CHAPTER-I
INTRODUCTION

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

Law, Religion and Gender

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

Law is generally recognised as an important instrument of social control, and religion is considered to control morals and ethical level in members of the society. Both law and religion are closely related to each other. Morden (1984:8) writes: ‘Much of the beginnings of law took over religious institutions and religious precepts and put the force of state behind them’. Morden also points out that law and religion share certain same values and principles, and they also have similarities in many ways such as: the conservatism of law and religion and legal institutions in religion. Mulford Sibley illustrates the intersections of law and religion, he states, ‘The relation of law to religion
is two-fold: the sanctions of the legal system provide for and organize the institutions of religion; and, on the other hand, religion undergirds the system of law’ (1984:45).

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

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

Law has been considered essential for maintaining the legal norms of a society. Sometimes the legal system is a tool of the political system and sometimes the religious system is a tool of the political system or vice-versa. The important point is, in whatever
form the relationship takes, there is always a relationship between the legal system and religious system. Over centuries, the legal system and religious system have clashed, cooperated and persecuted one another (Berman 1983).

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

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

**Sociological Perspectives on Law**

The sociology of law defines law as “rules of action” or “statuses established” by authorities such as states. The early social theorists such as Karl Marx and Emile Durkheim did not write a systematized treatise of law. Alan Hunt (1981:91) proposed that the reason why there is no Marxist theory of Law is that, law never constituted a specific object of inquiry for either Marx or Engels. He is of the opinion that the creation of Marxist theory of law is an ongoing subject. Though Marx himself did not devote much space to law, he nevertheless had much to say about it. First, law is presented as part of the bourgeois state; it was an instrument of class oppression. Secondly, since the ruling
ideas of a period are the ideas of the ruling class, legal concepts such as “rights” are part of the system of bourgeois domination. Law is ‘presented as an agency of conflict, not integration, which functions to protect and preserve not common and shared interests, but dominant interests variously conceptualized as class or elite interests’ (1981:95).

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

It is difficult to give a clear cut theoretical definition of law. According to Petrazycki (1955), by law he means which is experienced as “imperative-attributive” in its character. Imperativeness refers to obligation, while attributiveness refers to right or claim and obligation. He states, ‘Law is that which has to do on the one hand with someone’s obligation to do (or to desist from doing) something, and on the other with someone else’s demand that the action or desisting identified by the obligation carried out’. Petrazycki further distinguishes between the moral and legal phenomena saying that a moral experience is marked only by the feeling of “obligation”, while a law-related experience is additionally marked by the “ascribing of a right” to someone. The former is precise since law is always marked by “moral obligation”, but then there is uncertainty in the latter. Because sometimes law may not be additionally marked by “ascribing of a right” to someone, law may be a concern with the maintaining of social order which comes before individual’s rights also demanded “duty” and “responsibilities” (Petrazycki 1955; Podgorecki 1974:191).
Indra Deva argues that one of the major problems and difficulties underlining the concept of law is because of the “western conceptualization” of law in terms of its own institution. Since this kind of conceptualized framework of modern centralized state and its instrumentalities have few similarities with the “non-modern” social system, it tends to narrow down the vision to such an extent that even the need to enforce law in some societies is denied (Deva 2005). This is quite similar to that of Simon Roberts’s argument. Roberts states that because of the use of English law (I take it as western concept of law) some lawyers who work in small scale societies have misunderstood other people’s institutions of social control through adhering to preconceptions they have formed about their own. What they considered law was generally assumed as ‘laws which derived from a common law or civil law model’ (1976:672). However, there are laws operating in small scale society which are based on the customs and traditions of the people. It is necessary to break away from the concepts and institutions of western legal system if we are to understand the control mechanism operating in other societies such as tribal society.

