CHAPTER - III

MIZO CUSTOMARY LAWS AND THE DISCOURSE OF WOMEN’S RIGHTS

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

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

Mizo Customary Laws

As seen in Chapter-II, the Mizo customary law is based on patriarchal ideology which discriminates women. According to Mizo Customary laws, women do not have inheritance rights, and they also cannot claim maintenance after divorce. Pautu (2006:98) states, ‘Women in marriage are continued to be seen as economic liability to the other family, in divorce, burden to their family and in inheritance nondescript others’. The deliberation of Mizo women’s subjugated roles and denial of rights is considered “natural”, and the idea is that it must stay that way. For instance, a widow can inherit her dead husband’s property only by virtue of her children and for promised fidelity to the
dead husband. There is no security for a widow within the bounds of the customary laws unless a will is written.

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

**Lushai Autonomous District Council (1954 - 1972)**

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

The question of who are the Mizos was raised because the Lushai customs and ceremonies are in fact the composition of the *Lusei* Clan. Since it was adopted as the *Mizo Dan*, there was protest from non-*Lusei* groups. What was then decided was that the *Mizo Dan* would not be applicable to tribes such as: - Mara and Lai who occupy the
southern part of Mizoram, and who have their own Autonomous District Council. In the year 1957, the first customary law compiled by the Mizo District Council was published. But there were no changes relating to marriage, divorce and inheritance.

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

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

**Formation of Mizo Customary Law Board Committee**

In 1980, *The Committee on Mizo Customary Laws* (CMCL) was formed, and in the year 1982, the Mizo Customary Laws Compiling Committee was formed. Even
though CMCL formed in the 1980’s, the actual work started only after Mizoram gained statehood. The difference between the two is that, after discussion at Customary board meetings, the “Compiling Committee” usually makes final conclusion or decisions. Five members were appointed: Robert Lalchhuana, H.T Thanhranga, Pi Rozami, C.Sangzuala and Rev Z.T Sangkhuma. Right from the beginning, the Mizoram state government took active role. The members appointed for the customary law board committee were headed by the then Minister of State, Law and Judicial Department, Government of Mizoram.

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

In 2006, the first edition of Mizo Hnam Dan or Mizo Customary Laws was published by Law and Judicial Department, Government of Mizoram (See Appendix III). Most of the laws which were enacted during the Autonomous District Council were adapted without modification and even to this day it remains almost the same (Sailo
2006). The MHIP, founded on 6th July, 1974, the largest women’s body expressed deep resentment over the “male friendly” Mizo customary laws. During the process of “codification” of the customary laws, various demands have been made with regards to women’s rights and status, MHIP lobby for the reform of Mizo customary laws relating to divorce, inheritance and sawn-man. “Our efforts to change the Mizo customary laws to make it more favourable for women went in vain” says Sangkhumi.

**Issues and Debates within Mizo Customary Law Board Committee**

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

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

**MHIP Demands**

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

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

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

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

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

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

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

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

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1 There are some members who argued that *Tlangchil* is not the common practice of Mizo, it is only practiced in some few villages. However, they did not deny that, it is considered one of the Mizo customs.
are considered no longer relevant for the present society; therefore, it has been omitted. They maintained that the demands made by women are radically different from existing Mizo customs, and they cannot make that kind of drastic change. To quote one of my respondents, he states,

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

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

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

Based on the study, it seems that when it comes to women’s rights, members of the CMCL (mostly male) consciously avoided the word “reform”. The question of customary law as representing Mizo identity and more significantly symbolizing Mizo cultural values is deeply rooted among the people. Opinion varies, but, one thing I observed among my respondents and people I met during my fieldwork is that, majority feels that Mizo customary laws should not be reformed nor can be changed. However, out
of these majority, few people acknowledged the limitations of the usages of Mizo customary laws, for example, in terms of punishment or penalty fine, they said the amount is too less. However, with regards to women, most common responses are: -

