw, hna dang avangin emaw in hrangah lo awm mah sela, ro khawm thei lo tur anga indanga ngaih tur a ni lo. Nu hrang laka fate pawh pa hnena an awm chuan, roluahtu dik tak an ni a. Nu hnena awm nghet erawh chuan, fapa, pa hnena khawsa an awm chhung chuan pa rovah chanvo a nei lo.
b) Fapa, pa ro luahtu tur chu a ro luah hmain thi sela, a thia fate chuan a chunga ro luah dan sawi angin ro chu a luh ang;
c) A dawt lehah chuan, ro neitu chuan fapa dang a neih lohva, fanu a neih chuan fanu chuan a luah ang;
d) A dawt lehah chuan, an la dam a nih chuan, ro neitu nu leh pate;
e) A dawt lehah chuan ro neitu unau mipa leh an fate;
f) A dawt lehah chuan ro neitu farnute leh an fate;
g) Ro neitu chuan unaute a neih loh chuan, pu (pate pa) lama thisen inzawm leh remchang hnai ber apiang;
h) A chunga sawi anga mipa lama ro luahtu tur an awm loh chuan hmeichhe lama laichin hnai ber.

Chang 181 RO LUAH DAN

1) Ro neitu, fanu fapa nei a thih chuan, a fate chu an nu hovin an khawsa ang a, an nu chu chang 178 leh chang 180-a sawi angin ro neitu pa dinhmun luahtu a ni. A fate leh a tute chungchangah pawh, a pa dam laia pa dinhmun luahin, fate man teltu leh pusum eitu a ni. Ro luh chungchangah pawh tuma tihbuai theih a ni lo. Hetianga tu leh fate enkawl thei nu chu, nu dik leh nu rinawm, nu zahawm leh chhuan tlak, nu thianghlim a ni. Chutiang a nih zawh loh erawh chuan, chanvo engmah a nei thei lo.

   Pa remtihnaa lo indang tawh fapa tan emaw, chanvo siamsak leh tul bikna avang emawa In lo Ram dinhmun tihdanglam tur thuah pawh, nu remtihna tel lo chuan tih theih a ni lo. Amaherawhchu, nu chuan pa dam laia pa duh dan tlangpui chu a zawm ngei tur a ni.
2) Ro neitu chu a thih chuan, ro luahtu dinhmun pawimawh indawt dan chu hetiang hi a ni :

   Insem tur chi-ah chuan, fapa tlum ber chu a farnute leh unau chhawmdawl ngaite chhawmdawltu tura ngaih a nih avangin a unaute chan leh hnih a chang ang. Amaherawhchu, insem theih loh a chanpual chu, a unaute chan leh hnih hu a nih chuan, insem theih chi-ah chanpual a nei loving. Hetiang thuah hian fanu, inhrang chang lova la awm, nu leh pa inchhunga thawkchhuaktu chuan chanvo a nei ngei tur a ni.
3) Ro neitu chuan fapa nei lovin, fanu chauh neiin a nupui fanau thihsan sela, a fate chu a nu hova an khawsak laiin an nu chu thi ve leh ta sela, nu leh pa ina la awm fanute chuan ro chu an luah ang a, Ro insem dan chu fapate ro insem dan ang bawk a ni ang.
4) Ro neitu chu nupui fanau nei lovin thi sela, a nu leh pa an dam chuan a ro chu an luah ang. An dam tawh loh chuan, chang 180-a ro luahtu lal dan indawta hnai berin a luah ang.
5) Ro neitu chuan, fa nei lova nupui a thihsan chuan, chang 184 (4)-a a sawi anga rel tur a ni.

