

**WOMEN AND LEGAL PLURALISM: A STUDY AMONG
HMARS OF MANIPUR**

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DECLARATION

I hereby declare that the thesis entitled, “**Women and Legal Pluralism: A Study among Hmars of Manipur**” is the result of research work carried out by me at the Department of Humanities and Social Sciences, Indian Institute of Technology Guwahati, under the supervision of Dr. Sawmya Ray. The work has not been submitted either in whole or in part to any other university/institution for a research degree.

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CERTIFICATE

This is to certify that Ms. Ruth Lalsiemsang Buongpui has prepared the thesis entitled, “**Women and Legal Pluralism: A Study among Hmars of Manipur**” for the degree of Doctor of Philosophy at the Indian Institute of Technology Guwahati. The work was carried out under my supervision and in strict conformity with the rules laid down for the purpose. It is the result of her research work and has not been submitted either in whole or in part to any other university/ institution for a research degree.

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Dr. Sawmya Ray
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CONTENTS

Acknowledgements

		Page No.
Chapter-I	Introduction	1
Chapter-II	Review of Literature	51
Chapter-III	Legal Pluralism among Hmars	114
Chapter-IV	Gender, Customary Law and Church: Legal Pluralism and Its Impact on Hmar Women	161
Chapter-V	Conclusion	240
	References	254
Appendix-A	Interview Guide	275
Appendix-B	Abbreviations	281
Appendix-C	Glossary	282
Appendix-D	Map of field sites	287
Appendix-E	Photographs	288
Appendix-F	Types of Administrative Structure for the Tribes of North East India	297

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CHAPTER-I

INTRODUCTION

This study attempts to understand women's lives in the context of existing legal pluralism among Hmars. It attempts to look at the ways in which different legal orders deal with issues related to Hmar women, and the negotiations, if any, that Hmar women make through such legal pluralism. Data for the study was garnered through feminist ethnography conducted for two years at intervals in Rengkai, Thenmuol, Ngurte, and Langza villages of Churachandpur District, Manipur. Interviews, case studies, observation, informal interaction, and participant observation at church meetings were used as tools for data collection during ethnography. Besides informal conversations, interviews were conducted with 89 respondents. 57 male respondents and 32 female respondents were interviewed. 32 cases solved through customary law were collected from Hmar community elders and members. 7 state court cases were also collected from Family Court, Lamphel, Imphal, for the period 1993–2013. For archival research, state and private archives were accessed to collect documents related to customary laws in Manipur. Content analysis of church manuals and records was also conducted.

Based on ethnographic data collected, this study argues that customary law is intrinsic to Hmar life and is considered integral to Hmar identity, so much so that, any attempt at circumventing customary law is stigmatized. Existing jurisprudence within Hmar community is an intersection of church law and customary law without any clear-cut dominance of one over the other. Christianity brought in new forms of patriarchy.

Existing Hmar patriarchy converged with patriarchy of the church, thus reinforcing women's subordination. As church and customary law functions almost integral to each other, it does not grant much space to access one over the other. However, in matters of divorce and child custody, despite the larger overlap of patriarchies, women do create space to negotiate and further their interest.

Women's groups though aiming to improve the status of women, largely function within the dictates of the church and customary law, and eulogize notions of ideal woman and "good" wife. The documentation and review of Hmar customary law is taken up by all men's review committee and is gendered both in ideology and membership. Women's voices are systematically marginalized within this review process. There is no intention of reviewing customary laws on inheritance, bridal gifts, child custody, and divorce which are inherently discriminatory towards women, or, to bring in new laws on gender violence.

Statement of the Problem

Customary laws are treated as obligatory rules to be accepted by all members. They are an intrinsic part of life, worldview, and the very identity of many indigenous communities (WIPO: 2013). 'Customary law consists of customs that are accepted as legal requirements or obligatory rules of conduct, practices and beliefs that are so vital and intrinsic part of social and economic systems that they are treated as laws' (Black's Law Dictionary: 2004: 1165). Women's lives become central to this discourse as their lives are to a larger extent confined to the personal sphere. With the Constitution granting certain communities the right to deal with civil cases through

personal and customary laws, customary legal forums operate with state sanctions. It is in this context of customary law being granted both social and state sanctions, and immensely determining women's lives and rights that study on women and customary law becomes important.

Further, given the presence and operation of both church law as well as state laws along with customary laws in Hmar community, any study on women and customary law necessitates placing of such study within the framework of legal pluralism. This study therefore is an attempt to understand women and Hmar customary law within the larger milieu of legal pluralism.

Background of the study

The annexation of Northeast India in 1826 led to British East India Company getting foothold over the political administration (Nongkynrih: 2009). Before their annexation, the entire Northeast region remained outside the Indian subcontinent with independent kingdoms and chiefdoms within itself. With the 'exception of Meiteis in Imphal valley and Assamese in Brahmaputra valley, the hill people remained outside the orbit of Hindu influence and caste based societal formation' (Dena: 2008: 198). Various ethnic communities lived in hilly, isolated, and segregated habitats (Chatterjee: 2010). They had their respective language, and social, economic, cultural, and political institutions. Inter-tribe feud and the practice of head-hunting were very common among the tribes (Downs: 1994). Each community in the region had their respective 'decentralized and democratic government' (Chatterjee: 2010: 4), and 'well-defined territory with clearly defined boundaries' (Khongreiwo: 2009: 450).

They were mostly under the control of their chiefs. The chiefs acted as the judge and took the final decision in all matters within their jurisdictions according to their respective customary law (Gangte: 2010).

Colonial rulers believed that an elaborate system of administration as in the plains would not be suitable to the hill men since they had never experienced the art of a modern system of governance. Therefore, these areas were kept outside the purview of regular laws of the country and were administered in a different way by framing various regulations, acts, and laws from time to time (Vungzamawi: 2014). The colonial regime further initiated new 'political policy of dividing the region administratively into hill and plain areas' (Nonkynrih: 2009: 18).

British rulers did not directly interfere in the administration of the hill tribes; they allowed them to 'manage their own affairs within the ambit of their respective customary laws' (Misra: 1988: 162). However, they considered it necessary to 'civilize and humanize' the hill communities through modern education (Srikanth: 2006: 96-101). Colonial rulers however, did not allow Christian missionaries to enter freely into tribal areas. They were restricted to 'confine their activities to evangelical work and to render social services like education and medical help' (Rao: 1997: 203). A large number of studies have brought forth that literacy, education, translation, and introduction of scripts and medical work are some of the important missionary practices towards the spread of Christianity in the Northeast (Dena: 1988; Robinson: 2003; Srikanth: 2006; Thomas: 2010).

The protection received by tribes during the British period against the penetration of non-tribes into their land preserved their identity as a distinctive one. During India's independence, various tribes demanded self-government as there was fear in their minds that inclusion of tribes into mainland will result in subsuming of their identities within the mainland Indian culture and identity (Nongkynrih: 2009; Panmei: 2013; Pereira: 2009).

After India's independence in 1947, 'certain matters were taken into consideration by the Constituent Assembly pertaining to the socio-political conditions of the tribes of Northeast India' (Pathak: 1991: 203). Framers of the Indian Constitution recognized the necessity of a separate political and administrative structure for the region. Subsequently, a 'plethora of efforts have been made by the government of India to address these demands so as to integrate these tribal communities into the project of nation building' (Pereira: 2009: 1). The Constitution of India assures the protection of their culture, tradition, customs, and laws. As a result, special Articles were laid down for the different states such as constitutional provision for the tribes, the right to be governed by their respective customary law, and others.

Even though customary law of most tribes remains un-codified (except the customary laws of Mizoram and Nagaland), it remains intrinsic to their identity. Literature shows that customary law continues to remain the primary legal forum for grievance redressal among most tribes in Northeast India. In the past few years, there has been growing research on the nature and functioning of such customary forums as well as

on their importance to the tribes. The present study is related to such attempts at understanding customary law in Northeast India.

Customary law: Definition and Functions

Mathieu Deflem (2008) defines law as an, ‘institutionalised complex of norms that are intended to regulate social interactions and integrate society’ (2). It is a command according to John Austin (1832) ‘which obliges a person or persons to a course of conduct’ (18). Law indeed has an important role in the regulation of harmony in a society. The function of law as considered by sociologists is, ‘to sustain the social order by upholding the basic values and norms of society’ (Deva: 2005: 2). It is a common perception that law came into existence through the state. Though one of the main characteristics of the state is to formulate laws, legal pluralists would argue that not all laws originate from the state (Ehrlich: 1975; Pospisil: 1971; Sheleff: 2009; Vani: 2002). There are large bodies of law that are non-state in nature yet have binding force upon the members of the concerned communities. One such body of law is called customary law, traditional law, indigenous law, native law, living law, and people’s law, or local-law ways (Sheleff: 2009). Customary law refers to a ‘system of customs, norms and practices which are repeated by members of a particular group for such an extent of time that they consider them mandatory’ (Fajardo et al.: 2005: 34). It is a system of governance among indigenous people. The jurisdiction of customary law is however ‘only to the extent that the people who follow it, voluntarily or otherwise, consider it to have the status of law’ (Harper: 2011: 17).

The knowledge of indigenous people, their histories, customs, religion, and literature

that is embedded in oral tradition is found in 'both men and women who are regarded as living repositories of tradition' (Syiem: 2010: 114). Customary law has deep implication in the life of the people. Amongst the most distinctive features of indigenous people are their unique cultural patterns, social institutions, and legal systems, where 'their social and cultural practices continue to be regulated by their respective customary law' (Roy: 2005: 5).

Differentiation between custom and customary law

Customs and customary laws are not synonymous. There may be 'various customs without any legal authority whereas customary laws have the sanction of the bulk of the society and if not obeyed, such violator is liable to be punished' (Gangte: 2013: 227). Customs are norms of action, percepts, or rules of conduct, which are accepted and practiced by groups of people. Custom may or may not have social recognition, and its violation may or may not result in any sanction. Customary law is a 'usage and practice which is socially recognized, and the breach of this will result in some penal action' (Pereira: 2009: 55). Customary law, which is derived from morals, values, and traditions, has its authority and control over the people. It regulates the 'entire spectrum of activities from birth to death and governs their civil and criminal affairs including family relations, traditional authority, property rights and succession' (Frenrich et al.: 2011: 2). Customary law does not constitute a 'single body of law, but is an adaptive, flexible, evolving body of norms and rules governing the behavior of communities over long periods of time' (Vani: 2002: 6). It 'regulates social relations amongst members of the society and facilitates social control as breach of

customary law forms the subject matter of dispute and may lead to serious consequences' (Bhowmick: 2002: 172).

Scholars (Allen: 1961; Elias: 1956; Lloyd: 1966) advocate that customary law is law and not just custom. Customary law as Leon Sheleff (2009) writes, 'are not just relics of the past, they are an ongoing fact of social life, often providing practical guidance for daily interactions and effective solutions for problematic situation in a more satisfying manner than that provided by the formal legal system' (4). He further writes, 'despite lacking formalized institutions for enacting the law, nevertheless created means of conveying to their members the parameters of desired behavior, and the scope of the obligations that devolved upon them and the rights that accredit them' (5). As Lloyd (1966) also writes, 'broadly speaking, however, the vital contrast between primitive custom and developed law is not that the former lacks substantive features of law, or that it is unsupported by sanctions, but simply that here is an absence of centralized government' (207). Their argument entails that customary law contains features of law, which are respected by the people and is as powerful as state law. Customary law distinguished itself from statutory law only 'by being more closely attached to people's culture than statutory law. Unlike statutory law, customary law does not gain its authority from formal acts such as a vote of assembly. It rather 'derives its existence and content from social acceptance' (Ahren: 2004: 63). Ahren (2004) argues that 'this difference alone, does not justify a lack of respect for indigenous legal systems. Both statutory and customary laws are created by purposeful activity of human beings' (64).

Customary law is derived from the ‘morals, values, and traditions of indigenous ethnic groups’ (Twinomugisha: 2011: 448), and ‘from social practices that the community concerned accepts as obligatory’ (Bennett: 2004: 1). These norms and values have passed on from one generation to the next. As customary law includes customs and traditions of the people, it plays a crucial role in shaping their culture. It is an expression of people’s identity and way of life. Customary laws ‘help people understand their background, who they are and-in a wider sense-their culture’ (Twinomugisha: 2011: 448). Customary law is the ‘habitual course of conduct of a society and contains dos and don’ts based on its norms, practices and usages, mechanisms such as taboos, sanctions, social rituals, culture, public opinion and ethics of each individual and thus restrains their pattern of behaviour’ (Vitso: 2003: 5).

Scholars also uphold that customary laws are results of daily interaction between the members, where the rules are derived from the existing custom of the people (Croce: 2012; Fuller: 1968). As Leon L. Fuller (1968) writes, ‘Customary law arises, then, out of situations of human interaction where each participant guides himself by an anticipation of what others will do and will expect him to do. There is, therefore, in customary law something approaching a contractual element; it’s underlying principle in reciprocity of human expectations’ (74). Such laws are not ‘simply a reiterate habit, but a normative device meant to govern the conduct of rule-abiders and to provide an orderly frame for their daily interaction’ (Croce: 2012: 28). Thus, customary law is ‘an inherently adaptable, flexible and dynamic form of social regulation whose primary

strength lies in the fact that it is created; maintained and developed by the people it governs' (Bennett: 2004: 1).

Gender and Customary Law

Amy Wharton (2005) argues that, 'we cannot understand the social world without attending to gender' (viii). Operation of customary laws acts as a powerful tool to define the roles of men and women and dictate acceptable standards of behaviour. Women's social and economic status continues to be influenced by customary rules (Agarwal: 1994; Bano: 2005). Laws of succession, division, and control of family property, and inheritance, which are considered the centre of attention of the community have a greater impact on the lives of women than on the lives of men (Bano: 2005).

Customary laws are diverse based on their area-specific origin. Most of these laws have their origin in the use of land and resources by the community. It is the prolonged use of certain customs and norms surrounding natural resources that has led to the emergence of diverse customary laws specific to a habitat (Agarwal: 1994). Land constitutes the most vital productive resource in an agrarian society (Agarwal: 2003; Nongbri: 2003b). It is a 'wealth-creating and livelihood-sustaining asset. Ancestral land symbolically stands for continuity of kinship and citizenship. In traditional agrarian institution, there was the system of reciprocal labour- sharing arrangement that was customary in agriculture. The terms of reciprocity were typically established between households to support family-based farming' (Agarwal: 2003: 219). In many societies, 'women played a major role in crop production, and the gathering of forest

produce and their knowledge of indigenous crop varieties was extensive' (Agarwal: 1994: 104). However, when it comes to ownership rights, formal managerial control over the land is vested in men (Agarwal: 1994; Nongbri: 2003b; Fernandes et al.: 2005). Customary law on land and property often discriminates against women, restricting the succession of ancestral land to male heirs in order to keep the land within one family unit (Emerton: 2005; Izumi: 2006). In communities where some assets such as land and cattle are transferred to wives and daughters, such rights are restricted to usage rights and not possession (Fadlalla: 2009).

Harper (2011) argues that customary practices can be 'connected to discriminatory attitudes embedded within the social fabric' (97). Traditionally, men and women have occupied different spheres in society, with distinct roles carved out by gender. In the context of Chakhesang society, Vitso (2003) writes, 'the economic roles of men and women were sharply distinguished because men were generally engaged in hunting and agricultural activities while women were engaged in domestic and agricultural activities. Therefore, women were not encouraged to participate in political, administrative or in religious activities because those were considered to be the domain of men' (59).

From marital decisions to land rights, customary laws are gender-biased. 'Tradition' and 'custom' are discriminatory because their explicit patriarchy contributes to the oppression of women (Fernandes et al.: 2005). 'In all customary systems, be they patriarchal or matrilineal, women have status lower than that of men and are often equated to children and minors' (Ngassa: 2012: 69). Customary laws keep women as

adjuncts to the group to which they belong, rather than equals (Amoah: 2012; Twinomugisha: 2011).

Gender is a constitutive element in all customary laws resulting in unequal distribution of power between men and women. It further strengthens economic, political, and social inequalities resulting in subordination of women's lives. All laws in various degrees 'embody and reinforce gender meanings' (Wharton: 2005: viii). Women largely remain outside the construction, interpretation, and administration of customary and other forms of law and positions of power. Thus, in a setting of legal pluralism, like that among Hmars, understanding the ways in which plural legal orders influence each other affecting women's lives makes for an important sociological study. This study attempts to understand functioning of legal pluralism vis-à-vis Hmar women's lives in Manipur. Special emphasis is on delineating the ways in which different legal orders collate and diverse with each other to deal with women's issues.

Gender is viewed by sociologists as 'social construction' (Bhasin: 2000; Kramer: 2005). Sociologists studying gender examine the impact that gender has on individual and collective experiences. Studying gender thus becomes important in sociology, 'as it organizes one's identities and self-concepts, interactions, and is one basis upon which power and resources are allocated' (Wharton: 2005: viii). This study attempts to examine legal orders and the influence that they have on women's lives. In trying to understand the relation between three different legal orders and the ways in which women negotiate through them, I inevitably take up a study that falls within the scope of sociology as well as gender studies. Both laws as well as gender are social

constructs functioning within social institutions and any attempt to inquire into these and their effect necessitates sociological including feminist tools, theories, and methodology.

Hmars: An Overview

Hmars are one of the various tribes of Northeast India belonging to Chin-Kuki -Mizo ethnic group. They were the first settlers in what is now the state of Mizoram, as can be seen by the Hmar names of many villages and rivers in the Champhai area of the state bordering Myanmar. With the arrival of the Pawis, Lushais, and other tribes, the Hmars spread out to other parts of Northeast India (Thiek: 2013). At present, they inhabit the states of Assam and the adjoining states of Manipur, Meghalaya, Mizoram, and Tripura in India and Bangladesh and Myanmar. Their concentration is highest in Churachandpur district, which lies in the southern part of Manipur. They got recognition as Scheduled Tribe of the Government of India under Section 316-A of the Indian Constitution in 1956. The Hmar people speak Hmar language which G.A. Grierson (1904) placed under Tibeto-Burman language. Despite the lack of historical records, traditional songs, tales, poems, and legends which are handed over orally from generation-to-generation are important sources of information to understand the origin, traditions, and norms of the Hmars.

Nomenclature of the term 'Hmar'

The word 'Hmar' literally means 'North'. One legend believes that the term originated from the word '*hmar*' which means 'north' or 'northerners' (Grierson: 1904;

Shakespeare: 1912). It is believed that 'Hmar' was given to them by the Lushais as Hmar's lived to the north of Lushai Hills (Thiek: 2013).

Unable to trace the identity of the Hmars, the British rulers clubbed them as Kukis. As Lal Dena (2008) writes, 'colonial writers were confused about the real identity of the Hmars and commonly clubbed them as Kukis' (3). Grierson (1904) in *Linguistic Survey of India Vol. III Part III* mentions that, 'the word Kuki is, especially, used to denote the various tribes who have successively been driven from the Lushei and Chin Hills into the surrounding country to the north and west' (2). Hmars, however, do not accept their classification as Kuki. Darliensung Hmar (2013) mentions that, 'the Hmars never call themselves as Old Kuki... the name was given by foreign writers and the *vai* (mainland India). The only nomenclature accepted by this ethnic group is Hmar' (4).

Traditional socio-economic life of Hmar

The basic unit of Hmar society is the family. The organizational structure of the family is patriarchal, patrilineal and patrilocal. The family functions under the leadership of the father. In the family, the father is considered as the head of the household and his decision is regarded as final in all matters (Sanate: 2010). He is known as *in khat pa*, which means head of the family or owner of the house.

Pre-colonial Hmar society was strictly based on well-defined gender division of labour. The father had the responsibility to take care of the needs of the family and protect the family from danger. Construction of the house and repairing works was

entirely his responsibility (Keivom: 1982). Women were confined to household duties; she had the responsibility to look after the children, care for the sick, and the old and needy in the family. Rearing of domesticated animals was considered her duty. She had to wake up early in the morning, pound rice, and cook food for the family. She also went to fetch water from the springs. Women were responsible for carrying firewood and storing them for the rainy season (Lalrinchhani: 2008). Men considered doing household chores as a shameful thing as they did not want themselves to be addressed as 'henpecked husband' by their fellow men. A woman after returning from the field is expected to prepare food and do all the necessary household chores. It is considered feminine (*tuai*) for men to help in any household chores. Lalrinchhani (2008) mentions that, even if a man sees the cooking pot overflowing in the hearth, he just watches and calls his wife who is busy in some other chores to attend to it. Though division of labour within homes was gendered whereby men do not and are not expected to participate in household chores, women did contribute equally in economic activities. Along with exclusively taking care of the household chores, women contributed heavily to agricultural and other economic activities in a traditional set up. The situation today is not very different with similar patriarchal gender norms directing men and women's lives.

The main activities of the Hmars in traditional times centered on food production and so they depended on shifting cultivation. From clearing of the land which starts from the month of January to harvesting season in the month of December, women participate equally in agricultural work. Apart from agricultural work, women were

also engaged in pottery and weaving (Darliensung: 1987; Pudaite: 1963). Women weaved all the clothes for the family from the family looms. A girl of 15 was expected to be capable of making all kinds of designs and to produce for the family requirement in her spare time (Pudaite: 1963). The knowledge of weaving was considered an important quality in a woman.

Drinking *zu* (locally brewed rice beer) was very common among the Hmars. In all their occasions; festivals, celebration of successful hunting they served and drank *zu* (Pudaite: 1963). It was served at any social gathering and as a courtesy to guest and visitors at home. *Zu* was an important part of Hmar's culture and tradition. None of the social customs could be performed without *zu* (Lalhmuoklien: 2009). It was the responsibility of women to prepare and serve it and to have it ready at any time.

Despite women carrying out major agricultural activities along with household duties, privileges were not granted equally to them as compared to men. Attitudes towards Hmar women are reflected in the sayings such as *Nuhmei varin tuikhur ral a kai ngai nawh* (the wisdom of a woman does not extend beyond the bank of a river), *nuhmei le pal sie chu thleng thei a nih* (women and old fence can be replaced any time), *nuhmei le aiin sakhuo an nei nawh* (women and crab have no religion), and *nuhmei le khuoihli'n umna ding an hriet nawh* (women and bees do not know where to stay). Such sayings 'reflects the broad spectrum of marginalisation of women in the society' (Chakraborty: 2008: 28). Hmars believe in keeping women within the sphere of the family giving them limited or no space in political, religious, and other social institutions.

Pahnam (Clan Organisation)

Hmar family being patrilineal, each generation is linked to the other in genealogical succession through male line. Women are not considered to have any clan as they belong to their father's clan before marriage, and after marriage join the clan of their husband. Thus, women remain outside clan organization (Sanate: 2010).

Hmars have clan organization where descent is traced through male line called *pahnam*. *Pahnam* is one of the important social institutions of the Hmar tribe (Sanate: 2010). The members of the *pahnam* traced their descent from a common ancestor who is regarded to be the founder of the clan. The members shared strong social bond based on *pahnam*. As Crosthang Sanate (2010) writes, 'the solidarity of *pahnam* is manifested in the performance of various customs and rituals with the life cycle of an individual. All matrimonial arrangements are conducted at the level of *laibung* (kinsmen). To ensure social security, clan members extend their maximum help socially, emotionally and economically to all its members' (49). This sort of collective responsibility of the clan members makes it a strong force for social order (Varte: 2010a).

Each *pahnam* is further divided into smaller kinship-based unit called *Hnamsiper* or *hnam kaupeng* (lineage). The clanship among the Hmar do not regulate marriage rules, as there are no specific rule prohibiting clan endogamy or exogamy. Marriage among same clan members is often not desirable as the two are regarded as blood relatives (Varte: 2010a). However, the 'rule of exogamy is not strictly observed'

(Sanate: 2010: 46). Monogamy was practiced by the Hmars (Pudaite: 1968; Dena: 2008).

Marriage

The different types of marriages prevalent in the pre-Christian Hmar society are as follows:

- a) *Chawngmolaka Innei* (engagement of the girl and the boy by their parents from childhood)
- b) *Sawngpuia Innei* (marriage with parental approval),
- c) *Arasi hnuoia innei* (literally meaning marriage under the witness of stars, an eloped marriage without parental approval); and
- d) *Tluna Innei* (marriage in which a woman/man enters the house of the man/woman that she/he loves and insists on living there as his/her wife/husband even against the wishes of the members of her/his family).

During pre-colonial times, bride price was paid in the form of mithun (*sieI*) which was distributed among the kinsmen (Dena: 2008). Great care was taken in the selection of husband and wife. After the girl and the boy have made their choice, they should inform their respective parents. The boy's parents will carefully trace the family history of their son's choice for his wife. They will enquire whether the family had any adverse traits or tragedy such as any family member dying at a young age or any abnormality, lazy or talkative behavior, habit of taking others' things without their

knowledge, or if anyone in the family suffers from incurable disease. If they found any of these in the girl's family, then they do not allow the boy to marry her (Keivom: 1982). Similarly, the girl's family will also enquire whether the boy is quarrelsome, sluggard, drunkard, does not know when to return home after courting, or has the habit of scolding his parents. Parents did not prefer such individuals to be their son-in-law. The standards for an acceptable wife were based on feminine qualities such as being chaste, dutiful, and obedient, which were not the criteria for selection of a husband. Such standards constructed women as responsible for domestic labour and childbearing and child caring responsibilities (Laltlinzo: 2015).

After the approval, for *Sawngpuia Innei*, the boy's father has to first approach the girl's parents to ask for the hand of their daughter. This pre-negotiation stage was a very important period because decision as to whether marriage was possible or not had to be taken (Dena 2008).

After marriage, there were certain expectations from the bride. She was expected to wake up early in the morning, start with the household duties, and carry out all the responsibilities with ease. She was expected to be a loyal, submissive, and dutiful wife to her husband and a well-behaved daughter-in-law towards her in-laws (Laltlinzo: 2015). She should not address her husband by his name. As a mark of respect, she should prefix *U* (which is pronounced as oo) meaning elder before his name. Even if she was elder to her husband, she should not address him by his name (Sanate: 2010).

Mode of Inheritance

The Hmars follow patrilineal system of inheritance in which sons inherit the property of the father. Certain Hmar clans like Faihrem, Leiri, Changsan, and Khurbi follow the system of primogeniture whereby the eldest son inherits paternal properties while other clans follow ultimogeniture, that is, the youngest son inherits all property. The one who inherits the property has the responsibility to look after his parents. Inheritance law is deeply rooted in patrilineal ideology according to which only men were entitled to own and inherit property such that there is an entrenched attitude that daughters are not entitled to have inheritance rights. A family who did not have a son was often termed *suonmawng* (without a male inheritor) (Keivom: 1982). Widow had right to inheritance if she remained unmarried after her widowhood. In the absence of a male heir, the property went to the nearest male relative and not to daughters.

Traditional Administration

In pre-colonial Hmar society, the institution of chief (*lal*) was considered as the highest authority (Darliensung: 1987; Pudaite: 1963; Vanlalnghak: 2004). He is armed with extra-judicial powers, which nobody can question. For instance, if a 'criminal managed to touch the *sutpui* (middle post) of the chief's house, he is safe and anyone continuing to seek revenge was considered guilty or an enemy of the chief. The moment the criminal sought protection from the chief, he automatically became the chief's slave' (Dena: 2008: 19). Everyone respects and obeys the orders of the chief. The chief and his councilor had the right to punish any individual or family who disobeyed the orders of the chief or who in the opinion of the chief councilor were

considered as troublesome and declare them as '*Khawtlang Ensan*' (social ostracize). Such kind of punishment was considered so severe and shameful that everyone tried to comply with the orders of the chief and his councilor (Pulamte: 2007).

Though the chief enjoyed supreme power in all matters of the village, with regard to land, 'he could not sell even small portion of property without the approval of his people' (Lalhmuklien: 2009: 23). This was regarded as communal ownership (Hmar: 2013). In support of this claim, Rochunga Pudaite (1963) writes, 'significant among the Hmar system of village government is the fact that the land belongs to the people. It is considered common property and the chief and his councilors were trustees with the power to see the rightful use and distribution of each homestead for cultivation' (5). It belonged to the person as long as he cultivated the land, and ceased to be his when he moved or abandoned the land (ibid).

The chief had a council of ministers: the *Khawnbawl upa* (chief councilor) and ordinary *khawnbawls* (councilors). *Khawnbawls* were elected by the chief and were mostly his relatives and kinsmen (Thuomte: 1997). They were next to the chief in the ranking of the administrative power (Hmar: 2013). *Khawnbawl upa* enjoyed certain privileges such as exemption from paying *busung-sadar* (the practice of paying every year a certain quantity of paddy and of surrendering the fore-legs of every animal shot or trapped within the chiefdom) (Keivom: 1982).

Another important official next to the chief and his councilors was the *thiempu* (Varte:

2010a). *Thiempu* was the religious priest who offered sacrifices for the well-being and good health of the family, individual, and community at large. He offered such sacrifices at least twice a year (Keivom: 1982). Every village had at least one blacksmith (*Thirsut*), a village crier (*Tlangsam*) and a youth Commander (*Val-Upa*). (Darliensung: 1987).

In terms of political administration, from chief to youth commander, all post was reserved for men. Further, the institution of youth dormitory showed the prevalence of gendered space which was predominantly occupied by men. During pre-Christian times, every Hmar village had a *Zawlbuk*¹ (youth dormitory). Boys above 15 years of age were supposed to sleep here at night and were not allowed to sleep at their own houses (Dena: 2008; Vanlalnghak: 2004). *Zawlbuk* served as a sort of ‘military wing of the village organization by imparting strict discipline and vigorous training in the art of tribal warfare and defense to youngsters’ (Dena: 2008: 71). As gender division of labour constructed women as wives and mothers responsible for domestic labour and men as husbands and fathers responsible for protecting the village, youth dormitory was accessible only for men. Women were not only excluded, but also restricted from entry into the dormitory (Dena: 2008; Keivom: 1982; Sanate: 2010).

Religion

The Hmars believed in the existence of a supreme being called *Pathien* (God). They

¹ *Zawlbuk* is a big hall constructed with a single entrance. Inside the hall, they built a large fireplace at the centre, in which the fire was kept burning day and night. Close to the fire is an open space used for recreation (Varte: 2010a). There are no beds inside the hall; everyone sleeps on the floor (Keivom: 1982).

attributed him as ‘the creator of all things, and the power over all things. They prayed to him in times of need and praised him when they are blessed’ (Pudaite: 1963: 56). Hmar traditional belief system was animistic. They worshipped mountains, rocks, and rivers (Darliensung: 1987; Dena: 2008). They believed that each of these objects was ‘inhabited by innumerable spirits, good and bad’. These spirits were ‘attributed to every illnesses and misfortunes’ (Dena: 2008: 28). Hmars gave great importance to their traditional beliefs, as they considered it important to receive the blessings of the village priest for their prosperity and protection against evil spirits. The role of the priest was restricted to men. Women did not play any role in religious rituals (Laltlinzo: 2015)

Pielral was a Hmar version of paradise (Hmar: 2013; Pudaite: 1963) and was considered as the place where only the soul of *Thangsuo* enters (Dena: 2008; Hmar: 2013; Pudaite: 1963). *Thangsuo* were the ‘ones who had performed heroic deeds, such as hunting and killing dangerous animals or cultivating and harvesting larger than average quantity of paddy and then celebrating the occasion by throwing a feast and killing one or two Bison during their life on earth’(Dena: 2008: 30). Such achievement was linked with masculinity and thus, it automatically denied women from reaching the paradise through heroic deeds.

Thus, gender norms and division of labour traditionally relegated women largely to the private sphere and kept them from achieving any form of power and fame except in the fulfilment of their roles. This ideology continues to have its hold on Hmar society to a large extent. However, the influence of Christianity resulted in changes in Hmar traditional religious beliefs and social practices. The effects it had on gender norms and women’s lives and whether it challenged such gendered norms or reinforced it, is of importance to the study.

Acceptance of Christianity and its impact on Hmar culture

Religious beliefs and practices were central to the life of Hmar people. They played an important role in their social, economic, and political life (Thiek: 2013). Performing such religious rituals gave them a sense of comfort and joy. Christianity, which spread amongst the Hmars in the early 20th century, brought about a new interpretation such as the existence of God, the creator of the world, and belief in life after death. The new religion gave them the message that by believing in Christian God, there was a hope for future - where the souls will go to a place called 'Heaven'. Heaven is considered a place where everyone will live in eternal harmony, peace, comfort, and no sorrow (Varte: 2010b). Such hope for life after death was absent in the traditional religion. The missionaries preached the message of God through the language of the people. To find suitable vocabulary of the Christian ideas and terms, missionaries often used 'vernacular idiom that could convey the ideas found in the gospel. Therefore they sometimes co-opted existing names and concepts and infused them with new meaning, thereby tampering with and altering its old meaning' (Thomas: 2010: 81). For instance, 'in their traditional belief *vanram* is used to refer to heaven, where the soul of the heroic will go after their death. After their conversion to Christianity, the same term *Vanram* is used to refer to the place where the soul of those who are Christians will go after they die. In fact, Christian God and the supreme being of their traditional religion were addressed by the same name *Pathien*' (Dena: 1988: 88). The preaching of the missionaries exposed the people to new concepts such as sin, heaven, and hell.

The initial preaching that the missionaries gave to the people was, ‘if you want to go to heaven, give up drinking *zu* (rice-beer), sacrifice of animals, believe in Lord Jesus Christ, take baptism and register your name in the record of the Church’ (Pulamte: 2014: 118). The missionary’s teachings were based upon leaving behind one’s sinful past and acceptance of Christ as his/her personal saviour. The missionaries told them that they no longer have to make sacrifices to the spirits anymore if they become Christian and accept Jesus Christ as their true and living God (Pakhuongte: 1983). The new Christian converts did face persecution and social ostracization from the non-converts. When they gave up preparing *zu* for sacrificial and traditional functions, they were either beaten up or driven out of their homes (Dena: 1988). However, this did not stop the people from converting to Christianity (Lalhmuoklien: 2009). Today, almost all the Hmars have converted to Christianity (Dena: 2008; Lalhmuoklien: 2009; Varte: 2010b).

Apart from the changes brought about in the religious beliefs of the Hmar, Christian missionaries brought changes in the cultural and social life of the people. Missionaries, more so the Protestants, ‘exalted Bible as the ultimate source of authority and made it a condition that if an individual had to worship God alright, he must be able to read’ (Dena: 1988: 90). They believed that a good Christian should be able to read the Bible scripture by themselves. Thus, wherever the missionaries went, they opened schools and provided education to the people. Their primary aim in giving education was to make them able to read the Bible (Pudaite: 1963).