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

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

Malinowski used the term “law” here implying to all modes of social control. His opinion includes though the western legal institution have no direct counterparts in some societies, their functions in maintaining continuity and handling conflict have to be performed somehow in all of them (Roberts 1979). Malinowski plays a major part in introducing new concepts of laws in particular laws in small scale societies. Malinowski’s work also raised theoretical questions about written law. Sally Moore
(1969) is of the opinion that, Malinowski’s “bold strokes” open new level of understanding of law among the Anthropologists. A theory of primitive law like Hartland’s (1924) suggests that, the primitive man automatically obeyed the customs of his tribe because he was absolutely “bound” by tradition. Malinowski on the other hand was less concerned with “prohibitions and sanctions”, but he was rather taken by the ‘positive inducements to conformity to be found in reciprocal obligations, complementary rights and good reputation’ (Moore 1969). Malinowski’s view is that, the social and economic stake of the man coupled with one’s wishes to remain in “good standing among his fellows” is as the dynamic force behind the performance of obligations. Sally Moore comments:

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

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

The idea of law and definition of law can open up more doors for confusion and debates. Dhagamwar (2006:12) states, ‘The Law means different things to different people, and what it means depend on how well they can deal with it’. In order to have a concept of law comprehensive enough to be applicable to all kinds of social system, one needs to view law in a broad sense. Sociologists look upon law as a sub-system of the socio-culture as a whole. Law is very much part of the socio-cultural system of the society and custom, traditions and beliefs/religion play an integral part in forming the laws. The need for legal system is also a function of human beings living in the society. Upendra Baxi (1982) refers to the police, lawyers, the courts and the jails, and the
legislature as forming the legal system. Broadly speaking laws are present in every layer of the society. Moore states, not only does every society have law, but virtually all significant social institutions also have legal aspects. In order to understand the whole legal system of one society, one must master the whole institutional system of that society- ‘from citizenship and political place to property and economic relations, from birth to death, and from dispute to peaceful transaction’ (1969:253).

Legal Traditions

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

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

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

Legal Pluralism

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

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

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

In Hindu law, scriptural sanction, and religious laws are clear examples of NSLS being self-consciously repressive. These are either expressed through religious law or other domains. Every society has its own inventory of repressive system of NSLS. It has a reference to certain complex tradition. Baxi makes an interesting point that there is a connection between NSLS and status of women, and also the idea that the states offer an arena for emancipation of women is somewhat a utopia. He also states that legal
pluralism is simply incomprehensible unless we consider a plurality of power structures. Baxi draws from Michel Foucault’s theory of power to explain legal pluralism (Baxi 1986).

**Debates within Legal Pluralism**

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

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

Often allied with the school of critical legal studies, scholars of “new” legal pluralism often reject the preoccupation with the state law characteristic of conventional jurisprudence, and are themselves critics of the official legal ideology proclaiming the law of the state as the only normative order. Because the study of new legal pluralism is mainly concerned with western, its connection with older legal anthropology may not be very close...Moreover, studies of new legal pluralism do
draw heavily on those of classic legal pluralism, and they are conversely relevant to the investigation of plural normative orders within non-western societies as well (1994:10).

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

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

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

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

Personal Laws

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

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

**Hindu Law**

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

**Muslim Laws**

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

¹ Implications of “Personal Law” on marriage, divorce and property rights will be discussed in chapter 4, 5 and 6 respectively.
Schools of Islamic legal thought (*fiqh*), namely, Hanfi, Maliki, Shafi and Hanbali. Depending upon the cultural, political and socio-economic milieus in which they are developed and also upon philosophy of reasoning, each school has differed from the other in some sense or the other (Ghosh 2007: 16).

**Christian Laws**

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

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

The Lok Sabha shows no record of any discussion on this bill which lapsed in 1971. It is generally believed that the government acceded to the wishes of some
Christian Bishops who were opposed to the contemplated reform. Since then no further effort has been made to reform any aspect of Christian personal law. In 1983, the Law Commission again prepared another report on the grounds for divorce for Christians but the government has yet to act upon its recommendation. There is no direct information available about the government’s view on the matter of Christian personal law reform although the government has been made aware of the demand at least by a certain section of the community, for changing their personal laws (Parashar 1992:189-190).