6) Ro neitu chuan, a nupui ni lo, midang lakah fa nei sela, a hnena a awmpui chuan, a nupui laka a fate chan ang bawk chanvo a nei ve ang. Amaherawhchu, chutiang chu kum thuah naupang ber ni mah sela, fatlum chanvo a chang thei chuang lo.
7) Pain a nupui a sun hnuin nupui dang nei leh sela, a nupui te lakah chuan fa nei ve vein amah chu thi ta sela, a nupui hmasa bungrua, chang 50-a a sawi ang chi bungrua a neih reng reng chu a nupui hmasaa laka ama fa bikten an chang ang Chutiang bawkin a nupui hnuhnung bungrua pawh ama fa bik ten an chang an.
8) Mizo Ro inluahchhawn danah hian, tulna bik tak a awm loh chuan, roluahna lehkha lake maw, pek emaw a awm ngai lo.
9) Mizo Ro inluahchhawn danah hian, tul bikna a awm chuan, Roreltu hnen atangin Roluahna lehkha lak tur a ni.

Chang 182 THU ROCHHIAH Thurochhiah chu, Rwi o neituin a ro luahtu turte hnena a ro an luah dan tur a siam leh mi dang hnena a ro sem dawngtu tur leh an chanvo tur a siam hi a ni. Chu chu ro neituin tawngkain emaw, ziakin emaw a sawi thei. Thurochhiah siam dan chu a hnuaia sawi ang hi a ni.

1) **Tawngkaa thurochhiah siam dan :** Ro neituin a rilru harhfim laiin tawngkain thurochhiah a siam thei. Chutiang thulhah chuan thuhretu pahnih aia tlem lo hriatpuiin, a ro a semna thurochhiah chu a siam ang. Vanduaina tawh phut vangte leh dam lohna avanga thurochhiah siam hmanhmawh bikna thilah chuan, thuhretu pahnih neih kher lo pawh ni se, a thurochhiah chu pawm theih a ni.
2) **Thurochhiah ziaka siam dan :** Ro neitu, puitling chin chuan mihring rilru pangnga put lai leh a rilru harhfim laiin, chang 180 (1)-a a sawi, a mi duh apiang roluahtu atan thurochhiah a siam thei.
3) **Thurochhiah ziak dan :** Thurochhiah ziaka siamtu chuan a hnuaia mi ang hian a siam tur a ni.
   a) Ro neituin chang 180-a mi anga a ro luahtu tur hming leh awmna khua te, amah nena an inlaichinna leh ro a luah tur chu chiang taking a ziak tur a ni.
   b) Ro neituin, ro luahtu atan ni lovin, chang 179 (3) anga a ro thenkhat chauh pek atan a thurochhiah ziaka a siam pawhin, thurochhiah a siamsaka hming leh awmna khuate, a ro pekte chu chiang takin a tilang tur a ni. Chutianga a ro sem dawngtu chu chang 179 (3)-a sawi angin, ro luahtu nih a tling lo.
   c) Ro neitu chuan, thurochhiah chu ziakin a siam ngei a ni tih fiah nan, a hming a ziak ngei ang a, a ziak ni thla leh kum pawh a ziak tel thlap tur a ni. Ziak thiam lo a nih chuan, a kutzungpui thla a nem kai ngei tur a ni.
   d) Ro neituin, ziaka thurochhiah a siam chuan, ama duh dan ngeia a ziak a ni tih hriatpui nan thuhretu pahnih aia tlem lo, mi ang pangngai puitling chinin, ro neitu hming ziak zawnah a hmuh lai leh hriatpui ngeiin an hming leh an awmna hmun, ni leh thla leh kum chiang takin thurochhiahah chuan an ziak vek tur a ni.

      Amaherawhchu, Ro neituin ziaka thurochhiah a siamin, ama ziak ngei a ni tih rinhlelhna a awm loh chuan thuhretu awm lo mahse pawm theih a ni.
   e) Ro neituin, a ro thuhmun atan thurochhiah vawi khat aia tam, tawngka emaw, ziak emw a siam chuan, a hnuhnung zawk apiang pawm tur a ni.

Chang 183 THUROCHHIAH DIK LO SIAM

1) Tupawh vauna emaw, bumna emaw hmanga, ro neitu, ama duh dan hmang thei lova thurochhiah siamtirtu chu hrem theih a ni.
2) Ro neitu hminga dawt thua thurochhiah lo siamtu chu, a chunga hremna siam ang hian hrem theih a ni.