In the field of education, Christianity pioneered the introduction of modern education among the Hmars. Hmar language was transcribed to writing by the missionaries and to some extent with the efforts of the new converts (Pulamte: 2014). With their conversion and the establishment of schools, certain institutions such as youth dormitory began to lose its significance, as parents preferred educating their children rather than sending them to youth dormitory (Dena: 2008; Pudaite: 1963). Initially, sons first had the exposure to education as sending daughters to school was considered a waste of time and loss of economic contribution at home. If a woman was able to weave or was skilled in household chores, it was considered adequate for finding a suitable husband. The assumption that daughters will leave their natal families after marriage and that giving education will only benefit her husband's family was one of the reasons for parent's objection in giving education to their daughters (Lalremsiem: 1988). Gradually, parents began to understand the importance of education and thereby started sending their daughters to school.

The opening of schools and the introduction of education brought changes in the social life of the people. Earlier there were two groups: one comprising the chief, his councilors, and village priest and the other comprising the common people. With the introduction of education, there arose new classes, that is, the class of educated people. Such groups of people were those who worked under the leadership of the missionaries as pastors, teachers, and missionaries (Dena: 1988). These educated groups of people looked at the missionaries as models and started accepting western outlook and attitude. The new converts regarded themselves as belonging to a more or

less different category and assumed new leadership as educators and spiritual leaders thereby substituting the traditional priests (Varte: 2010b)

Medical work was another important missionary practice towards the spread of Christianity. Medical work, according to Lal Dena (1988), was used by the missionaries as one of the 'most effective means of destroying the traditional world view and belief system' (105).

After conversion to Christianity, church became the main religious institution in Hmar society. It played the role of strengthening the bond of relations between church members. Initially, churches were under one mission called Northeast India General Mission (NEIGM). However, due to internal conflict among the leaders, gradually there arose various church organizations such as Evangelical Assembly Church (EAC), Evangelical Free Church of India (EFCI), Independent Church of India (ICI), Assembly of God (AG) Mission, Wesleyan Methodist Church, Reformed Presbyterian Church, and Local Church. Membership in the church became an important identity marker in the life of the Hmars. For a woman, her membership in the church depends upon her father during her maidenhood and to her husband after marriage. It is expected that after marriage, the wife will join her husband in his church. She is expected to be submissive and thus unquestioningly join her husband's choice of church. Further church propagated the headship of husband over his wife and expected women to be submissive, humble, and quiet, and self-sacrificial towards her husband. Church kept men above women and expected women to live according to the dictates

of her husband (Laltlinzo: 2015). Thus, the existing gender norms in Hmar society continued even after the introduction of Christianity and take over by the Church.

Church opened up avenues for women to participate in religious activities unlike pre-Christian religion barring women (Laltlinzo: 2015). Thus, Christianity slowly but steadily gathered its influence and control over the lives of the newly converted, thus changing their belief systems and socio-cultural patterns. This affected norms, rules, and traditional justice systems with customary laws experiencing slow but strong changes. Christianity has had and continues to have great influence upon Hmar society. Such influence in turn has its impact on gender relations and women's lives.

Given the overwhelming presence of church in Hmar lives, it will be a major flaw to ignore the influence of church laws on the operation of customary laws in Hmar community. Thus, this study recognizes the necessity to understand the influence of church law and customary law on each other and on their cumulative effect on women's quest to negotiate rights for themselves. Further, it is established that in a secular democratic state, all citizens have the right to approach the secular law despite the predominance of customary and religious laws. Women in Hmar community, like any others, have the right to and do address their issues through the state courts. This study therefore also works towards documenting Hmar women's attempts, if any, to negotiate for their rights through the state law and the consequences of it. This study thus attempts to look at Hmar women's lives within legal pluralism and women's negotiation through it to ascertain their rights.

Legal pluralism gives choices to individuals living within a legal plural set up to choose multiple legal systems for their benefit (Driemeier and Tazeen: 2013; Kameri-Mbote: 2003; Kamau: 2014; Tamanaha: 2008). Taking such literature as the base, my study attempts to understand whether Hmar women exercise such choices. It is this context that makes it pertinent to understand the ways in which women access this legal plurality, and, the agencies they create for themselves. It is these questions of access and negotiation that women undertake within multiple legal systems to address their issues, and the response of such systems, singly and in intersections with each other that my study attempts to undertake.

Methodology

In this section, discussion of the research objectives and research questions along with the methodological framework within which this research is conducted is taken up. Elaboration of the methods used to collect data from various sources, description of field site and my field experiences are also taken up.

Objectives of the study

- To document Hmar customary laws and understand its nature and forms.
- To understand women's status within Hmar customary law. The interpretation of such laws in relation to women's cases.
- To understand the intersections, if any between the existing plural legal orders (customary law, church law and state law) and women's negotiation with such legal pluralism.

- To understand the current process of review of Hmar customary law, role of women's organizations in such review, and what it entails for women's lives and rights.

Research Questions

- What are the nature and forms of Hmar customary laws in Manipur?
- Are the Hmar customary laws inclusive of women's lived experiences and what role do women play in its implementation and interpretations?
- What ways do customary laws intersect with existing church laws and secular state law and what is its effect on women's lives?
- Is the review and documentation process of Hmar customary laws gender sensitive and is it up to date with the changing socio-cultural conditions within which women live?

Sources of Data: Primary and secondary data

The study includes both primary and secondary data. Primary data were collected through ethnographic method encompassing several techniques of data collection such as interviews (both formal and informal), group discussions, participant observation, and case study. Court cases were collected from state court to analyse the kind of cases that have reached the state judiciary system and to understand the ways in which the state court deals with such cases. Cases solved through customary laws were also collected from community members through interview and informal conversations.

Archival research, state, and private archives were accessed to collect documents related to customary laws in Manipur. Official records and reports, as well as newspaper, magazines, journals, and other popular writings containing relevant materials and information on colonial and missionary interventions of law; customary laws and women's position; women's movement in Manipur, and others were collected.

Reports on history of Manipur, colonial intervention in law were collected from offices of Deputy Commissioner Office, Block Development Office, Sub-Divisional Office, Sub-Divisional Collector Office, and other government offices in the field area. Furthermore, libraries of Indian Institute of Technology Guwahati; Guwahati University; Northeastern Social Research Centre, Guwahati; Indian Council of Historical Research in Guwahati; State Central Library Manipur, Manipur University; Northeastern Hill University in Shillong, Indian Council of Social Science Research in Shillong, Indira Gandhi National Tribal University in Manipur, Tribal Research Institute in Manipur, and the Internet were also regularly consulted and accessed to obtain further secondary literature related to various aspects of the study. Content analysis of church manuals and church records was conducted to understand the functioning of the different Church denominations among the Hmars and the laws laid down for their members to abide.

Sampling techniques

Purposive and snowball sampling was used in the study to identify women and men who have solved their cases through customary laws. It is also used in interviewing

community leaders and elders having knowledge on customary laws and Hmar women's organization members who are dealing with women's issues. It is also used in interviewing advocates, who have handled family related cases. Random sampling is used to conduct interview with other members of the community.

Feminist Research

Feminist research 'stresses the importance of considering how gender intersects with other forms of women's oppression based on characteristics such as race, ethnicity, class, nationality' (Given: 2008: 332). They felt the need to conduct studies from women's standpoint as meaning comes from women's experiences, their perceptions of experiences, and life stories (Rothe: 1993). In this context, Judith Lorber (1988) argues, 'women's realities are different from men's, and conducting feminist research, is the only way women's realities can be tapped and understood' (cited in Reinharz: 1992: 13). Following Shulamit Reinharz (1992), I also believe that 'to get closer to women's realities, ethnography is an important feminist method as it makes women's lives visible, just as interviewing is an important feminist method as it makes women's voices visible' (48).

There is a need to conduct studies from women's standpoint. My study intends to look at the functioning of customary law and the effect of the intersection of the three different laws: customary law, church law, and state law on women lives. The everyday experiences of Hmar women within the larger institutions of family and community as well with the customary and church laws are kept at the center of this study. This study is thus propelled by feminist methodology's emphasis on standpoint

approach and helps in understanding the social realities of women as actors whom previous research amongst Hmar community has rendered invisible. Further, intersectionality approach is also used to understand Hmar legal life in general and women's lives in particular under different legal orders. The overlapping and contradictions between Hmar peoples identity as Hmars as well as devout Christians, which has a direct bearing on the ways customary and church law operates is attempted to be understood through the lens of intersectionality. More so, the emphasis is on understanding the negotiations that Hmar women with their triple identities of ethnicity, religion, and gender, attempt at while living life under plural legal orders.

Description of field sites

The state of Manipur lies on the Northeastern border of India. It is bounded on the north by Nagaland, on the west by Cachar district of Assam, on the east by Burma (Myanmar) and the south by Mizoram and the Chin state of Burma. There is a 'mosaic of numerous ethnic groups having their distinct social and cultural practices' (Shimray: 2001: 3675). These ethnic groups can be broadly divided into Meiteis, Muslim (who are called Meitei Pangals), Naga tribes and Kuki-Chin-Mizo tribes. There are 33 scheduled tribes in Manipur and seven Scheduled Castes. Manipur is divided into nine districts. Meiteis are the dominant ethnic group of Manipur, who mostly live in the valley. The hill areas of Manipur is inhabited by various tribal groups-Nagas and Kuki-Chin-Mizos. Kuki-Chin-Mizo tribes have their maximum concentration in and around Chandel and Churachandpur District.

Taking into consideration, the high concentration of the Hmar settlement in Churachandpur district², it is chosen as the field site. In the selection of the villages within Churachandpur district, one of the important factors taken into account is its proximity and distance from formal legal courts. For this reason, rural-urban component was given preference where one urban area namely Rengkai and three rural villages namely Thenmuol, Ngurte, and Langza (also known as Chinglangmei) villages of Churachandpur district were selected. In these rural villages, basic infrastructures such as schools, roads, health centres were hardly found and access to state court is difficult. The mode of administration still contains a strong element of traditional and customary structures. Rengkai has better basic infrastructures compared to the other villages and has more accessibility to state court. The professed religion in the entire selected field site is Christianity.

Rengkai was established in the year 1938. It has 1463 household with a population of 8293 of which male population is 4287 and female is 4006 (Census of India: 2011). The village is connected to Churachandpur town and has been subject to modernization in many ways with two private, and one government high schools, two higher secondary schools and a vocational training institute. Many of the inhabitants (men and women) are working in government offices, schools, hospitals or in non-governmental organizations (NGO). Apart from such employment, there are women

²Churachandpur district is situated in the southern part of Manipur bordering Mizoram. Churachandpur district is the largest district of the state in terms of geographical area. The population according to the 2011 census is 274,143 of which male and female were 137,748 and 133,526 respectively. Churachandpur is inhabited by Hmar, Paite, Thadou, Anal, Chothe, Kabui, Kom, Vaiphei, Zou, Mizo, Gangte, Simte, Ralte and others. These tribes belong to Chin-Kuki-Mizo group. There are also other non-Manipuri ethnic groups like Nepalese, Biharis, Malwaris, and Punjabis.

who are engaged in selling vegetables, running hotel, weaving, tailoring, opening groceries shops, working as maid by *busep* (husking rice), *puonsawp* (washing clothes) or babysitting in others home, while men are mostly engaged in farming, construction works or as butchers.

Thenmuol and Ngurte are two adjacent villages located 8 km from Churachandpur town. Thenmuol was established in the year 1946. It has 106 households and a population of 543 of which male population is 260 and female is 283 (Census of India: 2011). It is devoid of any government infrastructure except for one government primary school. Ngurte village was established in the year 1909. It has a population of 604 and a household of 144 out of which male population is 293 and female is 311 (Census of India: 2011). Though a 100-year-old village, the development process is still negligible. There is no school in Ngurte village. It takes more than half-hour to reach these villages from the town due to poor conditions of the road. The main occupation in both these villages is agriculture.

Langza was established in the year 1956. It has a household of 71 with a population of 310 out of which male population is 153 and female is 157 (Census of India: 2011). There is one primary school run by the Evangelical Assembly Church (EAC). The main occupation of the people in Langza is agricultural work and ginger plantation. In this village, both Hmar and Kom tribe resides. Majority of the population in both these villages are Kom. The languages spoken in this village are Kom, Hmar and Manipuri. Manipuri is the language used for communication amongst them. This village lies in the border of Churachandpur District and Bishnupur District and is located 35 km

towards East from District Headquarter Churachandpur. The surrounding areas of this village are inhabited by Meiteis and Meitei Pangal.

Pilot Study

I moved out for my first stage of pilot study in September 2012 for two months. The pilot study gave me the initial experience of engagement in research and to collect baseline data required to develop the detailed plans for the main fieldwork. During this period, I visited Manipur State Archives and various libraries to collect secondary information from journals, reports, dissertations and others. There are quite a handful of books and thesis concerning tribes of Manipur and their administration. However, there is a dearth of academic literature on the Hmar, especially about customary laws. I became aware of the fact that I will be researching on an issue, which is so much intrinsic to the people, but research on it was scanty. The blend of my identity as a Hmar and the unexplored nature of the study helped me pin down the area and field of study.

During this period, I engaged myself in building contacts with scholars, Hmar community members, academicians through snowball sampling. My interactions with them were informal. Being an insider to the field, I did not face communication problem, as I was able to communicate with them either in Hmar, English or Manipuri language. Through snowball sampling, I was also engaged in networking and striking up rapport with advocates who can tell me about the nature of cases that Hmar people approached them with and how such cases are solved in the state court.

Apart from my visit to Family Court, I also interacted with the villagers. Being an insider provided me the opportunity to have easy access to the people. I moved freely between homes and built conversations with them. People were inquisitive and would often ask what I am working on and the details of my research. The usual response that I received was, don't you have the Hmar customary law book (the booklet documented by Hmar Youth Association)?” Many of them thought that I am working on the documentation of Hmar customary law. Therefore, I had to explain that I am not just working on the rules and regulations of customary law, but I am also looking at the functionality aspects of customary law.

Fieldwork

Fieldwork is a ‘useful and important process that challenges fieldworkers to witness, record and try to understand vastly different and often harsh conditions; it opens worlds to which we would not otherwise be exposed’ (Wolf: 1996: 3). In this section, I discuss my in-situ research experience. This phase of my fieldwork began from January 2013. This time, as I had established contacts and rapport with the people in the field area, they were more familiar with me. On the way, I was often stopped just to enquire how my work is going on; some would smile without a word but in friendliness and recognition, while others would ask me ‘how are you doing’³ and about the progress of my work.

³In the field, in public space, people exchanged pleasantries and asked each other: How are you? Have you taken food? In the morning, usually women asked one another: Have you started cooking? What dish did you cook?. Often I notice that a curry name *changal hme* is one of the main dishes. Some would say, I do not like to have food without *changal hme*. Women who can cook *changal hme* in the right proportion are often praised. Often people used to say, *she knows how to prepare*

In Rengkai, since women were mostly busy in the morning and daytime, I mostly visited them in the evening and as per their convenience. Only on Sunday, they were free from engagements. Sunday is observed with utmost solemnity (*ursun takin*). Almost all the shops were closed except pharmacies. Vegetable stalls also remained closed on Sundays. In Rengkai, the then Hmar Women Association (HWA) Secretary told me that earlier many of the shops used to be open on Sundays; however they have taken the step by ordering the shopkeepers to close their shops on Sundays, a penalty of Rs 500 was imposed to those who open their stores. She said, “Such steps have proved to be effective. The reason for us (HWA) taking such steps was to observe Sunday in its true meaning; as a day for leaving aside our six days labour and dedicating the day to God. Since most of the people prefer to have meat on Sundays, we allowed the meat shops to be open till 8:00 am in the morning.”

As women rarely have leisure time, in Ngurte, Thenmuol, and Langza village I often joined them in the fields and their other workplaces. There were also times that I joined the women (some in a group of 4 or even up to 10, 15) in their work where we chatted and at the same time, they carried on their work. Women often shared with me their heavy responsibilities as regards maintenance of their home. To be at liberty to express opinion freely, there is a need for women respondents to have privacy while

changal hme. Men proudly spoke of their wife who can prepare *changal hme*. In one of my visit to a family, the husband proudly proclaimed, ‘when my wife cooks *changal hme*, you can taste the typical taste. Whenever she cooks *changal hme* I always eat more than the other days’. His wife continued, *we never ran sort of sathu (the main ingredients of changal hme) as my husband likes changal hme very much. Though I do not like changal hme earlier, now as I often prepare it, I started liking it.* Though it is not the criteria for marriage selection, when a woman has reached marriageable age, she is often asked, Do you know how to husk rice and cook *changal hme*? This shows the gendered division of labour and the expectation of women to excel in such household chores.

speaking. Having conversation with women, giving them space to be at liberty to pour out their thoughts is an important method of making women visible. I found that this is in line with Ann Oakley's (1981) argument that feminist researcher's engagement in conversation reflects feminist research purpose of cooperatively creating sociology of women.

In my visit to their homes, during our conversations, kids would cry, and the mother has to run to see the matter while some have to be excused in between to feed the animals. Even if a child may be crying in one corner, it is considered the responsibility of female members of the family to take care of the child.

During the course of the fieldwork, some would tell me, 'I don't know anything. Why don't you go to Mr. X or Mrs. Y? More women than men would suggest me to meet other people. It was again women who mostly suggested me to rather approach men who they thought will be able to give me better information and knowledge than themselves. However, I explained them that I am not meeting people to get correct answers or answers in general for that matter. Rather I convinced them that I am interacting with them to know their experiences as Hmar women and to know their views and opinions about matters related to Hmar society, family, women and the overall way of life. This I explained them would help me understand the ways in which Hmar society and laws function and how Hmar women lived their lives. After such initial apprehensions, we would carry on the conversation. Like Belenky et al. (1986), I posed questions that were broad but understandable on many levels, hoping that all- even the less articulate and reflective women- would respond in their terms

without feeling inadequate to the task. I was welcome to their homes, and they often invited me to come again. I was often served tea, despite my denial when I went to their homes. It is a matter of courtesy and a sign of acceptance and respect for the Hmar to offer tea to guests at home.

As the topic on which I am working was not alien to their knowledge and experiences, respondents gradually were able to relate to the issue at hand and my pursuit to study the same. With time respondents from community elders to church elders, women, youth, community members showed interest in our interactions. As they can relate customary law with their lives (which is intricately interwoven with customs and traditions), they were able to share their opinions and their experiences in the most vivid details.

Respondents were willing to extend their help in a very cordial environment. Many times during casual meetings and interactions, they would carry on the works they are doing, and I would either sit or join them and continue our talks. Many times during our informal conversations, it so happened that I inadvertently became the respondent sharing even my experiences and knowledge. Such revealing of the self to others helped me understand things about my own society and self that I did not realize before. Building such rapport has helped informants especially women to open up and share with me their personal views. I had taken permission from respondents to note down their opinions and assured confidentiality of it. Such assurances encouraged them, especially women, to speak out their opinions and views openly.

Women were surprised when they found out that I am doing research work after my

marriage and I stay away from my husband to complete my research. As we have the same identity as being a mother, women felt comfortable in sharing their experiences and opinions. The fact that I had an infant daughter made me more acceptable amongst women who believed that I would understand their hardships as a married woman and a mother. This in many ways helped me gain access to information and experiences important to understanding Hmar women's lives. Often during our conversation when they spoke about a certain issue, for instance, economic responsibilities of women at home, they would say, 'you will also understand'. Marjorie De Vault (1990) suggests the need to respect the intention behind women's words and learn to listen to phrases such as "you know" as a request for understanding (cited in Reinharz: 1992: 46). My access to my field sites 'by virtue of being a woman allows me to study women's private domains, workplaces and organizations' (Reinharz: 1992: 56).

Depending on the situation, I also held conversations with husband and wife together at their residences. Sometimes their idea would clash and they would get into arguments with each other on particular issues. However, in most cases I tried to interview the men and women separately. Though fruitful discussions can occur if both spouses are present, separate interviews are preferred as 'women tend to discuss their feelings about their lives, their roles, and their marriages more freely when men are not present' (Rubin: 1976: 9-11).

Church pastors and other members of the clergy were interviewed at their offices and residences. The coming of Christianity among the Hmars, which is a century-year-old, has become intrinsic in the life of community members. Church pastors and leaders

play a significant role in shaping the life of the people through their teachings of what is acceptable by the church. Furthermore, church records and manuals were collected from the churches with the permission from the concerned church authority to have an understanding of the church laws. Though there are different churches among the Hmar, however as the church are under evangelical denomination, they follow similar doctrine and the church law bears similarity.

Members of Hmar Women's Association (HWA) were also interviewed. The registered office of Hmar Women's Association (Joint Headquarter) is at Churachandpur. It was formed in 1988 and has been working since then towards the empowerment of women and protection of women against exploitation. HWA does not have a separate office building. However, they occupy one room of the residence of the then HWA President, as their office. The members of HWA gave me ample time for discussion. My interviews were mostly held at their residences. All of them being mothers were busy in their household work while some were busy in their office work. Community leaders such as village chief, Hmar Inpui (Supreme House), Hmar Youth Association (HYA), and Village Authority members were also interviewed.

During my field study, I attended an important meeting on Hmar Customary Law Review held by the Hmar Customary Law Review Committee. This aspect will be elaborated in chapter IV. I was allowed to attend the meeting under the condition that I will only observe the proceedings. Later on, I was allowed to take appointment from the members to conduct interviews for the study. In the context of conversations, when I informed community members that I have been to the meeting on customary law

review committee, they expressed surprise. It was strange for them that I attended the meeting. One woman asked, *do women attend such meetings*, while another woman said, *are you interested in such meeting?* ‘*What did you have to contribute there?*’ These questions and the queries related to my attending the meeting brought home the point that women were systematically excluded from the review process. This reveals the inherent patriarchy and discrimination of the review boards as well as the administration of the customary laws.

As youth formed a sizeable section of the population, they were other important respondents. They were very informative, and their opinion contributed a lot to the study. My interactions with them were informal. Sometimes I even conducted group discussions with them especially when they were together after church service or after their choir practices.

Community elders are important informants as they are well versed in customary law. I also conducted informal conversations with community elders. I mostly visited them at their homes. Sometimes in the process of our interaction, they would become nostalgic and give in-depth knowledge of the past and the changes that has set in over the decades.

Laibung inbiékna thurel

I used the term *laibung inbiékna thurel* (customary board decision) in my thesis to refer to the forum where the concerned *laibung* (kinsmen) gathered to discuss and settled cases (especially family-related matters) by referring to customary law. The

Hmar term *inbiek* means meeting or discussion, and *thurel* means decision. As there is no courtroom, kinsmen meets and discusses such issues at the house of aggrieved parties. I was informed that for cases relating to marriage, divorce, child custody, the matter is discussed at the house of the woman concerned. On the other hand, for issues concerning theft or other matters, it is discussed at the house of the victim. It is pertinent to mention that *laibung*⁴ comprises only of male members. The institution of kinsmen being an unorganized setup and due to the absence of courtrooms, no records of the cases dealt with was maintained. Participant observation of such proceedings is not possible, as the involvement of women is not permitted; only the concerned kinsmen gathered and discussed the issue. Therefore, such cases were collected through the method of oral history, from community members, who have been involved in such meetings. Community members especially elders who have participated in such kinsmen meetings narrated cases that they were privy to. As my study focuses on customary law and gender, the cases collected mostly focus on issues of marriage, divorce, child custody and inheritance rights. Purposive sampling method is used to identify community elders who have been involved in such meetings. Altogether, I collected 32 cases dealt with through customary law.

⁴ It is important to mention that kinsmen who discussed such issues are not a formally selected people. The members of the kinsmen differ from clan to clan. There is no fixed rule for the number of *laibung* who should gather and discuss the issue. It depends on the person who has the issue/dispute. Though there may be many kinsmen within a clan, kinsmen who are called to discuss the issue differs from person to person. For instance, a person mostly called kinsmen who has more intimate relations with him. This does not however mean that he is avoiding the others. Rather it is like choosing some out of the whole, to be his representatives in dealing with his issues. A person from one village can also invite his kinsmen from other places or village to be amongst his kinsmen who will stand on his behalf.

I also interviewed eleven advocates of Family Court at Imphal during this fieldwork period. Two family counselors' interviews were taken too, to understand the kind of issues that women brought to the family courts and how it was dealt within the state law. Court cases relating to Hmar women were also collected.

Collecting court cases becomes necessary in my study to analysis the kind of cases filed by the Hmar in general and women in particular in state court. The fact that Hmar community members prefer to settle cases within their customary forums (as will be elaborated in chapter III), it was important to understand which kinds of cases reached the formal courts, by whom, under what circumstances and what was the results of such deviation from the “normal”. It needs to be noted here that taking cases from the community to the state courts is not considered a good practice amongst Hmars.

With permission from the Family Court officials, I collected court cases. As there is no specific data maintained on cases, I had to go meticulously through each file. I was however not permitted to take out any of the cases and had to conduct most of my studies in the documentation section. There were also times when I was not allowed access to the documentation sections due to certain restrictions on particular days. As my focus area is on the Hmar, I looked out for those cases that are filed by Hmars. It is to be noted that there are very few cases from the Hmar community that has gone up to the family court. After looking through the cases, I collected seven Hmar court cases from the year 1993–2013.

During the process of my fieldwork, I conducted in-depth interview with eighty-nine respondents besides informal conversations. Informants include community members,

community leaders, elderly members, men and women who have solved cases through customary law, researchers and academicians who have worked and currently working on Hmar community and Hmar women's groups. The number of male respondents interviewed is 57 and 32 female respondents. As mentioned earlier, with women respondents it was more of conversation than interview. The interviews were guided by a semi structured interview guide with open-ended questions to help in the smooth flow of the conversation. At the outset of the interview, certain questions related to the topic were asked to build rapport with the respondents.

Analysis of data

I took great care in writing down field notes, which came as extra information and enriched the data. After spending the day with my respondents, I spend some time in noting down in detail the observations with respondents along with other things that I had observed during the day. Observation of people in their natural habitat, watching, listening and talking were another important source of information. After returning from the field, I transcribed the data collected from interviews, observation, informal conversations, cases, and field notes. All the interviews were transcribed verbatim and later translated into English. After transcribing the data, all the personal names and any relevant information of the respondents were removed to maintain confidentiality. Using content analysis, I analysed the data. Open coding was used to bring forth the various themes that emerged from the data. Then axial coding helped gather the recurring themes under one axis thus sorting the data into various conceptual categories explaining the issue dealt in the study. Axial coding helps to understand the

core concepts of the data. Existing sociological, legal and feminist literature/theories were used to analyse and explain the data working towards addressing the research questions. As noted by Uwe Flick (2009), 'the interpretation of data is at the core of empirical procedure. The interpretation of texts serves to develop the theory' (306).

Personal reflexivity

Wolf (1996) mentioned the feminist politics in entering the field such as adopting the local dress code. Knowing that dress can be an important factor in reducing barriers, I feel that to dress according to the situation becomes necessary to reduce the gap with my respondents. During my fieldwork, I mostly wear dresses, which was commonly worn by community members. I usually wore tops and skirt or at times trousers. I experienced one such situation where once I wore salwar kurta during my interview with a college lecturer. During our discussion, a visitor came and when he saw me, he looked at me strangely saying: Are you not Hmar? Later on, I became more conscious about the way I dressed. However, in my interview with advocates in Imphal, I wore salwar kurta, which is mostly worn by women in Imphal.

During the process of interaction with interviewees, I remained conscious of the fact that my attitudes and beliefs do not influence my respondent's answers. As Mc Neill and Steve (2005) writes, 'interviewees may be able to tell the interviewer's opinion from the way the question is asked especially via the interviewer's facial expression or tone of voice' (62). There were situations where men would share their opinions on women which reflected chauvinism, using terms like *nuhmei mei mei* (just a woman). There was this particular situation where a male respondent said, wives should be

threatened time to time that they can be divorced anytime so that they do not try to exercise authority over their husband. In such cases, I got provoked by his comments and was annoyed. However knowing that I need to respect the opinion of my respondents, I controlled my temper. The pain, emotions, the helplessness that I encountered during the process of my field work, often relating to the experiences of women, proves that I can never be totally objective and conduct value-free research. Feminists 'challenges positivist claims to objectivity and value neutrality and critique the traditional standards and methods that accompany these claims' (Brooks: 2007: 8). 'Feminist critique has helped undermine the authority of conventional social science by challenging the notion of value-free research' (Hoggart et al.: 2002: 4). They 'seek to produce stronger, more objective, more truthful results through including women in their research studies by documenting women's lives and experiences that have been previously marginalized or left out of the dominant knowledge canons together' (Brooks: 2007: 10). However, I tried to maintain objectivity by not influencing or rejecting the opinions of my respondents in whatever forms they came. Instead, these responses made my study rich in helping me reflect on the inherent patriarchy in Hmar society, which at the surface may seem to be and claimed as gender egalitarian.

Chapter Scheme

The second chapter titled "Review of Literature" is divided into three sections. The first section deals with influence of colonial rule and Christianity on customary law. The next section delineates the debates on legal pluralism, which largely forms the theoretical framework of this study. The third section deals with feminist debates on

law in India; and gender and customary law in Northeast.

In the next two chapters (3rd and 4th), I have taken up analysis of data collected in the field. The third chapter titled “Legal Pluralism among Hmars” deals with understanding legal pluralism, its nature and functioning among Hmars. It discusses important characteristics of customary and church law among Hmars, and their inter relationship. Through data, it is shown that despite being two separate forums of jurisdiction, yet in their functioning, customary and church forums overlap in many ways with each other, and is largely patriarchal in nature. Members of customary law boards are simultaneously members of the church thus inevitably bringing in teachings of the church into customary decision-making. Both customary boards and church exclude women from decision making and operate as exclusively male spaces. This chapter also emphasizes that despite socio-economic and political changes, customary law remains intrinsic to Hmar life, so much so that stigma is the result of any attempt to bypass it.

The fourth chapter titled “Gender, Customary Law and Church: Legal Pluralism and Its Impact on Women’s Lives” elaborate the relationship between customary law, church law and women’s lives. It discusses the nature of women’s access to existing laws within the context of legal pluralism. Responses of these legal institutions to women’s issues both individually as well as in intersections with each other are also brought forth. Data collected from field endorses that legal pluralism in Hmar community is not an exception to the gendered nature of law. Hmar women are relegated to the “private sphere”. This ensures that their cases are adjudicated within

the framework of prevailing gendered norms, constitutive of the idea of Hmar identity, culture, and family values as well as that of a good Christian woman and wife.

The concluding chapter consists of detailed summarization of the study on women's lives in the context of legal pluralism among Hmars. Major findings of the study are discussed, bringing forward the theoretical framework within which such findings can be placed. Similarities and departures from existing literature on women and legal pluralism are brought forth.



CHAPTER-II

REVIEW OF LITERATURE

This chapter is divided into three sections. The first section deals with features of customary law and the influence of colonial rule and Christianity on customary law. The next section delineates the debates on legal pluralism, which largely forms the theoretical framework of this study. Feminist debates on customary law and its impact on women's lives is also discussed.

Features of customary law

Customary law as a 'legal system has been in existence from time immemorial and finds expression in day-to-day cultural practices, rituals and traditions of the people' (Ozoemena: 2006: 1). Such law has its sources in the practices and customs of the people, who conduct their 'personal activities in accordance with and subject to customary law' (Ndulo: 2011: 88). According to Ndulo (2011), 'the sources of customary law that are historically and presently accepted as authoritative are a product of social conditions and political motivations' (88).

Nandita Haksar (1999) pointed out that, 'the existence of an alternative legal system assumes a very important role in showing us that there are other ways for dispute settlement rather than the so-called modern legal system' (83). Haksar's analysis shows that dispute-settling mechanisms in customary law are different from state legal system. 'Informal or non-state justice systems are umbrella terms often used to describe mechanisms of justice and conflict resolution that operate outside the bounds

of formal, state-based legal system' (Harper: 2011: 1). While Nandita Haksar (1999) term 'tribal customary justice system as 'tribal jurisprudence' (83), scholars have used different terms to refer to justice that operates outside the purview of the modern legal system⁵.

Oral Tradition of Customary Law

The most striking features of customary law is the fact that, they are unwritten and are based on oral tradition (Bennett: 2004; Ngassa: 2012). The 'mode of communication might often find expression in the narration of songs, stories, epics, myths, tales and legends' (Pereira: 2009: 78). J. C. Bekker (1989) considers customary law as 'an established system of immemorial rules which evolved from the way of life and natural wants of the people, the general context of which was a common knowledge...'(11).

Restorative justice

Scholars (Harper: 2011; Scharf: 2003; Sheleff: 2009; Sonkosi: 2004) underscore that customary law aims at bringing about peace, law and order within the system. According to Zola Sonkosi (2004), 'The crucial goal of customary law is the restoration of peace and harmony within the community by reconciling the victims and the perpetrators' (100). He views such goal as crucial for 'securing ethnic cohesion' and 'restoration of harmony and understanding among the community' (99). Customary law is based on the principle that the wrongdoer must compensate his or

⁵ Erica Harper (2011) refer customary justice systems as 'traditional justice systems' (1), Sally Engle Merry (1993) to 'popular justice', Wilfried Scharf (2003) prefer to term it as 'non-state justice systems' and Dr. Celestine Nyamu-Musembi (2003) refer to as 'non-formal justice system'.

her victim for the harm that has been done with an aim of bringing about redistribution (Mayen: 2010).

The flexibility nature of customary law 'provides room for looking out for ways to settle the issue and provide solution amicably and to the satisfaction of both the parties' (Pereira: 2009: 83). According to Erica Harper (2011), 'customary justice systems apply flexible rules and procedures; norms are constantly being 'reinvented' in response to changing social circumstances. This dynamic structure allows leaders to craft pragmatic solutions that suit local conditions and respond to the issues at the crux of a dispute' (19-20). Rather than focusing on what the law says, maintaining harmony and cohesion within the society is given more importance. 'Customary tribunals encourage mediation and to reach decisions that are restorative' (Kane et al.: 2005: 11).

Raja Devasish Roy (2005) also writes, 'In the case of dispute resolution, since the parties must face each other in their small community after the dispute is settled, efforts are made to produce two winner instead of a winner and a loser' (21). By producing two winners, it aims to 'restore justice, abolish revenge and divisions, and generate tolerance and forgiveness' (Dexter: 2005: 38). Justice within indigenous law system is reconciliatory and timely, whereby 'decisions are produced in a relatively conciliatory, consensual manner rather than imposed' (Merry: 1993: 34).

Customary Law and Mechanism of Reciprocity

Customary law is recognized, not because it is backed by the power of some strong individual or institution, but because each individual recognizes the benefits of behaving in accordance with others expectations, given that others also behave as he expects. Reciprocities are the basic source both of the recognition of duty to obey law and of law enforcement in customary law system (Benson: 1990). Malinowski (1926) elaborates customary law as ‘the positive law governing all the phases of tribal life, consist then of a body of binding of obligations, regarded as a right by one party and acknowledged as a duty by the other, kept in force by a specific mechanism of reciprocity and publicity inherent in the structure of their society’ (58).