Parsi Personal Laws

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

Customary Laws

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

Customary Law or “tribal law” as some have put, is not the same as “personal law”. Personal laws are based on religious ideology whereas tribal laws or customary laws are more or less based on the customs and traditions of the people. Ghosh states that, ‘Personal law is not territory-specific and its application is generally determined by the community to which persons belong by birth or the religion to which they adhere…in contrast, customary law is generally territory-specific’ (2007:129).
To understand what tribal customary law is one must first understand what a tribe is. Sociologists and Anthropologists usually define tribes as ‘This term usually denotes a social group bound together by kin and duty and associated with a particular territory’ (Marshall 1994:674). In India, popular opinion about tribe people is divided and ambivalent. During the British rule, census commissioners faced considerable difficulties in deciding where the category of tribe ends and caste begins. In 1881, when the first proper all-India was conducted the word ‘forest tribe’ was introduced (Ghosh 2007:128). The tribe are also referred to as indigenous people. According to Virginius Xaxa, ‘The Indian-language term for the indigenous people freely to refer to the tribal people’². He argued that the term has been extensively used by scholars and administrators in their writings and reports mainly as a mark of identification and differentiation, that is, to mark out a group of people different in physical features, language, religion, custom, social organisation etc. (1999:3590).

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

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

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

² Xaxa states, ‘defining 'tribe' has conceptual as well as empirical problems for the academician. But this term of administrative convenience has now been adopted by the tribals themselves to mean the dispossessed, deprived people of a region’ (1999: 3589).
Feminist Perspectives on Law and Religious Institutions

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

Feminist Legal Studies

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

Feminist legal theory seeks to explain ways in which the law played a role in women's former subordinate status and argued that laws need to be reformed. There are many theories within feminist jurisprudence. Each theory of feminist jurisprudence evaluates and critiques the law by examining the relationship between gender, sexuality, power, individual rights, and the judicial system as a whole; the second wave women’s movement of the late 1960s and 1970s gave a fresh impetus to feminist thought, and in particular stimulated the gradual entry of feminist ideas into the academy in response to political and intellectual developments in the legal field of law (Lacey 2000; Wiesberg 1993). Nicola Lacey points out that the early feminist legal scholarship pointed out and exposed the absence of women and women’s issues from the agenda of legal study. This
was followed by questions such as domestic and sexual violence, family and criminal law and the need to review such laws. Women’s ‘distinctive position in the economy began to be acknowledged in labour law and social welfare law courses’. In simple terms, we may say that feminist legal study helped make women or gender question visible.

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

**Feminist Critique of Religion**

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

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

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

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

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

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

Pre-Independent India

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

Sati

The British saw the practice of Sati (widow immolation) as “barbaric” and “uncivilized”. The early writings of the British highlighted the “peculiarities” and “barbarities” Hindu tradition to which Indian woman was the subject. According to Janaki Nair, the most common strategy adopted by all imperial power in the 19th century was highlighting the “denigration of politically and economically subjected cultures by
foregrounding the position of women in those societies, compared with the more obvious freedoms of the European woman’ (1996 50-51). This was done by pointing out the most unusual of cultural practices for attention, which were then taken as representative of the culture as a whole and worthy of reform. In fact, the practice of sati was not a common practice. However, ‘regional variation in the mode of committing sati’ was ignored by the colonial officials (Mani 2006).

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

The second was Rukmabhai’s case. This was a great deal of debate through newspapers all over India. Rukmabhai was married at the age of 11 to Dadaji Bhikaji. The marriage was never consummated and she refused to go back to him. Most of the men had stood together and stated that she should go back to her husband. This case resulted in people like Pandita Saraswati to expose the contradictions in the shashtra vis-a-vis upper caste Hindu women. Pandita Saraswati saw ‘the complicity between the
supposedly reformatory impulse of the colonial system and the reconstituted Indian patriarchy, which increased the oppression of women’ (Basu 2008:6).