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

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

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

**Issues of Codification and Customary Law Reform**

   The major main question is the issue of codification which still remains in ambiguity. Majority of the members of *The Committee on Mizo Customary Laws* (CMCL) have stated that it is “codified” and accepted by the Mizoram State Legislative Assembly. Meanwhile, senior lawyers like Thanga (name changed) vehemently opposed the claim by saying that ‘customary law cannot be codified’. He along with many others argue that the CMCL merely “compiled” the Mizo laws, and being a member of the committee does not give them the authority to make laws or turn customary law into a statute law.
In the issue of codification of customary law, Bennet & Vermeulen, in their study of *The Customary Law in African Societies* (1980) proposed two interesting theories: The first approach, according to them is, codification usually takes place at the aftermath of revolution in order to establish a new legal system, and it arises out of the necessity to “bringing up the law up to date and removing uncertainties and contradictions” or in other words “establish a new legal order to assist in modernising the nation”. The best example given is Ethiopian codification project which presents the “radical reform” of the whole legal system including the almost total abolition of customary law. The second approach advocates a “code in close conformity with customary law”. The Second theory suggests that customary law is ‘The best system adapted to the needs of the people and, thus, in accordance with their traditions and social values’. They argued that the Malagassy code provides a good example of this approach. This approach states that to ensure the acceptance of the customary law by the people whom it was intended to rule, the code should take customary law as its basis. In this context, ‘Modification of the customary law would be required where the question arose out of reconciling conflicting rules of customary law, of attempting to amalgamate customary and civil law or of abolishing what might be felt to be undesirable or outdated rules’ (Bennet & Vermeulen 1980:207-209).

The second approach seems applicable in the context of Mizoram. The Mizoram Government formed the customary law so that it can be updated to the present society. Certain law which seems “redundant” in the “modern” Mizo society was abolished. Robert Lalchhuana, a member of the CMCL points out ‘we were to bring the old customary laws in attune with the present society’. However, the status of Mizo customary law as codified law remains uncertain. The CMCL members also voice differently in this regard. Whether it is codified or not codified, Mizo Customary Law is used in all family matters, especially with regards to marriage, divorce and inheritance. If a case falls under the purview of the customary law, judges in modern courts consult the written customary book before making judgments. But, this is not to say that just because the customary law is in written form it has the codification status, Bennet & Vermeulen writes,
Codification in the case of customary law implies far more than the mere provision of a written description of existing unwritten rules. Customary laws which are reduced to writing and then applied in court necessarily undergo change; this change may result in disregard for the codified version (1980: 211).

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

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

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

**Interaction of State and Religious Authorities**

Women seek the state intervention for rights and provisions, not only in Mizoram, even in the mainstream India, women’s movement have always considered legal reform as a tool to empower women (Nair 1996). According to Rajni Kothari (1994), the state in modern times has been a source of both law and legitimacy, of authority and monopoly over coercive power, a source also of security for the people, of systems of justice, equality and accountability, and through them all, of conditions for freedom and creativity, the arts and the pursuit of excellence.
Since the state promised equal rights to all citizens, naturally, it is considered that the state should ensure fundamental rights to every individual. This leads us to believe that state’s intervention is crucial for social reform especially concerning women’s rights. But feminist studies have pointed out how the state is responsible for the continuation of patriarchal system and in reproducing patriarchal social relations. Women, as a homogenous group, are often oppressed by a centralized state (Haney 2000:641).

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

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

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

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

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

According to MHIP leaders, they demanded Christian Marriage Act, 1872
because this would at least ensure certain provisions for women, however limited it may
be. The church’s refusal to this Act is also seen as “fear” of being stripped of their
authority. One respondent says, ‘According to the Indian Christian Marriage Act, 1872,
the government shall appoint marriage officer, even ordained minister such as pastor
needed approval from the government’. At present, in Mizoram the church has absolute
authority. The church does not require the government’s approval for marriage officer. Usually ordained pastors and church elders (in exceptional cases) act as the marriage officer. According to one of my respondents,

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

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

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

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

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

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

\[\textit{I suggested that we should declare the year 1997 as "year of women’s empowerment". The then president Pi Lalnipuii supported me, however, other executive committee members were very nervous and scared, and they said 'we should not add the word empowerment, lets just say women’s year'. They fear that if we include the word empowerment we will be facing too much criticism especially from the men. However, it was decided that by any means we should announce as 'year of women’s empowerment'. We organized conference based on the empowerment theme and other related issues. When it was time to speak up, nobody wanted to be the first speaker, MHIP members were all scared to be hated by society and men, they fear that talking about women’s empowerment would provoke such feelings. I stood up and deliver the first ever speech on Mizo Women’s Empowerment.}\]
MHIP leaders faced various criticisms from the beginning. Lalnipuii points out, ‘there are many male members who hated her’ because of women’s empowerment. Because of the strong patriarchal mindset of the Mizo society, it was very difficult for MHIP to stay forceful and strong. Lalsangpuii said majority of women do not support MHIP, she states, ‘The sad thing about Mizo women is that, majority of them are not aware that they are being subjugated and that the customary law discriminates women’.