Easy accessibility

‘Resolving disputes at customary level is generally affordable in terms of transaction costs; customary norms rarely impose dispute resolution fees, and the system is structured in such a way as to limit the costs that disputants would otherwise need to absorb’ (Harper: 2011: 27). Such tribunals are easily accessible by the people and do not involve ‘high user fees or the need to hire a specialist such as a lawyer’ (Merry: 1993: 33). They are usually within ‘walking distance of user’s homes, and flexible operating procedures means that dispute resolution can occur at times that do not interrupt income-earning activities’ (Harper: 2011: 27). ‘The scheduling and duration of the case handling are usually designed to accommodate the rhythm of work and family life of the clients and the officials of these forums’ (Merry: 1993: 33).

History of colonial rule and customary law

In the process of underlining the evolutionary process of customary law, many scholars have put forth the impact of colonial rule on customary law (Allot: 1969; Kane et al.: 2005; Ndulo: 2011; Rwezaura: 1995). Colonial rulers emphasized on codified laws rather than oral traditions thus establishing formal legal systems in colonies where such legal systems were absent. Given the relatively scarce work in the context of South Asia, I would like to draw insights from the rich mass of work done on customary laws in African context. As Pereira (2009) write, 'In both there is the action of colonial power seeking to impose its order on unique and established politics and leaving behind a nation-state model of European origin on geographic regions that embraced diverse peoples' (55).

Colonial rule has in many ways brought about transformation upon the functioning of customary law, at the same time bringing about formal law for their administration. The colonial rulers applied dual system of law. In areas under "direct rule", English law was applied, while in areas under "indirect rule" customary or traditional laws were administered by native populations (Kane et al.: 2005). British rulers did not abolish customary law; rather they recognized those institutions that administered customary law. Such policy, according to A. N. Allot (1969) was the 'first essential precondition for the survival of customary law' (13). From its inception 'the system of administration of justice introduced by the British differentiated between the Europeans and Africans' (Ndulo: 2011: 94). British rulers applied indirect rule policy and a racially stratified dual legal system, 'with one system of law for Africans and

another system for non-Africans' (Kamau: 2014: 4). Thus 'plural legal system exist because Western law was received into these states, while, at the same time, the colonial authority granted limited recognition to existing indigenous systems of law and religious laws' (Rwezaura: 1995: 524-525). Bart Rwezaura (1995) considers such plural legal system as 'legal cocktail' (524).

According to Garey and Townsend (1996) 'customary law is a parallel legal system to statutory law (modeled largely on South African law) and forms the framework of norms within which the vast majority of the people of Botswana think and act' (cited in Htun and Laurel: 2011: 20). Colonialism resulted in an 'imposition of foreign rule over indigenous traditional setting and dominance of African people' (Arowolo: 2010 cited in Schoeman: 2012: 25). For instance, in countries like Kenya and Tanzania 'no separate customary tribunal systems were created and the formal judiciary adjudicated on matters of customary law' (Kane et al.: 2005: 6).

The role of customary law 'varies between and within countries in its content and form as customary rules are not static but continually evolve in response to cultural interactions, population pressures, socio-economic change and political processes' (Kapur: 2011: 77). Among some countries, state law and customary law were integrated into state legal system. Countries such as Ghana, Tanzania became partially incorporated into the Western system (Bond: 2010). For instance, the Law of Marriage Act (LMA) passed in 1971 in Tanzania was an integration of a substantial body of marriage laws and principles derived from Islamic law, African customary law and the

English common law while Ghana established a unified law of inheritance in 1985 (Rwezaura: 1995).

On the other hand, many countries retained division between the various legal systems. Such division 'perpetuates the separation between public law and private, family law, and area in which the state will not intercede to prevent gender discrimination. These countries have embraced a strong form of multiculturalism, ceding the authority to govern family law to local communities and removing the backstop of constitutional non-discrimination rights' (Bond: 2010: 516). Commenting on the existence of parallel legal systems Jones (1998) writes: 'It has never been encouraged in Western European countries, where the predominant view is that the different legal systems cannot exist within one-state structure'(6).

From pre-colonial times, customary law in most countries was presided and adjudicated by traditional leaders. Such leaders were primarily male elites, who were charged with an undefined duty to act in the interests of the people (Kane et al.: 2005). The leaders 'usually consulted a group of elders or councilors as part of the decision-making process' (Bond: 2010: 559). Such decisions were 'reconciliatory and timely, as it is based on the assumption that the interests of the community as a whole are paramount' (Ozoemena and Michelo: 2009: 5). British authorities consolidated power to some indigenous leaders by co-opting them to the colonial administration. In the context of Africa, as Bond (2010) writes, 'colonialism changed the role of local, traditional leaders in decision making and the degree to which they engaged in consultation with their constituencies. As a result, traditional leaders no longer felt the

need to consult elders since they had the support of the colonial government' (559). Thus the power of traditional leaders, who enjoy social and political power, was transformed and cemented with the assistance of the colonial powers.

Christianity and customary law

Colonialism opened new avenues towards the spread of 'Christianity and education, which sowed the seeds of modernization and westernization among the indigenous people' (Nongbri: 2003b: 16). According to Zhang (2010) the large scale spread of Christianity in Africa is the result of European colonization. 'Colonial rulers and Christian missionaries encouraged studies of tribes to aid them in their respective tasks of administration and conversion of the people' (Nongbri: 2003b: 18). Consequently, 'the introduction of Christianity in Africa marked the beginning of religious pluralism on the continent, thus putting to an end the monolatric religious system that operated in traditional African societies' (Ibenwa: 2014: 150).

Amongst the changes brought in by Christianity western education is considered one of the most important. In the context of Cameroon, John Mukum Mbaku (2005) writes, 'the early missionaries expected converts to attend school, not just so they could read the Bible, but also because they expected them to study European culture, abandon their native ways, engage in employment of a European nature and generally become civilized'(62). With the introduction of western education, 'Christianity and the market played major roles in the erosion of vital aspects of tribal life and culture' (Nongbri: 2003b: 24).

The missionaries denounced certain practices which were very significant for the indigenous people. Haldipur (1972) commenting on the head hunting practices among the Nagas mentioned that such practices demonstrated 'the theme of integration of culture. It was the very core of the Naga culture based upon the concept of fertility, their lives and their activities and behaviors were inextricably woven round this practice' (307). The disapproval of such practices by the missionaries and their conversion to Christianity resulted in the disappearance of the head hunting and ultimately 'changed the mode of life of the tribes in the administered area' (Mills: 1992: xii).

Christianity also replaced traditional religions, whereby churches were established to 'deal with the issues that had been the purview of traditional religions (Mbaku: 2005: 62). David O. Ogungbile (2010) considers 'the emergence of the group of churches' as one of the significant transformation, which Christianity in Nigeria witnessed (4). This led to the existence of multiple legal systems such as customary law, religious law alongside state law. As Rwezaura (1995) states: 'A fascinating aspect of this historical development is the fact that people rarely confined their actions within one system of law. They tended to draw from all the various systems whenever it suited them best' (ibid).

Thus, 'law in modern society is plural rather than monolithic; that is private as well as public in character and that national (public, official) legal system is often a secondary rather than a focus of regulation' (Galanter: 1981: 20). 'What is accepted is that in pluralistic legal regimes, several sets of laws are administered in several sets of

institutions' (Griffiths: 1986: 5). 'This does not mean that more than one rule applies to the same situation. The state's laws have still a role to play in regulating individual behavior while allowing personal laws and customs to be used to a certain extent in those matters specific to those communities' (Jones: 1998: 6). The existence of multiple legal systems as Benda-Beckmann (2002) notes 'is an extension from the analysis of pluralism in colonial societies where it indicated asymmetrical power (and race) relationships between the white minority and the indigenous majority' (60).

Legal Pluralism

Legal scholars claim the existence of multiple legal regimes within the same territorial area of a state (Griffiths: 1986; Hooker: 1975; Merry: 1988; Tamanaha: 2008). They term such multiple legal regimes as 'legal pluralism'. As Brian Tamanaha (2008) writes 'what makes this pluralism noteworthy is not merely the fact that there are multiple uncoordinated, coexisting or overlapping bodies of law, but that there is diversity amongst them. They may make competing claims of authority, they may impose conflicting demands or norms; they may have different styles and orientations' (375). Legal pluralism 'seeks to understand the complex ways in which local practices and the formal law compete, coexist and incorporate each other in contemporary societies' (Nagaraj: 2010: 432). Indeed, 'elements from various systems may be fused in one context, and reproduced as distinct 'pure' systems in the other theoretically by the same people, in the same village, all on the same day' (Benda-Beckmann: 2002: 70).

Hooker (1975) defines legal pluralism as 'the situation where two or more laws interact' (6). According to Griffiths (1986), legal pluralism is 'that state of affairs, for any field, in which behavior pursuant to more than one legal order occurs' (2). Sally Engle Merry (1988) define legal pluralism 'as a situation in which two or more legal systems coexist in the same social field' (870). Such multiple legal systems as listed by Brian Tamanaha (2008) includes 'village, town or municipal laws of various types; state, district or regional laws of different kinds; there are national, transnational and international laws of various types.... Besides there are more exotic forms of law such as customary law, indigenous law, religious law or law connected to distinct ethnic or cultural groups within a society' (375). Every functioning sub-group in a society as Pospisil (1971) writes 'has its legal system that is necessarily different in some respects from those of the other subgroups' (1971: 107). 'When the notion of legal pluralism is invoked, it is almost invariably the case that the social arena at issue has multiple active sources of normative ordering' (Tamanaha: 2008: 397)

According to Merry (1988), 'Legal pluralism has expanded from a concept that refers to the relations between colonized and colonizer to relations between dominant groups and subgroups and subordinate groups, such as religious, ethnic, or cultural minorities, immigrants groups, and unofficial forms of ordering located in social networks or institutions' (872). 'Legal pluralism thus provides an alternative and very useful way of thinking about the legal as well as about discourses about the legal, as it sets itself the multiple task of looking at the law and theory both from an internal and external point of view' (Melissaris: 2004: 57). The study of legal pluralism has today gained

attention in various fields such as legal anthropology, legal sociology, comparative law, international law, legal theory and socio-legal studies.

Jamila Hussain (2011) in her article 'More Than One Law for All: Legal Pluralism in Southeast Asia' examines the nature of law in Malaysia, Indonesia and Thailand of Southeast Asia. He elaborates on the existence of diverse laws in the region. Countries such as Asia, Africa, and the Middle East 'recognizes their rights to be governed under the personal law of their communities, subject to the overriding state law in matters that are of common interest to the community as a whole' (Hooker: 1975: 375). In such existing normative systems, as Tamanaha (2008) writes 'the people who believe in them, the people who hold positions in them, and the interests that benefit from them-will fight to maintain their power and positions' (409).

Legal pluralism moves away from the 'ideology' of what Griffiths (1986) termed as legal centralism. To quote Griffiths (1986), 'According to what I shall call the ideology of legal centralism, law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions' (3). 'The formal or legal centralist stance may be summarized as the insistence that the labeling law should be confined to the law of the state, that there is a distinction between law and positive morality and that there is an ultimate unifying source of norms in a legal system' (Allot and Woodman: 1985 cited in Manji: 1999: 437). 'To the extent that other, lesser normative orderings, such as the church, the family, the voluntary association, and the economic organization exist, they ought to be and, in fact, are hierarchically subordinate to the law and institutions of the state'

(Griffiths: 1986: 3). Legal centralism is based on the ‘standpoint that state law or state recognized and enforced law is the most important normative order and all other norm-creating and enforcing social fields, institutions and mechanisms are either illegal, insignificant or irrelevant’ (Kameri-Mbote: 2003: 10).

Jamila Hussain (2011) critiques the ideology of legal universalism which ‘aims to impose single law, where all people be treated in exactly the same way by the legal system, regardless of differences in cultural background, religious belief or personal choice’ (375). He further writes, such ideology of ‘one law for all’ does not ‘take into account differences in personal beliefs, religious law or customary practices of different groups’ (375). ‘Plurality of laws exists everywhere, because everywhere there are different rules for different situations’ (Woodman: 1998: 54). Legal pluralism rather than ‘propagating one law for all or to think of all legal ordering as rooted in state law suggests attention to other forms of ordering and their interaction with state law’ (Merry: 1988: 889). John Griffiths (1986) further writes:

Legal pluralism is the fact. Legal centralism is a myth, an ideal, a claim, an illusion. Nevertheless, the ideology of legal centralism has had such a powerful hold on the imagination of lawyers and social scientists that its picture of the legal world has been able successfully to masquerade as fact and has formed the foundation stone of social and legal theory (4).

Kameri-Mbote (2003) thus writes, ‘legal centralism and legal pluralism are analytical frameworks that provide different understandings of the law, while the former denotes a unified system of rules, which are enforced through state machinery, the latter

describes a system where the tiered and interactive normative systems operate within a system either within or without the formal state legal system' (10). Eugen Ehrlich (1975) developed his theory of 'living law' in reaction to the ideology of legal centralism. He states, 'it is not an essentialist element of the concept of law that it be created by the state, nor that it constitutes the basis for the decisions of the courts or other tribunals, nor that it be the basis of a legal compulsion consequent upon such a decision' (24).

The existence of multiple legal systems in a given system 'give option for the individuals and groups to look out for the particular legal system to advance their aims' (Tamanaha: 2008: 375). Thus, legal pluralism takes on 'new meaning, recognizing that there are regulatory systems other than formal law that affect and control people's lives' (Kameri-Mbote: 2003: 10). However, in such plural systems as Kameri-Mbote (2003) states, 'women find themselves situated in the intersection between different systems of laws and a plethora of normative orders that influence the choices that she can make and the decisions that are reached about her by others' (10). Though legal scholars claimed that legal pluralism offers opportunity for choosing forum to advance their aims however, Driemeier and Tazeen (2013) argues that 'the plurality of law offers choice, but in practice nearly all legal systems treat women and men differently, and women's access to equitable justice remains a challenge' (121). Legal pluralism can be a double-edged sword when it comes to jurisdiction related to women's rights and issues. Given the history of the powerful and the elite of any society exploiting multiple legal systems for their benefit, it is

pertinent to understand the ways in which women access this plurality and the spaces and agencies they create for themselves. My study attempts to undertake these questions of access and negotiation that women undertake within multiple legal systems to address their issues and the response of such systems singly, and in intersections with each other.

Feminists Studies of Customary Law

Feminists argue that customary law are discriminatory towards women as matters relating to inheritance, marriage, divorce, maintenance, and adoption, which are regarded as “personal” issues, affect women’s lives more than men. Laws favor men on issues relating to property rights and inheritance (Bhasin: 2000). Though women play a central role in the ‘symbolic reproduction of ‘community’ and its survival, however, law singles out women. There are always specific rules and regulations which relate to women as women’ (Bano: 2005: 170). According to Kamla Bhasin (1993) as most property and other productive resources are controlled by men and property passes on from one man to another, usually from father to son, even where women have the legal right to inherit such assets, a whole array of customary practices, emotional pressures, social sanctions prevent them from acquiring actual control over them. Bina Agarwal (1994) in her study on gender and property in South Asia titled ‘A Field of One’s Own’ shows that ‘unequal gender land laws do not entitle a vast majority of women in South Asia to inherit landed property as daughters, most don’t do so even as widows, and few women inherit in other capacities. To the extent women inherit, it is usually under very restricted conditions’ (249).

In matrilineal societies, even though 'women are considered to be in a dominant position where they inherit family property, yet the real control is in the hands of the brothers and uncles, though there is no denying of the fact that the status of women in such systems is far higher than it would be otherwise' (Bhasin: 1993: 17). Tiplut Nongbri's (2003a) work among the Khasis (matrilineal system) of Meghalaya brings forth that though Khasi woman has inheritance rights, however, she does not have the right to sell or dispose of the property. She has to consult her maternal uncle before taking such steps. Bina Agarwal (1995) emphasizes that customary law is biased, as women's right in land are severely circumscribed and limited to usufruct. Though, in the contemporary period, daughters are given inheritance rights, she raises the questions as to what extent women are able to exercise this in practice. Even though women may inherit landed property, Agarwal is very doubtful whether such women will have authority and control over the property.

'Privatization of land and exclusion of women as owners in patriarchal societies has enforced and strengthened male dominant position while exacerbating women's dependent position on their husband' (Grabe: 2010: 32). Madhu Kishwar (1987) in her study on Ho community mention that despite mother's valuing daughters for their work capacity, 'the fact that land can be inherited only by sons and that daughters have minimal usufructuary rights as long as they are unmarried, creates condition of domination by men and also gives rise to a culture of son preference' (98). According to Shelly Grabe (2010), 'restrictions of women's right to land ownership share core

ideologies that are embedded within constructions of masculinity and femininity and the “proper” roles that men and women should assume in public spheres’ (32).

Ndulo (2011) in her article, ‘African Customary Law, Custom, and Women’s Rights’ pointed out that customary law which has a great impact in the area of personal law in regard to matter such as marriage, inheritance and traditional authority, ‘is dominated by patriarchy, and some of its norms conflict with human rights norms’ (87). In her analysis on the functioning of customary law, she argues that ‘women are treated as adjunct to the group that they belong’ (89). One such instance she mentioned was inheritance issue, where a daughter was denied inheritance right of the family property on the ground that her responsibility in her marital home is considered more important than to her natal home. As she writes, ‘the daughter was excluded from inheriting her father’s estate under the law of her community regardless of birth order’ (111).

Rita Nkiruka Ozoemena (2006), in her work titled, ‘Legal position of women in South Africa’, shows that although customary law constitutes an important role in the lives of the people, however, ‘customary practices in the sphere of family law and succession placed women in position of dependency. She argues that in the choice between equality and culture, the choice is often on the protection of culture even at the cost of denying women rights’ (97-98). Further, Kane et al. (2005) argues that, ‘the interpretation of customary law remains deeply rooted in patriarchy and ageism’ (15). They further argue that customary law is patriarchal, as it favours male disputants. ‘This is especially the case with martial disputes. Such disputes are mostly settled in ways that is rarely accorded to women. It is interpreted as better for a woman rather

than her husband to lose face. Thus, while a woman may be reprimanded in front of her husband, the reverse is exceedingly rare' (ibid: 14). Kapur (2011) also mentions that, 'African local justice is usually delivered through male elders in forums to which women have no access. Consequently, while prima facie women have the same individual formal land rights as males, women who separate from their husbands or become widows often lose not only their customary, but also their statutory access and cultivation rights' (82).

Else A. Bavinck (2013) argues that, 'traditional leaders being predominantly male, women are unlikely to have a role in dispute resolution or in the development of customary law at all' (41) As customary courts are adjudicated by men, they favour men in decision-making (Bond: 2010; Driemeier and Tazeen: 2013). As Mary Driemeier and Tazeen Hasan (2013) writes, 'marital disputes, including disputes with implications for control over assets, may be settled in ways that stop husbands from losing face, even when they are obvious in the wrong-an approach that is rarely taken with women' (130). Because of the social stigma attached to challenging customary law, women are compelled to accept and abide by the law (Bond: 2010). Johanne E. Bond (2010) advocates that 'given the very real structural inequalities between traditional leaders and grassroots women, civil society organizations, along with the state, must carefully structure the dialogue to minimize barriers to women's meaningful participation' (563).

Despite flexibility in customary law, mode of delivering justice and punishment in customary law is understood in collective sense. For instance, 'debt payment owed by

the perpetrators for a crime committed is made in the name of the family as a whole and can be paid by the perpetrators family. Sexual assault may be resolved through compensation paid by the perpetrator to the victim's family' (Grenfell: 2013: 185). Given the gender bias in such judgment, Grenfell (2013) argues 'individual rights, such as that of rape victims, are not priority. Committing a crime is seen as more than an individual act of transgression; it is seen as a community problem' (185). Tobin (2014) argues that in Somalia, the practice such as 'godobtir (the forced marriage of a girl into another clan as part of a compensation payment or inter-clan peace settlement) compels victims of rape under significant pressure to marry the perpetrator' (74). As 'customary leaders (who are male members) are representative of the general population, it is not surprising that they do not recognize, inter alia, gender equality' (Harper: 2011: 97).

Local customary norms are however 'subject to change and adaptability and provide some scope for transformation' (Griffiths: 2007: 237). However, 'flexible rules and the lack of procedural safeguards pose particular risks for women disputants in contexts of generalized gender discrimination. Because of the emphasis on social harmony, the perspective and needs of the victim are often regarded as secondary or even overlooked' (Johnstone: 2011: 17).

Challenging customary law is not always satisfactory. In a case in Botswana, when a woman named Unity Dow challenged the traditional law, she was ostracized and stigmatized. The government in this case favoured the traditional law and noted that 'if gender discrimination were outlawed in customary law, very little of customary law

would be left at all' (Cherif: 2015: 3). Her case brings forth the discriminatory nature of customary law and that of the decision makers, whereby women are expected to oblige, and comply with such decision. Challenging such decision is considered as dishonoring the name of the community. Unity Dow (2001) herself expressed stigma and ridicule that she had to go through because she challenged Botswana Citizenship Act of 1984 on the grounds that it discriminates women. She writes 'the traditionalists charged that I was influenced by foreign ideas and that was seeking to change their culture, even women distanced themselves from me' (326-327). In customary system, as Driemeier and Tazeen (2013) argues, 'women are unable to voice their grievances directly, having to rely on male head of the family to decide whether to bring the grievances to the elder's attention. In addition, a woman may have no right to speak unless directed to do so' (130).

Customary justice processes lack equality, and their outcomes violate the right to non-discrimination. Customary systems are patriarchal and, therefore, favour men's interest over those of women. 'This critique is leveled both against processes of customary settlement and customary administration such as lack of women judges in courts, cultural impediments to women's participation in court debates, and in some cases, the requirement to have their interests represented by their husbands or male relative' (Ubink: 2011: 52).

Feminist Jurisprudence

Feminist jurisprudence is not a 'single body of thought but rather a family of different perspectives or frameworks used to analyze the actual, and the desirable, relationship

between law and gender' (Barnett: 1997: 3). There are different trends of feminist movements combined to form feminist legal theory or feminist jurisprudence. Such trends focuses on 'abolishment and amendment of laws that oppressed women; envisioning and enactment of new laws that actually promoted women's equality; and creation of conditions that helped more and more women gain access to the kinds of knowledge, structures and processes that continue to make these changes possible' (Lahey: 1999: 100). Feminist Jurisprudence 'is not just for women. It is not about replacing all the male values with female values. It is about being inclusive of women, and of people who differ from the norms of the law as it exists today' (Juergens: 1991: 32).

Feminist legal theory is based on the belief that law has been instrumental in women's historical subordination (Lahey: 1999). Feminist legal scholars seek to 'highlight and explore the gendered content of law and to probe characterizations positing themselves as neutral and, more specifically, ungendered. They also seek to track and expose law's implication in women's disadvantage intending to bring about transformative social and political change' (Conaghan: 2000: 359-360). Central to feminist legal theory are several premises:

First, feminism maintains that culturally, politically, economically, and legally, women have been, and still are, subordinated, oppressed, degraded, and ignored.

Second, feminism argues that law is in many ways gendered, it is an exercise of power, and it operates to the detriment of women. Finally, feminist legal theory

contends that this pervasiveness of patriarchy is unjust. Feminism in law means advocacy to end restrictive treatment of all women (Levit: 1998: 1040-1041).

Like the larger feminist jurisprudence, Indian feminist legal scholars too emphasized on the patriarchal nature of law in its different forms and the ways in which women and their rights are subordinated to patriarchal interests. Beginning with the understanding of colonial influence on law in India and its impact on women's lives, feminist scholars have studied the continuity and change in law in India and the ways in which women access, negotiate and deal with challenges they face both outside and within the ambit of law. The next section is a detailed analysis of the various debates and discourses within Indian feminist jurisprudence with special emphasis on their understanding of gender, customary law and legal pluralism.

Legal Discourse in India: Pre-colonial Legal system

Legal systems in India have not remained the same through ages (Deva: 2005). Pre-colonial India was characterized by legal plurality. The heterogeneity of the Indian society was more in terms of 'differences than similarities' (Xaxa: 2003: 373). There existed 'innumerable, overlapping local jurisdictions, where many groups enjoyed one or another degree of autonomy in administering law to themselves' (Galanter: 1997: 16). The recognition of a religious community in pre-colonial period was more limited, as 'language, ethnicity, caste and region were more apparent bond. Religious perceptions and hostilities were more localized' (Thapar: 1990: 17-18). There seems to have been no rigid distinction made between religion, law and morality.

Local customs which prevailed among people in different parts of the country granted certain rights to women. 'Plurality of laws and customs and non-state legal structures were the essential characteristics of ancient Indian communities' (Agnes: 1999: 12). Along with the various customary laws, there were Hindu, Muslim and Christian religious personal laws. Despite the presence of such laws, studies show that the acceptance of such laws was very region and community specific with local customary laws either strongly influencing or completely sidelining the practice of such laws (Dhagamwar: 1992; Galanter: 1997; Holden: 2008; Mani: 2008). Laws followed by the people in different parts of India differed from region to region and was more influenced by local custom and traditions rather than religious texts (Carroll: 2008; Verma: 2001). Such customs were administered by 'family or caste councils or village panchayats' (Agnes: 1999: 22). Though the various tribes, caste, sects had their definite 'notion of authority, however, there was no 'notion of legality' (Nair: 1996: 22).

Among the lower caste in Southern India, there was a wide divergence in the marriage practices. Cross-cousin marriage prevailed among Dravidians in South India. Matrilineal cross-cousin marriage was considered a 'generalized exchange' because the 'exchange of women' was also one of the preferred forms of marriage in southern India (Ikegame: 2013: 111). Such marriage prevailed with pragmatic reasons to value daughters.

Among several sections in the southern region, there exists the custom of giving a plot of land to daughters, where the income generated was used by her, for her personal

expenses (Mukund: 1999). Lower caste women in Tamil Nadu, such as the land owning caste had the right to inherit land at the time of marriage, known as *stridhanam*, and rights over her property such as jewellery and her personal belongings. The line of succession was through female heirs i.e. from mother to daughter. Such land inherited by a woman was called *manjal kani* (*manjal* means turmeric) where the woman exercised control, managed the income generated from it and even had decision making rights over such land (Mukund: 1992: WS-5).

Among the Lingayats of Karnataka, daughters were given some immovable property such as land at the time of marriage as *stridhana*. They also had the rights of divorce, remarriage and property ownership (Mukund: 1999). Carol Upadhyia (1990) in her study on coastal Andhra Pradesh notes that women inherit a portion of family land at the time of her marriage. Such practices were intended to attract good matches and to raise the social status of the women. Women had authority over this property, and the revenue that was received from it becomes the sole income of the women. The line of succession of this property was matrilineal- from the mother to daughters.

Devadasis in Tamil Nadu has property rights over their earnings (Mukund: 1992). As the temple was considered as a 'site of symbolic and material exchange,' devadasis were placed in a superior position than her counterpart (Nair: 1996: 165). It was crucially their 'dedicated status which made it a 'symbol of social prestige and privilege to maintain her' (Srinivasan: 1985: 1869). As they were considered to play important roles in the ritual and religious life of the community, 'land grants were given to devadasi by rulers and patrons' (Srinivasan: 1985: 1870). They were even

allowed to adopt a child. Altekar (1956) also pointed out that in western India there were indications of women's right to property. For instance, a 'thirteenth-century inscription shows a woman selling some land, she had inherited from her father' (238-9 cited in Agarwal: 1994: 94). Such inscription shows that women had inheritance rights.

The importance of women in the agrarian economy made marriage an acknowledged 'economic necessity' (Chowdhry: 2008: 151). As a result of their contribution towards family economy, women from lower caste and the tribes were not totally dependent upon men (Agnes: 1999). As such, the custom of bride price was very common amongst them. Prevalence of custom of bride price among most of these communities made divorce easier as women could initiate divorce by returning the bride price (Agnes: 2000). Prem Chowdhry (2008) pointed out that work qualities of the girl such as strong physical health of the girl for which she will be able to perform the agricultural task well was one of the aspired qualities being looked out for in arranged marriage. It was because of her economic contribution that bride price was heavily practiced among the peasantry, agricultural castes and the lower castes in Haryana. Bride price was also prevalent among non-Brahmin caste such as the peasants of South India (Mukund: 1999). Such practices was rejected by the Smritis, as it 'amounted to the sale of the daughter' (Agnes: 1999: 20). Among lower caste, widow remarriage was popular (Carroll: 2008; Sarkar: 1993).

Customary practices in Punjab indicate that among Muslim communities, 'widows could only inherit the husband's ancestral landed property in the absence of sons, and

only as a life interest' (Agarwal: 1994: 98). In North India, Muslim woman without brothers were allowed to 'inherit a substantial portion of her parent's estate' (Kozlowski: 1989: 327). Moreover, the courtesans in North India, who were talented dancers, singers and poets were provided with substantial gifts of money, clothing and jewelry by the male patron whose interest were artistic rather than sexual. Such wealth as inherited from mother to daughter (ibid).

Among the Nayers of Kerala, matrilineal (descent traced from female line) system prevails where they lived in tharavad (female headed household) consisting of a woman, her children, granddaughters, brothers, descendants of female line, of sisters and relations of dead female ancestors (Nair: 1996). Ancestral property was inherited through female line (Agarwal: 1994). Being matrilocal, a woman does not move out from the natal home after marriage (Agnes: 2000). They rather had the rights to establish a separate household or tharavad (Agarwal: 1994; Arunima: 2008). With regard to property, all members of the family were coparceners (co-heirs and co-owners) of the family property and no member of the family were permitted to ask for a share in the property through partition (Arunima: 2008). Francis Buchanan notes that without the unanimous consent of all women in Nayers families, 'not an atom of the family property [could] be legally alienated' (cited in Nair: 1996).

Patricia Mukhim (2011) in her study on the Land Owning among the Khasis of Meghalaya writes about the 'matrilineal culture' among the Khasi, Jaintias and Garos (287). Khasi women had the right to inherit family property-ancestral and acquired, where such property was passed down from mother to Khadduh, the youngest

daughter. Khadduh owns ancestral home of the family and everything within it. She shoulders responsibilities as guardian of the family property and custodian of its religion. Among the Lalungs of Assam, a matrilineal society, inheritance was traced through the female line and property pass on to whomever the mother wishes to reside with. A man had no right to dispose of the land or have any claim to his wife's property. Cross-cousin marriages were prevalent among the Lalungs of Assam (Agarwal: 1994).

The various studies show the existence of legal pluralism in India and the rights granted by the customs. Such customs were more liberal towards women as it gave certain protection to women regarding owning and inheriting of property. The control over women's sexuality was more liberal with freedom to divorce and remarriage. Though the scriptural text contained certain discriminatory provisions, it was possible to negotiate women's right to property because of the existence of customary law.

British rule and Indian Legal System

The existing legal pluralism in India underwent changes during British rule as they used legal system as a tool to redefine the Indian social order (Ray: 2009). Colonial intervention in India primarily began as a political expedient to secure 'political and military stability and ensure the economic success of the East India Company without interfering in the religious and the cultural practices of the local population' (Tschurennev: 2004: 69). The company, however, claimed legality after defeating Mughal rulers, who had been the source of aristocratic power and succession. Mughal courts that settled family disputes could no longer function with the decline of their

rule in 1707 (Agnes: 1999). Thereby the ‘company officers were often consulted by the people in dealing with family and civil disputes’ (ibid: 42). Since the officers had no knowledge of law in India, they consulted Hindu pundits, Muslim qazis or the English law to deal with such matters. This resulted in the ‘process of Brahmanisation and Islaminisation of laws’ (ibid: 44). Colonial rulers understanding of Indian society was based on indological study based on religious text. For this purpose, they consulted those who were considered to be well versed in religious texts. This approach had unprecedented effects on the way customary laws were marginalized and a more homogenized religious law as interpreted and understood by the colonial rulers through the brahmins and maulvis was brought in.

The Company, further went ahead and ‘introduced their English legal practices on Indian soil after obtaining the Diwani (i.e. as civil administrators) rights in 1765 at Calcutta, Bombay, and Madras’ (Verma: 2001: 125). The Diwani taken over by the Company consisted not only of the right to collect revenue in the territory under their control, but it was also ‘connected with the tasks in the civil judiciary, which aroused the need to establish legal institutions and clarify legal norms’ (Tschurenev: 2004: 69). What began as ‘trading relations expanded into political domination’ (Agnes: 1999: 41). Warren Hasting initiated the ‘Regulating Act of 1772, which provided that personal laws (such as marriage, dowry, dissolution of marriage, legitimacy, guardianship, adoption, maintenance, gifts, wills, inheritance, succession, and so forth) of the Mohammedans would be followed according to the Koran and those of Shastras shall be adhered to the Hindus’ (Verma: 2001: 125).

Colonial rule in the country underwent changes in 1858 after the power for governance in India was transferred from East India Company to the British crown (Galanter: 1997). Queen Victoria in 1858 proclaimed non-interference into the personal laws of the people while stating that all the administration, revenues, law and order will be dealt by them (Rudolph and Lloyd: 2001). Personal laws were however not free from the interference of the colonial administrators. Since scriptures were accepted as the source of both 'Hindu and Muslim family laws, English administrations set the task of translating ancient texts as an essential precondition to good governance' (Agnes: 1999: 43). The translation of traditional text became the most important priority for the colonial political scheme (Agnes: 1999). The British administrators and jurists concentrated in obtaining an authoritative version of the Hindu law. Warren Hastings first initiated translation work (Nair: 1996). In 1773, 'eleven pundits were brought together in Calcutta by Hastings to compile a written digest of Hindu law, which was later printed with the title: 'A Code of Gentoo Laws' (Choudhury: 1998: 25). Since brahmin pundits had monopoly of learning amongst the highly segmented society, they considered themselves as the sole authorities conversant with the textual traditions of India (Nair: 1996). The pundits thus became the 'sole authorities on Indian culture and tradition, thereby creating the impression that authentic cultural traditions were those which flowed from religious scriptures of the upper castes' (Choudhury: 1998: 28). Their interpretations of ancient texts became binding on the people thereby making the law 'certain, rigid and uniform' (Agnes: 2005: 6). This 'marker of modernity was accepted by the newly evolving English-educated middle class of Bengal giving room for the British justification for ruling

India as harbingers of enlightenment' (Agnes: 2005: 6). The digest thus became 'authentic source for understanding Hindu law' (Choudhury: 1998: 25). The supremacy of Hindu text as Upendra Baxi (1986) writes, 'was elevated above customary law' (12).