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

Child Marriage

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

Women’s Education

The AIWC became more active towards this campaign. Initially the AIWC was advocating for education, but later realized that women’s education could not progress unless the age of marriage was raised. It passed the resolution that the minimum age of marriage should not be 14, but should be 16 for girls and strongly supported Hari Singh Gaur’s Bill. Around this time, the government also appointed the Joshi Committee led by N.N Joshi to discuss both the Bills of Hadbilal Shardar and Hari Singh Gaur. A resolution was passed to elect a small committee to watch and report on the progress of the Bill and
co-ordinate and direct the activities of the various provincial committees. Small committees were formed in each province to put pressure on their local members of parliament to pass this Bill. A huge campaign was launched against child marriage through public participation, articles, propaganda, posters and even postcards with many signatures were sent to parliament. During 1928-1929, AIWC strongly campaigned against child marriage, they brought out to public the ill effect of child marriage on health, education etc. Finally, with a fairly substantial majority (77 members voted and only 14 were against) the Bill became law. However, the age of marriage was not fixed at 16 for girls, but at 14. However, it is found that the law did not really achieve what was expected. Child marriage still continued and the Census report of 1931 shows that many more child marriages took place in that year. The reason was that before the Bill became an Act, and child marriages were made illegal, parents rushed their children to get married. This shows that getting a law was not enough, it had to be followed up, implemented and women organizations also realized much more work had to be done to change society (Basu 2008).

During the 1930’s, women’s movement took up the right to divorce, and inheritance and control of property. The AIWC for instance, formed a committee on legal status, undertook studies, talked to lawyers, published pamphlets and articles etc. They argued that the Hindu law should be reformed. During this time, the state of Baroda had passed a law on divorce. This strengthened the women’s movement argument and justified their statement that if an Indian princely state could do it, why couldn’t British India? Meanwhile, Dr Hafiz Abdullah, the then Member of Legislative Assembly argued that not only the Hindu law but also the Muslim Personal Law should be reformed. A bill for preventing polygamous marriages by Radha Subbarayan was also put forward. The women’s movement also wanted an amendment in the Special Marriage Act, 1872, and suggested that this should be made applicable to all Hindus and not just the Brahmos. They demanded equal rights for women in inheritance and control of property. After a great deal of pressure from the women’s movement, the government finally formed a committee under Sir B.N.Rao, D.N.Mitter and V.V Joshi from Baroda but interestingly no woman member was appointed as a committee member (Parashar 1992; Basu 2008).
However, women witnesses were called to give evidence before the B.N Rao Committee. When the quit India movement was launched in 1942, the women’s movement faced a dilemma as to whether or not women should cooperate with the government. Gandhiji’s famous statement was ‘These issues concern elite women and that there should be concentration of fighting for freedom’. This was endorsed by Rajkumari Amrit Kaur who also suggested that women should cooperate in the freedom struggle (Basu 2008).

Post-Independence Struggle

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

There are certain new laws being passed and amended such as the introduction of Dowry Prohibition Act 1961, and the amendments in 1983, 1985 and 1986. The amendments of rape laws in 1983, the introduction of labour legislations concerning women such as Equal Remuneration Act and the Maternity Benefit Act. In the 1980’s laws such as Sati Prohibition Act, the PITA and ITPA, the National Commission of Women Act and the Protection against Domestic Violence Act were passed. Kirti Singh (2008:10) classified the changes and reforms of law in the post independence period into three broad categories. The first category is laws which recognise certain rights of women
which previously did not exist, such as Hindu law reforms in the 1950’s, which now acknowledged and highlighted certain rights of women within marriage. Kirti Singh highlights, though there were law reform taking place in the area of labour legislation, Christian marriage and divorce amended in 2005 and also reforms of Hindu personal laws and introduction of the Hindu Succession Act, 1956, these laws grant women better rights but only at certain levels. Women were given “only partial rights” and not equality. She further points out that the laws that were introduced and reforms during the 1950’s could be characterized, as a member of parliament at that time said “mild moderate reforms”.

