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
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 viewpoint 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 Lalnipuui 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 fulfill 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. 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.

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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 levyng 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

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<td>3.</td>
<td>Amicable settlement with the help of judge</td>
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<tr>
<td>4.</td>
<td>Dismissed Case</td>
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<td>5.</td>
<td>Non-Mizo Case</td>
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<td>2</td>
<td>‘Sumchhuah’ (Divorce by the Wife)</td>
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<td>3</td>
<td>‘Sumlaitan’ (Divorce by Mutual agreement)</td>
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<td>4</td>
<td>‘Sazumeidawh’ (Husband leaving wife and children)</td>
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<td>‘Sawnman’ (illegitimate child)</td>
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### 1.3 Economic Profile of the litigants

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<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Husband with monthly salary (government employee)</td>
<td>177</td>
</tr>
<tr>
<td>2</td>
<td>Husband Daily Worker/Labourer</td>
<td>6</td>
</tr>
<tr>
<td>3</td>
<td>Wife with monthly salary</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Wife Daily Worker/labourer</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>186</strong></td>
</tr>
</tbody>
</table>

### 1.4 Nature of Work (Husband)

<table>
<thead>
<tr>
<th></th>
<th>Nature of Work (Husband)</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Grade 1 level (officer, lecturer etc)</td>
<td>12</td>
</tr>
<tr>
<td>2</td>
<td>Grade 11 level (UDC, LDC, Primary Teacher)</td>
<td>51</td>
</tr>
<tr>
<td>3</td>
<td>Grade 111 level (Gov’t Driver, Peon, IV Grade etc)</td>
<td>51</td>
</tr>
<tr>
<td>4</td>
<td>Army/Force (IR, Excise, MAP)</td>
<td>66</td>
</tr>
<tr>
<td>5</td>
<td>Daily Worker/Labourer</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>186</strong></td>
</tr>
</tbody>
</table>
1.5 Maintenance Amount (2002-2009)

<table>
<thead>
<tr>
<th>Below Rs.1000</th>
<th>102</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rs.1000 (fixed)</td>
<td>39</td>
</tr>
<tr>
<td>Between Rs.1000-Rs 1500</td>
<td>25</td>
</tr>
<tr>
<td>Above Rs.2000</td>
<td>20</td>
</tr>
<tr>
<td>TOTAL</td>
<td>186</td>
</tr>
</tbody>
</table>

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.\footnote{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,}

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, 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 3\textsuperscript{rd} Mizoram Arm Police (MAP) Battalion. He submitted that he is

\footnote{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 outcasts. 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 names 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 rapists’. 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.