With the attempt to codify Hindu law, there was also attempt to revise Muslim law. Due to the influence of non-Islamic cultures among certain sections of Islamic people, local customary laws replaced and intersected with parts of Islamic law. Hence both customary law and Shariat law co-existed, where, in certain matters Muslims followed Shariat law while customary law was used in dealing with others. Muslims in most situations followed the regional and local customs rather than the overarching instructions from Quran. The flexibility ended in 1937 with the enactment of the Shariat Application Act (Choudhury: 1998). Shariat law was developed with the help of maulvis. Thus a system of 'personal laws' evolved during the colonial period (Jaisingh: 1995). Hence, Muslims were brought to strict rendering of law thereby reducing the importance of customary law (Nair: 1996). The translated texts that became the basis of the Anglo-Hindu and Anglo-Islamic law in India was the result of influence of British rule on Indian legal system (Agnes: 1999; Baxi: 1986).

As the existing legal pluralism remained a difficult one for understanding Indian society for colonial rulers, it was precisely with an aim of bringing some coherence to the civil procedure, that Law Commission came up (Nair: 1996). The First Law Commission, which was established in 1834, produced the draft of the Indian Penal code under the leadership of Macaulay, which was adopted in 1860. The Second

Commission established in 1853, devised the Code of Civil Procedure (1859) and the Criminal Procedure Code (1861). The Criminal Procedure Code was revised in 1877, 1882 and again in 1903. The Second Commission, however, expressed strong reservations against the codification of Hindu and Muslim law where personal laws of Hindus and Muslims were to apply to the respective communities. It rather identified that only the members of the respective communities could reform such laws. The Third Law Commission established in 1861 drew up drafts codifying contracts, laws of evidence, negotiable instruments while leaving personal laws alone. The fourth and last British Law Commission established in 1879 attempted further codification of substantive law, but it too left personal laws untouched (Nair: 1996: 29-30). Criminal and procedural law was codified with the passing of the Code of Civil Procedure (1859), the Penal Code (1860), and the Code of Criminal Procedure (1861) (Larson: 2001). These legal edifices laid down uniform laws regulating 'crime and punishment and commercial transactions' (Agnes: 1999: 60). It also 'ensured that as far as criminal laws were concerned, everyone had to follow the same law of the land' (Verma: 2001: 127). Though the Commission left personal laws untouched, however, there was interference into the personal law through the codification of Hindu and Muslim personal laws.

Though brahmin pundits and Muslim jurists were consulted to administer and develop Hindu and Muslim personal law, yet they were eliminated by the British administrators in 1864 on grounds of disparate interpretations of the various texts as well as suspicions of corruption. Thereafter, British judges interpreted religious laws

without the aid of pundits and jurists (Larson: 2001). They also did so because by this time there were various scholars who had already documented the various customs and traditions and the religious texts into English. Thus, this gave confidence to the colonial administration that they had their own people to interpret and administer law and did not any more need the natives for it. Further, the case laws and the interpretations in such case laws carried on in the courts were documented and by now formed a considerable amount of information to carry forward future judgements, thus making the necessity of the pandits and maulvis irrelevant. This had a negative impact on the evolution of the law and its usage. Customary and local laws including sastric laws were applied through debates and discussions in traditional courts and legal forums. Further, in such discussion and interpretations the then current socio-cultural context within which the case comes up for judgement was taken into account, thus giving every interpretation of law a contemporary flavor. However, with documentation and removal of pandits and other such native interpreters such dynamic evolution of the local and religious laws ceased. The British interpreters and administrators of law judged according to the letter of the word and based on their moral and ethical understanding which was far removed from region specific realities of various parts of India. Such interpretation as Indira Deva (2005) writes 'did not conform to the genuine content of the texts' as the Englishmen introduced their concepts whenever they could not understand the whole context of the texts (20). The translation of the original text by the British according to Flavia Agnes (1999) had 'subverted the context and meaning of these precepts' (64).

Further, British administrators presumed the ‘culture of the higher caste and upper classes’ as the culture of all (Dhagamwar: 1992: 127). They thus favored the introduction of the ‘upper middle-class British ways and the abolition of old Indian laws and social customs’ (ibid: 127). Further, the desire of British in re-defining Indian tradition preferred the interpretation through Brahmanic scriptures as culturally authentic (Nair: 1996; Prasad: 2001; Holden: 2008). British knowledge of law in India was based on the myth of one pan-Indian Brahmin law. Such construction perceives ‘homogenous religious communities of the Hindus’ as one (Agnes: 1999: 24).

The legitimacy of Brahmanical laws over existing customary practices by colonial rulers raised the customs and orthodoxy of higher castes to the status of a norm (Tambe: 2000). It led to the ‘ascendency of the elite (high –culture) laws over the laws prevalent among the common folk’ (Deva: 2005: 19). Brahmanical customs as mentioned earlier imposed strict conduct over women’s sexuality to maintain ‘caste purity’ (Chakravarti: 1993: 579). Strict conducts were maintained through child marriage, prohibition of widow remarriage and divorce. Brahmanical customs were different from custom of the lower caste and tribes, which gave more freedom to women such as the right to divorce, widow remarriage and right to property. The supremacy of brahmanical customs over such existing customs shows the patriarchal nature of the British who aimed to abolish gender sensitive local laws that gave certain rights to women. British patriarchy intersects with brahminical patriarchy to subdue women.

Colonial rulers homogenized patriarchal scriptural laws of the Brahmins by weakening local customs, on the one hand, and, on the other hand, leaving women to be governed by personal laws. Judicial sanction which was provided to Brahmanical patriarchal practices further led to the disadvantage of women across the social spectrum as it affected the laws relating to marriage, divorce, succession (Ray: 2009). 'The line between respectable and disrespectable sexuality became more deeply marked through new laws on legitimate marriage, patriliney, monogamy and age of marriage' (Tambe: 2000: 593). The customs of the Nayar community was transformed and later abolished after the British conquered Malabar in 1792. In the process, the matrilineal system of inheritance was replaced by patrilineal system, which resulted in the loss of property rights for the women (Agnes: 1999; Arunima: 2008).

Though British gave supremacy over brahmanical law, they found that 'traditionally there had been no fixed Hindu law applicable uniformly to all Hindus. Customs often at variance with shastric rules prevailed in most parts of India. To take cognizance of this, 'regulations were passed giving precedence to custom over shastras' (Agarwal: 1994: 200). However, to be accepted as customs, certain standards were laid down, against which existing customs in various regions were measured to be certified as law. Colonial rulers thereby attempted 'to standardize customs all over the subcontinent, to create a comparative framework for administering the country' (Arunima: 2008: 405) by imposing certain 'standards to prove the customs' (Agnes: 1999; Carroll: 2008). Such standards were 'customs as ancient, uniform, invariable, continuous, certain, notorious, reasonable (or not unreasonable), peaceful, obligatory

and it must not be immoral nor opposed to an express enactment or to public policy' (Kane: 1950: 44 cited in Baxi: 1986: 13). As a result, many of the customs which failed to meet the 'standards of proof' were eliminated. Reiterating it, Upendra Baxi (1986) writes, 'the "popular" or "customary law" was difficult to "ascertain" and it was "parochial" whereas the high culture brahmanic law was "cosmopolitan" and "uniform" based on readily ascertainable written texts, and developed through interpretation by legal notables' (13).

'Law and the courts thus became the colonial rulers most important weapon to appropriate and redefine the social order' (Sheel: 1999: 66). They re-established courts based on the 'procedure and a clear hierarchy of courts with English rules' (Agnes: 2005: 5). The shift of dispute- settlement from local tribunals (and local notables) to the government courts, as considered by Marc Galanter (1997) was the 'most striking impact of the provision of governmental courts' (19). Such procedures, 'were meant to make the arbitration forum certain and definite, along the model of English courts' (Agnes: 2005: 5). This was different from customary law which sought 'compromise or face-saving solutions acceptable to all parties' (Galanter: 1997: 20).

Colonial intervention 'decisively transformed indigenous notions of justice, honor, and property and brought them in line with the requirements of modern legal discourse' (Menon: 2004: 79). It devalued indigenous institutions that acquired the status of what Upendra Baxi (1992) calls 'non-state legal systems'. The creation of such state laws over non-state legal systems, as Janakir Nair (1996) notes, 'serves to equalize structurally unequal people in the court of law, while ensuring that in the cumbersome

process of appeals, adjournments and counter appeals, the poorer litigant was ruined' (25). The largely present non-state legal system was through cumulative and conscious efforts, maneuvered and almost replaced into 'state-controlled and state-regulated legal system' (Agnes: 2000: 120).

The understanding of 'law' changed where 'legality' replaced 'authority'. 'Judgement had no other object but to put an end to a particular dispute, it now began to constitute a precedent, a source of law' (Menon: 2004: 47). It was thus under British system that the 'judge fixed the interpretation once and for all, and further development of the law could take place only through cases' (ibid). Moreover as Lucy Carroll (2008) notes, British judges in the court had the preconceived notion of a Brahmanical Indian society. Thereby their understanding of the Indian society was based on brahminical law. Further, Indian judges who belonged to upper caste emphasized on shastric law. Their collaboration thus resulted in the introduction of a brahmanical and elite bias decisions in most of the cases for the settlement of disputes. They codified the interpretation of the cases through 'case laws'. Such law was, to quote Bina Agarwal (1994) the 'cross-breed of classical Hindu law, customary law, and statutory law, which can be broadly termed as Anglo-Hindu law' (201).

Thus, case laws were constituted in court, which became binding for the people to settle their cases. This was in contrast with the existence of multiple authorities among various sections of the people, delivering different type of justice as a result of the non-uniform legal system (Menon: 2004). Since colonial rulers gave supremacy to case laws, 'it marked a decline in the authority of customary laws and traditional

decentralized institutions that dealt with such laws' (Deva: 2005: 19). Thus, all other forms of dispensing justice began to be seen as inferior (Menon: 2004). Discussing in this context, Lucy Carroll (2008) points out, 'though British-Indian courts gave lip service to customary law, in actual practice it was extremely difficult in most cases to prove custom in the face of the judicial presumption that Hindu Law applied' (78). Moreover, 'the adversarial, dilatory, formidable and expensive court structure became illusory and beyond the reach of most women' (Agnes: 1999: 209).

With an aim to gain legitimacy and the support of Hindu upper-caste, the colonial rulers left the family untouched (following Queen Victoria's non-interference policy proclamation of 1858), thus making a distinction between home (private) and the world (public) (Dhagamwar: 1992; Holden: 2008; Nair: 1996). The British administrators followed the policy of 'public- private' divide wherever necessary in formulating laws. The 'privacy of the family' was held sacred (Kapur and Brenda: 1996: 119) where women's sexuality was analyzed on the basis of chaste and loyal wife (Nair: 1996). However, private (home) and public (outside world) divide was used as a strategy by the British to perpetuate domination: helpless and weak Indian women in need of protection (Nair: 1996).

Nineteenth century British India was marked by a series of debates on 'reforming the status of women' (Mani: 2008: 38). Women's question' as Partha Chatterjee (1989) writes, 'was the central issue in some of the most controversial debate in the early and mid-nineteenth century (233). As a result, legal intervention took place in the 'realm of family' (Kapur and Brenda: 1996: 117). Despite their non-interference policy in the

realm of family, British justified their attempts at legislation in the name of uplifting the low position of women under such prevailing traditions (Mani: 2008). They claimed that Indian women were victims of 'barbaric tradition'. They justified their interference into the private realm as an 'act of rehabilitation, thereby emphasizing the need of foreign rule, with the aim of proclaiming the superiority of their values' (Kapur and Brenda: 1996: 29-35). As Anand A. Yang (2008) notes, 'rescuing women' from barbaric tradition became part of the British 'civilizing mission' (16). Even the urban educated elite (constituted by the social reformers) who were aligning with the British, had parochial understanding of Indian society and therefore assumed upper caste women as the standard thereby neglecting a lot of women's experiences. They play an influential role in the 'enactments of laws for the abolition of certain customs and practices that they considered were undesirable' (Deva: 2005: 21). As a result of such collaboration, certain legislations were passed such as the Sati Regulation Act of 1829, the Widow Remarriage Act of 1856, the Age of Consent Act of 1860, and the Prohibition of the Female Infanticide Act of 1872.

In the whole discourse on reforming women's status, Lata Mani (2008) argues that the context of women was missing. Women's experience and their voices were not taken into account. The focus of reform was on 'tradition' rather than 'women' (Nair: 1996: 58). Though women were the site on which tradition and modernity was debated and formulated, yet they were absent in such debate- they were 'neither the subject nor the object of debate' (Mani: 1987: 152).

Political nationalists, on the other hand, strived to keep family and home beyond the reach of the colonial intervention. They opposed any legislation related to family and women, glorifying women's role as wives and mothers (Kapur: 2005). They reinforced 'public-private' divide and enhanced gender inequality even in legal realm. They assumed that since 'women are weak and subordinate they are in need of protection and should be treated differently in law' (Kapur and Brenda: 1996: 23). They refused to make 'women's question' an issue of political negotiation with the colonial state (Chatterjee: 1989). They rather located 'women's question' within an inner domain of sovereignty, far removed from the arena of political contest and the colonial state, where the inner domain of national culture was constituted in the light of the discovery of tradition (Parker: 2001).

The interference of colonial rulers in family realm, in their plea of reform and upliftment rather took away the rights of women. For instance, in their aim of homogenizing family law in India, resulted in the abolition of devadasi system (Nair: 1996). The British were concerned in such legislation because they perceived such system as abnormal and contradictory. Hence, they were in a mission for homogenizing Indian women thereby removing what they believed to be anomalies.

Laws which were formulated to improve women's status rather resulted in women losing their once enjoyed rights. The rights of Hindu women over her stridhana underwent changes during the colonial rule. As a result of the introduction of new legal principle through court decision, the property of a woman acquired through male relatives and female relatives could no longer be considered her stridhana rather it

belonged to her husband. Under this new rule, Hindu woman lost the right to will or gift her stridhana (Agnes: 1999). Women's rights to such property thereby deteriorated. As Flavia Agnes (1999) writes, 'many of the customs which were crushed were those in favor of women' (52).

With the passing of Hindu Widows Remarriage Act in 1856, Hindu women were liberated from the restrictions of remarriage. Under the Act, 'widow remarriage would be legally valid, and the offspring would be legitimate. However after remarriage, a widow will be deprived of all claims to wealth or financial support which she had inherited through earlier marriages' (Agnes: 2000: 120). The Act affected lower caste women negatively as it eroded the property rights of widows, who customarily were entitled over their husband's property and the right to be maintained from joint family property after remarriage (Agarwal: 1994; Carroll: 2008).

The Indian Succession Act of 1865 established that by marriage the husband does not acquire any right in the property of the wife. Though this law was intended to benefit propertied women, yet it operates in ways that tend to increase the burden of making them responsible and liable for post-nuptial debts if they marry after 1865. However, such law rather than being in favor of women increases the burden of women by making them responsible for post-nuptial as well as anti-nuptial debt if married after 1865. On the contrary, these serve to relieve the husband of any charge of mismanagement (Nair: 1996).

The process of homogenization of Indian society to a largely brahmanical tradition, resulted in the 'displacement of the plurality of customary laws', with very serious

consequences for women (Nair: 1996: 66). The confluence of British gendered parochial norms and conservative Brahmanical patriarchy resulted in 'gendering authority' where family and control over property was seen as the authority of man, even in communities where it was earlier not followed so (Arunima: 2008: 405).

Post-Independent India

Law introduced by colonial rulers during their rule in India continues to have its influence even on post-independent law system (Deva: 2005; Kapur: 2007). The legal system which was laid during 1860 such as Civil Procedures Code, Criminal Procedure Code and Law of Evidence continued to remain in force without major modifications even after independence (Verma: 2001). The prevailing legal system thus remains 'colonial in nature' where the 'structure remains the same' as was created during the 1860s (Deva: 2005: 42).

Despite the presence of formal legal system, a large part of tribes in Northeast India and caste communities in India continue to follow customary law. Though colonial rulers sidelined the existence of non-state legal system during their rule in India with state laws, however, it continues to survive even in post-Independent India. As Janaki Nair (1996) writes, 'the continued resilience of local law-ways over state laws right up to the present day, is an indication that colonial legal systems rarely achieved the kind of dominance they aspired to' (25).

Apart from approaching law courts, the lower caste, and the tribes still hold on to their customs. On the one hand, due to the lack of resources and the desire for quick results

people seek solution through customary law. There is the perception of the local and customary as quick, effective and flexible forums in dispute resolution (Dhagamwar: 1992; Nagaraj: 2010; Pur and Moore: 2007).

Vasudha Nagaraj (2010) in her study on the local forums in Addagutta basti in Secunderabad, brought forth that there are people who felt that the court is unsuitable for solving issues of the family. They felt that rather than cementing relationships it only breaks them and make the disputes worse. They thereby turned to their customary law for solving family disputes.

The power that caste panchayats had in deciding over family matters gradually disappeared during colonial rule (Galanter: 1997). However, there is resurgence of caste panchayats in post-Independence times, where they continue to have the power and authority in settling disputes among their member relating to family matters based on the customs (Dhagamwar: 1992; Pur and Moore: 2007). Kripa Anant Pur and Mick Moore (2007) in their study on rural Karnataka also described the resurgence of the customary village councils in post independent India. They are 'active, strong and often the sole dispenser of justice for their members' (Dhagamwar: 1992: 1486). Those who breach the caste dictates are punished and even ex-communicated from the communities (ibid).

The rights that customs gave to women are often one of the reasons why people preferred customary law than state laws. Livia Holden (2008) in, 'Hindu Divorce: A Legal Anthropology' discusses the functioning and the continuation of customary law in Piparsod village of Madhya Pradesh. Her studies show that customary law rather

than statutory law dissolved many of the Hindu marriages (including the Brahmin women in Madhya Pradesh) since customs allowed remarriage and divorce. Her findings exemplify how Hindu women, 'successfully negotiate the end of unsuitable matrimonial ties and remarry to secure better lives for themselves and their children through customary divorce even though Hinduism denies customary divorce as a legal remedy' (218). She also recorded how law courts are influenced by local customs to deliver justice instead of following formal laws. She argues that the low expenses in settling cases through customary law remain one such reason for the continuation of customary law. The functioning of state law laws along with personal laws made the Indian legal scenario plural in nature. Thus as Vasundha Dhagamwar (1992) writes, 'the territory is thus divided between state law on one hand and customary law on the other; one therefore also has two systems of justice delivery' (1484).

In post-independent India, there has been a large number of women's group engagement with law. Women's movement has initiated their 'campaigns to reform rape and dowry during the 70's, campaigns to reform personal laws and implement Uniform Civil Code, to improve the legislation prohibiting sati, and to prohibit sex determination test in 80's and continued to press for further amendments to sexual assault in the 90s'(Kapur and Brenda: 1996: 52-58).

The early phase of women's movement in India believed that through legislation of new laws gender equality will be achieved. Therefore, law was seen as an instrument of change and protection of women. It was the result of the growth of women's organization that there is widening awareness of the nature of Indian patriarchy and

the development of the strategies to contest it (Nair: 1996). As Ratna Kapur and Brenda Crossman (1996) writes 'feminist activists, within contemporary women's movement have turned to law to advance their struggles to improve the conditions of women' (65). Because of their campaign, certain legislative changes were brought in such as Criminal Law Amendment Act 1983, the Dowry Prohibition Act of 1984 and 1986, cruelty to wives and harassment to wives was made cognizable offence under Section 498 (A) IPC in 1983 and special section to deal with dowry deaths are included in the IPC (Section 304 B) in 1986, Indecent Representation of Women (Prohibition) Act 1986 among others (Agnes: 2005). Even the Family Court Act of 1984 was passed as a result of the law reform concerning women (ibid). Indian feminist challenged state law as the ultimate ways of attaining gender justice and advocate for legal reform. However, they failed to address the existence of different normative orderings.

Nandita Haksar (1999) brings out another approach towards law and women. She stressed that a large group of women remains outside the purview of law as customary law governs them. The 'existence of an alternative legal system assumes a very important role in showing us that there are other ways for dispute settlement than the so-called modern legal system' writes Haksar (1999: 83). Rather than advocating uniform civil code, she feels that women's organization from the region should demand for the codification of tribal laws, and for the anti-customs to be declared violative of Article 14. However, she mentioned that there is a problem of codification of their customary law. As she writes:

In fact what is derogatively or rather patronizingly called tribal customary law is in fact tribal jurisprudence. Tribal jurisprudence has evolved as ways and means of preserving ecological degradation by evolving complex sets of practices which form a part of their jurisprudence. Centre to their jurisprudence is the concept of collective rights to natural resources and the concept of common property. This further balances the right of the individual with that of the community. If these are eroded, the whole society would be destroyed....Once any customary law is codified it will get fossilised and die a natural death because it will not be able to evolve. (83-84).

Customary law is typically 'unwritten, indigenous law that is passed down from one generation to another. Attempts to codify customary law have been criticized for freezing customary law in a particular iteration. Proponents of living customary law implicitly recognize the contested nature of the law as it is continually evolving' (Bond: 2010: 561). Haksar (1999) thus emphasizes that 'women's group should aim at bringing changes within social and familial structures and 'fight for the right to evolve their own customs in consonance with the time' (74). Reiterating similar opinion, Zoya Hasan and Ritu Menon (2005) advocate that as a large number of women remains outside the purview of the state, legal reform will have minimal impact on their lives. Therefore, they advocated women's group should bring changes within the system. This entails understanding women's lives and their situation from their standpoint, rather than essentializing women as one. Bijukumar (2013) also writes, 'unlike the intersection between gender and class and race, in Northeast India, gender

often intersects with the identity of ethnicity which brings oppression and discrimination for tribal women. Women belonging to ethnic community face multiple discrimination and oppression due to the intersection of ethnicity and gender' (46). Rather than attacking state law as the only measure to bring gender equality, feminists argued the need for understanding the existence of multiple legal regimes and its affect on women's lives taking into consideration intersectionality approach (Haksar: 1999; Hasan and Ritu: 2005).

Gender and customary law in Northeast India

Northeast India comprises of a combination of patrilineal and matrilineal society. Women in this region when compared with their counterparts of other parts of the country, are often portrayed as enjoying greater freedom with respect to their movement and the absence of certain practices such as dowry or obligatory wearing of burqas (Baneerjee: 2010; Xaxa: 2008). Absence of such practices in this region leads to the naïve claim that women enjoy egalitarian or at least higher status in society as compared to other parts of India. In the context of Naga society, Shimray (2002) makes notes of the contribution of women in the family, 'Naga women are hard-working and dutiful to their men folk. With her efficient management, the family earns reputation and respect in the village as well as in the society' (377). Further, Furer-Haimendorf (1939) in his observation of Naga society writes, 'many may envy women of the Naga Hills, their high status and their free and happy life and if you measure the cultural levels of the people by the social position and personal freedom of its women, you will think twice before looking down on the Naga as savages' (101).

Given the relative freedom of movement and their participation in economic activities, Tiplut Nongbri (2003b) argues that, 'social scientists working on tribes rarely focus on gender issues on the assumption that tribal societies are free from gender inequality. The high participation of women in the system of production and the greater flexibility in the rules of kinship, led scholars to believe that tribal women do not suffer from discrimination' (47). Studies conducted across the region bring forth that in reality there is strong discrimination against women mainly in the light of tradition and customary practices (Ao: 2010; Brara: 2002; Fernandes et al.: 2005; Krishna: 2005; Niumai: 2015; Nongbri: 2003; Sawmveli and Ashley: 2010; Sithlou: 2015; Zehol: 2003; Xaxa: 2008b). Beginning from the cultural spheres to the material and economic, women across the region face discrimination in varying degrees. One of the most interesting ways to understand the status and value of women in the region is to look at the prevalent metaphors. Many of the communities equate women with animals (Laltlinzo: 2015). Lucy Zehol (2003) in her article titled, 'Status of Tribal Women' mentioned that among the tribes in the region there are various taboos where a contact with women on certain occasion is considered to bring evil or bad fortune to man. For instance, it is a taboo for the Zeliangrong Nagas man to 'sleep with his wife before going to hunting because it is considered that this may bring bad luck to the whole group' (302). The Zemei Naga males are forbidden to touch the meat of an animal killed by a woman as it is 'considered that touching the meat would be below their dignity because bravery is a quality of men and docility that of women' (ibid). Among the Tangkhuls in Manipur there are restrictions upon women such as, 'a woman should not yell in public, a woman should not climb over roofs, trees

(Kashung: 2012: 11-12). In Garo society, Rose Nembia (2008) pointed out that, women are 'ridiculed with the saying that just as a goat is without teeth, so a woman lacks brain. The Mayon Nagas of Manipur considers women as having no principles' since women are considered to have no permanent clan, as her clan changes into that of her husband's after her marriage' (12). Such metaphor 'reflects the broad spectrum of marginalization of women in the society' (Chakraborty: 2008: 28). The Khasis in Meghalaya has the sayings that 'if the hen crows, the world including the family will change for the worst' (Zehol: 2006: 104). Such sayings according to Chakraborty (2008) serve as a 'substantiation of the historical role ascribed to women and also serves as justifications for the distorted and stereotyped construction of gendered practices in the society' (28). The above sayings also shows that women are not regarded to have the 'wisdom and the reasoning power and the capability of being given any power, be it in the private or public domain' (Lalrinchhiani: 2008: 214).

Further, Virginius Xaxa (2008) argues that, 'the economic burden and work load suffered by the women as well as their access to education, food and nutrition, modern occupations especially in the modern context has still not given the kind of attention it deserves' (429). Reiterating similar opinion, Krishna (2005) agrees to the fact that the relatively greater freedom in choice of marriage, divorce and a widow's right to remarry gives the impression of equality among sexes, however she argues that 'the lack of gender seclusion only masks underlying power structures. Women lives are circumscribed by laws that governs social relations in the community' (2557).

Such discrimination against women, according to Nongbri (2003b) has its source from ‘the long years that women spend in the bearing and rearing of children which have given rise to the widespread assumption that, it is a natural outcome that for their lifetime women should be obliged to do all the household and domestic chores’ (197). Ajailu Niumai (2015) also considers that ‘the fundamental difference between men and women is the principle of biological reproduction in which this difference overshadows the qualitative variations, skills and successes’ (348). She states that through ages men has been perceived as naturally and biologically superior to women. Temsula Ao (2010) makes similar opinion, ‘in the olden days it was man who was the ‘protector’ and hence it was easy for him to assume the superior status in the male-female dichotomy’ (103). In practically all families, ‘the division of labour is organized in such a manner that the domestic tasks connected with the running and maintenance of the daily household needs are assigned to women while the more extroverted and distant income-generating activities are allocated to men’ (Nongbri: 2003b: 197). In the context of Mizo society, Lewin (1870) writes in similar line, ‘there is clear-cut division of labour in society, where women were involved in domestic chores while men were employed in outdoor activity such as hunting, cultivating or war (cited in Sitlhou: 2015: 97). The ‘universality of this ideology is evident from the deeply entrenched and, well-established gender role differentiations’ (Nongbri: 2003b: 197).

Ideology, according to Nongbri (2003b), ‘plays a critical role in the construction of gender, provides the basis of gender, and provides the basis of their subordination’ (5).

She further writes, 'though the degree of subordination varies in specific contexts, the process of development and women's increasing participation in production have not only reinforced their subordination but also led men to interpret and reconstruct gender ideology in a more stringent manner in an apparent attempt to keep them in perpetual subjugation' (ibid). Such ideology 'contributes to the notion of gender by influencing and moulding the community members about the ways in which men and women should behave, perform specific roles and live in a certain way'(Niumai: 2015: 348).

Traditional gender roles have a great influence on gender relationship in the society. Almost all the tribes in the region have their history of warfare and headhunting. It was in such a situation that ensuring peace and security to the people was an important task on the part of the youth. Hence, the institution of bachelors' dormitory plays an important role in being the centre of training ground for the youth. Even though maintaining security was its main concern, the bachelors' dormitory was also concerned for the welfare of the village community. It was also an institution from which the young men learned technique of war, fighting, wrestling, traditions, etiquette, religion and all the essential things for their lives (Dena: 2008; Sikdar: 2009). Most of the tribes in Northeast deny young women with such training facilities (Burman: 2012). They were rather obliged to look after the welfare of the family as domestic affairs and household maintenance fell upon them. Today, even though such institutional practices like head hunting and bachelor dormitories have been done

away, yet the attitude towards women, to quote Temsula Ao (2010), as ‘benevolent subordination’ continues.

The pattern of gender socialization in the region has been shaped by the deeply rooted culture of patriarchy. From an early age, children are taught and often made to differentiate between the ways of a boy and a girl. Like any other part of India, girls are socialised early into household chores. They are taught to cook, fetch water, wash dishes, clean the house, and look after their younger siblings while their mothers are away in the fields. Meanwhile, boys are taught maintenance chores such as looking after the fields. Girls are expected to remain at home and look after the family where they are made to think that the domestic activities and nurturing are women’s work while boys are made to work outside thereby depicting the ‘gender-stereotypical roles’ (Lakshmi: 2007: 213). The process of gender socialisation continues throughout the life cycle. When a girl grows up and becomes a married woman, managing the household is considered her sole responsibility.

The underlying gender ideology in the region that is built into the landscape, such as ‘forests for men, fields for women, reflect division of labour that is determined by patriarchal norms and power structures. These norms prescribe an ideal way of life into which girls are socialized from an early age. The norms govern women’s conduct and the space within which they can move’ (Krishna: 2005: 148). While the management of the family and all the activities connected with it are considered to be the sole responsibility of women, men on the other hand are concerned with administration and management of the affairs of the community. There are indeed very

strict gender rules and norms that define the roles, responsibilities and attributes allotted to women (Ao: 2010). Within such a framework, gender has always been a basic differentiating factor, as is reflected in the cultural norms that have assigned specific roles to men and women in society.

The prevalence of sexual division of labour 'has not only contributed to the devaluation of women's work, where even their production activities are seen to be a part of their natural functions as reproducers of the family, it also provides the moral basis for the differential distribution of the material and power resources within the family' (Nongbri: 2003b: 197). Temsula Ao (2010) also pointed out that, 'these practical situations facilitated the exclusion of women from the decision making seat-of governance in society' (103). Therefore, 'raising even the basic feminist questions of gender equality, women's rights and women's autonomy have been discouraged in the society' (Niumai: 2015: 348).

Gender division of labour makes it 'natural' to consider that a women's place in the home with specific set of tasks which are thought to be universal, while men is seen as the natural head of the family, representative in the outside worlds (Rogers: 1980: 11 cited in Nongbri: 2003b: 197-198). In the context of Naga society, Shimray (2002) writes, from traditional times, 'all the household maintenance work falls on women. The eldest daughter helps in domestic affairs. The mother looks after her children, teaches them, and weaves clothes for the entire family and passes on the art of weaving to her daughter (377). However rather than challenging such gender ideologies, women accepted their private domain. For instance, the Ao-Naga warrior

shawl was fashioned by women to inspire and reward heroic exploits of the men in warfare. Through such means, as Temsula Ao (2010) argues 'women encouraged men to take the leading role on various fronts mainly to ensure their own safety and security' (103). Women are thus considered to be the property of men, and hence their productive (labour) as well as their reproductive powers essentially belong to the male. 'Women's engagement in the production of economic goods-be it agriculture, trade or the tertiary sector-is no guarantee that they are free from subordination' (Nongbri: 2003b: 48).

Women in matrilineal society such as Khasi and Garo, are not free from such gender prejudice. While 'matriliny gives women the right of descent, authority over the family lies in the hands of men. In contrast to the patrilineal system where authority is vested in the hands of the father, in matrilineal system, it is entrusted in the hands of the maternal brother' (Nongbri: 2003b: 204). 'Khasi society considers women to be physiologically weak and considers that women lack the capacity to take important decisions therefore need the supervision of men throughout' (Das: 2013: 55).

Gender ideology, which segregates home and outside world, makes men refrain from engagement in household chores. 'Men in Mizo society consider skirt to be the symbol of femininity and inferior and make it a point never to wash skirts whatever the situation be' (Chakraborty: 2008: 29). Among the Tangkhuls it is considered that 'ill luck will fall upon a man if he walks below a woman's clothes line' (Kashung: 2012: 12). In Meitei society too, it is thought to be degrading and below the status for a man to touch the women's clothing (Chanu: 2015).

Despite the important role played by women in the family and towards the economic stability of the family economy, men have set up certain standards to regulate their conduct. In Khasi society as Nongbri (1993) writes, 'daughters are taught to be chaste, obedient, polite and virtuous because family honour and the continuity of the family depends on them. They are considered as the custodians of the family rituals' (185). This applies in other communities too. As women's sexuality is considered to be the property of the family and the community at large, women are expected to conform to strict behavioural and moral code implicitly. In Meitei society, a man might commit 'forceful abduction on a girl and compel the society to accept it as marriage by elopement. Though a girl has the right to refuse marriage to her abductor, she is usually persuaded by relatives to submit to such a marriage because a girl who loses her virginity' can only hope to become a second or a third wife of another man (Misra and Malini: 1986: WS 56). The prevalence of marriage by elopement in the region, through which a girl and boy can marry without the approval/knowledge of their parents, seems to give women the autonomy to choose her life partner. Chanu (2015) however points out that the underlying politics of parents accepting such marriage is because the girl is now regarded to be impure, she is no longer regarded to be chaste and will not be taken by other men.

Christianity and gender in Northeast India

The first missionaries who came to Northeast India were Reverend Stephen Cacells and J. Gabral, in 1826, who were on their way to China and Tibet. Rev. F. W. Savidge and Rev J.H. Lorrain came to Mizoram in 1894 and worked in Arthington Aborigines

Mission. Christian mission work in Northeast India got intensified gradually under several Protestant denominations and the Catholic Missions (Goldsmith: 2005).

Christianity has brought a very far-reaching significant change in North-east India. In the context of Naga society as Niumai (2015) writes, 'the growth and impact of Christianity among the Nagas has been phenomenal, especially on their social and religious life. Their nature of worship involved offerings sacrifices of animals and genna (taboo), but they ceased from such practices after being converted to Christianity (357).

A large number of studies have brought forth that literacy, education, translation and introduction of scripts, medical work are some of the important missionaries practices towards the spread of Christianity (Dena: 1988; Barbora and Walter: 2002; Robinson: 2003; Srikanth: 2006; Thomas: 2010). Christianity opened up space for women to participate in religious worship side by side with men, a phenomena that was denied to them in the earlier religious traditions of many societies (Xaxa: 2008: 428). Unlike pre-Christian religion, where Angami women were confined to perform rituals for household deities, Church opened up platform for women including widows to participate in the church (Yano and Rekha: 2012). Gradually, 'women seem to be empowered through education after the missionaries' intervention, and they were even allowed and encouraged to participate in the church worship and administration (Niumai: 2015: 357).

Christianity made modern education accessible to women (Xaxa: 2008). Caroline R. Marak (2002) in 'Matriliny and Education among the Garos write', 'Christianity and

education proved to be the two most important factors in bringing about change among the Garos. While Christianity left many Garo social institutions and customs untouched, the concept of monogamy in the Church definitely contributed to the upliftment of women's status' (162). However, women were given secondary role in the church, home and society (Niumai: 2015: 357).