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

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

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

MHIP leaders though demanding women’s empowerment and even reform of Mizo customary law, also endorse patriarchal ideology. For instance, among the MHIP leaders who demand Mizo women’s empowerment, they insist that they only demand
empowerment for women who ‘deserved’, who have been “victimized”. In terms of widow property rights, prominent MHIP leaders told me ‘We only ask to reform customary law for widows who deserve to inherit her husband’s property, a true Mizo woman who is faithful and fulfilled all her duties to her husband’. The question of daughter’s inheritance rights was not brought up at all. Also, all members of MHIP representatives in the Customary Law Board Committee did not ask for reform of Mizo customary law. Within the MHIP the members were divided on this issue.

Contentious Traditions

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

The Oxford dictionary of Sociology defined tradition as ‘A set of social practices which seek to celebrate and inculcate certain behavioral norms and values, implying continuity with a real or imagined past, and usually associated with widely accepted rituals or other forms of symbolic behaviour’. An example is, the distinct Highland culture (of kilts, tartan, and bagpipes) of Scotland were a late 18th and early 19th century creation. The indigenous political and economic traditions of many African societies were also in fact invented by the colonial authorities in order to make the necessary
connections between local and imperial political, social and legal systems (Marshall 1994:672).

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

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

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

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

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

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

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

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

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

"Authentic" Tradition

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

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

Lata Mani mentioned how the Brahmanic scriptures are seen as the locus of this “authenticity”. She argues that the privilege given to Brahmanic scriptures and ‘the equation of tradition’ is an effect of colonial discourse on India. Mani argued colonial
discourse as a means to legitimate the colonial state. She mentioned that the indigenous male elite, though subordinate to British colonial officials, actively participated in representations of sati and in constituting ‘woman as the site for the contestation of tradition’.

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

Partha Chatterjee also points out, in the course of social reformation, adjustments have to be made with the material level, but, what was equally important was to retain inner spirit of indigenous social life. The idea was that changes in the external conditions of life should not let women lose their essentially spiritual (i.e.Feminine, virtues etc). They must not, in other words, “become essentially westernized”. The result is, as Chaterjee writes,
The new woman defined in this way was subjected to a new patriarchy. In fact, the social order connecting the home and the world in which nationalism placed the new woman was contrasted not only with that of modern western society; it was explicitly distinguish from the patriarchy of indigenous tradition (2006:244).

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

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

**Customary Laws vs. Indian Constitution**

The tension between minority rights and women’s rights have been long debated and discussed even in mainstream Indian society. This problem lies within the Indian constitution itself. Though giving “equal” rights to all citizens, the Indian Constitution also separately recognizes and grants special provisions to religious minority groups and
tribal communities. This often caused conflict in relation to women’s rights. This position has been justified by the State on grounds of non-interference with the right to cultural practices of minority communities and religious communities (discussed in Chapter-I). This approach is most common especially in the interpretation of personal laws. With regard to personal laws, the state gives precedence to religious rights over women’s rights to equality (Jaising 2005:5). The same is extended to tribal customary laws.

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

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

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

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

\(^3\) 1996 AIR 1864 1996 (1) Suppl. SCR 442
\(^4\) Madhu Kishwar and others v. The State of Bihar and others (AIR 1996 5 SCC 125)
out the discriminative provisions of the Act and paved a way for tribal women to entitle their rights to tenancy lands along with men. Jaising states,

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

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

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

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

**Women’s rights vs. Minority rights**

Coomaraswamy (2005:24) pointed out, fighting group prejudice while struggling for women’s empowerment are often faced with the ‘Modern dilemma between the Universal Human Rights and the particularity of cultural experience’. For instance,
Sylvia Tamale also points out how the mainstream feminist present the two concepts of “culture” and “right” as distinct, invariably opposed and antagonistic. Her articulation also states how we are made to believe that the concepts “culture” and “rights” are polar opposites with no possibilities for locating common ground where new synergies can be developed for social transformation. She argues that this is especially true in the case of how theorists of African women’s rights, where culture is viewed as being essentially hostile to women. She states, ‘Narrow interpretations of culture that collapse it with ‘customs’ or ‘tradition’ and assumed these to be natural and unchangeable exacerbate the problem’ (Tamale 2008: 47-48). Women have to first strip themselves off culture before enjoying their rights.