Chang 184 PASAL RO CHUNGCHANG NUPUI DINHMUN

1) Pasal ro luah thei tur emaw, chanvo nei thei tur emaw chuan, a nupui a nihna a chiang tur a ni. Chang 36-a sawi anga inneihna chiang tawk a awm loh chuan, Nupuiah chhiar theih a ni lo.
2) Pasal sun chu, Chang 102-a sawi anga nu thianghlim a nih chuan, Pa chan changing a fate enkawltu a ni.
3) Chang 177 (1)-a sawi thlahtute atanga ro luahte chu mipa lam, a ro luahtu an awm chhung chuan, a nupuiin a rochung thei lo. Nimahsela, a nupui dam chhung chuan a remtihna lo chuan ro chu laksak theih a ni lo.
4) Pasal sunin, a pasal rovah ro neitu a nih theih dan emaw, chanvo neitu a nih theih dan emaw chuan, chang 180 (1) leh 181 (5)-a sawi a kalh tur a ni lo.
5) Ro neitu chu, a nupui hmasa lakah fa neiin, a hnuhnung zawk a pawmlai lakah fa nei lovin thi sela, a nupui hnuhnung zawk chu nu thianghlim a nih loh chuan, chanvo engmah a nei tur a ni lo. Nu thianghlim a nih chuan, chang 181-a sawi angin pa chan a chang ang a. An awmho theih loh chuan ro an insem ang. Nu chuan fatlum chanvo ang ni lo, fapa dang chanvo ang a chang thei. A chanvo chungah chuan, a ta liau liau a nih tawh avenging, thuneitu a ni tawh a, ama ro luahtu tur pawh a duh angin a siam thei.
6) Pasal sun hmeichhia chu, pasal nen la indang lo a nih chuan, roluah chungchangah chanvo a nei lo. Fapa a neih erawh chuan, a pasala pa chuan a tupa chu chanvo a siamsak thei.
7) Pasal sun hmeichhia chu a pasal nen indang tawh a nih a, Nu thianghlim a nih bwk chuan, chang 18-a sawi ang a, pa chan chang a nih tawh avangin a fate emaw, midang reng rengin emawan hnwtchhuak thei lo. A fate nen awmho thei lo an nih erawh chuan, nu leh pa dinhmuna ding a nih tawh avangin fate chu an indang zawk tur a ni. Fatlum ber chu ro luahtu tura ngaih a nih avangin nu hnena awm tur a ni a, a awm peih loh erawh chuan, a unaute zinga nu chawm peih apiangin fatlum chanvo changing a ro a luah ang.

Chang 185 FAPA INDANG

1) Fapa, nupui nei emaw, nei lo emaw, In hranga thuk hrang chhuanga khawsa chu Indang a ni.
2) Pain fate chu a duh hunah a indantir thei.
3) Pain a fate indantit kher lo mah se, eizawnna avangin emw, tul dang avangin emaw, hmun dangah fanaute nen kum nga(5) an lo khawsak hman tawh chuan, mahni puala in leh lo emaw, in hmun emaw nei lo mah sela, indanga ngai a ni.

   Fapa, ro luahtu tur chu a pa nen intuithlar vang ni lo va, chhungkaw rokhawlhna leh tul dang vanga chhungkaw remtih tlana, amahin emaw, nupui fanau nen emw in hranga khawsa chu eng chen pawh lo khawsa hrang tawh mah se, ro luah chungchang thuah chuan indanga ngaih a ni lo.

   Fapa mal chu, a pa nena intuithlar vang chauh lo chuan a malin emaw, chhungkuain emaw, eng chena rei pawh hmun dangah awm mah se, ro luah chungchangah engti kawwng mahin indanga ngaih a ni chuang lo.
4) Fapa indang tawhte chuan, chang 180(2)(a)-a mi ang chauh lo chuan, pa rovah chanvo an nei tawh lo. Amaherawhchu, pa ber dam lai atanga unauzaho, in hrang chang tawh pawh, eizawna kawnga la inti hrang lova, hmun khata an la tih tlan chuan, ro khawm chungchangah indanga ngaih an la ni lo.