Violence against Women

The second category is the introduction of laws that define and recognize certain acts of violence against women. The second broad trend in the post-independence law reform according to Kirti Singh focused much on violence against women. The new offence called “dowry death” was introduced in IPC, which allowed punishing of the husband and his family for dowry harassment, physical and mental torture. ‘This offence defined a new species of murder, which occurred in specific Indian situations’ (Singh 2008:10). The definition also took an account of the fact that in cases of dowry death, it is difficult to gather evidence and usually there are no eye witnesses. The Dowry Prohibition Act itself sought to define the offence of giving and taking dowry, and made it punishable. Hence, an amendment to this Act in 1986 shifted the burden of proof to the accused person. This is in contrast to the previous situation where the burden of proof lies on the person making the allegations. During the first phase of the violence against women, “dowry violence” was taken as the dominant concept for understanding violence within the family. However, it was soon realised that focus on dowry alone failed to address the unequal power relations within the family that caused persistence of domestic violence. Eventually, the focus on “dowry violence” gave way to broader notions of “wife beating” or “wife battering” and then to the use of the term “domestic violence” (Suneetha and Nagaraj 2006).
The third category is the “discriminatory laws”, these are laws which have been amended, or which women’s organizations and groups are seeking to amend. For instance, archaic Victorian laws like 377 IPC, which target oral, anal and other forms of consensual sex and homosexuality. Section 377 of the Indian Penal Code was introduced during colonial period. This section declares sexual activity “against the order of nature” as criminal. The AIDWA (All India Democratic Women’s Association) re-drafted the Bill and sought to repeal 377 IPC, and also the Bill includes marital rape as a form of rape. Not only this, but also women’s groups have also demanded other legal provisions such as: - the restitution of conjugal rights and laws that punish sex workers for soliciting need to be repealed. Kirti Singh proposed that ‘the future challenges will be to legislate in areas in which there is still a paucity of laws, like in the area of Registration of Marriage, Marital Property so as to give women further and better rights, and define crimes like “honour killing”, which are invisible as far as the law is concerned ( Singh 2008:12).

**Attempt to reform Personal Laws**

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

**Property Rights**

The attempt to codify Hindu laws within the reformed laws gave women better rights, however, women are still denied to have equal property rights in the ‘Hindu Undivided Family’. The Hindu Succession Act, 1956, gave full ownership rights to women, whereas earlier she had only a limited estate in property and could neither sell
nor alienate property in any manner. Though women were given right to inherit intestate property, she was denied this right in the Mitakshara coparcenary (joint family property). Not only this, there were sections within the congress which were against the reforms. The *Hindu Mahasaba* was against the reforms on the ground of Hindu *Shashtra* and Hindu religion. The party also argued that Hindu men alone could not be targeted since Muslim personal laws remain unchanged. The fact that they were promoting negative concept of equality that stopped women from getting equal rights was of no consequence to them (Singh 2008).

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

Shah Bano was a seventy year old woman who was unilaterally divorced by her husband, who refused to pay her maintenance. Both unilateral divorce and non-payment of maintenance are sanctioned by the Muslim personal law in India. Shah Bano sued her husband under CrPc.125 section a provision that allowed destitute women to ask for maintenance. The lower court granted the petition, however, the case was put up to
Supreme Court because of the protest from Muslim community. The Indian Supreme Court held with her, but her case led to a great deal of Muslim unrest in India which also affected the then Rajiv Gandhi led congress at the centre government. The Shah Bano issue became a political issue and the status of Muslim minority in India was highlighted. It was argued by many people that any change in the status of the personal laws is seen as an assault to the Muslim community (Coomaraswamy 2005).