When Christian missionaries first introduced formal education, women education was not encouraged by men and women. In the context of Mizo society, it was felt that as women were considered responsible in looking after the family, they were not encouraged in attending schools, as it demands to stay away from home for hours (Vanlalthanpuui: 2014). Temsula Ao (2010) also argues that, in Naga society, which existed on the strength of male superiority and male prerogatives, when book-learning became an option, it was the 'male child who first got the opportunity. In a family, if a female child was allowed to go to school it was only to study up to the study to the stage where she could read. That was considered 'enough' for a female' (101). Similarly, Sanjay Barbora and Walter Fernandes (2002) also argues that 'though educational institutions opened up opportunity for receiving education for women and girls, however, they are often kept secondary by their social mores and customary law which is interpreted by men' (134). Furthermore writing in the context of Mizo society, Sawmveli and Ashley (2010) argues that 'women were not allowed to deviate from set roles and patterns which mark them as the repositories of the pure Mizo culture which must be protected at all costs' (138).

There is much ambiguity in Christianity towards women's status (Barbora and Walter: 2002: 133). Christianity also introduced a 'variety of restrictions in the name of ethics and laws of the church, which went against the kind of freedom that they enjoyed in their traditional social-set up' (Xaxa: 2008: 428-429). Gender inequality inherent in the tradition of the Christian churches and denominations reinforced existing inequalities (Ibid). As patriarchy is held firmly in the church, women did not receive equal treatment as men. In the church women were barred from priestly function (Yano and Rekha: 2012). Similarly though unwritten rules, 'Garo women were barred from ascending in pulpits in conventions' (Barbora and Walter: 2002: 133).

Further, when it comes to political participation, women did not take part in any decision-making bodies. They were absent from the political domain in the village (Yano and Rekha: 2012). Similar exclusion is visible in the church. Though women participate in religious ceremonies, however the main leadership of the churches as well as of worship remains in the hands of men (Ao: 2010; Barbora and Walter: 2002; Niumai: 2015; Sawmveli and Ashley: 2010; Sithlou: 2015; Zehol: 2003).

Customary law and gender in Northeast India

Though there is no denying that women in Northeast India has more access to movement or could take up issues at the forefront, however 'there are traditional and customary laws that expect women to be subjugated to men' (Niumai: 2015: 347). Expressing similar opinion, Thokchom Binarani Devi (2011) writes, 'although the status of women is said to be higher but men in their societies do not treat them as

their equal. The customary laws of the various tribes in this region are in favor of men who are considered to be superior vis-à-vis women in their respective societies (13).

Customary laws are part of the tribal traditional customs and practices where the tribes considered it 'intrinsic to their identity and culture' (Fernandes and Gita: 2009: 95). The operation of customary laws acts as powerful tool to define the roles of men and women and dictate acceptable standards of behaviour. Women's social and economic status continues to be influenced by customary rules (Agarwal: 1994; Krishna: 2005). Almost all the customary law of the region which includes 'people's beliefs, customs, social mores, precepts, rites and usages practiced since time immemorial, are not always conducive to the interests of women but are highly oppressive to women' (Nongbri: 1998: 20). As has been mentioned above, women in the region shoulder heavy economic responsibilities vis-a-vis men, but customary laws deny them equal rights to property and inheritance which is one of the important factors affecting their empowerment (Agarwal: 1994).

The customary laws in matters of marriage and divorce also are far from favourable to women. Among many of the tribes in Northeast India, women are treated as mere commodities which can be seen in their custom of bride price. Bride-price prevails among the various communities in Northeast India where the bridegroom has to pay a certain amount of money to the girl's parent. This custom of bride-price which is practiced among the tribes is based on the recognition of the importance of women's role in the economic sphere. It is the 'reflection of the fact that women are a productive worker in the economy of the tribe' (Nembiakkim: 2008: 13). Though

bride price was paid to compensate the girl's family for their loss of an 'economically active member', it has provided man with the 'justification to treat his wife as a disposable commodity' (Nongbri: 1998: 22). The payment of bride price did not protect women against exploitation within the family (Krishna: 2005) rather it creates limitation on women's right to initiate divorce as it 'entails the obligation to return the bride price to the husband. So women prefer to suffer in silence, even if she is ill-treated rather than take recourse to divorce' (Nongbri: 1998: 22-23).

There is lack of opportunities for women in decision-making. Customary laws prevent women from sharing their ideas and opinions in village decision-making (Fernandes and Gita: 2009). Women are thus actively excluded from participating in all important decision-making institutions (Ao: 2010). Almost all communities in Northeast India are patrilineal where descent is traced from father to son except for the state of Meghalaya where the Khasis and the Garos follow the matrilineal system. What remains similar is that patriarchy rules in all these societies. Thus, even though women have property rights in the matrilineal society, but when it comes to decision making whether it is in matrilineal or patrilineal societies, it is regarded as the domain of men (Gneezy et al.: 2009; Krishna: 2005). Subhadra Gupta (2014) in her study on the 'Impact of Local Self Governance and Customary law on the status of Women's Participation in Grassroots politics' brings forth that among Dimasas of Assam, women are excluded from village council and are not allowed to participate in its discussion. Only when a woman was involved in a dispute she could be called for the meeting.

Among the Karbis of Assam, the rule of inheritance 'is that all immovable property (land and buildings) as well as family artifacts are to be distributed among a man's sons. The daughters have no share in it. In the absence of son, the nearest male member of the clan inherits the property' (Gupta: 2014: 11-12). In Naga society too, all landed property belonged to the male. If a man has only daughters, on his death his property reverts to his male siblings and their sons (Ao: 2010).

Hoineilhing Sitlhou (2015), in her study among the Kukis, argues that customary law is biased as it preferred men for allocation, authority and power over the land. She writes, 'in the household and within the domestic sphere, women are sidelined in favor of male members in the family' (112). She also mentioned that in matters of women's access to traditional courts, 'Kuki women have no political voice in decision-making where land is concerned, not only within formal state law but also within local-level management systems such as the customary-law courts' (92).

Women do not represent the family or the kin group at the community level. Moreover, they are neither being given any authority at the social level (Ao: 2010). Even in cases relating to women's issues, men takes final decisions. Women are neither consulted, nor their views are taken into consideration (Fernandes and Gita: 2009). Reiterating it Moamenla Amer (2009) in the context of Naga society writes, 'In Nagaland patriarchy appears to control all institutions of the society, be they traditional or modern. Consequently, the political status of Naga women remains low-profile and unrecognized' (370). Women are not only denied participation at decision-

making institution at the traditional council; it even applies to the higher elected democratic bodies (Misra: 2007).

Any intrusion with regard to customary law is considered as a as a threat by the community. For instance, the Naga customary laws are protected and upheld by Article 371 A of the Indian Constitution. The Nagaland Assembly, during its eleventh session, adopted the resolution to seek exemption from the constitutional provision on women's quota in civic bodies as they considered that the 33 per cent reservation violates the customary practices protected in Article 371-A of the Constitution of India (Times of India: 2012). Such objection shows the gendered protection of customary law at the cost of women's lives (Amer: 2009). Women in Governance (WinG), a non-government organization believe that in order to enable representation and participation of women in governance, there is a need to change laws to suits the demands of gender equality.

Women's movement in Northeast India

Literature on women's movement shows that most of the issues and campaigns in India were taken up by the mainstream feminists with their focus on the formal laws. These campaigns in the women's movement hardly took into account gender relations in northeast, family structure and women's status in Northeast India and the laws that ruled people's lives in this part of the country. Further, in academic and other documentation of women's movements in India, the struggles of Northeast women are almost neglected by the mainstream women's movement and academic feminism. The documentation is mostly done by the regional people and is not widely circulated.

Northeast region is regarded as one of the most militarised regions of India (Baneerjee: 2010; Devi: 2011; Goswami: 2010; Hazarika: 2010). Even though the conflict in different states of the region has ‘different causes and objectives with various forms and involving different sets of actors yet the similarity in all these is that, the impact on women and on their lives has been enormous and deep-seated’ (Goswami: 2010: 90). As the region has always been inflicted with armed conflict situation, it has impacted women and their lives in ways that have had unpredictable responses. Most of women’s issues taken up are in the light of conflict and its impact on women’s lives as conflict takes a toll on women’s lives by destroying families, economies and communities, which doubly affect and burden women. Because of the larger identity politics that they identify with and the fight against militarisation, they do not speak of women’s issues from a feminist perspective.

Scholars from the region have brought forth the flaws in the women’s movement. In the context of Mizoram, Sawmveli and Ashley (2010) mentioned that ‘women organization such as Mizo Hmeichhe Tangrual Pawl (MHTP), Mizo Hmeichhe Insuikhawm Pawl (MHIP), and Puitu Hmeichhe Pawl (PHP) have not challenged patriarchal hegemony, but have shown works within limits prescribed by Mizo/Christian patriarchy and play no more than a supportive role’ (138). Similarly commenting on the role played by Meira Paibi in Manipur towards safeguarding the lives and interest of the people, N. Vijayalakshmi Brara (2002) argues ‘these women are reluctant to touch the social norms of their society. They neither address nor do they have a policy or ideology regarding domestic violence, polygamous liason which

are prevalent in their society. Nor do they address the women's issue in general. They are the organisation only of women but not necessarily for women' (ibid: 195). Commenting on the various issues taken up by women organization among the Nagas, Ajailu Niumai (2015) writes, 'Naga women are able to achieve their goals as peacemakers because they act as agency for spaces and shun to challenge the traditional role of women' (363). In the choice between women's rights and community identity and rights, often women's rights are sidelined.

To conclude, from the above discussion it is clear that customary law formed an important component in the lives of indigenous people. Colonial rule has in many ways brought about transformation upon the functioning of customary law, at the same time bringing about formal law for their administration. Legal pluralism functioned as the forum, which gave option to the people to choose legal forum that they feel will best deal with their issues. However, studies show that such normative orderings functioned within the ambit of patriarchy. Women largely remain outside the construction, interpretation and administration of customary and other forms of law and positions of power. These institutions do not just operate singly but often collaborate and influence each other in dealing with issues of women and also in making their experiences visible or invisible. In the following chapters with the help of data collected from field, discussion of the ways in which legal pluralism operated in Hmar community vis-à-vis Hmar women and their lives is taken up.

CHAPTER-III

LEGAL PLURALISM AMONG HMARS

This chapter deals with understanding legal pluralism, its nature, and functioning among Hmars. It discusses various aspects related to customary and church law, and their interrelationship. Through data, it is shown that despite being two separate forums of jurisdiction, in their functioning, customary and church forums overlap in many ways with each other, and, is largely patriarchal in nature. Members of customary law boards are simultaneously members of the church thus inevitably bringing in teachings of the church into customary decision-making. Both customary boards and church exclude women from decision making and operate as exclusively gendered spaces. This chapter also emphasizes that despite socio-economic and political changes, customary law remains intrinsic to Hmar life, so much so that stigma is the result of any attempt to bypass it.

Tracing History of Hmar Legal Systems

Hmars were once a nomadic tribe and their migration was mainly motivated by their search for greener pastures for cultivation (Dena: 2008; Thiek: 2013; Varte: 2010a). In the process of their movement, they evolved political institutions in the form of village council headed by the chief. In pre-colonial society, the formations of Hmar villages were mostly based on clan wise pattern. The names of the villages they inhabited were known by the name of the clans inhabiting them such as Chawnsiem, Ngurte, Sungte, and Zote. Each village had a village council called *khawtlang roreltu* consisting of chief (*lal*) and his councilors (*khawnbawl upa*). Being a patriarchal society, village

council comprised only of male members. The council held both judiciary and administrative power in the village (Dena: 2008). The chief was the supreme head and he appointed the member of the village council. His decisions were final in all matters. He, along with the village council, decided both civil and criminal cases according to customary laws. He had the authority to enact laws and consequently execute these laws at his discretion (Khobung: 2012).

The Meitei kingdom in Manipur had adopted a policy of non-interference in the internal affairs of the tribes prior to colonial rule. Such policy over the tribes continued even during colonial rule. 'With the introduction of British paramountcy in Manipur in 1891, the administration of the hill areas was also taken over by the British. However, British rule did not bring any marked change in the hill administration' (Kshetri: 1993: 5). The political agent was entrusted the task of managing the hill administration. In the administration of tribes, the British applied the policy of indirect rule. They did not disturb the administration of the hill villages; instead, chieftainship was made legitimate. Village Council continued to exercise administrative power over their respective territory (Kamei: 2014). Colonial rulers recognized chiefs as intermediaries between the people and their government. Within the colonial set up, chiefs assumed dual roles: first as interpreter of customary laws and secondly as collector of hill-house tax within their chiefdom (Dena: 2010).

It was only in the post-independence period in India that the hills men and the plainsmen came under a common administration but with safeguards provided under the Manipur State Hill People (Administration) Regulation, 1947. As per the provision

of the Act, an election based on adult franchise was held in 1948. The Hill People's Regulation was framed for the welfare and administration of the hill people of the state (Kamei: 2014). This Act was repealed and a new Act, Manipur (Village Authorities in Hill Areas) Act, 1956 was enacted. Under this Act, every village with a population of 20 or more tax-paying households is to have a village authority. This Act introduced the concept of adult franchise for elections to village authority. According to this Act, the people shall directly elect the members of the village authority rather than selection by the village chief. However, taking into account the importance of village chief, he remains as ex-officio chairman of village authority (Dena: 2012).

The Act thus resulted in democratization of the hill administration in Manipur. Adult franchise that was unknown to the people was introduced. The shift from traditional village government to democratic system of administration brought about political consciousness among the people. Though the chief remains as ex-officio chairman in village authority, he no longer possessed supreme power in the village. The new acts 'provided a separate administrative, judicial and developmental role for the village authority' (Khobung: 2012: 223). Along with the administration of the village according to customary laws, the jurisdiction of village authority is limited to settlement of land disputes, management of community land, fixation and allocation of shifting cultivation sites, and identification and application of government social welfare schemes (ibid).

At the time of movement for statehood in Manipur, tribal leaders demanded for constitutional safeguard of their rights. Thus, the Constitution (27th amendment) Act, 1971 laid down special provision for the formation of Manipur Legislative Assembly (Hill Areas Committee) by inserting Article 371 C to safeguard the rights of the people in the hill areas of Manipur (Sanga: 2014). The Hill areas committee is empowered by the Constitution ‘to monitor law making and administration of hill areas’ (Kamei: 2014: 24).

Thus, with the ‘changing trend from authoritarian to democratic system of administration, there is a great change in the power structure of the traditional tribal society. The absolute power of the chiefship institution degraded considerably in the hill areas of Manipur’ (Sanga: 2014: 6). Customary law however continues to remain the primary legal forum for grievance redressal. Issues related to family, marriage, divorce, child custody and others continue to be dealt by traditional kins groups and the 1956 Act did not have any effect on the jurisdiction of these matters. Commenting on the works of Village Authority, one of the members said:

We (Village Authority) are more concerned with the welfare of the society; we have not dealt with family related cases. Such cases are dealt by kinsmen (laibung).

In one such dispute over boundary (as told by a member of the Village Authority), two neighboring families had a dispute over their land boundary. Since they had no written demarcation of their land, both had their own claims. As they could not come into negotiation, they approached Village Authority to demarcate their boundary. One of the village authority members narrated the issue as such:

I called upon both parties to discuss the issue. I gave time to both of them to give their own justification on their claim. They blamed each other for taking portion of their land. I told them, 'as you are going to stay as neighbor all through your life, it is not good to have grudges upon each other, so let us settle the matter in a cordial manner'. Initially, both of them were angry at each other, however after constantly telling them that they should be considerate of one another, slowly they began to cool down and were willing to fix the boundary. We fixed the boundary at their agreement.

In another case, Mr. Puia⁶ was constructing his house on the roadside thus blocking the path of drainage system. This caused problem for the neighbors as water and dirt began to accumulate at the roadside. Village authority was approached to settle the matter. One of the village authority members narrated the case:

We went to the house of Mr Puia to discuss the issue. When we talked about the drainage problem caused by his construction, he was very adamant that it is his property and that he has the right to use it as he wants. We tried to make him understand that despite being his property, he should be considerate of his neighbors, as they are facing problem because of his construction. After a prolonged discussion, he agreed to take into concern the drainage system. We did not force him rather we gave him suggestion and made him understand the necessity to maintain cordial relationship with his neighbors.

Village authority members intend to solve issues in an amicable manner by giving

⁶ All names are changed to maintain privacy of the respondents.

suggestions to the concerned parties rather than using force or imposition. It is seen in the field that village authority members are respected. Solving cases in a friendly manner is considered important to maintain cohesion and stability.

Customary law as marker of Hmar identity

Customary law is seen as a marker of Hmar identity and there is almost a consensus on this aspect among the respondents of the study. Respondents considered the elements of Hmar culture as closely knitted with their way of life, which are expressed in the form of customary law. They say (to quote some respondents)

Customary laws are framed in relation with our culture and it has a close relation with our way of life.

Our law is formulated by us and we are not adopting any foreign law. It is framed within the milieu of our social setting and it is applicable to handle and solve our issues.

I cannot think of doing away with our customary law, because it has close relations with our culture and such practice is what differentiates us from other tribes. Customary law signifies my identity as being a Hmar and it is very important to preserve our customary law, which is our identity.

Customary law is not only considered important for settlement of disputes; it is considered as a marker of identity. Thus, great importance is attached to the continual use and protection of customary law. Customary law is considered so much a part of

Hmar identity that today a conscious and organized effort is put to preserve and document it.

Dispute Resolving Forum

Data analysis shows that there are various dispute resolution forums prevalent in Hmar society, which can be divided as family-based organization known as *laibung* (kinsmen) forum; community-based organization known as Hmar Youth Association⁷ (HYA) and Hmar Inpui⁸ (Hmar supreme house); religion-based organization known as Local Church Committee⁹ and village related matters by Village Authority. These different resolution forums arose mainly because of the abolition of village council and limiting the role of village authority. Earlier, the village council solved all matters within their jurisdiction. Consequently, disputes relating to gender issues such as marriage, divorce, child custody, inheritance are now taken up and settled at the level of kinsmen forum. Those issues that can be resolved at the level of family are adjudicated within the two opposing families. If not, they are handled at the level of kinsmen.

Hmar Youth Association (HYA) and Hmar Inpui deals with matters relating to social or community issue. In certain cases, if kinsmen cannot solve cases or either one of the

⁷ HYA was formed in the year March 7, 1985. It aims to promote *thlawmngaina* (selfless service, which was very much prevalent in traditional Hmar society) among Hmar community. HYA was entrusted with the responsibility to document Hmar customary law.

⁸ Hmar Inpui is the highest institution that deals with the problems of socio-cultural, economic and politico-jural of the Hmar community.

⁹ Local Church committee has complete administrative power in the church. To maintain cohesion and reputation of the church, local church committee takes up the role of reconciling members if they have disputes of any kind, before the issues are brought up to their kinsmen.

concerned party is not satisfied with the decision, then they may take their issue to HYA or Hmar Inpui. In this matter, one of the HYA members said,

Cases reaching the level of HYA are very low. Cases that have reached the level of HYA are because both or either of the opposing parties is not willing to accept the decision of their kinsmen. In such cases, we do not take the final decision; we give suggestions or guidelines for their negotiation. We often advice the two opposing parties to come into mutual understanding.

The case below gives a glimpse into the adjudication system. In one case, regarding property dispute between Mr. Zuia and Mrs. Sangpui, HYA is delaying solving the case to provide time and space for them to come to a mutual understanding rather than imposition of solution. In this case:

*During the marriage of Zuia and Sangpui, Sangpui's parents and sisters extended financial help towards them. As a result, Zuia and Sangpui bought a piece of land and built a house. Later, Zuia started to have extra marital affairs that created misunderstanding and problems in their marital relationship. Sangpui initiated divorce by returning her bride price (*sum in suo*¹⁰). She claimed property rights over the house as it is built from the money of her family, stating that it is her bridal gift, and she has every right over it. The case was referred to HYA, as the concerned kinsmen could not solve it.*

¹⁰ According to the Hmar customary law, if the wife no longer wants to remain in the marriage she can initiate divorce by returning her bride price. Such form of divorce is called *sum-in suo*. In case of *sum-in-suo* according to the Hmar customary law, the wife can take all her personal belongings.

One of the members of HYA who is dealing with the case, narrated:

We called both of them to discuss their issues. The husband agrees to the fact that his wife's family gave them the money, and they bought land and constructed a house. However, he refuses to accept that it is her sole property stating that they are one after marriage, and so it is their joint property. We requested Zuia to give the property to Sangpui since they are no longer one after divorce. The husband, however, argues that as she is the first one to have initiated divorce by returning her bride price and leaving the house, the property now belongs to him. In this case, we do not take any final decision, as we want them to come into agreement. We want them to settle the issues to their satisfaction and do not want to give decision or create hatred among them. The case is still ongoing as both parties could not come to an agreement.

In this case, HYA prefers to solve it amicably, whereby the customary law is very clear that in divorce initiated by the wife (*sum in suo*), the wife takes all her personal belongings. In the pursuit of amicable solving of cases, the chances of the woman not having exclusive right to the house for which her father and sister paid for, is high. Thus, often the HYA's attempt to bring in amicable solutions is at the cost of the woman and her rights and has financial implications for the woman. Here, the aggrieved party is clearly the woman and the circumstances under which she chose to end the marriage are also clear. Despite the clear instruction of customary law and the obvious reasons of marriage breakdown, the HYA prefers to give equal weightage to the husband's arguments to keep up their principle of amicable solutions. In this dispute, one can also see the influence of church upon community members. Though

customary law gave women rights over her bridal gifts, the church socializes individuals to the idea that the wife's identity merges with her husband including the ownership over all her property. Thus, in the above case, the husband claims ownership right over his wife's bridal gift.

Apart from this case that has reached HYA, data shows that in almost every case, the concerned parties accepted customary board decisions (*laibung inbiekna thurel*¹¹). Non-adherence of kinsmen decision is regarded as dishonoring the clan. Therefore, litigants even when not happy with such decisions, prefer to abide by it. It is for this reason that not many cases reach the other forums such as HYA. As one respondent said,

Challenging the decisions of kinsmen is considered inappropriate. Our laibung are our representatives who speak on our behalf. The final decision that comes out may not be exactly as we wanted to be, but the kinsmen have tried to settle the case in the best possible ways as per our customary practices.

Reiterating this opinion, some other respondents said,

What I feel is that in almost all issues we want to be at peace with each other and for that we accept whatever decision our kinsmen takes. Moreover, customary law provides quick means of solving the issue. Within a short period, our cases are solved. One does not have to wait for years to get the case settled as in the state court.

¹¹ *Laibung inbiekna thurel* refers to the forum where the concerned kinsmen gathered to discuss and settled cases (especially family matters) by referring to the customary law.

Gathering kinsmen for solving my problems implies a will to accept the decision of kinsmen. If I am against kinsmen decision, I shall be labeled as inconsiderate and convening my kinsmen in the future will be difficult.

There is an obligation towards obeying kinsmen decision without challenging the decision. Community members share that if the concerned persons are not satisfied with the decision of the kinsmen, they can ask the kinsmen to re-look and re-discuss the issue. However, it is seen in the field that rather than making the case more complicated, kinsmen decisions are accepted without objection.

Even in traditional times, everyone respected and obeyed the orders of the chief. If individuals or families disobeyed the orders of the chief, then the village council called for social ostracization of such individuals/families. Such kind of punishment was considered so severe and shameful that everyone tried to comply with the orders of the chief and his councilors. Similarly, community elders shared that even today failure to conform to the decision of kinsmen is stigmatized. Data also shows that religious teachings have an important influence on the functioning and ideology of kinsmen. In the opinion of a community elder,

There is a close relation among us. We prefer to live together as one big family. The reason selfless service is very strong amongst us is because we care for one another, and we want the well-being of everyone. In cases of disputes amongst us, we may be very angry, but the concern that we have for one another makes us think of the issue with cool mind. We prefer to be at peace with one another rather than causing harm to another. Our religious beliefs strengthen communal feeling and care for one

another. Religion teaches us to be at peace with one another. The cooperation of our custom and religion teaches us to be in good terms with one another and look for the interest of others. In most cases, we pray before we discuss issues. We want to solve cases to bring reconciliation between the two disputing parties.

Given the fact that community members who participate in kinsmen meeting are also active members of church, there is inevitable influence that church laws and teachings have on kinsmen decisions. This also has important effects on the larger understanding and interpretations of customary laws. Church sermons instruct church members to be in good terms with one another even at the cost of sacrificing for the sake of others. Such sermons focus on God's forgiveness and thus expect church members to show such character to their fellow being. One of the church pastors expressed his opinion:

Bible instructs us to live in peace with one another and not to have grudge against others, rather to be willing to sacrifice for the good cause of others. As a pastor, I feel important for church members to live in peace; we are like a big family. This is one of the advices I often give to the church members.

Another respondent shared a similar opinion.

It is easy to return good for good and evil for evil. But our religion teaches us to live in peace as far as it is up to us. It teaches us not to return back evil for evil. Christianity demands us to live in this way.

The collaboration of customary law to solve cases amicably which also has the aim of living peacefully amongst community members and church, propagating reconciliation

and mutual agreement makes community members accept kinsmen decision. Thus, one finds the overlapping and mutual influence of customary norms and church preaching whereby both the dispenser of law as well as the disputing parties are oriented and function with the aim of amicable settlement and not winning or losing.

Aiming for amicable settlement

As discussed above, one of the aims of customary law is to bring about social equilibrium and cohesion in the society. It intends to settle issues in an amicable manner. Scholars emphasize that customary law aims at bringing peace, law, and order within the system (Harper: 2011; Scharf: 2003; Sheleff: 2009). The crucial aim of customary justice system is to bring about reconciliation among the two opposing parties and a win-win situation for both the parties for creating harmony in the society. The aim is to find a solution, and not to condemn the guilty (Fadlalla: 2009; Vitso: 2003). In Hmar customary legal system too, the effort is to set right the disturbed equilibrium in the community by reconciling the warring parties. Cases collected from customary forums also shows that out of thirty-two cases collected thirty-one cases were solved in a consensual manner.

According to Erica Harper (2011), 'Customary justice systems apply flexible rules and procedures; norms are constantly being 'reinvented' in response to changing social circumstances. This dynamic structure allows leaders to craft pragmatic solutions that suit local conditions and respond to the issues at the crux of a dispute' (19-20). According to one respondent,

Our customary law is not rigid. There are certain sections of our customary law, which states that depending on the gravity of the offense, the party will decide how much penalty is to be paid. What I feel is that we are trying to settle issues to the extent where both the parties agree to it. This may even involve moving away from what the law says, as long as both the parties can come to an agreement. Depending on the issues, aggrieved party can impose fine against the offending party.

In one of the cases collected,

Thanga and Sangi were married for seven years. Thanga is a school teacher while Sangi is a house wife. Misunderstanding and incompatibility between them often resulted in quarrels amongst them. In one such quarrel, Thanga shouted at Sangi to return to her natal home. Sangi returned to her natal home and shared the matter to her parents. Sangi's father called upon his kinsmen to decide the issue and it was decided that the matter be jointly decided by the kinsmen of both sides. The kinsmen gathered at the house of Sangi's father to discuss the issue. In the meeting, Sangi's father's kinsmen accused Thanga for ill-treating Sangi and by forcing her to get out of the house. They expressed their anger at such behavior. They demanded Thanga's kinsmen to pay fine by killing pig of not less than 5 feet and pay a sum of Rs 50,000/- as divorce fee. Thanga's kinsmen requested them to reduce to Rs 20,000/-. Initially Sangi's kinsmen denied their request, however with persuasion from their kinsmen they mutually agreed with Rs 25,000/.

According to Hmar customary law, divorce fee amounts to Rs. 500. As can be seen in this case, kinsmen from Sangi's side demanded divorce fee of Rs 50,000/- which was

settled at Rs.25,000/-. The flexible nature of customary law allows the kinsmen to solve the disputes through which they can bring amicable settlement. The flexibility nature of customary law ‘provides room for looking out for ways to settle the issue and provide solution amicably and to the satisfaction of both the parties’ (Pereira: 2009: 83). Despite all the rigidity about customary law being part of Hmar identity and the need to preserve such law, data shows that customary law can be used in a flexible manner depending on the attitude of the kinsmen. However, kinsmen as they consist of all men, operating within the framework of church and customary norms such flexibility may not be always be applied for cases related to women.

Problems in Approaching State Court

Data shows that amongst the three different legal orders present in Hmar community, it is the State legal system that is accorded the status of “other”/“outsider” and all efforts are directed from refraining from its actual use. Rejection or denial of kinsmen decision and taking one’s case to state court is considered as social stigma; therefore people try to comply with such decisions. As opined by one of the respondents,

We want to avoid having court case, as we do not want to be tagged ‘greedy’ or ‘inconsiderate. Therefore, we prefer to comply within the domain of customary law. Amongst us no one would like to be known in the society as having court case. We feel shy of having court case. Those who have court case are looked differently by the community members. They are looked upon as inconsiderate. Due to the fear of being looked differently in the society many do not want to take their case further in the

court.

Such perceived social stigma is attached with approaching state court. Moreover, respondents felt that in the presence of customary law through which they can solve their dispute, customary law should be approached, and the decision be respected. One respondent asked,

Why should we approach the court when we have our law (customary law)?

In only seven cases, the state court has been approached. The possibility of filling a case in the state court is used more as a threat to bring obedience to customary jurisprudence rather than actual usage of it. Some of the cases below illustrates the same:

Mr Puia and Ms. Mawii were having an affair. After months of their relationship, it was found that Mawii is pregnant. Puia suspected Mawii's pregnancy stating that it cannot be his child and that the child belongs to another. Therefore, he refused to marry Mawii. Mediator (palai) was sent from Mawii's side asking Puia to a pay fine for sawn-man (fine payable by the father to "illegitimate" child's mother). However, Puia denied paying sawn-man stating that it is not his child. Kinsmen from Mawii's side threatened Puia that if he did not pay sawn-man at the earliest, court case would be filed against him. Puia did not suspect anyone in particular; therefore to avoid court case against him he paid sawn-man.

In this case the kinsmen had not intended to file court case but knew that such threatening would add to the pressure on the man to accept the customary decision and

thus the 'state court' was used as a tool ensuring acceptance of the customary forum. Further, this case also shows the inclusive and women friendly nature of customary law. The fact that such women can approach the customary boards and can get relief in terms of financial assistance is by itself a more inclusive stand compared to church and state laws. Further, it shows the openness in terms of sexual moralities and norms.

In another case, *Mr Ruotsang and Ms Romawi had marriage by elopement without the knowledge of their respective parents. After their elopement, both of them were worried that their parents might separate them, so they did not inform their parents of their whereabouts. Romawi's parents threatened Ruotsang's family that if they do not bring their daughter within a week, they will file case against them in state court. Within two days, Romawi was brought home.*

In another case, *Mr. John borrowed a sum of two lakh from Mr. Hminga which should be repaid within a year. However, John did not repay the money within the stipulated period. Hminga threatened John that if he did not pay the amount within a month, he will file court case against him. John requested Hminga not to file any case and to pay the money within a month. He did pay the money.*

Thus the presence of state court is used as a pressure tactics to negotiate one's case and bring a desired outcome through customary forums. Apart from social factors preventing people from approaching state legal systems, factors such as lack of legal awareness, the unfamiliarity of the language used, lack of immediate access, long procedures and heavy expenditure involved, also keeps people away from state legal systems. Customary laws are simple and easy to understand, community members are

aware of such laws and the procedures involved with it. It is more user-friendly than the state legal system, and so it receives higher conformity from the people. Since community members are aware of the laws, it is more convenient for them to approach such legal system. As Raja Devasish Roy (2005) writes, 'the rules and procedures of customary laws are generally known by all who are involved in the litigation or complaint' (7).

Compared with state legal system, customary laws are less complicated. One does not have to wait for years to resolve their issue. Cases take years to be solved in state law, while in customary legal forum, within a short period the issue is solved. The long procedure that takes time for a case to be solved in state court is another reason for preference of customary law. The desire for 'quick reprisal' also contributes to their preference of customary law. In the opinion of one of the advocates interviewed,

People are more concerned about their relief and thus they approach any legal forum, which will give them decision instantly. In most cases, it is customary forum, which gives them quick relief. So, they do not feel the need of approaching the state court, even if state court may be more beneficial for them.

Further, the locations of such customary tribunals are within the reach of people, as such cases are solved within the jurisdiction of the community and provide easy physical as well as material access. Such 'tribunal is close to home and inexpensive or affordable for the average person. The scheduling and duration of the case handling are usually designed to accommodate the rhythm of work and family life of the clients and the officials of these forums' (Merry: 1993: 33). The time for the hearing and

discussion of the issues are adjusted according to the convenience of the parties concerned. As in the case of Hmars too, kinsmen mostly meet at night or early in the morning to discuss such issues. The procedure followed in kinsmen meeting is simple, and the proceeding is conducted in Hmar language. As said by one respondent,

For the people in the village, even if they may want to approach state court, as it involves high expenditure, it is difficult for them. To approach state court means that they have to go to Imphal for which they have to look out for a place to stay. Travelling cost and accommodation becomes the initial problem. They have to pay lawyer's fee as well. Court proceedings are very slow and dates keep postponing. Approaching customary law becomes more convenient as it gives quick decision and easy affordability.

Another respondent added,

When people are striving hard for their daily needs, the question of going to the court does not arise. Who is to bear their expenses if they may want to approach the court?

Along with importance attached to customary laws, economic and other constraints thus keep Hmars away from state courts. One of the advocate respondents said: *Court case among the Hmar is practically nil.*

In one of the ongoing cases collected from state court,

Mr. Kima and Ms. Thari got married in the church. However, they got divorced after some years according to customary law. After their divorce, the children were in the

custody of Thari. Their case was discussed by their respective kinsmen. However, they could not come to mutual agreement, as both (husband and wife) want to keep their children. In this case, Kima rather than approaching his kinsmen to relook at the case or approaching Hmar Youth Association, took the case to Family Court for grant of child custody rights to him.

In this case, Kima and Thari got married according to church law. Church law does not allow divorce as it considers marriage as sacred. Despite the objection of church the couple used customary law to get divorced. In case of divorce, Hmar customary law gives custody rights to husband. However, in this case Thari was granted custody. When their case was discussed by their respective kinsmen, both Thari and Kima claimed custody rights over their children. Though kinsmen could not come to mutual agreement, they did not take the children away from Thari, thus giving her child custody rights. Kima knew that gathering his kinsmen again to discuss his issue will not be beneficial for him, thus he approached state court for child custody rights. This is an example of how when in times of need individuals use the present legal pluralism by choosing the forum that will further their interest. In the above case, Kima initially approached the customary law despite the opposition of the church to get divorce. Also he knew very well that customary law grants custody rights of children to father and therefore did not have any hesitation to solve the case in customary board. However, when the case did not turn out as he wished, he used the state court to further his interest. This is what scholars have referred to as “forum shopping” and argue that legal pluralism provides scope to pick and choose laws to further individual

and group interests whereby, it is the powerful who benefit more from such legal pluralism as compared to the marginalized (Driemeier and Tazeen: 2013; Kamari-Mbote: 2003; Kamau: 2014; Tamanaha: 2008).