Chang 186 MAHNI FATE ROLUAH Chang 181(4)-a sawi angin, nupui fanau thihsan nei lovin ro neitu thi sela, a pain a ro a luah ang. Pa a thih tawh chuan nuin a luah ang.

Chang 187 PA MI RO LUAH Ro neitu chu nupui fanau leh nu leh p leh unaute nei tawh lovin thi sela, a unaupa fate zinga mi, chang 180-a sawi, ro luah thei indwt hnai berin ro chu a luah ang.

Chang 188 TUPA RO LUH Tupa indang tawh chu, nupui fanau leh tu leh fate leh, hringtu nu leh pa pianpui unaute nei lova a thih chuan, a pu/pi in a ro a luah ang.

Chang 189 PI RO LUAH Pi ro luah tur lo awm ta sela, a luah thei tur hnai zawk an awm loh chuan chang 181(4)-na angin a kal ang.

Chang 190 RO KHAW TURA SIAMCHAWP Hemi bunga sawi Mizo ro inluah chhawn dan pangngai baka tulna a lo awm chuan a hnuaia sawi ang hian ro khawmtu siamchawp theih a ni.

1) **Ro luah thei tur nena intuithlar vanga ro khawmtu siam :** Ro neitu chu a ro luah theitu tur chang 180-a swi ten en lo intuithlar ta sela, a duh apiang a ro khawm turin a siam chawp thei. Chutianga tih a nih chuan, an intuithlarna leh ro khawmtu thar a siam dan chu thuhretu pahnih tal awmin ziaka dah tur a ni.
2) **Chawmhlumtu tura ro khawmtu siam :** Ro neituin laichin bulbal nei lo sela, a ro khawmtu atana tha a tih apiang a zawng chawp thei. Hetianga tih a nih chuan, thu hretu pahnih tal awmin ziaka dah tur a ni.

Chang 191 RO LUAHTU MAWHPHURHNA LEH TIH TURTE

1) Ro luahtu chuan a ro luahsak chungah chuan a tih tur pual a tihsaak ngei tur chu hengte hi a ni :
   a) A thihin a ruang a hlawm ang a, a vui bawk ang. Mitthi chungchangah tihtur awm apiang a ti.
   b) Ro luahtu chuan, a ro luahsak khan leiba a neih chuan a mawhphurhna a ni.
2) Chang 181-a sawi ro luahtu, a tu a pawhin luah sela, a ro luah torah leiba rulh tur a tel vang maiin ro luahtu nihna a pha thei lo.

Chang 192 MI CHUANG RO KHAWM Mi tupawh awmna nei lova vak mai mai chu, mi inah a thih chuan, a thihna in neitute chuan, dan pangngaia an vui chuan, a neih apiang a khawm tur a ni. Mi inah thi lova, khawlaiah a thih chuan, khawtlangin an phum ang a, a neih apiang chu khawtlang ta a ni.

Chang 193 INRALNA Chhiat tawh nikhuaa inralna hi ruang chhuahna hmuna pek a nih thin avangin a dawngtu tur pawh a hnuaia mi ang hi a ni :

1) **La indang lo inpuia khawsate dinhmun :**
   a) **Ralna thilpek :** Chhungkaw pa ber la dam chuan ralna thilpek chu pa ber kuta lut tur a ni. Pa ber a dam tawh loh chuan, pa chan changtu nu ber kutah a lut tur a ni. Nu leh pa an awm tawh loh chuan an aia chhungkaw hotu ber kuta lut vek tur a ni.
   b) **Ralna thil bik :** Khawi atang pawhin ralna thil bik lo kal a awm chuan a petuten tu pawh pek bik nei mah sela, chhungkaw hotu ber kutah a lut hmasa phawt tur a ni. Amaherawhchu, hmanral lehna lamah chuan chutiang thil bikin a tum tak ang

zela hman tur a ni a, chhungkaw hotu leh an pek bik remtih tlanna a nih chauh loh chuan, kawng danga hman tur a ni lo.