**Contemporary Women’s Questions and Legal Reforms**

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

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

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

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

Janaki Nair points out; “On the face of it, Article 25 does not appear to contradict the Article on fundamental rights, since freedom of religion is subject to fundamental rights listed in the part III of the constitution. Yet, in the name of freedom of religion, which leaves personal laws strictly alone, women are discriminated against in the most fundamental ways” (Nair 1996:4-5). Nair rightly points out ‘there is no single set of laws which discriminate explicitly on the basis of sex as do personal laws’. However, because of the constitutional mandate, these inequalities within personal laws and customary laws are many times ignored. Indrani Mazumdar has rightly pointed out that, ‘We have some advantages in the fact that we have a constitution which defines equality, and we also have the disadvantages of that constitutional mandate of equality operating in a social life of inequality’ (2008:28).
Some people used to argue that India has good and just laws, but they are not implemented properly. If laws are to be implemented, as it should be, there would be less discrimination. Janaki Nair says, this problem has a colonial origin which goes back to the nature of law-making. The problem is the assumption that we live in a society where everybody knows their rights and the expectation that ‘people will access their own rights in their own way, according to their own need’. Nair writes:

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

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

**Understanding Differences in Society**

The term “intersectionality” is basically coined by Crenshaw in 1989 (Denis 2008: 680). The concept of “intersectionality” emerged as ‘an interplay between Black Feminism, feminist theory and post-colonial theory in the late 1990’s and the beginning of the third millennium’ (Knudsen 2006: 62). Crenshaw (1989:139) used the concept to develop a ‘Black feminist criticism because it sets forth a problematic consequences of its tendency to treat race and gender as mutually exclusive categories of experience and
analysis’. Crenshaw argued this tendency is perpetuated by a “single axis” framework that is dominant in antidiscrimination law and that is also reflected in feminist theory and antiracist theory. According to Crenshaw, “single axis” framework ignored Black women distinctive experiences of race and sex discrimination, by using “single axis” approach, the experiences of otherwise “privileged” of the group overshadowed Black women’s experiences. Crenshaw writes:

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

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

In the beginning, “intersectionality” was introduced as intersection referring to race and gender. American researchers criticized the gender-based research for “producing diversity in gender but homogenized race”. Feminist’s scholars such as
Crenshaw (1989) and Mc Call (2005) argued that, in feminist studies, women and men were analysed as ‘different and heterogeneous across and within the female and male categories’. However, when it came to the question of race, the race-based critics argued that women and men were analysed as ‘all white and the entire same Western race’. Though the concept of “intersectionality” was considered mainly focused on race and gender, however, since the studies concentrated on the “poor” and “marginalized” coloured population, the class dimension was often implied in the theoretical reflections and analysis. Disability and alternative sexualities have also been integrated in the theory of “intersectionality” (Knudsen 2006: 61-64).

**Doing “intersectional analysis”**

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

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

Knudsen’s article suggests, by diverse and marginalized position, it includes gender, race, ethnicity, disability, sexuality. She also stresses that class and nationality are categories that may ‘enhance the complexity of intersectionality, and point towards identities in transition’. According to her, “intersectionality” is a theory to analyse how social and
cultural categories intertwine and how the relationships between gender, race, ethnicity, disability, sexuality, class and nationality are examined (2006:61-62).

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

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

**Context of the Study**

Because of the geographical location and also different ethnic identity and cultural practices, mainstream women’s issues hardly make impact on Mizo women. However, due to the ‘modern’ thought and also education now Mizo women began to
understand the discriminatory nature of Mizo Customary Law and therefore, women’s associations like MHIP have started to raise their voice. Even at present, the Mizo women feel themselves very different from those of the Hindu and Muslim women, therefore, women’s issues raised in mainstream India (e.g. dowry related violence) is seen as a problem which is faced by Hindu or Muslim women and not of Mizo women.

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

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

**Mizoram: Mizo Women**

According to the provision of Sixth Schedule of Constitution of India, special provision was given to these areas in regards to their customary practices and tradition. The Mizo customary laws are the governing laws related to marriage, divorce and inheritance/property rights. It is based on patriarchal ideology which put women at a disadvantaged position. According to Mizo Customary laws, women do not have
inheritance and property rights. For instance, a widow can inherit her dead husband’s property only by virtue of her children and for promised fidelity to the dead husband. There is no security for a widow within the bounds of the customary laws unless a will is written.