Another three cases collected from the family court was taken up to that stage only for need of official papers and not because the litigants disagreed with the customary board's decision. In one such case,

Mr. Fima and Ms. Siemi had church marriage. Fima being a government employee had entered his wife's name as nominee in his service book. However, they got divorced according to customary law. To remove his wife's name from the service book, he needed to have a decree from Family Court to prove that he is divorced. He approached state court for issuing the legal decree.

In this case, as similar to the above case, despite the objection of church, Fima and Siemi got divorced. For official purposes had to approach state court to remove his wife's name from his service book. The existence of multiple legal systems 'offers opportunity, where parties have the advantage of choosing the legal system, which offers more benefit for them' (Kamau: 2014: 7).

Influence of Christianity on Hmar society and customary law

Christianity brought about transformation in the socio-cultural and religious life of the people. Respondents' admiration of such influence is far more than their critique. Given the history of missionary influence and their condemnation of many things traditional, the Hmars largely understand their past as barbaric and dark to which

Christian missionaries brought transformation. Such transformation was projected in the form of telos ‘from darkness to light, from sin to redemption, from savage to civilization, from headhunters to soul hunters and from ignorance to enlightenment’ (Thomas: 2010: 8). In her article on the coming of Christianity among the Hmar, Lalrimawi Pudaite (2010) writes, ‘I tremble to think what my life would be if the Gospel had not come to my people! Only a generation earlier, our ancestors were worshipping rocks and trees, and making endless animal sacrifices to appease evil spirits. Not long before I was born, they were headhunters!’(107). She further writes, ‘without the inexpressible of the Gospel, I would have been without hope in the world. But because the Gospel came to my people, their way of life, including my own, has changed forever’ (ibid). Lalhmuoklien (2009) also makes the following statement, ‘we were in the bondage of various powers that influenced our life with fears and superstitions. Because of the Gospel, now we have a changed life and an earnest endeavor to win others for Christ’ (xii). When respondents were asked to share their opinion on the influence of Christianity on Hmars, one of the church pastor said:

Our ancestors worshiped trees, stones and were very much scared of attacks by evil spirits. They tried to appease the spirits by making sacrifices. Today, we are no longer scared of such spirits. We believe in living God, who will protect us. Before the coming of Christian missionaries, thiempu (village priest) was considered as intercessor between God and people. The people had to obey whatever advice thiempu gave them. Today, we pray to God personally, call upon him when we are in need and thank him for his blessings.

Substantiating such viewpoint, another respondent said:

Christianity has made significant impact in our land. It transformed our lives from head-hunter to heart-hunter. God loves us so much that he does not allow us to go to hell, he sent his son through whom we have eternal life. Had the missionaries not come to our land, we would still be in darkness without knowing the beauty of God's love.

Their opinions portray an appreciation of the work of Christianity, thus considering their pre-Christian days as barbaric. Missionaries denounced certain practices, which were very significant for the people. They eradicated those practices that they felt contradicts with Christianity. For instance, before the coming of the missionaries, Hmar ritual and ceremonies were incomplete without *zu* (locally brewed rice beer). However, missionaries taught that drinking *zu* is bad and irreligious and thereby replaced the tradition of drinking *zu* by tea. In this regard, one of the community elders expresses his opinion,

During British rule, they did not disturb or change our culture or our administration; rather, missionaries had more influence upon us. During those times, everyone consumed zu(rice beer). We drink zu in all occasions both in times of merry making and in times of sadness. The missionaries taught the people that drinking zu is evil and that to be a Christian one should abstain from drinking zu. Thereafter with conversion to Christianity, whoever consumes zu was considered as ungodly.

Conversion to Christianity did not entail leaving behind one's culture, but rather using

those cultural elements as a mechanism to worship God. In the context of African Culture, John S. Mditl (1979) writes in a similar vein, ‘The Gospel does not throw out culture; to the contrary, it comes into our culture, it settles there, it brings its impact on our total life... Our culture is the medium of receiving, diffusing, tuning in and relaying the Gospel. Without culture, we would not hear the Gospel, we would not believe the Gospel, and we would not inherit the promises of the Gospel’ (185). Similarly, Immanuel Zarzosang Varte (2010b) also upholds that Hmar people adopt Christianity without fundamentally disrupting their indigenous structure and traditions. In the opinion of a male respondent,

Khuong (drum) formed an important part of social life of the people. We have great passion in singing. Our agricultural work and even our migratory movements were accompanied with songs along with the beating of khuong. In pre-Christian days, as we use khuong for merry making, the missionaries did not accept using the same instrument in the church. Thus for a long period the converted Christian refrained from using khuong. However, as khuong has been so closely associated with the life of the people, we started using khuong as an important musical instrument in the church. The beatings of khuong make singing livelier. Today khuong becomes an important musical instrument in the church.

Similar opinion was shared by another respondent:

Tea tradition replaces our tradition of drinking zu. We still say Zu-Dam (Zu means rice beer and Dam means pacification) however it is replaced by serving tea, though the purpose remains the same.

Hmars existing cultural symbols and practices were not entirely discarded but slowly negotiated its way into the new religion. Another influence Christianity has upon Hmar social life is the observance of Sunday. Before the coming of Christianity, people carried on their daily work all through the week. On exceptional day when the village priest performed sacrifices for the village, the day was observed as *um ni kham* (leaving behind all their agricultural work and observing the day as sacred) where no one in the village was allowed to make noise. After conversion, traditional religious practices and other forms of sacrifices are no longer in practice. Rather an observance of Sunday is given great importance. It is spent as a day of going to Church. The reasons for observing Sunday as a day of worship is based on the ‘belief that it was the day when Christ had risen from the dead, hence the designation Lord’s day’ (Haines: 2010: 3). Majority of the respondents consider that idling the day without going to Church is a waste. One of the Church Pastors said,

Sunday is an important day. It is the day when we meet members of the Church and worship God together. We leave behind all other works on Sunday.

An elderly woman said,

I never want to miss going to Church. Only when I am compelled to stay at home such as in times of sickness, I do not go to Church. I am now 78 years old, but there are just a few Sundays that I did not go to Church.

Observance of Sunday involves certain restrictions. As Dorothy Haines (2010) writes, ‘restriction that arose are by no means trivial; they called for bringing to a complete

halt all physical labour, all commerce, all legislative activity...'(vii). In similar vein, one of the respondents elaborates,

We do not want to do any mending or any physical labour on Sunday. Six days of the week we are engaged in our daily work, we spend Pathien Ni¹² (Lord's day) as a day of going to church and a day of rest.

Another male respondent said,

We never conduct secular meetings nor organize any social gathering on Sunday. The day being Lord's day, we observe it as a day for going to church, listening to sermons.

Hmar social life is highly influenced by Christianity and its dictates whereby they follow missionary traditions and strictly refrain from any physical work and secular meetings including sitting for kinsmen meeting. The impact of Christianity has been phenomenal in their social and religious life. After conversion to Christianity, church became the main religious institution in Hmar society. Church constitutes an integral part of Hmar lives and Hmar society revolves around the growing control of church.

Despite the constant claim to preserving customary law in its "original" form as a marker of Hmar identity, respondents are not critical of the changes that Christianity has brought to their customs and law. There is the simultaneous existence of zeal to preserve the Hmar social order as it was from time immemorial and unquestioning acceptance of Christianity's influence on Hmar customs and norms. Given the

¹² Sunday is term as *Pathien ni* by the Hmar. The Hmar term *Pathien* refers to 'God' and Ni refers to 'day'. Putting the two terms together means Gods day or Lords day.

enormity of such influence on Hmar life, the section that follows delineates the nature of church law and its effect on women's lives.

Christianity and sexual norms

From pre-Christian period, Hmar women have endured patriarchal domination and control over their lives. Their personal lives and socio-legal status were curtailed by strictly prescribed patriarchal-social codes of behavior based on traditional norms, rules and practices. Patriarchal ideology in Hmar society considers women as biologically and naturally inferior to men thus relegating women to the private domain. However, Hmar women like in other tribal communities lived within a loosely held patriarchal norms, which was not as rigid as that of many other caste and religion based communities across India. Rules related to marriage, divorce, pre-marital sexual relation, children outside wedlock, importance attached to chastity and other such aspects were not determined by one homogeneous patriarchal standard. However, with the coming in of Christianity, such open norms were looked down upon, sidelined or rejected altogether and a strict code of conduct was propagated.

Christianity brought in new forms of morality such as considering marriage as sacred, an inviolable relationship and constitutes marriage as a one-flesh union. Preservation of chastity is preached as of utmost importance to marriage. Marriage is made sacrament and divorce is not granted by church. Both customary and church norms construct marriage in gendered terms. In marriage, church emphasizes more on chastity of woman as compared to that of man. Only virgin women can wear white wedding gown.

The notion of marriage as a sacrament and an unbreakable institution was absent in pre-Christian times. Divorce was allowed and no stigma was attached to it. In the opinion of an 84-year-old male respondent,

Had our forefathers considered marriage as a sacrament, I don't think they would in any way frame laws on divorce.

After conversion to Christianity, the ideology of marriage took on new forms. For church marriage, church law imposes strict morality. It demands both man and woman to live a virgin life until their marriage and not to indulge in sexual relation. Such restriction was absent in pre-Christian forms of marriage. According to one church pastor,

Church marriage is sacred. To be husband and wife, it demands both man and woman to have a pure relation before marriage, and restricts pre-marital sex.

Another respondent made the following remark,

As Christians, we are obliged to have church marriage, because such laws are framed for us to abide. For such marriage, it demands both man and women to maintain virginity until marriage. Such marriage is sacred because the pastors in the church bless it. Those who do not obey such laws i.e. those who had marriage by elopement, are ostracized by the church.

Church marriage is a blend of customary law and church law. In this form of marriage, marriage negotiations and all other formalities such as payment of bride price are conducted according to customary laws. Without the completion of such procedure,

there can be no church marriage. This is where majority of the respondents articulated that there is a strong mutual influence of customary law and church rules. Such practices bring forth the ways in which customary law and church law have influenced and accommodated practices from each other giving the tradition of marriage a new form while also retaining the old.

In the words of a community elder,

Earlier in pre-Christian times, marriage was not considered as a religious ceremony but rather as a time of merry-making, drinking rice beer (zu). It was just before the bride leaves her natal home, the village priest wiped her feet with broom soaked in water, and blessed her by saying 'May God bless you; harvest bags of rice; have children and learn the living style of others'. The bride then stepped out of the door with her right leg followed by her bridesmaid, cousin sister, relatives and friends towards the groom's house.

However, as discussed above influence of Christianity brought in many changes including stricter codes for conducting marriage. Church marriage demands the approval from both the parents. Payment and taking of bride price is possible only if both the parents agree¹³ to the marriage. After completing all the customary

¹³ With the approval of their parents, the boy's father will first discuss the marriage proposal amongst his close friends, kinsmen and maternal uncle. Then they approach the girl's parents with a pot of tea, which should be carried by the female relative's husband (makpa). *Makpas* has to serve tea starting from the girl's side spokesperson. After serving the girl's side, he then serves it to the boy's side. Acceptance of tea by the girl's side signifies that they are willing to have a talk with them. The spokesperson from the boy's side with humble words would stand and ask the girl's family for the hand of their daughter. If the girl's side accepts their proposal, then the boy's side will give *thirdam*(engagement). *Thirdam* can be in the form of axe, hoe, skirt, but should be wrapped by cloth) to the girl's side as a sign of engagement between the boy and the girl. Then they fix the date for payment of bride price (*man le muol*) and the date for church marriage.

formalities, the boy and girl's parents have to inform about their children's marriage agreement to their respective church. Their marriage agreement is announced in the church and posted on the church's notice board at least three weeks prior to their wedding date. Anyone who thinks that they are not qualified for church marriage can file an objection. Such objection mostly relates to pre-marital sexual relationship either by the boy or girl or both of them. If church upholds the objection, then their marriage cannot take place, otherwise it is solemnized on the fixed date. Here too one sees the blending and accommodation of the old and new ways of marriage. The process of fixing the marriage, payment of bride price remains customary in nature whereas the announcement, acceptance and other rituals of marriage is according to the church norms.

Church stigmatized certain forms of man-woman relationships which were earlier accepted by Hmars. Such new norms constricted the openness among Hmars and brought in new forms of gendered sexual norms. Given the introduction of notions of sexual morality as well as that of sacrament, it is clear that Christianity has replaced a more egalitarian and progressive system of marriage and family with a standardized patriarchal monogamous marriage system. Further in church marriage, while giving

On the appointed day for payment of bride price, the boy's father and kinsmen will go to the girl's house. When all the expected kinsmen from both sides had taken their seat, *makpa*) from boy's side will serve tea. It should be first served to the spokesperson from the girl's side. While having tea, the mediator (*palai*) from boy's side will produce the bride price in a winnowing basket (*leidar*). The winnowing basket should be kept upside down, covered by Hmar cloth and the bride price should be placed over it. Then the mediator from the boy's side would request the girl's family to receive it. The kinsmen from girl's side after receiving bride price should turned the winnowing basket and count the bride price over it. After counting the bride price, the *makpa* from the girl's side would offer tea to the boy's side, as a reciprocating gesture. Mediator from both the sides will write their marriage agreement, signed by the *makpa* from both sides (who have given and counted the bride price).

advice to the newly wedded couple in the church, the responsibility of the bride is more focused. The bride is advised to be sensible, chaste, domestic, kind and submissive to her husband. Bible is often interpreted to make a clear demarcation of the responsibility of man and women in the family. There is a discernible notion of adherence to gender notions of responsibility in marriage and family. Thus, monogamous heterosexual marriages are maintained and function to keep up the patriarchal gendered structure.

Exclusion of women from decision-making

Women as in any patriarchal society are treated as immature and lacking the capability to think and thus are incapable of holding decision making and power positions. Both in pre- and post- Christian eras, one of the ways in which patriarchy manifested/s itself, is through complete restriction on women from participating in any form of decision-making.

From pre-Christian times, Hmar women made important contributions in the family and towards the economy of the family. They are engaged in carrying out household chores and simultaneously involved in weaving, agricultural work or in pottery making. The visibility of women in public sphere and the absence of practices such as sati, dowry and female infanticide gives a picture of women enjoying more freedom with respect to their movement. However, women's visibility in public sphere does not signify that they have equal access to decision making like men. The Hmar familial and community ideology considers man as biologically and naturally superior to women. This socialization process of men as superior and women as inferior

relegate women to the private domain, despite their contribution to agricultural and other economic activities. Some of the important areas such as political and legal spaces are strongly regarded as male space and women are systematically kept out of it. Hmars like the Khasis consider 'politics as the arena for mature and physically fit persons' (Nongbri: 1993: 180), qualities that are believed to be possessed by men only. Women as in any patriarchal society are treated as immature and lacking the capacity to think and thus are incapable of holding decision making and power positions. This is visible in the Hmar simile *nuhmei var in tuikhur ral a kai nawh* (the wisdom of a woman does not cross beyond the riverbank). The coming of Christianity though made some changes to women's lives, yet overall it strengthened patriarchy. Like among Nagas, Christianity brought in new forms of patriarchy (Ao: 2010; Niumai: 2015; Yano and Rekha: 2012; Zehol: 2006).

In pre-Christian Hmar society, women did not participate in performing rituals. It was the responsibility of village priest to perform such rituals. Christianity opened up platform for both men and women to be involved in the church. However, this came with certain restrictions. Women's activities are restricted to what is known as *Kristien Nuhmei Pawl* (KNP) which is the women's wing of the church.

Women play an important role within their women's wing. They generate their own fund, organize fellowship for women, raise funds and support missionaries. They look after the welfare of women, orphans, conduct seminars on many areas like health, religion and others. KNP organized their own fellowship/ church meetings which are attended only by women. In such church meetings, women take on the role of

conducting the service and preaching. Analysis of their sermons shows that KNP works within the ambit of patriarchal ideology focusing on the headship of man and the standards of an 'ideal Christian women'. In one such sermon collected from the field, one of the woman speakers delivered this message:

As the head of woman is man, they deserve our respect. Even if our husband may be less educated than us, they are still superior to us. God has given us husband who will provide our needs, so we ought to respect our husband. Showing respect to our husband is a sign of showing our respect to God. If we cannot give respect to our husband with whom we live with, then how can we say that we respect God whom we have not seen? It is sad that in many families even after getting married for years, husbands often get angry upon their wives. It is our responsibility to know all the taste and dislikes of our husband. Misunderstanding between husband and wife is often the fault of wife. We should take good care of our husband.

Another sermon by a woman says:

Family is considered as the realm of women. As a mother in the family, we have the responsibility to stay at home and take care of our family. If we spent most of our time outside our homes, how can we expect our children to be good? We should give outmost priority towards our responsibility at home. We should be hardworking, loving, faithful, perseverance, ardent concern to the needs of the family. Above all, it is very important that we fear God, and show submissiveness, loyalty towards our husband.

The above sermons bring forth the active acceptance as well as propagation of gendered ideology within the functioning of the church. Women's wings thus carry forward the idea of an 'ideal Christian women' who adheres to the gender roles and unquestioningly accepts the dominance of the husband within the family and community. Ideal hetero-normative patriarchal narratives are thus reinforced and the burden of maintaining such ideals is placed on women. There is thus a clear convergence of the gendered expectations arising from Hmar customary practices and church ideals. Even within their own group women advise one another to be an ideal Christian women and failure to live within such standards is considered as un-dutiful. This is illustrated in the opinion of a female respondent:

It is our responsibility to take good care of the family. As a woman, I may not be able to speak publicly, however at home I have the responsibility in upbringing my children and be a supportive wife for my husband.

The existing patriarchal gendered norms that keeps women responsible within the homes continue even after acceptance of Christianity. Women's ostensibly natural differences are deployed to preclude any entitlement to the domain of men. As women are considered to play significant role in the domestic sphere, in their everyday lives, they are expected to adhere to the patriarchal set up of the standards of ideal Christian women. The argument of Sitlhou (2015) in the context of Kuki society applies even in Hmar society. She writes, 'in a society that is already patriarchal, Biblical texts come to be looked at or selected through patriarchal lens and are received within that framework. ...the text is taken in uncritically without referring to the social, cultural

and religious contexts in which it was written. This becomes the dogma through which gender relations in the church and the society are arranged' (109). The public-private dichotomy is clearly marked where home is considered the domain of women and public as the domain of men. Such definitions of gender roles provide the 'ideological support for the domestication of women and their exclusion from political domain' (Nongbri: 1993: 180). This is visible in the absence of women in the decision-making body of the church.

In the church, a committee called local church committee takes up the overall administration. Under the supervision of local church committee, there are various departments such as women's department, youth department, Sunday School for children. Local church committee members are selected from male members of the church. The eligibility criteria for local church members selection is payment of regular tithes¹⁴ to the church and obedience of church law. Though men and women give their tithes, women are not eligible to be local church committee members. Androcentric interpretation of Biblical text such as women should remain silent in church or women should not speak in public worship relegates women within the confines of women's wing of the church.

The executive body of *Kristien Nuhmei Pawl* (KNP) consists of Chairperson, Vice-chairperson, Finance Secretary, Treasurer, committee members and advisor. Sitlhou (2015) argues in the context of Kuki society that, 'this seems to be the only space in

¹⁴ One-tenth of monthly income is given to to the Church.

society where women's groups exercise an independent role unchallenged and without being subject to ridicule' (110). However, it is doubtful whether it is actually so. Within their domain, women are dictated by patriarchal ideology of what is acceptable and what is not. Church manuals collected from my field shows that in every KNP, advisor should be church pastors or church elders or local church committee members who are invariably male. Further, according to church law, whatever decisions are taken by KNP should not be implemented directly by them, they have to take the approval of local church committee. Patriarchal ideology have its foothold even in church administration, which itself is gendered in its norms and functions. Such ideology treats women as weaker and considers women in need of guidance, thus the inclusion of men as ultimate advisors to KNP.

It is of importance here that Hmar church is yet to have a woman ordained as a deacon. Denial of women in such position as argued by Dan L. Griffin (1985) 'revolves around the power structure in the Church... to ordain a woman as a deacon means that she is going to share power with the men in the decision-making processes' (8). Thus, to protect power and authority; men guard such space by denying women to be deacon in the church.

In church, there is separate sitting arrangement for men and women. Men and women are not permitted to sit together. Facing towards the altar, women and children sit to the left side while men sit to the right. Pastors, elders and local church committee members sit on the right side and older women sit on the left side of the altar. In her article on Meitei women, Brara (2002) pointed out the gender bias in the position of

women on left side while right side which is reserved for men. She pointed out that 'left is associated with impurity, defilement, death and women; while purity, auspiciousness, life and men symbolize the right' (197). This signifies that in the seating arrangement in the church, the position of women is lower than that of men. In church, women with infant occupy the back seat. They are expected to make their children well behaved inside the church. A child yelling or crying is considered as disturbance and the mother of such children is expected to either control the children or to take them outside the church. It is not found appropriate for a man to sit with his children in the church. If a father sits with his children, the mother is accused of not taking care of the child. Indeed, there are different role expectations by the church, which expects men and women to fulfill such expectations.

It is also seen in the field that women are not given the platform to speak or deliver sermons in the church. Some churches (in very rare cases) even if they allow women to be the speaker, it is mostly on Saturday evening service but not on Sunday services. During Sunday service, which is the main worship service of the church, only pastor, church elders, or male members of local church committee take on the role of preaching. Women are only given the role to read scriptures on Sunday services. Crossing of such boundaries such as women preaching on Sunday morning is not accepted. A vice-chairperson of KNP in one of the church shares,

I am never given the platform to speak in Sunday services. Even though I attend important church conferences or meetings, being a woman I was never given the opportunity to share or give reports.

Although women are not allowed to be the preacher in church, however when it comes to selection of Sunday school teacher for children (children from age 3–15 years gather on Sunday to learn the word of God), women are always preferred and are more in number, though men are also appointed in such posts. Such appointments are to be understood as extension of women’s “feminine” roles. Gender roles that assign women care-giving roles is believed to make them more qualified for teaching children. The opinion of a male respondent substantiates such belief:

Women are calm and have the patience to teach, they are a better teacher for the children.

A female respondent said,

Men and women have different capacities and capabilities. God has given men the ability for leadership role. We (women) have been taking care of our children from the day they are born, and so it is reasonable that we will be able to understand their mentality and teach them in a way they can easily comprehend. For teaching children, we need to have patience, which is one of the qualities that women possess.

Despite considering women as qualified Sunday school teacher for children, they are denied to take up Sunday school classes for adults. Women are prohibited from teaching adults because the ‘practice would imply an exertion of authority and the reversal of normal conditions in which men, due to their superiority, rule and teach women’ (Zamfir: 2013: 218). Commenting on such inequalities prevailing in the church one of the women respondents said:

We are living in a society, which treats women as subordinate, and thus inequality will prevail.

Another female respondent said:

If we look into our history, men have been involved in activities outside home, while women were responsible for taking care of the family, cooking, child bearing. Such mentality continues till date. Despite the knowledge or the capability of a woman to preach or despite the spiritual ability of woman to deliver God's word, she will remain inferior as long as society treats her as women – one without the capability to think. In church too, women are expected to remain within their domain and not question or challenge their lack of participation in the higher hierarchy of the church.

The exclusion of women from leadership position in the church, the preference for women as Sunday school teachers for children, and the limiting of women to participate only in the women's wing of church brings forth the inherent and deep rooted gendered ideology of the church. Though Christianity provides equality of access to church unlike the traditional religion by allowing them to participate in certain church activities, yet such access is again not egalitarian. The socialization of the church, which considers husband as superior to his wife; and the creation of a standard of ideal women collaborates in subduing women to secondary status in comparison to men. Such gendered ideology of both customary and church law results in curtailment of women's equal access to law designating a secondary status to their rights and issues.

Gendered space in customary forum

Though the central aim of customary law is to bring about peace and reconciliation between the two groups, however, female respondents argued that decision of kinsmen are not always gender sensitive. Even if the case involves the issue of women, neither the concerned woman nor any other women are allowed to participate in kinsmen meetings. In the words of a female respondent,

Almost all cases are compromise in customary law. If a woman is not happy with the decision, she does not have any voice. Even if she may want to take up her case to the court, but if the laibung has decided the case and settled it, then she is compelled to comply with the decision as she has no bargaining power.

Many women respondents shared that since women have no voice in kinsmen meeting, such decision fails to take into concern the standpoint of women. As Bina Agarwal (1995) argues, there is still a wide gap in relation to men, especially at the level of decision-making. She writes, 'Equally debilitating under customary practice has been women's exclusion from jural authority and public decision-making. Traditional forums of decision making in the village, such as clan or caste councils admitted only men' (ibid: 70).

Men justified the absence of women on the ground that women do not have clan, which is reflected in the popular ideology,

After marriage a woman takes on the clan name of her husband, and this assured that she will be under the headship of her husband.

Patriarchal ideology designates that women take on the name of the husband's clan after marriage. This also indicates that women are subordinate to the man upon whose identities their own identities and status are determined. Thus, not belonging to a particular clan and having a wavering identity, which depends on their marital status, women are seen as not full members and therefore are not eligible to be part of the customary law forums and decision-making. Such ideology and exclusion of women, research shows have helped strengthen patriarchal hegemony in the family, religion, economic, political and social institutions (Sangari and Void: 1989; Ranjan: 1999).

The exclusion of women in public forum stands as a barrier towards their empowerment. Denial of women in such body, as Sawmvelli and Ashley (2010) argue, 'has to do with the deeply embedded misogyny and patriarchal devaluation of women' (135). The traditional attitude towards Hmar women are reflected in the sayings such as:

The wisdom of a woman does not extend beyond the bank of a river.

Women and old fence can be replaced any time.

Just as the crab meat is not counted as meat, so also women's word is not counted as a word.

Unthreatened wife and unthreatened creepers of the field are both unbearable.

Such sayings consider women as lacking the 'wisdom and the reasoning power' and

the capability of being given any power be it in the private or public domain (Lalrinchhani: 2008: 214). In one such instance,

Mr. Zara called upon his kinsmen to discuss the necessary preparation for his son's wedding. As they discussed whether to give feast on that day, his wife who was preparing tea in the kitchen murmured from there that giving feast would be so taxing. The husband overheard it and straightaway said, 'because you (wife) gave opinion, we shall give feast.

This case is a reflection of the ways in which women are restricted from taking any form of decisions both in private and public spaces. The power to take decisions is an important tool of empowerment and through customary law and norms, women are systematically kept out of such forums and power positions lest the man's status be toppled. Therefore, in the above case the husband ensures that the wife learns to be in her assigned position in the family and community hierarchy. In similar lines, one of the common phrases used amongst the Hmar men is *nuhmei twang mei mei* which translates into *frivolous as women's talk*. Thus, women and their opinions and suggestions are relegated to the sphere of frivolous, naïve and unintelligent thereby the denial of a place in customary decision-making forums.

Women's view on gendered space

On the fact that women are denied participation in both customary forum and church administration, a female respondent said:

The attitude that women are not fit to be in the decision-making bodies has blinded us so much that women are considered incapable. Most women think that they do not have the wisdom and intelligence to raise their voice. I do not believe that God gave lower thinking power to women. He created man and woman with the same capability. In Bible we find that God did not allow Adam to stay alone, he created woman as a helper. When we looked at the meaning of helper, a helper is a person who is stronger than the other person. When we take this in our context though it does not mean that we are physically stronger than men, rather we have the potential to support the needy ones. Many women have a mindset that, 'I'm just a woman; I'm not capable of doing anything'. We have the pre-conceived notion that we are not capable of doing what others can do. This creates an image that we (woman) are inferior to men. Therefore, it is important for a woman to feel that, 'I'm not just a woman'. Men and women have different personalities. God creates us with unique feature and it is important for women to discover that.

According to this respondent, women have different personality, and discovery of such personality is considered important. Like liberal feminist claims for equality with men, she demands for the same legal and political rights. This respondent too is alluding to equality but through the dictates of religion and through an acceptance of gendered notions of femininity and masculinity. Though questions are raised against the segregation of women in customary and church boards, yet that is done in a cultural feminist paradigm emphasizing on the feminine power of women and not on the paradigm of questioning structural discrimination.

Another group of respondents argues that women need to raise their voice and be included in decision-making bodies. They challenged the existing men's legal forum as the primary cause of gender inequalities. As one female respondent opined,

The reason why women are not allowed to take part in decision-making body is because men are scared that women will take over their position. When meetings are called, our husbands represent our family. Even in the church, women are not allowed to be ordained as pastor. There are women who are more efficient in delivering message than men, but the voice of a woman is always neglected.

Another women respondent said,

Our society still treats us as inferior. In the church organisation though women have their own group, but when it comes to the larger body we do not have any women representatives. Women are not included in the decision-making bodies in the church such as local church committee or even in ordained post such as pastor. There should not be bias in such selection. Whoever is capable should be allowed to be in the decision making body. Just because the person is a woman, she should not be devoid of such rights.

This group of respondents challenges gendered culture that subordinates women. They challenge male supremacy and argue that God gave men and women the same capability; thus arguing that women should also be in decision-making bodies. They do not consider themselves inferior to men.

Another group of female respondents feels that as women are less capable than men,

they lag behind in decision making bodies. As one respondent shared,

Politics is the domain of man and we (women) are not competent enough to take part.

Female respondents within this group give importance to their role in the family. They do not want to leave behind the needs of their family and take up a role in the society. They accepted patriarchal hegemony and the public and private divide. One such respondent share,

As I'm busy from morning to dawn for my family, it's not possible for me to participate in the decision making and neglect the needs of our family. Family matters come first to me.

The common refrains used within women's circle are 'let men decide' or 'women should not talk or share opinion in men's meetings'. Such refrain brings forth the ways in which women internalize the secondary status assigned to them and act as agents of perpetuating the patriarchal social order. This not only affects their life chances but also ensures that other women follow suit. They do not want to come out from their private domain as they find themselves inherently incapable and unfit for the "public" and thereby more competitive sphere.

Conclusion

Christianity, as discussed, brought about transformation in the socio-cultural and religious life of the people. Respondents' admiration of such influence is far more than their critique. From pre-Christian period, Hmar women have endured patriarchal domination and control over their lives. Their personal lives and socio-legal status

were curtailed by strictly prescribed patriarchal-social codes of behavior based on traditional norms, rules and practices.

Patriarchal ideology in Hmar society considers women as biologically and naturally inferior to men thus relegating women to the private domain. This study shows that religious teachings further reinforce patriarchy among Hmars. Conversion to Christianity continued to uphold patriarchal ideology and brought in new forms of patriarchy. One of the manifestations of such patriarchy is the complete restriction on women from participating in decision making bodies. Such restrictions affect women's life chances, prevents them from enjoying any sort of power thereby relegating them to further subordination. Having unilateral power over decision making on the other hand empowers men to use these legal forums for furthering their interest. In a conflict based on gender, men thus benefit even within the existence of multiple legal orders.

Along with social and cultural elements preventing people from approaching state legal systems, factors such as lack of legal awareness, unfamiliarity of the language used, long procedure and heavy expenditure involved keeps people away from state legal systems.

In customary law, flexibility, amicable settlement, mechanism of reciprocity, and easy accessibility are some of the salient features. Given the large-scale acceptance and identification of Hmars with customary law, stigma is attached to bypassing or not complying with it. The overlapping of kinsmen meeting to solve cases amicably with an aim to live peacefully amongst community members and church propagating reconciliation and mutual agreement makes community members accept kinsmen

decision at all cost. However, in the zeal to uphold customary law and tie it to Hmar identity, women and their rightful claims are diluted. Maintaining cohesion is preferred over women's rights.

Discussions in the next chapter will amply demonstrate that it is often women and their claims of property, child custody, and others that take a back seat in the pursuit of amicable settlements, peaceful co-existence, and the practice of accepting kinsmen decisions unquestioningly.



CHAPTER-IV

GENDER, CUSTOMARY LAW AND CHURCH: LEGAL PLURALISM AND ITS IMPACT ON HMAR WOMEN

This chapter delineates the relationship between customary law, church law, and women's lives. It discusses the nature of women's access to the existing laws within the context of legal pluralism. Responses of these legal institutions to women's issues both individually as well as in intersections with each other are also brought forth. Data collected from field endorses that legal pluralism in Hmar community is not an exception to the gendered nature of law. Like in any other society, both socially and legally Hmar women are relegated to the "private sphere". This ensures that their cases are adjudicated within the framework of prevailing gendered norms, constitutive of the idea of Hmar identity, culture, and family values as well as that of a good Christian woman and wife. To understand the functioning of laws vis-à-vis women's lives, an understanding of the larger familial structure of Hmar and women's status within it is discussed in the first section.

Hmar family structure and women's role

As discussed in Chapter I, the authority structure of Hmar society is patriarchal, inheritance is patrilineal and living arrangement is patrilocal in nature. Hmar society being patrilocal, after marriage, the wife joins her husband's household. Gender norms expect her to build ties with her husband's family and be dutiful towards them. Her identity changes to that of her husband.

Church sermons also emphasize on gendered familial ideology, reiterating that a woman should leave behind her own identity and take on the identity of her husband. After marriage, women are expected to loosen ties with their natal families. This does not mean that she should forsake her relationship with her natal family. Rather, she is expected to establish ties and give priority to her husband and his family. It is not an acceptable behaviour for a married woman to often visit her natal home. Even husbands who establish close relations with their wife's family are often ridiculed as '*thaibawi*' (henpecked).

Patrilineal kinship is stronger in Hmar community where father's side relatives are given more importance than mother's side thus creating a person's basic social identity as belonging to father's line and not mother's line. A woman takes on the clan name of her husband after marriage. *Pahnam* (clan organisation) is one of the important institutions of the Hmar. To ensure social security, clan members extend their maximum help socially, emotionally, and sometimes even economically to their co-members. There is a strong sense of patrilineal bond in the society.

