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

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 V1 (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,
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

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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)

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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 kalloor 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,

\(^2\) 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

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 Dendi (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, Dendi stated that, it was difficult for her to stay with son Tlanmawia, who was supposed to look after her. But, Dendi 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, Dendi 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 Dendi, 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 Dendi. However, later on, as Dendi 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 ‘input’- 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.