Christianity: Churches in Mizoram

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

When the missionaries first came to the region, the Welsh mission and British Baptist Mission Society covered the region where Lusei or Duhlian was the Lingua franca. The Lakher (Mara) Mission Pioneer Mission was assigned to work with the Mara people who lived in the southernmost corner of Mizoram. At present they are known respectively as, Mizoram Presbyterian Church, Synod (MPC), The Baptist Church of Mizoram (BCM) and Evangelical Church of Maraland (ECM). Mizoram Presbyterian Church has the largest number of members followed by the Baptist, while ECM has a much lesser member compared to the other two. Later other Christian groups like Salvation, Roman Catholic, United Pentecostal Church, Seventh day Adventists and others emerged. They have drawn their members from the churches that have been already established by these missionaries (Kipgen 1996; Hminga, 1987; Sangkhuma 1995). The people’s loyalty towards each denomination in the church is notably important. The important role played by the Church cannot be overlooked. Aleaz (2004:1) has rightly commented that, ‘Religion developed not only homogenous identity, but it is the prime denominator in socio-cultural, cultural, political and economic existence as well, the penetration is total and complete’.
The general perception is that the emergence of Christianity has changed Mizo society in positive ways, including that of Mizo position. It is believed that Mizo women have more freedom as compared to their fellow women in other religions, some even went to the extent to say that the Mizo women were liberated from the traditional way of living which is male-dominated and opened up new gates of entry in the field of the larger world, where they can freely express themselves. Phadke (2008:268) also stresses that the adoption of Christianity proved a positive factor in terms of Mizo women’s status in the family because Christianity has consistently expressed disapproval of the Mizo customs of polygyny and divorce. But the important question is: have women really benefited from Christianity?

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

The study looks at the relationship between the “state laws” and “non-state laws”. I use Upendra Baxi’s (1986) concept of ‘non-state legal system’ and ‘state legal system’. Baxi conceptualized people’s law as non-state legal system (NSLS) and state-legal system as the one which is more associated with the sovereign power. Baxi also states the non-state legal system as an expression of non-sovereign power and can be “self-consciously repressive” (Baxi 1986:51-52). The research attempts to examine the dynamic and interface of both these laws and gender relations. I place my study within
the context of Mizoram and focus on the customary laws of the Mizo with special reference to marriage, divorce and property rights of women.

Objectives of the Study

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

Methodology

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

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

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

**Description of Field-site**

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

**Aizawl**

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

**Mizoram Presbyterian Church – Synod**

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

Sample Selection

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

District Court, Aizawl

There are two Judiciary divisions in Mizoram and they are: - Aizawl District Division and Lunglei District Division. Under each division there are several Districts. We may say that geographically District Court Aizawl divisions cover the northern part of Mizoram, and Lunglei District Court covers the southern part. Under Aizawl District Court there are Aizawl District, Mamit District, Champhai District and Serchhip District. Under Lunglei Districts there are Chawngte, Hnahthial, Lawngtlai, Saiha. According to Lawyers and Judges (my respondents) 80 per cent of court cases in Mizoram are file before District Council Court, Aizawl. Therefore, I decided to look at court cases in District Court Aizawl in order to understand how laws operate and also the legal system in Mizoram. I studied 217 Maintenance Case under Cr.Pc Section 125, period from 2002-
2009 (available in the records room). Studies were also carried out on property and inheritance disputes from the Sub-District Council Court & District Council Court.

**Gauhati High Court, Mizoram Bench, Aizawl**

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

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

**Table No.1 – Maintenance Case**

<table>
<thead>
<tr>
<th>Court</th>
<th>Period</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>District Court Aizawl</td>
<td>2002-2009</td>
<td>217</td>
</tr>
<tr>
<td>Gauhati High Court, Aizawl Bench</td>
<td>1996-2009</td>
<td>5</td>
</tr>
<tr>
<td>Total Cases</td>
<td></td>
<td>222</td>
</tr>
</tbody>
</table>

**Table No.2- Property/Inheritance Disputes**

<table>
<thead>
<tr>
<th>Name of Court</th>
<th>Period</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-District Council Court &amp; District Council Court</td>
<td>2000 – 2009</td>
<td>60</td>
</tr>
<tr>
<td>Gauhati High Court, Mizoram Bench</td>
<td>1990 - 2008</td>
<td>50</td>
</tr>
<tr>
<td>Total Cases</td>
<td></td>
<td>110</td>
</tr>
</tbody>
</table>
Journals/Documents

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

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

- Zoram Hriattirna District Information published fortnightly by Lushai District Council. This is an official news letter of Lushai Autonomus District Council where the proceeding of the session debates are given in detail, I covered the period from 1956-1970.