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

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

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

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

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

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

However, in the context of northeast, it is inevitable to escape the debate of dichotomy of individual (women) versus indigenous rights. Since the identity politics plays a very important part, preserving tribal traditions are all too important for the people and women are the site of such traditions. To quote one of my respondent’s view, she states, ‘Mizo customs and traditions are established by our forefathers in accordance with Mizo society structure- which is best suited for the functioning of the Mizo society, I don’t think it is a good idea to forsake what our forefathers have built’.
At present, especially in Mizoram, women’s issues are hardly recognized as social issues. Studies have also proved that women play an important part in transmitting socio-cultural traditions, and women are the site for continuing tradition. Aparna Rayaprol, in her study among the South Indian immigrants in Pittsburgh, USA shows how women play a crucial role in keeping the customs and traditional practices. She states, ‘South Indian Immigrant women who frequent the temple play a crucial role in this process of reaffirming their cultural heritage and in shaping the identities of their children’ (Rayaprol 1997:63). This is applicable even in the context of Mizoram, where women are considered to be the “bearers” and “transmitters” of socio-cultural traditions, which is also manifested in daily lives.

**Cultural relativism**

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

The essence of minority rights as recognized by the international community in Article 27 of the International Covenant on Civil and Political Rights. It gives minorities the right to enjoy their own culture, to profess and practice their own religion and to use their language. The declaration also gives them the right to enjoy their identity, their own culture, religion and language. The state has an affirmative obligation to grant minorities equality and to create conditions for them to develop their culture, language and religion.
Though the formation of CEDAW (Convention on the Elimination of Discrimination against Women) adopted in 1979 by the United National General Assemble describe as an international bill of rights for women. Women’s rights provisions had to be read together with the rights of indigenous or cultural rights (Zechenter 1997).

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

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

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

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

All knowledge and morality are exclusively culture-bound, and rational thinking and the scientific method are no more than a culturally-bound form of western ethnoscience. In that view, science is not a logically coherent system of verification and falsification, but rather a culturally biased way of thinking that is no different from magic or witchcraft (see Zechenter 1997:325).
According to this view, all cultural views are equally valid such as customs and ethics are relative to the individual within his/her own social context. Relativists declared “there is no absolute truth” meaning no universal standard of morality exists, so no one has the right to judge another society’s customs. Zechenter argues, ‘By adopting cultural relativism, proclaiming unqualified tolerance of all cultures, and by taking a group-centered perspective, anthropology has left little room for rational discussion about the rights of individuals, particularly in the non-Western societies’ (326). This is extendable especially in the context of women.

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

Mohanty critiques representations of “third world” women in writings by “first world” feminists on subjects such as female genital mutilation and women in development. She critiques how most of the texts define women as “object” of what is done to them rather than acting with any agency, and as victims of either “male
Mohanty states that the western feminist writings “ignored” lived experiences, and making certain generalization by assuming about differences between first world and third world. Mohanty proposed a theoretical model involving “intersectionality”, which will look at women and groups of women without falling into false generalizations, and acknowledges the contradictions as well as the commonalities in women's experiences (Mohanty 1991:55-65). Chandra Mohanty’s (2003) critique of ‘euro-centrism’ within Western developmental discourses of modernity through the lens of racial, sexual, and class-based assumption, Mohanty argued ‘gender essentialism over generalized claims about women, assumes that women have a coherent group identity within different cultures prior to their entry into social relation’ (Agnes 2011:xxviii).

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

Another cultural practice is the “honour killing” practiced in some parts of India and Arab countries, Turkey, northern Pakistan and countries with a Mediterranean heritage etc. All these are conducted in the name of cultural practices, and it usually
falsify in the name of tradition, family values and respect and not losing face in front of other community members. Radhika Coomaraswamy states,

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

Critique of Cultural Relativism

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

Cultural relativism has many flaws, in many ways it overemphasizes the rights of the groups and marginalizes the rights of individuals and non-dominant groups. For instance, the inhuman act against women in Africa, India or in some other parts of the world, cultural relativism usually provides the justification of those practices. Sati is one such example. Cultural relativism is extended to all societies, as discussed, even in the context of Mizo society, the customary law discriminates women, and the members of the customary law board committee ignore women’s movement on the basis of Mizo cultural
traditional identity. However, all the male members in the committee are of the opinion that ‘Mizo customary law is discriminatory, but since this is our custom we cannot change’ thereby justifying the unjust done to women. This kind of argument is similar to what Zechenter has discussed, that is by emphasizing solidity and cultural stability of customs and traditions, relativism overlooked the importance of social change. In fact, they ignore the unavoidability of change in every society. They also ignore the fact that some traditions persist while others are selectively discontinued. The fact is that, we should recognize culture as an ongoing historic and institutional process where the existence of a given custom does not mean that the custom is either adaptive, optimal, or consented to by a majority of its adherents (1997: 332).