2) **Indang tawhte dinhmun :** Indang tawh chhungkuaah tupawhin chhiat tawk se, tupawhin ralin tupawhin dawng se. Thihna Ina ral a nih chuan, chu chhungkuaah chuan pek luh vek tur a ni.
3) **Hmun danga thi :** Mahni khuaah ni lo, khaw dangah miin vanduaina a tawhin an khaw lama hawnpui theih lohva laina hnai aan bel a nih chuan, ralna reng reng chu a thite chhungkua leh ruang thlenna chhungkua ten an insiamrem tur a ni.

Form 1.

MAN HLANNA LEHKHA

(Brideprice Form)

(Chang 36 (2))

He Man Hlanna Lehkha hian mipa nupui neitu hian a hnuaia ziak ang hian a nupui man a hlan tih a entir :

1. Innei te hming :
   (1) Mipa hming _____
   Kum zat _____
   Pa hming _____
   Khua/Veng _____
   (2) Hmeichhe hming _____
   Kum zat _____
   Pa hming _____
   Khua/veng _____
2. Man zawng zawng zat _____
3. Man pek zat _____
4. Man bat zat _____
5. Thutphah (A awm chuan) zat _____
6. Man hlantute – 1.Signature _____
   Hming _____
   2.Signature _____
   Hming _____
7. Man dawngtu _____
8. Man hlanna hmun _____
9. Man hlan hun leh ni _____
10. Inneihni _____
11. Hriatpuitute : (1) Signature _____
    Hming _____
    (2)Signature _____
    Hming _____

APPENDIX – IV (A)

INTERVIEW GUIDE FOR LAWYERS

1) Years of service

2) Where did you get your law degree?

3) Why did you choose legal profession?

4) Your experiences as lawyer (i.e most difficult case etc)

5) What is the difference between government advocate and private advocate?

6) How many courts are there in Mizoram?

7) If I wanted to understand and study the legal system in Mizoram and observe court cases, what would you suggest?

8. Issue of separation of judiciary and executive.

9) With regards to Mizo customary laws? Do lawyers need to have certain degree or do you study?

10) As a legal person, do you see any connection, conflict between Mizo customary laws and Indian Constitution?

11) Mizo women's legal rights

12) Is the present legal system in India and in particular Mizoram satisfactory?

13) What do you think is the most common legal problem faced by Mizo women?

14) Is the legal profession a tough one? How do men and women lawyers cope with system?

15) Name

16) Age

17) Sex

17) Educational Qualification

18) Religion

19) City/residential address.

APPENDIX – IV (B)

INTERVIEW GUIDE FOR JUDGES

1) What kind of cases do you deal with most?

2) Which are hard cases and why?

3) In your experience are there any cases that remain unsolved?

4) How are hard cases resolved?

5) What kind of cases are most common in Mizoram court?

6) In criminal and civil cases, what are the most common cases in a specific sense?

7) How do different legal systems operate in contemporary Mizo Society?

8) How many courts are there in Mizoram?

9) Is Aizawl District Court is only for people who are within the District?

10) When and to whom Mizo customary law should be used?

11) When you used Mizo Customary laws, which book you refer to? Is there any rule? Perry (1927) or District Council Court (1957) or the latest version 2006 published by Mizoram Government.

12) Is Mizo customary law only used in family matters? What laws do you use in criminal cases?

13) Is there any conflict of law (e.g. constitutional laws vs customary law?)

14) If such cases happen how do you solve the problems?

15) There are lawyers who are non-Mizo do they also handle civil cases where Mizo customary laws are used?

16) If such cases happen which language do they use?

17) Legal position of Mizo women

18) Are there any jugements you passed but regret later?

19) As a Christian, do you pray before passing judgments? How far you religious views influence your work?