- MHIP (United Organisation of Mizo Women) Documents:- Important official letters of MHIP such as their applications to the Mizoram State Government asking for implications of Mizo Divorce Law, Mizo Women Inheritance Law and others demands made by them.

- Archival documents such as: - British rules and regulation/education policy, diaries, official letters, letter- correspondence between official, government official reports, missionary reports etc.

- The Mizoram Gazette (1972-2006), published by Government of Mizoram, this contained any law or regulation passed by the Mizoram Government. It gives a detailed report of government’s activities.

Interviews

Interviewing is usually defined as, ‘A conversation with a purpose, specifically, the purpose referred to is to gather information’ (Berg 1989:13). In other words interview is defined as ‘Method of data collection mainly through the verbal interaction between the respondents and the interviewer’ (Sharma 1984:141). Interviewing includes several meetings and interactions between the respondent and the interviewer. In my study, I
have carried out in-depth qualitative interviews; I prepared an open-ended interview
guide which is quite flexible. According to Taylor and Bogdan (1984:77),

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

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

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

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

**Participant Observation**

According to Taylor and Bogdan (1984:15), ‘Participant observation is used here
to refer to research that includes social interaction between the researcher and the
informants in the milieu of the latter, during which data are systematically and
Participant observation also refers to ‘primary technique for collecting data on non-verbal behaviour’ (Srivastara 1994:110). The participant observer actively participated in all activities that are taking place and shares the situation with the respondents as a visitor, good listener and making notes of everything that is happening or taking place within that observation period, learning from behaviour, non-verbal act, and interpreting group behaviour. Trying to gain the confidence of the respondent or establishing rapport is very crucial in this context.

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

**Lok Adalat**

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

**Content Analysis of the Data Collected**

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

**Self Reflexivity**

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

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

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

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

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

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

Being “Outsider”/ “Insider”

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

In my first week in District Court Aizawl, I was still very much an outsider, and the official treated me like one. They did not speak much to me and they were watchful and careful in their conversation. After one week, things changed, many people thought that I was one of the new employees and some lawyers even came to me and asked me to
search files for them (since I was in the record’s room). By the second week, the record keepers and other official people became closer to me, before the end of the 2\textsuperscript{nd} week they all treated me as one of them. They would just give me the room key and I could enter into the record’s room alone, I actually could have stolen files had I wanted. By the end of my field work, I became so familiar with the files that I was entrusted with official work! The officials trusted me. For instance, one day a lawyer came to the record’s room looking for an old case – (inheritance case), the record’s keeper told the lawyer to ask me to help him find the files, the lawyer came to me and I helped him.

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

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

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

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

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

My Own Limitations

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

**Chapter Outline**
The thesis is divided into the following chapters:-

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

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

In the next chapters (4th, 5th and 6th) I have taken up analysis of the data collected in the field. The fourth chapter titled ‘Marriage and Family’ discussed sociological definitions of marriage and family. The chapter explains changes within family and marriage institutions in Mizo society, and the contributions of external forces such as Christianity in those changes. The chapter also discusses the “Church Law” on marriage and family and how members of the community are shaped and moulded by Christian ideology.
In the fifth chapter titled ‘Divorce and Maintenance’, I discuss system of divorce and how it has different meanings and implications for women. The chapter also contains an analysis of court cases from District Court Aizawl and Gauhati High Court, Aizawl. I show how Mizo women are discriminated by the Mizo customary laws and the legal system. The societal construction of gender inequality is complimented by the legal institution.

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