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

**Are Women’s Rights Universal?**

The reason cultural relativism often finds expression in the denial of the rights of women lies at the intersection of issues relating to women, culture, and identity. There is always the dilemma of “sameness” and “difference” emphasised by feminist scholars. For some, women’s oppression is a universal phenomenon. Catharine MacKinnon interprets patriarchy as being the most basic of all kinds of women’s oppression. She critiques the patriarchal nature of the state and capitalism, and the ways in which women’s sexuality is controlled. According to her, male dominance is a universal phenomenon, she pointed out the condition of women and a shred sense of expression and exploitation. Women everywhere suffered under the dominance of men (1982; 1989). She would never countenance the belief that cultures or societies cannot be judged. She would in fact argue that every culture and every society should be judged from the
vantage point of sexual equality and oppression. On the other hand, scholars like Carol Gilligan and Martha Minow are more concerned with the world of difference. Seeing women's socialization as different, they see strengths and nuances in women's difference from men. Their aim is to be less judgmental and more inclusive of worldviews and traditions in which many women are differently empowered (Coomaraswamy 2002: 2-5).

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

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

Tribal Women

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

Tribal women look at themselves within the customary set-ups- the traditional councils and their own practices or laws….the state of Mizoram had codified the
customary laws. They have again reviewed but, unfortunately, the women didn’t have much say in it. Not even in the review process, despite the fact that they have a women’s commission and the MHIP is supposed to be a big women’s movement in the state of Mizoram. Despite the fact that Mizoram is the state with the second highest literacy rate in the country, women’s voices from Mizoram are yet to be heard outside the state (2008:74).

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

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

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

Critique of Perceptions on North East Women

In the northeast, women are actually suffering from the false perception which says they are more “free” and “liberated” as compared with women from Hindu or Muslim community. Haksar also points out,
The positions of women from tribal societies are far better than the position of women in caste society. There is equal availability of divorce to both men and women, there is a right to remarry, absence of religious taboos concerning menstruation and absence of physical seclusion (Haksar 2008: 283).

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

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

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

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

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

**The Relevance of Mizo Dan in Contemporary Society**

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

E.J Thomas in his analysis points out, majority were for new legislations ranging from 53.33 percent in regard to marriage, family and divorce; 64 percent for the status of women, 68.18 percent for the rights of children and 89.51 percent with regards to property and succession rights. He mentioned that the data represents a clear indication of Mizo views on the relevance of Mizo customary laws in present society. People who feel that *Mizo Dan* is relevant today do not “seriously object to change but their anxiety is about the outcome of the change”. This is more highlighted in the case of males where the percentage for irrelevance of *Mizo Dan* is 57.97 percent for marriage, family and divorce; 69.69 percent with regards to women, 62.5 percent rights of children and 87.5
percent in terms of property and succession rights. As shown in the table, for women, except in the case of marriage, family and divorce (38.09%), in all other areas the percentage is more than men. Thomas points out how Mizo women quoted the Bible to justify their low status and are happy to continue in the same level (44). Thomas’s concluding remark is,

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

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

As Thomas has rightly pointed out, a bold step is indeed necessary to make changes. Instead of a “change of convenience”, a “change for progress” is required. It is difficult to talk of what could be the best strategy. Looking at the historical context and also the ‘peculiarity’ of the tribal community, perhaps, reform within their “indigenous laws” is what will actually benefit women. Because, laws such as ‘international law” or “central laws” are viewed as “alien” and a “threat” to their cultures. Therefore, it might be helpful to point out the discriminatory nature of customary law and address issues which need to be addressed. Instead of using culture as the so-called explanation and justification for all social behaviours, we should be asking whose interests are being
served by the traditions and customs, and who benefits from those traditions? Why some ‘reform’ took place and some remain unchanged and some customs are even resurrected? Who are the agents of these traditions and customs? Which and whose rights are more fundamental than the others? These questions and more discussions might produce new perceptions and create new thinking among the community members on issues such as marriage, family, divorce and inheritance.