20) How much amount is usyally granted in Maintenance cases?

APPENDIX –IV (C)

INTERVIEW GUIDE FOR MHIP LEADERS

1) Please tell me MHIP's Aims and Objectives

2) Your involvement with MHIP and experiences

3) MHIP – most notable work? Are there any changes?

4) What is the context of MHIP's declaration of Mizo women's empowerment, and what kind of empowerment you are talking about?

5) When and how the movements start?

6) What are the issues raised by MHIP in Mizoram with regard to women's right?

7) What are responses from the society, do you have good supporter?

8) What do you think about Mizo women's status compare to other women from mainstream India society?

9) Your opinion on Mizo customary laws? Do you think it is fair or discriminatory for women?

10) Do you support reform of Mizo customary laws?

11) If women are discriminated by Mizo customary laws? What laws should be good for Mizo women? What is your view?

12) What are the responses of Mizoram state government with regard to MHIP demands?

13) What is Mizo Divorce Ordinance Act, 2006? Do you consider it an achievement for MHIP, has anyone used the Ordinance? Is it benefitting for women?

14) Do you think Mizo women need to have a divorce Act?

15) Do the Mizoram church and especially women's wing in the church support MHIP demands? What are their reactions?

16) Since Mizo women are discriminated within the Mizo customary laws, what would be the proper steps to take? In mainstream India, there is a talk of Uniform Civil Code- what do you think of that?

17) How does Women Commission function in Mizoram? Do MHIP collaborate with thia?

18) What do you think is the biggest challenge and major problems of Mizo women's right.

19) What are important issues MHIP has raised and also succeeded?

20) With regards to inheritance rights by will enacted by the Mizo Autonomous District Council, do you think this is good enough or sufficient for women?

21) Your opinion on Maintenance Act?

22) If there's disagreement arises within your family regarding property? Would you go to court?

23) Will you give equal share of property to your daughters and sons?

24) Do you consider men and women as equal?

15) Name

16) Marital Status

17) Age

18) Sex

19) Educational Qualification

20) Occupation

21) Religion

22) Numbers of Years and Designation in MHIP.

APPENDIX –IV (D)

INTERVIEW GUIDE FOR OF MEMBERS OF THE COMIMITTEE ON MIZO CUSTOMARY LAWS

1) Aims and Objectives of the Committee on Mizo Customary Laws

2) Criteria for members- Were there any criteria for appointing members of the customary law board committee? Why do you think they select you as a member?- any specific duration etc.

3) Can you tell me what you think of the customary laws compiled by N.E Perry

4) Why Committee on Mizo Customary was formed?

5) During District council period there was an attempt to reform Mizo Customary Laws, are these entire based on Parry's Mizo Laws? Was there any attempt to get information through different sources?

6) The Committee was formed in 1980, and the Mizo Custrymary Law was published first notified in 2005, why did it take so long? How different is this time from the old one?

7) Is there any reform or any changes.

8) What is the process of Compilation?

9) What are the demands made by MHIP during the compilation of the law? And how do you feel about that?

10) What were the most debated issues?

11) Is Mizoram Presbyterian church's opinion sought during law compilation?
12) According to Mizo custom divorce is very easy; do you think this has increased the divorce rate? Will it be better if we have divorce act?

13) Do you think customary law needs reform?

14) What about those who wanted to reform Mizo customary law? Are they only MHIP leaders?

15) If customary laws cannot be reform as you said, what about some 'tradition' or customs which no longer relevant in the present society?

16) What do you think of Mizo women's position at the society level and also legal status?

17) What do you think of the MHIP demands (women's rights)? How do you feel about some of the issues raised by them? Do you think it is important for Mizo society?

18) Is Mizo customary law codified?

19) What is the present state of Mizo Customary Law Board Committee? How does it function? Any comment.

APPENDIX- V

(A) Gauhati High Court, Aizawl Bench

(B) District Court Aizawl

APPENDIX- V

(C) Mizoram State Legal Service