Family as observed by Kapur and Brenda (1996) 'is a discourse through which certain relationships are given meaning, through which this meaning is naturalized and universalized, and through which unequal power relations are obscured and legitimized' (89). It is through this ideology that 'women are constructed as wives and mothers, responsible for child rearing and domestic labour, whereas men are constructed as husbands and fathers, responsible for the financial welfare of the family' (Ibid: 90). Gender division of labour 'situates women in roles based on

providing emotional support and maintenance, while men are primarily responsible for economic support and contact with the world outside the home' (Sikod: 2007: 58). Such division has 'demonstrated the extent to which this dominant familial ideology has both shaped and reinforced the public/private distinction, and the construction of the family as private' (Kapur and Brenda: 1996: 90). This dichotomy of private (household responsibilities) and public sphere (decision-making and production) creates segregation between home and outside world. Women's lives are confined to the private domain while men take charge of the public domain and simultaneously exercise control over the private sphere (Oakley: 1972). This separation of the separate world of private and public life as Pateman (1989) argues 'are actually interrelated, connected by patriarchal structure' (158).

Family ideology has both shaped and reinforced the kind of work a daughter and son is obliged to do. Gender division of labour is intrinsic to Hmar society. During pre-colonial rule, the primary activities of Hmars centered on food production and depended solely on shifting cultivation. Women shouldered substantial economic activity. Apart from agricultural work, women were also engaged in pottery work, weaving, preparing rice beer, carrying out household chores, and taking care of the needs of the family. Even in changing times, such gender division of labour continues. An excerpt from observation in the field brings forth such gender division of labour:

Household work of women in Langza, Thenmuol and Ngurte villages starts from early morning. Those who do not have water wells fetch water from their neighbor's wells. While fetching water with pot on their head, some women carry their infant child on

their back. Men are rarely seen fetching water. Apart from fetching water, women are engaged in cleaning, washing, sweeping, cooking food, looking after the children and making them ready for schools. Most households have domesticated animals such as cow, pig and hen, which are taken care by women. All these activities are completed in the morning before men start their daily works. After having lunch usually before 9:00 am, women left for agriculture work in the field with their husband. After coming back, they continue their household chores. Household chores are shared amongst women of all generations where daughters fetch water and clean the house; mother cooks and feeds the livestock. Daughters are engaged in household chores trying to lessen or free their mother from domestic work. Such expectation is not attached to sons.

Economic responsibilities of women today no longer centers only on agricultural work. This is prevalent in the nature of women's increasing participation in labour force especially in Rengkai village. Data shows that there is a strong desire among women to contribute financially to the household as well as be independent. Even women who did not take up formal jobs looked out for ways to earn. There are women who are engaged in rearing pigs, weaving, or tailoring while some open small tea stalls or sell vegetables door to door or in the vendor stalls. There are also women who open shops for clothes, or for household needs, while there are others who are engaged in working in households for cleaning, laundry, or for husking rice. Educated women are employed in government and in private jobs. They feel a sense of satisfaction in earning an income, though most of them do not use their earnings for their personal

purposes. Rather, they save up for meeting the needs of the family. Many of them submit their earnings to their husband. 'Secluded within patriarchal families and encouraged to play a largely domestic and reproductive role' (Flemming: 1992: 202), Hmar society values submissive role for women and girls who are taught to be docile and passive.

Though women take up jobs outside the family, it does not mean that they are free from their household duties. Rather such jobs are considered as an extension of their household work. Women especially in Rengkai, who are employed as teachers, nurses, and in offices, have to complete their household chores before leaving for work. Thus, women employed outside home bear double work burden both within and outside the domestic sphere. Such women are burdened with the 'second shift' and their employment status does not rescue them from performing traditional 'women's work' (Hochschild: 1989). Despite the double burden, women perform both care giving and economic roles. However, they are still assigned secondary status both within family and community. Such secondary status of women within family and community gets reflected in the functioning of legal pluralism in Hmar society, which will be discussed elaborately in this chapter.

Legal Pluralism, Patriarchal Familial Ideology and Hmar Women

Various laws that affect Hmar women's lives more than others are laws on marriage, divorce, child custody, and inheritance rights. Though these laws also affect men, in a patriarchal society it is women who largely approach these laws from a disadvantaged position. Therefore, the content of these laws and the ways in which they are

implemented have larger effects on women and their lives as compared to men. Below an analysis of the nature of various laws on inheritance, marriage, divorce, child custody and others are discussed to bring home the gendered nature of such laws. Existence of gendered law is a reflection of the larger patriarchy of the Hmar community and also acts as a tool for reinforcing such patriarchy and keeps women subordinate.

Inheritance rights

Central to Hmar customary law of inheritance is the principle of male primogeniture. Certain Hmar clans like Faihrem, Leiri, Changsan, and Khurbi follow the system of primogeniture whereby the eldest son inherits paternal properties while the other clans follow ultimogeniture, that is, the youngest son inherits paternal property. As Hmar society follows patrilineal system, wherein the ownership rights are restricted to men. The one who inherits such property has the responsibility of looking after the parents and siblings, if they are unmarried. The 'issue of elder-care thereby functioned as a screen for disempowering women from ideological prescriptions about sons undertaking the bulk of elder-care, whether or not they did any care-giving' (Basu: 2005: 166). In the absence of male child, according to Hmar Customary Law¹⁵, the property shall devolve to the nearest male relative, or one may adopt a son to inherit the property. Thus, even in the absence of a son, customary law denies inheritance rights to daughters.

¹⁵ Here, I am referring to the Hmar Customary Law booklet which is documented by the Hmar Youth Association, Second Edition.

In inheritance rights, women are never preferred. Daughters are allowed to inherit movable property such as cane baskets, utensils, woven garments, agriculture, and weaving implements. The prevailing custom does not permit immovable property especially ancestral land to pass down to women. Such properties have to be handed over only through the male line. Many female respondents of this study consider the existing customary law of inheritance as discriminatory. According to a female respondent,

Customary law gives preference to sons as it clearly mentions that sons are the rightful heir. We (women) are not considered entitled for inheritance rights. We should not be discriminated by law. We ought to be given inheritance rights.

Patrilineal inheritance 'bar women from obtaining primary access to land' (Kannabiran: 2014: xvii). Such law of inheritance is 'shaped by patrilineal assumptions, of property descending through the male line; and of women's economic dependency on male member in the family, either a father, husband or son' (Kapur and Brenda: 1996: 136). Another female respondent, who teaches in a college, feels that,

Customary law should entitle daughter as the rightful heir. Being patrilineal society does not justify that women cannot inherit property. At least, in the absence of son, the property should devolve to daughter rather than to nearest male relative.

Another female respondent expressed similar opinion,

If we look into our history, the responsibility of taking care of the family, care for the sick and elders has been the responsibility of women. Daughters have played an important role in taking care of their parents, but they are denied inheritance rights on the ground that after marriage they belong to their husband. I think there should be equal provision for daughters too.

As it is believed that ‘a daughter must get married and leave the house to go elsewhere, it was felt that there is no point in giving her share of the property’ (Seema and Enakshi: 2005: 148). The same applies to Hmar society too. Further as Srimati Basu (2005) argues, ‘given the gender division of labour whereby women are responsible for domestic work, it is not surprising that women had the advantage in getting unexpected elder-care awards. If property division were indeed proportionate to elder-care, women could thus have a favorable claim based on their physical care’ (163).

Nandita Haksar (1999) however argues that, ‘central to the jurisprudence of the tribe is the concept of collective rights to natural resources and the concept of community property’ (83). Male respondents expressed the opinion that denial of women in inheriting landed property has close relation to protection of communal land. To keep the land intact, men are favored. As one male respondent commented,

When we talk of inheritance rights, we mostly refer to landed (ancestral) properties. Daughters have the right to inherit their mother’s bridal gifts. The reason why women are not allowed to inherit landed property is that women can marry anyone either within or outside the community. With marriage, she takes on the identity of her

husband. If she marries outside Hmar community, say a Kuki, then her identity changes to that of a Kuki. Giving inheritance rights would mean that the property will belong to Kuki with whom she got married. To keep the land intact, women are not given such right.

Another male respondent expressed a similar opinion,

According to our custom, sons take the clan name of the father. Since women take the name of their husband after marriage, if they are given such rights then the land will devolve in the name of the property of another clan. In order to protect community land, rules are made to protect the land against intrusion by outsiders. The protection of such property i.e. land has a close link with the protection of the culture and heritage of one's clan and tribe.

Melvil Victor Pereira (2009) also brought forth similar findings in the context of Angami's of Nagaland. He writes, 'One of the reasons for not giving property to the daughters is the fear of fragmentation of ancestral or clan property..... If daughters are given property, and they marry outside the clan, they take away the property of the clan and this leads to fragmentation of the ancestral property. Therefore, the property is passed on to sons only' (253). Respondents too feared that giving women right to land would result in the loss of community land. As customary law is based on common property and collective rights, Nandita Haksar (1999) cautioned that 'if these are eroded, the whole society would be destroyed' (84). Protection of communal property versus women's right to land remains a contentious issue. In the contest

between women's right to land and community land rights in India, Nitya Rao (2008) writes:

'In India agriculture is the main source of livelihood and land is an essential element of identity. Collective rights and community control are seen as hallmark of this identity. In principle, collective rights can promote gender equality by guaranteeing all members of the community access to land. In practice, however, it does not necessarily work in this way, as landed property has historically been linked with male identity. Therefore, women's demands for land are seen by many men as disrupting the struggle to establish a collective identity and gain collective rights (10).

The 'intersection of individual women's right to equality on the one hand and protection of a group's right to culture on the other is a site of political and legal contestation' (Benda Beckmann et al.: 2009: 130). The discourse of 'community' is often used to deny women access to land as 'individual' (Varghese: 2015: 5). Nitya Rao (2008) further argues that 'in a patriarchal and patrilineal society, the potential for inter-generational transfer of land out of the patriline is put forward as a justification for denying women's land claims' (201). The 'assertion by women of their rights is a demand for recognition, but it is construed as a challenge to male authority that needs to be controlled. Men, therefore struggle to reshape their identities and masculinities by engaging in aggressive behavior to endure discipline' (Varghese: 2015: 5). There is strong 'resistance to the idea of land and asset ownership by women stemming from societal norms and traditions that are patriarchal in nature. The social factor of

maintaining a harmonious relationship with natal family is a key factor for women not claiming their inheritance rights' (Shankar: 2014: viii). In 1981, Manushi challenged customary practices by filing a petition in the Supreme Court on behalf of Maki Bui and her daughter, Sonamuni, Ho tribal of Lonjo village in Singbun District, Bihar challenging the denial of equal inheritance rights to women of the Ho tribe (Kishwar: 2008). The Court ordered enquiry into the case through the Block Development Officer (Kishwar: 2008). Challenging customary practices for the interest of individual rights are 'inscribed in images of overreaching greed, selfishness, lack of empathy and desire to cause family conflict' (Basu: 2005: 151). Such assertion by women is seen 'disruptive of the social order and hence felt needed to be controlled' (Rao: 2008: 13). Bihar government elongated Maki Bui's case, which traumatized Maki Bui, as she faced violation from her in-laws, who harassed and intimidated her for having dared to take her issue to court. They compelled her to leave her village. Before the Supreme Court hearing, Maki and her daughter died under mysterious circumstances (Kishwar: 2008).

Women publicly asserting their rights to land have been branded as witches, harassed, and killed (Misra: 2003 cited in Rao: 2008: 13). In the contest between 'respecting collective land rights of indigenous communities and guaranteeing individual rights to women, issues of identity gain precedence over redistribution' (Rao: 2008:12). This is largely true for Hmars too.

As noted earlier, economic responsibilities of Hmars are no longer confined only to agricultural work. In the contemporary period, the evolution and advancement in

economic sectors have opened up new avenues for people. They have started working in government and private offices or are self-employed. As such, acquired property¹⁶ extends to other material goods such as vehicles, furniture, houses, and other landed property. Such property being self-acquired property is considered as private ownership. One male respondent makes the following observation,

Earlier parents did not have much property to distribute among their children. They may at the most own a small house. Such properties are not large enough to be distributed. So, the one entrusted to look after the parents inherited the property. However, this scenario has changed today and in matters of property transfer, there are many instances of distribution of it amongst all the children rather than the one male inheritor.

Despite the law of inheritance granting only one of the sons the right to inheritance, there are cases where such law has been bended to accommodate other children sometimes daughters too in inheritance rights. However, such cases are still far and few. As one respondent informed,

I am the youngest son amongst our siblings (I mean amongst the boys). According to our customary law, I should be the one taking care of my parents. However because of my job, I am working away from home. My eldest brother is there at home, looking after my parents. Our family decided that all the family properties shall be inherited by my brother, except for the small piece of land which I bought with my money.

¹⁶ Ancestral land is passed down to the male line from generation to generation while acquired land, is obtained by purchasing, by an individual' (Shimray: 2004: 249-250).

In another case, a male respondent, 55 years, mentioned how he distributed property among his children. He said,

I am staying with my youngest son, who will inherit my property. I told him that he will not inherit the entire property, but shall share with his brothers. However, in the distribution of property, I gave preference to my youngest son to select the plot of land he wants.

Further, a woman respondent speaks about her share in her parent's acquired property,

My father distributed his acquired landed property amongst us (three sisters and two brothers) though the lions share went to my brother, who will take care of my parents. Even though we were given small paddy field, however, since it is my property, I know I have ownership rights over it.

The above-mentioned cases show that 'the grip that customary laws have over household issues has lessened with increasing education and individualism in society. The mode of disposal of personal property depends on personal choice' (Sithou: 2015: 103). However, it needs to be emphasized that in most cases including the ones mentioned above, changes in implementation of customary laws in terms of inheritance are incorporated often within the larger scope of the customary dictates. In the first case, parents went with the norm of delving the property upon that son who takes up the responsibility of looking after them. In the second case, the father decided to give the best part to the youngest son who is the rightful owner according to the customary law, and in the third case, sons received the lions share.

Today, in the absence of male heir, daughter(s) in certain cases also have the right to inherit acquired property that her parents have bequeathed, including agricultural land. However, under these circumstances, her husband should be willing to move into her house and look after his wife's parents. This does not mean that her husband will forsake his clan. Rather, his wife will take on his clan name. Such husbands are known as *makpa sungkhum* (*makpa*-son-in-law, *sungkhum* -to absorb into in-laws). However, being patriarchal, patrilocal society, men moving in to wife's house after their wedding, are often ridiculed as *thaibawi* (hen-pecked husband). The prevalence of patriarchal notions of masculinity within Hmar society has its bearings on women as well as men who do not measure up to social norms. Being a patrilineal society, there is already an ingrained ideology that a woman after her marriage should move in to her husband's house. Therefore, man's effort to stand up to the idea of ideal masculinity often hampers women's decision to take up the responsibility of providing for her parents, thus affecting her chances to be owner of property. Thus, it is found in the field that women's decision whether to take up care giving responsibility in absence of brother is largely dependent on the openness and consent of her husband.

Further, in other instances, despite parents bequeathing property rights upon daughters, they are often worried whether the community and larger family will allow such transfer of property. Customary law grants permission to the extended family members and members of the community to challenge parent's decision to grant property rights to daughters. For example, Mr. Liena, in the absence of a male heir has

willed his property in the name of his only daughter whose husband has moved into Mr. Liena's house. Mr. Liena expressed anxiety over his property and informed that,

I have written a will declaring my daughter as the rightful heir. I feel that it is important to make this will. If we look into our customary law, women do not have inheritance rights. Who knows after I die, there might be an issue over my property and the community and my relatives may not allow my will to prevail on the grounds of customary law. I hope to ensure the transfer of my property to my daughter through the will.

Sitlhou (2015) in the context of Kuki society argues that in such cases if relatives fight for inheritance rights, based on customary law, the customary court judges in their favour against the will of the parents. She writes, 'since customary law favours male rights over ancestral land, the settlement will always be biased towards men' (103). In one such ongoing case in Family Court,

Mr. Dara passed away leaving behind his unmarried daughter, Remi. His wife was also dead. Dara was a government employee and so after his death, his relatives claimed his retirement benefits. The chance of customary law ruling in favour of Dara's relatives was high. Therefore, Remi approached state court to provide decree as rightful heir.

In this case, the existence of the state law has proved beneficial for the woman in her challenge to patriarchal clauses of customary law. In contemporary Hmar society, although parents have the option to give inheritance rights to daughters over their

acquired property, in the absence of sons, however, this is not so in all cases. Cases collected from the field also show that there are parents, who prefer, in the absence of male child, to follow customary law and transfer their property to the nearest male relative.

Mr. Remsang has three daughters but no son, so he prepared his inheritance will in favour of his elder brother's son, Mr. Chawisang. After Remsang had passed away, Chawisang inherited his property. There was no opposition from the daughters. They shared that they accepted the will of their father.

In another case, Mr. Lala has four daughters but no son. His wife has passed away. Before his death, he wrote a will that his property shall be inherited by his elder brother's son, Mr. Hmanga. He also entrusted Hmanga to take responsibility for his daughters. As per his will, after he passed away, Hmanga inherited the property.

In the cases mentioned above, none of the daughters showed their resistance over denial of inheritance rights to them. They expressed that they accepted the decision of their father because they believed that it is not right on the part of daughters to oppose and demand property. Gender norms teach daughters to be chaste, obedient, polite, and virtuous and that good women should not claim a share in the inheritance, even if they have no brothers as in the above cases (Rao: 2008). Affirming such gender norms, one of the respondents said,

My parents have raised us trying to meet our needs even if it means forsaking their needs. Even though they are illiterate, they send us to school. Today we are all

educated having our own income. I do not feel the need to poke my nose or fight for inheritance rights.

Another female respondent expressed her opinion on accepting the dictates of parents,

In matters of inheritance, there is no point for children to fight for it. In today's generation, almost every parent gives and supports the education of their children equally. They wanted them to be able to stand on their own feet in life. There is no point in the daughter fighting for inheritance rights when her parents have provided her with the means to be independent in her life. If such women fight for inheritance rights, the cohesion that exists in the family will be disturbed, as she will be considered as greedy.

Women's 'putative claims to natal property are often inscribed as images of overreaching greed, selfishness, lack of empathy and love for the natal family and a desire to cause family conflicts' (Basu: 2005:151). As laws of inheritance are shaped by patrilineal and patrilocal nature of the ideologically dominant family, women face discrimination, as they are not entitled to the same inheritance as their husbands and sons. Restrictions of women's right to land ownership and their reluctance in claiming inheritance rights 'share core ideologies that are embedded within constructions of masculinity and femininity and the "proper" roles that men and women should assume' (Grabe: 2010: 32).

Marriage

The different types of marriage prevalent among the Hmars before the coming of

Christianity were:

- a) *Sawngpuia Innei* (marriage with parental approval),
- b) *Chawngmolaka Innei* (engagement of the girl and boy by their parents from childhood)
- c) *Inruka Innei* (marriage by elopement)
- d) *Tluna Innei* (marriage in which a woman/man enters the house of the man/woman that she/he loves and insists on living there as his/her wife/husband even against the wishes of the members of her/his family)
- e) *Kohran Dan Innei* (church marriage): Church marriage as a form of marriage began only after the conversion of Hmars to Christianity.

Respondents share that traditional forms of marriage could not retain their characteristics because of the influence of Christianity. They claimed Christianity as the main factor responsible for wiping away the forms of marriage such as *Chawngmolaka Innei* and *Tlunna Innei*. Church marriage, a new form of marriage was introduced and incorporated into the existing forms. *Sawngpuia innei* and church marriage bear similarities, as both demand the approval from parents on either sides. However, in church marriage, the wedding takes place in the church. Thus, using the same term *Sawngpuia Innei*, a term used before conversion to Christianity, was not felt appropriate with new Christian faith. *Sawngpuia innei* is rejected as barbaric and is henceforth changed to church marriage.

In contemporary period, the most prevalent forms of marriage are marriage by elopement and church marriage. Members of the church are given advice on the importance of church marriage, which is considered as the legitimate form of marriage. Parents take on the role of giving advice to their children from a young age that they should have church marriage. Conversation with younger generation shows that there is great importance given by them to have church marriage as they consider it as the only respectfully accepted norms. They consider that church marriage builds stronger commitment. This is reflected in the response of one of the young respondents,

Church marriage built stronger commitment between husband and wife. It is also the wish of the church and our parents. We should stress on the importance of church marriage. The vows that the bride and groom take at the day of their wedding have a strong hold upon them. Even if their marriage may not be smooth, however knowing that they have made a commitment to be one, they try to make an adjustment to save their marriage. There is a strong bondage in church marriage, as compared to marriage by elopement.

The idea of saving marriage is not different from other communities and regions in India. This entails that in terms of marriage, family, gender, and sexuality Hmar community is guided by almost similar notions of masculinity, femininity, gender roles, and status. The church contributes in a major way to bring in such socialization.

As discussed, church imparts upon its members the necessity of church marriage, and respondents accept it largely unquestioningly. However, marriage by elopement

(*Inruk Innei*) is also prevalent. Customary law gave liberty to its members to choose any form of marriage system. It does not give preference to one form of marriage over the other, neither does it compel community members to follow a set of rules in terms of marriage. Given the prevalence of marriage by elopement, church has formulated rules to deal with such situations. Church ostracizes members who had marriage by elopement for a minimum period of six months during which they are not allowed to take part in any of the church activities.

After the completion of such period, the concerned couple have to ask forgiveness for going against church law and request church to take them back as lawful members. Church allows eloped couple to receive the blessings and prayer of church pastor for their married life in the house of church elder (*upa*) or in church vestry, but not inside the main church building, which is called *Pindan Innei*. The couple can seek permission to local church committee for *pindan innei* (marriage in church elder's house or church vestry). After *pindan innei*, they are accepted back as lawful members of the church. This shows the partial integration between the two laws. It is interesting to note that those who had marriage by elopement and later had *pindan innei* marked the day that they had *pindan innei* as their wedding anniversary. The sanction of the church thus becomes an important factor in determining the status of individual identity in the community.

During fieldwork, I was invited for dinner by a family to celebrate their wedding anniversary. When I enquired how long they have been married, they informed me that they had marriage by elopement and later had marriage in church vestry. They

marked the day they had marriage in church elder's house as the day of their wedding anniversary. This is an instance of the importance given to church law and norms over customary law. Liberal marriage norms, which were not bound by the necessity of religious rituals of marriage, were either completely sidelined or relegated to a secondary or inferior status with the acceptance of Christianity. Thus, in the co-existence of various legal orders within Hmar society, customary law in certain spheres was relegated to the secondary.

For marriage in church vestry, the couples have to follow all customary marriage formalities. Informal interactions with community elders and those who have taken part in kinsmen meeting states that to have marriage in church vestry, both husband and wife need to have the approval of their marriage from their respective parents and perform all the customary formalities such as payment of bride price. Only then, they can have marriage in church vestry. In such forms of marriage, church gave them marriage certificate. One of the respondents, a church pastor said,

In church marriage, church gives the couples church marriage certificate. However for those who had marriage by elopement, unless they have marriage in church elder house, church does not give them any marriage certificate. Only after marriage in church vestry, they receive certificate from church. The certificate is considered very significant by the couple.

Recognition of marriage by church is considered very important. Interaction with respondents shows that they considered their marriage certificate given by the church as a proof of their marriage. According to one of the respondent,

Church marriage certificate given by the church is very much valued by us. It is an authentication of our marriage.

Some couples especially those who had church marriage make a frame of their church marriage certificate and hang it at their house. Church's sanction thus becomes important to give it social and religious standing and therefore after an initial punishment period, the couples seek and receive the church approval through a marriage certificate from the church.

Marriage by elopement (*Inruk Innei*)

The main reasons for marriage by elopement as asserted by respondents are pre-marital sex, disapproval of their marriage by either or both the families, high cost involved in church marriage. A female respondent who had marriage by elopement mentioned that,

From my childhood I wanted to have church marriage and wear wedding gown. However as we had pre-marital sex, which is not accepted by church, we had marriage by elopement. My parents were very disappointed with me. They wanted me to have church marriage, but I did not fulfill their desire. I feel guilty of what we had done.

This reflects the conservative sexual morals of the church and moral policing. In another case, church prohibited church marriage of Mr. Lawmsang and Ms. Kimi as they had pre-marital sexual relationship.

Lawmsang and Kimi were to be married in church. After all the customary marriage formalities were over, with the consent of the church, their wedding information was posted at the church notice board. Mr. Rema, a third person, informed the church that he and Kimi had an affair and had shared physical intimacy several times. As the church does not allow anyone who had pre-marital sexual relationship, to have church marriage, Lawmsang and Kimi were no longer allowed to have church marriage. Since both of them (Lawmsang and Kimi) wanted to marry each other, the matter was decided by their kinsmen where they were married as Sawngpuia Innei (marriage with the parental approval) without any church marriage ceremony.

This case shows that despite the large-scale approval and preference for church marriage, Hmar does utilize customary forms according to the situation. Customary forms of marriage thus often comes to the rescue of individuals and families especially in situations where the strict patriarchal morals of the church laws do not allow people with varied experiences to access it. Thus, customary laws in terms of marriage among Hmars continue to have their influence sometimes integrated into the larger church rituals as in church marriage and sometimes as an alternative to the church laws and norms itself. In situations where parents do not approve of the partner, couples go for marriage by elopement.

Mr. Dinga and Ms. Biekmawi were in love and wanted to get married. However, their parents objected to their marriage. Despite the objection of their parents, they had marriage by elopement.

In another case, *Mr. Ngura and Ms Puii were in love. One night pretending to go to nearby shop, Puii went out but did not return. Her parents were worried as she did not return. However, after some time, the kinsmen of Ngura went to Puii's house to inform that Ngura has eloped with their daughter.*

In both cases, consent of their parents was not taken. Their parents were very hurt by the act of their children. They felt that their children have brought shame to them as they had marriage by elopement and not church marriage. Yet, such marriages were not ostracized and were immediately accepted by families and community. It was the church approval that they had to wait for and received it only after serving the punishment period.

In the case of Puii, she eloped with the man of her choice, which her parents reluctantly agreed to their marriage. Along with the fact that customary practices allow such marriages, parents also accepted such marriages due to the fact that they are concerned about the chastity and honour of their daughter. Outwardly, this seems to give autonomy to women, as she enjoys the liberty to choose her own life partner. Conversely, the underlying politics with parents accepting their marriage is linked with her chastity, which is now regarded to be impure. As virginity is a high priced possession for a Christian woman, losing one's virginity amounts to lowering her dignity. Therefore in most cases, it is seen in the field that parents of women accept, sometimes reluctantly, such marriages with maintenance of chastity as an important factor in mind. Though elopement marriage is an option, yet it is accepted by parents

not as a matter of Hmar tradition but with concern to uphold the chastity of the daughter and honour of the family.

Bride Price (*man le muol*)

Bride price is a customary practice of the Hmars. It forms an important component in formalizing marriage negotiation within Hmar wedding. Giving and taking of bride price is considered very important in marriage negotiations. As discussed above, even for church marriage, it is necessary to complete all the formalities from engagement (*thirdam*) to payment of bride price. Without fulfilling such formalities there can be no church marriage. In the past, bride price was paid in the form of mithun (*sieI*). However after the introduction of money, bride price is given in the form of money which at present amounts to Rs 1200¹⁷. It is a customary practice that *makpa* (son-in-law of ego's clan) from the bride's family shall receive bride price from groom's family. After receiving bride price, the bride's father distributes it among his kinsmen, relatives, or even close friends.

Though the bride does not receive any share of bride price, respondents consider such customary practices as providing security for the bride. For instance, the one whom the bride's father gave the share of bride price as *pa-nghak*, has the responsibility to look after the bride in times of necessity and can even stand on behalf of her father. Before the distribution of bride price, the bride is consulted as to whom she wishes to give *pa-ngak*, because it should be someone whom she can treat like her father. Apart

¹⁷ Community elders shared that earlier the amount of bride price differs from clan to clan. However the amount is fixed by the Hmar Youth Association.

from giving *pa-nghak*, the bride's father also gives a share of the bride price to other relatives. Those who received such share are called *man-fa*. They have the obligation to look after the well-being of the bride after her marriage. In recognition of women's roles in the family, they do receive a share of bride price. A small amount of the bride price, Rs 20 called *sangdawn* is given to the bride's elder sister as recognition of her role in babysitting her sister when she was young. In recognition of her role in her brother's family, small amount of bride price, Rs 30 called *nisum* is given to the bride's aunt (father's sister). In case of divorce, if the bride stays with her father, the mother receives small amount of bride price as *nu-man* (the literal meaning of *nu-man* is for being the mother).

It is found in the field that an obligation that is attached to sharing of bride price that was practiced in pre-Christian times has changed today. Earlier, share of bride price were given to members of the same clan to 'sustain relationships, obligations, rights and responsibilities among clan members' (Varte: 2010a: 164). Whosoever receives a share of bride price has the obligation to reciprocate by giving gifts as an indication of appreciation. Today it has taken a different turn. The sharing of bride price is no longer confined only to members of the same clan. Such persons who will receive the share of bride price today are also chosen from outside the clan and even outside the tribe. The changing economic conditions have changed the nature of such practice. Today, distribution of bride price as Varte (2010a) argues has 'become more of a distribution of commodity rather than being given for the sake of strengthening

existing traditional clan relationships’, as the main intention lies in the ‘conscious thought on the economic position of that person and his ability to reciprocate’(165).

The following section deals with five different views that emerged from my data regarding bride price.

Bride price as granting ownership rights to husband over the wife

Data shows that it is considered very important for a husband to make full payment of bride price. If a woman dies and the husband has not paid the full amount of bride price, then he does not have the right to bury his wife. He first has to pay the bride price. He is even liable to pay fine for delay of payment of bride price. Even in old age, the husband is under strict obligation to pay the full amount of bride price. In one of the cases collected from field,

Mr. Liena and Ms. Zari were married for twenty-nine years. They had three children; one daughter and two sons. All of them are married with families of their own. Zari died due to ill health. On the day of her burial, it was found out that Mr. Liena had not yet paid the full amount of bride price. Since he had not cleared off the bride price, he was not allowed to have the right to bury his wife. So, Mr. Liena gathered his laibung and paid the remaining amount. Only then, he got the right to bury his wife.

As Siwan Anderson (2007) argues, ‘because women generally joined the household of their husband at the time of marriage, bride price is typically considered to be the payment a husband owes to a bride’s parents’ to have ownership right over her (158).

Many male respondents support that payment of bride price gives ownership rights to the husband over his wife. According to one male respondent,

Through the payment of bride price, a husband has ownership rights over his wife. After marriage, as it is our custom for a woman to leave her parental home and move into her husband's house, the husband pays price to have ownership rights over her. The husband can then exercise control over her as she is bought with a price. The husband becomes the owner and now has authority over her. Bride price is paid to authorize the husband the right to bury his wife (in cases of death), and her biological father cannot come and claim such right.

Another male respondent said,

I paid bride price as a sign that I now have authority over my wife. Like the way I pay money for things I buy, I pay bride price so that she becomes my property.

The responses show how some men considered women as possessions confirming to the patriarchal family norms of men as the head and the owner of the family. Women are treated as possessions transferred from father to husband through legitimate ritual to ensure purity of blood, family and clan as well as protection of property in the legitimate patriarchal line (Das: 2008). More importantly, such ideology of marriage ensures control over women's self, body and sexuality. This brings home the point that women live within similar patriarchal morals as well as experience control in almost similar manners across communities and that the claim of women enjoying egalitarian and a much better status among Hmars is not always true.

Male respondents consider that such payment gave them authority over their wife and demand obedience and subservience from their wives. Often men used words like, *'you are very cheap, I paid just Rs 1200 and bought you'*, or *'I've bought you with a price'* to their wife. Such lexis shows that payment of bride price provided man with the 'justification to treat his wife as a disposable commodity' (Nongbri: 1998: 22). 'Bride price though being an explicit recognition and valuing of women's productivity, it often serves to limit women's control over their bodies' (Anderson: 2007: 170).

Bride price as marker of building relations

Female respondents and few male respondents strongly objected this view. They argue that who would be willing to be treated as a commodity; to be sold and be purchased. They considered bride price as a marker of building relations between two families. Affirming this belief, as against the idea that taking of bride price is similar to selling the daughter, one female respondent said,

Our customary law has fixed the amount of bride price. As for me I do not consider giving and taking bride price as the act of selling women. Who will for a sum of Rs 1200 want to sell his daughter? I rather consider it as a witness. We make such payment in the presence of kinsmen who are there to witness that I've agreed to give the hand of my daughter to them.

In the words of another male respondent,

In my opinion, it is impossible to sell our daughter. However, as we are to build ties between two families, we pay bride price as a token or sign to show that we have build relationship between the two families. Rather than just declaring the ties with words, we have shown it in deeds by paying the amount. The amount does not count but rather the meaning attached to it.

Thus, for some respondents bride price is considered as the first step in marriage negotiations as it is seen as a cultural requirement for the establishment of every Hmar family. Bride price is understood as a process of initiation and legalization of marriage.

Respondents informed that if their daughters marry at a very young age, they do not take bride price immediately as they are apprehensive of their daughter not being able to adjust and will return soon. In such cases, they would prefer to watch for some time before accepting bride price, as acceptance of bride price gives a kind of permanency to things and involves lot of processes if the girl decides to get divorce. Often such parents would say,

She is not yet mature to handle family. Let her stay there (marital home) for a while. If she can stay for (may be) a year, we will think about taking bride price. Until then, we will not take bride price¹⁸, as we have less hope that she will be committed enough to stay there.

¹⁸ In church marriage, before wedding, all customary marriage formalities are conducted such as keeping *thirdam* (engagement) and payment of bride price. However, in marriage by elopement, as the

In such situations by not taking the bride price, they avoid a lot of hassles which makes the returning of the girl to her natal family easier. Just as payment of bride price entails the fulfillment of marriage negotiation between the two families, it also requires returning the bride price in situation where the wife initiates divorce. According to Hmar customary law, divorce initiated by the wife by returning her bride price to her husband is called *suminsuo*. If a woman returns to her natal home forever, then the girl's parents shall send their *laibung* (kinsmen), son-in-law, and sister to inform the husband's family that she will not return. In one such case,

Mr. Hrieta and Ms. Remmawi were married for five years. Due to certain differences between them, Remmawi returned to her natal home along with her three children. From her natal home, she initiated divorce by returning her bride price¹⁹ to Hrieta. It was decided by the kinsmen that as they are no longer husband and wife, Remmawi's

girl and the boy got married without informing their parents, bride price is given only after marriage. It is necessary for the boy's family to give information at the earliest, about the elopement of their children to the girl's family. If they fail to do so, then the girl's family can sue them or take action against them. Even in giving such information, there are strict customary rituals. The boy's family has to send their kinsmen to the girl's father's house to inform about the elopement of their children. After the kinsmen enters the girl's father house, they should first serve tea as a sign of asking forgiveness. If the kinsmen from girl's side do not accept tea, it means that they are not willing to carry on the conversation. However if they accept tea, then the kinsmen from boy's side will seek for their forgiveness for taking away their daughter without their knowledge. If the girl's kinsmen accepts their apology, then the boy's kinsmen has to keep an amount of Rs.20 as *pu-inhawn*. This signifies that the girl's side has opened the door to discussion for fulfilling customary rituals such as payment of bride price and bridal gifts.

¹⁹ There are customary rituals involved in returning bride price. Returning bride price does not mean that the woman can give away the bride price at her own will. In such situation if a woman, after marriage, returns to her natal family and if she has made up her mind not to return, she should inform the matter to her parents or relatives. If the family members agree to her decision, then her father will gather his kinsmen and inform them about her daughter's decision on returning bride price. The kinsmen would then inform the husband or his father regarding the issue and the need to have *laibung inbiekna* kinsmen meeting. They will fix a date for the meeting. On the fixed date, the *laibung* from the women's side will return the bride price to her husband's kinsmen.

sister's husband and her brothers shall collect Remmawi's belongings from her marital home. In this way their marriage is dissolved.

Bride price provides security for women

Female respondents also claimed that payment of bride price dignified them as it provides security for women. One of the female respondents said:

Bride price is given for the security of the bride such that in times of her needs, she will be able to take refuge from those who got a share of bride price.

Respondents who support this argument feel that such payment gave authority to bride's parents over their daughter even after her marriage. According to one respondent:

While paying and receiving bride price, a small amount of money is returned by the bride's family to the groom's family called 'man thungpha'. This literally means that, the bride's parents will not lose total authority over their daughter, and if anything happens to the bride, her parents have the right to interfere.

Respondent thus held the opinion that bride price represents a form of security for women.

Bride price as recognition of women's contribution

Literature shows that in many societies, payment of bride price is seen as compensation paid to the girl's father for the loss of a productive member in the family (Basu: 2005; Krishna: 2005; Nembiakkim: 2008; Nongbri: 1998; Rajaraman:

2005). Bernh Vroklage (1952) describes the practice of bride price in Indonesia as a compensation for the expenses, the care and trouble spent in the bride's upbringing and as a compensation for the complete loss of a worker. Shalini Randeria and Leela Visaria (2005) in their study conducted in Gujarat argue that 'if bride price is paid as a compensatory payment then the 'amount should be fairly high, given the high labour participation of the women especially in agricultural society' (60). They considered that the meager amount paid can hardly be an adequate compensation for the women's lifetime domestic and other labour which her natal family losses. In my study, too some respondents see bride price as a recognition of their contribution to their marital home, which they feel needs to be acknowledged by giving a higher amount of bride price. One respondent commented,

Our bride price should be increased. Why should we be made so cheap when we are the one who take care of our husband's family?

Bride price and bridal gifts

Like the above respondent, other respondents felt that the amount of bride price is very minimal as they compare it with bridal gifts. They feel (in the words of one respondent),

The amount of bride price needs to increase. In the present situation, the bride's family has to spend huge amount of money as they have to take bridal gift to the groom's house. Compared with their expenditure, the amount of bride price is very less which should be increased.

Another respondent makes similar remark,

The bride's family has to spend huge amount of money-for the sent off ceremony, bridal gifts, feast for the bride's relatives on the day of marriage. The expenditure is much higher compared to the groom who just has to pay a small amount of bride price. Our bride price needs to increase.

In contemporary Hmar marriage, as mentioned earlier, the bride takes both movable and immovable property as her bridal gifts to her marital home. As it is considered a huge burden for the bride's family, respondents feel that bride price should be increased to such an amount that it will in some way lift the economic burden of giving bridal gift bore by the bride's family.

Need for change in the term bride price

There are respondents in my study who disapprove of the term bride price and argue for change in the term. They feel that the use of such term treats women as commodities. According to them, as long as the term price is used, it signifies that there is a medium of buying and selling. One such respondent argues that,

Though many people may not want to say that they are selling their daughters away but the very use of the term bride price ('man le muol', the literal meaning of 'man' in Hmar is price) signifies that there is an agreement of selling and buying.

Reiterating similar opinion, a community elder expressed his strong objection with bride price. He questioned,

What is the need of bride price? There are some who demand that bride price be increased. I disagree with such proposal. I would rather ask why should we sell our daughters or give away our daughters with a price?

Thus, the practice of bride price is understood in various ways. One group of respondents feels that bride price should be done away as it treats women as mere commodities. Another group of respondents feels that the amount of bride price needs to be increased, as the present amount is very low. However, the most important aspect is the belief by a section of Hmar men that bride price ensures and seals their authority over their wives. Such beliefs are used to justify domination and violence on wives who are then constructed as men's possessions.

Bridal gifts (*mo thilsawm*)

Church marriage, as discussed, is a blend of customary practices and church law. Except for the wedding ceremony in the church, all other marriage formalities are carried out as per customary practice such as *thirdam* (engagement), payment of bride price and *mo-thuoi* (bringing the bride to her marital home). In church marriage, it is observed in the field that the bride takes along bridal gifts, gifts that parents and relatives give to the bride on the day of wedding. Although church does not lay down laws on the necessity of such bridal gifts, however as it is blended with customary practices it has become part of church marriage formalities.

According to Hmar customary law, bridal gifts include *puonri*²⁰, *dawrawn*²¹, *kawngvar*²², axe, hoe, *rel* (basket), silver utensils, spinning device and weaving materials. The main purpose of bridal gift as shared by respondents is that,

During traditional times, the only work that they were engaged was agricultural work. Therefore, when a woman enters marriageable age, her parents wanted her to be productive at her marital home. So they sent her off with tools for weaving and agriculture. These tools were handmade and were not expensive.

The value attached behind such bridal gifts, say a spinning device ‘implies solely the women’s role in the family and the means of how that role can be effectively played. This implies the woman’s economic productivity in matters of clothes and other necessary fabrics for the family. Likewise all such items have corresponding implications and values that strongly reiterate the woman’s role, importance and productivity potentials in her new home’ (Varte: 2010a: 172). Along with changes in the living condition both social and economic, there are changes in forms of bridal gifts. Today, bridal gifts are not just confined to the above listed items. They also include both movable and immovable property. The present practice of bridal gifts as observed by Varte (2010a) ‘has become a manipulative instrument where the groom’s families benefit economically from the marriage and where a woman is more of an

²⁰ A special type of blanket made of unspun cotton and cotton thread.

²¹ A closely woven bamboo basket specially for carrying unhusked rice

²² An open bamboo used for carrying firewood and water pots

economic commodity that drastically lowers the status of the women in Hmar society' (172).

Church does not expect bridal gifts to be followed as compulsion, however being part of customary practices; it continues to have its hold over Hmars. Thus, bridal gifts constitute an important component in church marriage. Many of the respondents held that such practice creates economic burden for the bride's family. In the words of a woman respondent,

Bridal gifts are a problem for the low-income family, as they cannot afford such extravagance, which we are practicing now.

Another respondent substantiates,

We should stop our practice of bridal gifts as it causes lot of problem for the bride's family. If that is not possible then at least, the gifts should be limited as financial status of the people differs.

Most of the respondents expressed that bridal gifts involves huge expenditure which creates economic burden for the bride's family. Even in the villages, data shows that parents tried to send off their daughter to their marital home with bridal gifts. This in turn creates economic burden for the bride's family who have to find means to meet such requirement. One of the respondents expressed her unhappiness,

We are struggling to meet our daily needs. It is a great burden for us to have our daughter married in the church, as bridal gifts are very taxing.

Although Hmar customary law prescribed a fixed amount of bride price, but in matters of bridal gifts such dictate is not followed. Hmar customary law also lists the items of bridal gifts; however, there is difference in practice. Such practice continues despite most Hmars rejecting the form it has taken. With the changes coming into the system of bridal gifts, it is comparable to the system of dowry. Despite the fact that there is no demand for such things from groom's side as in dowry, yet the impact of consumerism among Hmars leads to high expectations from groom's side in relation to the bridal gifts that the bride will get along with her. Bridal gifts are attached to the notion of status of both bride and groom's side and thus there is a pressure to give and get more and better bridal gifts. This burdens the bride's family often leading to financial inconveniences and debts. The status that is attached to such gifting practices pressurizes others who cannot afford to follow suit. In some ways, the practices and its effects on women's lives in terms of marriage and the associated material exchange are similar to that of the practice of dowry followed in other regions and communities of India. Yet, it needs to be mentioned that it is not as severe as it is in communities practicing dowry and, neither does it lead to violence against women as in dowry violence. According to one respondent:

Giving of such movable or immovable items was never a part of our customs. We have brought in other culture, such that today our practice of giving bridal gifts is similar to dowry.

Furthermore, many of the respondents mentioned that such practice creates hierarchy amongst people. One respondent comment,

Such practice (bridal gifts) makes a differentiation between the rich and the poor. While the well to do family can afford to send off their daughter with lots of items or goods, that is not so in the case of the poor. Though many couples may desire to have church marriage, however, due to financial problem, they are compelled to choose marriage by elopement.

Respondents thus consider that because low-income families are not in a position to send off their daughter with bridal gifts, many choose marriage by elopement. One respondent opines,

In church marriage, what matters most is the exchange of vow between bride and groom in the presence of the pastor. Rather than preparing a grand wedding and inviting large number of people, I feel that in the presence of relatives and selected well-wishers such marriage can be conducted which will also involve less expense. However, church remains silent on this issue.

Church's selective silence in matters of customary practices is clear in the case of bridal gifts. It is very rigid about granting church marriage rights to couples with history of pre marital sex and or those who marry by elopement, but is silent on such traditional practices like bridal gifts taking new shape and burdening people. It remains indifferent to issues affecting its members financially and tasking them with material burden by not being pro-active in banning the practice of bridal gifts.. Maintenance of sexual morality is prioritized over economic burden and exploitation. The fact that religion is largely bothered about maintaining gendered norms,

patriarchal sexual morality, and heteronormative monogamous family structure rather than the economic ethics is obvious in such silence.

Many respondents expressed that church marriage involves huge expenditure, which not every family can afford. They articulate church marriage as burdensome to bride's family compared to the groom's family. For instance, after the bride's father received bride price from the groom's family, he has to offer a feast called *sumkhumsa*²³. The bride's family is under compulsion to organize send-off ceremony of their daughter just before the day or on the morning of their church marriage. Relatives, friends, and well-wishers are invited to attend the ceremony. Often on such day, the bride is advised to be good wife, to be obedient, to be good to her in-laws. All these ceremonies burden the bride's family economically simultaneously ensuring reinforcement of gendered familial values. Given the large-scale influence that church has on the minds of the Hmars including the young, it can be discerned that patriarchal values and gendered sexual norms are also largely accepted and followed among Hmars like any other communities.

Divorce

Customary law permits divorce. According to Hmar customary law, both husband and wife can initiate divorce. There are five ways of divorce according to Hmar customary law:

²³ This is a feast to confirm the payment of bride price, on the day of the marriage or some days after the marriage. The bride's father has to kill pig, cow or mithun, as an acknowledgement of the receipt of bride price, which is called *sumkhumsa*. The pig slaughtered would be cut into half where the bride has to carry the half portion (excluding the inner portions and the head) along with the tail to the groom's house called *sa hrap* (division of the animal into two is called *sa hrap*). The groom's family would send their *makpa* and their *laibung* to collect the *sa hrap*.

- *Uire* (divorce due to adultery)
- *Mak* (divorce initiated by husband)
- *Peksachang* (divorce by agreement. In this case, there would not be any further transaction with regard to the bride price wholly paid or unpaid)
- *Suminsuo* (divorce initiated by wife)
- *Inthat the* (incompatibility as a ground for divorce)

Hmars traditionally believe that if couples cannot adjust with one another, or they want to end their relation, they can do so. Terms such as *nuthlawi* and *pathlawi* are used to refer to divorced man and woman respectively. Thus, divorce is not seen as a taboo among Hmars.

Customary law does not impose any sanction on divorced man and woman. Remarriage is also allowed for both. In customary law, if either or both husband and wife want divorce, the formalities of their divorce are decided by their kinsmen. Interview with male respondents, who have been involved in customary board meetings, brings forth that if either or both want divorce; the case is decided resulting in divorce. However, this is not so in the case of church law. The influence of Christianity, norms of sexual purity and morality, as well as marriage as sacrament permeated Hmar culture. Thus from the coming of Christianity, church law and morals continue to not permit divorce. Given the intense influence of the church on Hmars, the socialization is such that most respondents in my study believed marriage should

be treated as a sacrament thus opining that they will not easily choose divorce. Rather, they emphasized that one should always try to keep up one's marriage and fix marital problems to the best of one's ability.

Church and divorce norms

Church considers marriage as bound by God, so it strongly advocates for the need to protect it. According to church law, church committee members should give such couple counseling for reconciliation. Restoring marital relationship is considered important by church, because its sacrament and sacred. In marriage or divorce, the breach of church law amounts to punishment such as ostracizing the individuals for certain period of time. The counselors in Family Court also expressed similar opinion on the sanctity of marital relationship, which needs to be protected. One of the counselors said,

Cases which have come up to Family Court on matters of divorce, the judge often gives them time to restore their relationship. We give counseling to such couples. There are some, which we were successful in reconciling even after they have submitted their petition for divorce.

One can see a sharing of gendered ideologies between the state legal system and church law in terms of saving the marriage at any cost approach. Restoring marital relations is given utmost importance by both state and church whereas customary law provides space for divorce thereby not falling in line with the other existing legal systems among Hmars.

Church law does not grant permission of church marriage to divorced persons. In cases where either divorced man or woman (who earlier had church marriage and has initiated divorce) wants to get married to different partner, he/she can do so according to customary law. As discussed earlier, those who perform elopement marriage or marry second time are not allowed to do so in the main church building.

In one such case, *Mr. Ruota and Ms. Sawmi had their first marriage in the church. As both of them have jobs in different places, shortly after their marriage they went back to their respective place of work. A distance grew between them and even after having two children, their relation drifted apart. After some months, Ruota divorced Sawmi according to customary law. Later, Ruota wanted to marry another woman in the church and asked the church to grant him permission to re-marry. Church decided the matter and a word was sent back to Ruota stating that since his earlier marriage was church marriage, where he had made a vow before God and church for lifelong dedication, church cannot grant him the permission to have his second marriage in the church. Instead, church tried to reconcile them, by requesting Sawmi to forgive Ruota and reunite with him. Such suggestions by church was rejected by Sawmi.*

In attempt to reconciliation and saving marriage, the pressure was more on Sawmi to forgive and take the onus of renewing the marriage. Saving the family is a priority of the church. Even if individuals are clear about divorce, the church takes it upon itself to conduct mandatory counseling of its members to save the marriage. In its denial of permission to Ruota to have his second marriage in the church, and in its insistence on Sawmi to save the marriage, the church reinforces monogamous marriage norms.

Further, it was Ruota who initiated divorce, but church expected Sawmi, the wife to possess the qualities of an ideal Christian woman - sensible, kind, and submissive - willing for reconciliation. The burden of saving the marriage is placed on women. The right to initiate divorce by a woman (*suminsuo*) according to customary law seems progressive towards women as it gave women the liberty to walk out of marriage. On the contrary, Church sermons instill women to possess qualities such as being passive, chaste, to be devoted and be a faithful wife to their husband. Despite women having the right to initiate divorce by returning bride price, women rarely decide on divorce as the first solution. Only when they could no longer stay at their marital home or cannot adjust with their husband any longer, divorce is considered. Gender norms makes mothers responsible for instilling such values as well as take the role of advisor to daughters. Data shows that in cases, where a daughter returns from her marital home, it is often the mother who tries to bring reconciliation by persuading her daughter to adjust and return to her husband. To protect the honor of the family, parents, especially mothers, instruct their daughter(s) to keep up the marriage. 'For women, both the acquisition and the defence of honour demanded an essentially passive behavior. Her only possible contribution to the honour of the family or the social group lay in making that she did not bring shame on them' (Pernau: 2003: 23). Knowing that the honour of the family depends on them, women are compelled to adjust under all circumstances where they choose to bear all the pain in order to protect the family's prestige. Such kinds of stigma do not apply to divorced man. Such ideology burdening women with the responsibility to preserve 'family honour' pushes

women to have an inferior and less-empowered life. One female respondent describes how she lives her life within marriage:

Before my marriage, I always thought that marriage will be full of roses. I could never see any reason to fight, quarrel, or have misunderstanding between us. I always thought that I could handle any situation that comes along our way. Despite my parent's advice to think properly about my marriage with him, I never felt the need to do so. I was very much in love with him. We got married. The first few months were like fairy tales. Both of us were very happy. As time passed by, we started facing financial crisis, in fact our marriage was no longer a fairy tale. We began to blame each other and our relation slowly drifted apart. The first time my husband shouted at me, I was very scared and at the same time angry. I wanted to walk out of the door and return to my parent's house. I nearly took that step. But I asked myself, 'will I be happy if I return? Will my parents be pleased to see me? What will the society think of my parents? The answer to all was to stay with my husband no matter what happens. Indeed there are such many situations where I wanted to return to my parents, but I never could take such a step.

In protecting the name of their family, women prefer to remain silent about their marital problems and bear all pain by themselves. Ironically such woman is praised by the community for being a 'good woman'. Hmar society considers such woman as a godly person; as a woman who follows the teaching of God; a woman who is dedicated to her commitment to stand by her husband through all situations. Such

woman is often talked of as a good and dedicated wife in the community. One-woman respondent said,

We often go to church, listen to sermons but if we do not practice what we hear what is the need of listening such sermons. Once I had a very bad relationship with my husband and had heated arguments, but knowing that it is my responsibility to take care of my family problem and not run away from it, I stayed through it earnestly seeking God's help. We did overcome that problem. Today, I share my life experiences to help other women who face problems in their family. I advice them- be ready to handle such situations and not run away from the problem.

Other female respondents in the field often spoke of the above respondent as an exemplary illustration of how to be a faithful and godly wife. Such 'character traits in which women have been socialized are considered as central to the imitation of Christ and thus to Christian behavior. Women who cultivate such qualities are recognized as ideal Christians' (Miles: 1992: 331). On the other hand, many male respondents attitude towards their marriage is that 'woman can be divorced anytime', 'if we do not want her (wife) anymore, we should divorce her'. One male respondent said,

Most women do not wish to be divorced, so time to time they should be threatened of divorce so that they do not try to dominate us.

Such opinions depict the parochial attitude of men towards women. Women are considered as men's possession and can be treated as they want, which kept women in subordinate position. Marriage, thus, is understood to 'involve a husband's exclusive

right to his wife's sexuality, as a form of property right' (Kapur and Brenda: 1996: 103).

Divorce and support from family

Gender socialization inflicts pain and shame on women and their families upon divorce but largely again it is the family, which generally forms the support for the divorced daughter despite their sense of shame and unhappiness about the divorce. Women who are divorced by husband are forced to return to their natal home. They bear the pain, shame and guilt of their situation. However, their families generally stand beside them. This is reflected in the case of Zuali as narrated by her:

I got married at the age of seventeen. It was marriage by elopement. My husband was seven years older to me. My parents did not approve of our marriage, as I was considered too young to set up a family. After we eloped, I was very scared that my parents would take me back. Kinsmen were sent from his (husband's) side to inform our marriage to my parents; however my parents did not have any word with them. After a week, the kinsmen re-approached my parents. This time they were willing to have a word. They told the kinsmen, 'it is not that we do not like the boy, but as our daughter is still very young to get married, we want her to be more mature. But since there is no point of taking her back as she is not willing to come, we are compelled to accept their marriage'. Our marriage formalities were conducted, and my bride price was paid. After this, we paid a visit to my parent's house. My parents look sad when they saw us. I saw tears in my mother's eyes. However, I was so happy with my marriage that I returned after a short visit. Since it was marriage by elopement, we

had marriage in church elder's house . After a year of our marriage, we had a baby girl. We were very happy when she was born. After few months, my husband started to behave strangely. He would return home late at night and would excuse himself for different reasons. To my surprise, he married another woman. That was the hardest thing to accept. I felt as if my world had crumbled down. It was then that I regretted defying my parent's words when they called me back. I wished I could turn back my life, but that was not possible. I felt ashamed of myself and for the shame that my parents have to bear again because of me. I did not returned to my natal home but continued to stay in our house. After a week, my husband sent his kinsmen to my parent's house giving them Rs 500 as divorce fee. The next day my mother and our relatives came to our house to take me back. I saw the pain in my mother's tears. If only I have been obedient, they would not have had to face this day. I hugged my mother and asked her for forgiveness. My mother did not say anything but her tears said it all. I packed our clothes and returned to my natal home. How I wished, this was all a nightmare. But it was a reality I had to face. I was back to my room with my daughter. My mom asked me, 'since you have been divorced what do you want, do you want to keep the child with you or do you want to give it to his family. I told my mom, "Mother, I know I have hurt you so much, and I don't know whether you would want to keep this child. But I love her so much, and I can't think of giving her away. Just the thought of giving her away gives me heartache. If both of you allow, can I keep her with me". After few minutes my mom spoke, 'See, just as much as you love your child we love you and her too. We agree with your decision'. Few words but this was enough to make me realize the love of my parents. I hugged my mother, and we both

cried. We did not say a word. The next night the kinsmen gathered on the issue of the custody of our daughter. My father requested them that to allow us to keep the child with us. The kinsmen granted our request.

She further said, he (husband) tried to contact, but I did not want to keep any contact. Though I've to struggle hard to support ourselves financially, I do not want us to have any contact with him. He is dead for us. My parents have been supporting me all these years, and they have filled all the gaps that my daughter does not even sense that she does not have father.

This case shows that parents become the pillar of support to their divorced daughter.

Despite all odds and patriarchy, it is from within family that women find support during distress.

Studies (Agarwal: 1994; Bennett: 1983; Elgar: 1960) however shows that divorced women when they return to their natal home, often become economic burden for their family, as the social and cultural conditions do not allow them to take up employment, hence they are considered burdens by the families. In the case of the Hmar women, such women rather than being an economic burden, look out ways and means to support themselves as in the above case of Zuali. Hmar society gives space for divorced women to be economically independent by taking different kinds of jobs. Thus, the space to rebuild lives is often seen to be found within Hmar community.

Church teachings have created an atmosphere where divorce is not readily accepted and all attempts are made to avoid such an outcome to marriage. Despite such

inclination of looking down on divorced women, in practice, after initial dilemmas such women are accommodated both within the family, and the community with due respect. The negotiation between church and customary law is evident in such dilemmas in matters of marriage and divorce. The larger morals are influenced by church creating hesitation and dilemmas but in practice individuals do access customary law to get what they want. Customary law also creates congenial conditions for divorced women as against the non-acceptance created through church teachings. Acceptance of divorce within the customary norms ultimately does not make divorce a taboo among Hmars.

Customary law, pursuit of harmony and effect on women's cases

Customary law aims to look out for ways to maintain harmony in the society without allowing one party to win (Harper: 2011; Scharf: 2003; Sheleff: 2009). Female respondents argued that in the aim of bringing harmony, rather than looking at the interest of women, many a times they are forsaken of certain facilities. One female respondent who is a member of Hmar Women's Association (HWA) discussed how such aim for amicable settlement keep women in subordinate position. She said,

With issues relating to women especially on divorce, there is no benefit for women. Such cases are solved through mutual compromise, with no concern for the well-being of women. For instance, neither there is compensation for the woman, nor any means is decided for the maintenance of the divorced woman. Such woman has to start her life afresh from scratch.

Thus, despite the fact that customary law provides space for women to initiate divorce, they are often placed in a weaker position. Naomi Johnstone (2011) makes similar observation in Bougainville:

Flexible rules and the lack of procedural safeguards pose particular risks for women disputants in contexts of generalised gender discrimination. Outcomes are rarely consistent or predictable. Further, as a result of the emphasis on social harmony, the perspective and needs of the victim are often regarded as secondary or even overlooked. Even if victims are given the opportunity to participate in a dispute resolution process since they can be under significant pressure to agree to solutions broadly understood to be fair and equitable, they are vulnerable to be coerced by more powerful parties into accepting decisions that they find unsatisfactory (17).

Interview with Hmar community elders shows that almost all cases or disputes related to marriage, divorce, child custody, inheritance are discussed and solved at the level of the kinsmen. Kinsmen comprise only of male members and women are never allowed to participate in such meetings. Even if the meeting constitutes issues pertaining to women, they are not allowed to join the meetings. She is rather represented by her father or by her father's kinsmen and if there is any information that needs to be obtained from her, the kinsmen sends a mediator (her father or male member of the family) to collect the necessary information from her. As the meeting comprises only of male members, female respondents of my study express apprehension on the ability of such forums to take women's concerns into account during decision making.

Scholars (Bond: 2010; Driemeier and Tazeen: 2013) in other contexts bring home the same apprehension. They argue that as men adjudicate in customary courts, they favour men in decision-making. Mary Driemeier and Tazeen Hasan (2013) write in the context of Africa, ‘marital disputes, including disputes with implications for control over assets, may be settled in ways that stop husbands from losing face, even when they are obviously in the wrong-an approach that is rarely taken with women’(130). Johanne E. Bond (2010) in her work on Africa also mentions that because of the social stigma attached to challenging customary law, women are compelled to accept and abide by the law. Among the Hmars too, the aim of such customary forums is to bring about amicable solution between parties. Elaborating on it, a female respondent said,

We (the Hmars) are so much bound by our customary law. Almost all the cases are compromised through the customary law. For me, I say ‘compromise’ because even if a woman is not happy with the decision she does not have voice. Though one can approach state law, however, it is not possible to jump over kinsmen meeting. Even if a woman wants to take up her case to the state court but if the kinsmen has decided the case and settled it, then she is compelled to comply with the decision as she has no bargaining power.

Given the fact that women have very little access to power and autonomy in such discussions, often in their approach to bring amicable solution, women’s needs and perspectives are sidelined by the forums. This often leaves the woman empty handed as amicable often is understood in terms of preserving man’s ego and status. In one of the cases,

Ms. Hlimi, a mother of four children, was divorced by her husband giving her a sum of Rs. 500 as mak-man (divorce fee). Hlimi during her marriage worked so hard, trying to meet the needs of the family, engaging in all household work, dropping the children to school, feeding the animals and in her leisure time engaged in weaving to earn some money for her family. She rarely had time to rest. Her husband was a high school teacher. When she was divorced by her husband, she did not receive any share in their joint property.

Thus, it is established through data collected that in situations of divorce, customary law kept women at a secondary position by ‘denying them the legal relief to improve their situations and by sanctioning conduct of the men who control them’ (Taub and Schneider: 1982: 12).

Customary law and alimony upon divorce

Ms. Parmawi was married to Mr. Rama, who is an army personal. As Rama was posted in another place, shortly after their marriage he went back to his place of posting leaving Parmawi with his parents. He used to send her a monthly sum of Rs 3000. However, after few months, without the consent of his parents, his wife left the house and stayed at her sister’s residence. Rama did not find it appropriate for her to stay separately, so he set a deadline for her to return to his family. Since she did not return at the said date, Rama sent his sister and brother-in-law to call her back. Parmawi refused to return but rather insisted that she will stay separately from her in-laws. Rama got frustrated with all this issue and so he divorced her by paying divorce fee of Rs 500. On receiving divorce fee, Parmawi’s parents demanded a sum of Rs

3000 per month as alimony, as divorce was initiated by the husband and not by Parmawi. However, Rama refused to pay the money stating that it was the mistake of Parmawi as she did not want to stay at his home. Therefore, kinsmen from both sides decided the case. It was decided that as Parmawi is pregnant, the child will be handed over to Rama the moment the child's umbilical cord is cut off from the mother. All the medical expenses towards the delivery will be borne by Rama. However, there was no decision made for the maintenance of Parmawi neither did Rama pay any alimony.

According to Hmar customary law, a woman does not receive alimony in case of divorce. Under such law, divorce leaves a woman financially distraught. Thus, women even when in situations of torment and violence are often bound to stay rather than opt for divorce. Under state law, a woman has the right to claim alimony. However, for women who are struggling to meet their daily needs, there is no way to appeal to the higher body. The cost of bearing the legal expenses as well as the logistics of approaching the state courts was beyond the economic and social capacities of most Hmar women in my field. This is also visible in the absence of any petition by Hmar women for alimony in state court till date. Moreover, as bypassing customary law is looked down upon, no one preferred to go against the decision of the kinsmen.

Child custody

According to Hmar customary law, in cases of divorce, custody rights of the child belongs to the father. In cases where the child is an infant, if the mother request, the child stays with the mother until s/he attains the age of three years and thereafter the father takes the child. However, in rare cases, on the mother's persistence, the husband

may agree to give custody rights to the mother. This happens mainly if the father is not in a capacity to provide economic security to the child. In one of the cases,

Mr. Rova and Ms. Thangmawi had three children. Rova had extramarital affairs and did not pay attention to the needs of the family. He rarely stayed at home. Thangmawi tried her best to mend their relationship. However slowly, her relation with her husband began to draw apart. While she was struggling to restore their relationship, her husband divorced her, and she was forced to return to her natal home. Kinsmen from both sides decided the case. Kinsmen from Thangmawi's father's side demanded that since Rova is the one to initiate divorce and to be blamed for breaking their relation, he should pay a sum of Rs two lakh. They also claimed custody over the children. They threatened Rova's laibung that if they do not agree with the decision of the laibung, they will take the case to the state court. Finally, the case was settled by paying the said amount, and Thangmawi was given the custody over the children. After they came to an agreement, the kinsmen from both sides had feast called inremna ruoi (feast of pacification).

From this case, it can be observed that settlement of the case depends on the kinsmen. More importantly in Thangmawi's case, according to norms of monogamy, the husband was considered wrong, and he was the one who initiated divorce making him doubly guilty of breaking social norms. This helped Thangmawi secure child custody. Thangmawi received Rs two lakh from which, her family provided feast of pacification. With the remaining balance, Thangmawi had to find ways to start business or means to support herself and her three children.

Many female respondents strongly argued that in divorce cases, if the mother wants to keep the children with her, she should not be denied such right. According to one respondent,

If a woman wants to keep the children with her, the law should be in her favour. We love our children more than them (husband).

In another case, a woman respondent shared,

My husband and I divorced after 10 years of marriage. I asked for custody rights of my children, but he (husband) did not allow me to keep them. But his father stood on my side and granted my request. He knew that his son is not in a position to take care of our children. Had his father not been there, I do not think I would have ever received custody.

Such women friendly child custody decisions are not the trend among Hmars. The reasons of marital discord upon which divorce and child custody is appealed for becomes a major deciding factor. Women get child custody often when the customary board feels that social morals are broken by the man and thus such decisions are not based on the concern for women's right to their children or their need and emotions relating to their children. If women cannot show any such cause which defies monogamous gendered family norms they do not get child custody. Such reasoning is subjective in nature and depends on the understanding of the members of the particular customary forums. It is not, how women perceive their situation, but, what these

customary forums see as violation of morals that determines women's custody rights to their children.

Majority of male respondents and few female respondents, however, feel that children belong to the father and that women should not fight for their custody. According to one respondent,

Even if a mother may claim custody over the children, but when the children grow up, they will surely look out for their father. So it is better to grant custody to the father.

Extending such logic of father's rightful ownership over his children and women's temporary rights over her own identity, one woman respondent says,

In case of divorce, children should belong to the father. We often say a mother loves her children more than the father does. Some women claim that it is their children and fight for it. But then, if the father remarries, his children are still under his care, but if she remarries, it is not possible for her to take her children along with her. They are sometimes left with their grandparents or in the care of their relatives. There are many complications with such situation. That is why, whether the father is capable or not, he should be the custodian of his children.

Such attitude can be traced to the prevalence of patrilineal system of family, which socializes both men and women into accepting the ownership of the husband over both the wife and the children. Patriliney also allows the children to take up the clan name of their father and not the mother, therefore making it seem more convenient and obvious for children to be under the custody of father. Under such conditions, it is not

surprising that women too are ready to give up custody rights, believing in the inevitability of the child returning to the rightful owner, that is, the father.

Child custody thus is considered a right of the father and is not granted by customary law to the mother. Exceptions can be made depending upon the kinsmen, which however is established to be largely patriarchal in nature. Flexibility is part of the customary decision making bodies. Given the fact that kinsmen members are closely associated with the parties in conflict giving them the advantage of knowing the conditions and behaviour closely, women's requests for child custody are not completely rejected. Acceptance and rejection of such requests however depends on what the kinsmen think are appropriate conditions.

Adultery

Adultery is a ground for divorce according to Hmar customary law. Lal Dena (2008) in *Status of Mizo (Hmar) Women through the Ages* argues that the bias against women in customary law is amply highlighted by the specific penalties prescribed for women who committed *uire* (adultery) either while the husband is alive or even after the death of the husband. If she commits adultery while her husband is alive, bride price has to be returned to her husband, and the husband has the right to retain the bridal gift of his wife. Adultery by a woman is subject to heavy punishment which leads to divorce, and even deprives her of any share in the property, including her personal belonging. Dena (2008) thus writes 'what happened to the man with whom she committed the act of adultery?' (38). A 'woman who commits adultery is considered to be disloyal wife, and to have repudiated the marital relationship. But a man who commits adultery is

not considered to have repudiated the relationship, unless he also commits some additional misconduct' (Kapur and Brenda: 1996: 102). The case below illustrates the way a woman who has committed adultery is dealt with.

Mr. Khuma and Ms. Chawngi were married according to church law. Khuma being army personnel was always away from home. In the absence of Khuma, Chawngi had extra-marital relation with a married man, Remvel. Due to such act, which was considered immoral, their case was decided by their kinsmen. The kinsmen dissolved the marriage of Khuma and Chawngi and she was given divorce. She was also forced to leave the house in which she resided during marriage. No such actions were taken against Remvel.

Despite both Chawngi and Remvel responsible for the act, however women's adultery has been judged more harshly and considered a more fundamental repudiation of the relationship. She was blamed for being an unfaithful wife and from diverting from her role in being a dutiful wife. She was accused for tempting a married man - Remvel. The blame is thus upon the adulterous woman than the man. Commenting on the differential treatment, one respondent questioned,

In adultery, both man and woman are involved. The penalty should be for both of them. Why release the man and put all the blame upon the woman?

A wife's adultery is not only more serious than a husband's, but it is also seen as a harm to the society. Under Hmar customary law, both men and women have the right to divorce. However, in case of adultery, the judgement that such men and women

receive differs. More specifically, women are judged against the norm of a 'good wife; chastity, loyalty and self sacrifice' (Kapur and Brenda: 1996: 103). With regard to the way adulterous women are treated in Hmar community one female respondent, said,

Such women are looked at differently by the society. Women keep a watchful eye on her, so that she does not trap their husband.

An adulterous woman is considered to deviate from her role in being an ideal wife. *In the case of Ms. Rami, who, in the absence of her husband committed adultery requested her husband to forgive her and not to divorce her. Her husband forgave her.* Such cases of acceptance from the man's side are rare whereas women do take it as a duty on their part to put extra effort to keep the husband away from an adulterous relationship.

Even when the husband commits adultery, patriarchal monogamous social order places the blame on the wife for such adultery. It is believed that it is the wife's failure to sexually satisfy and make the husband happy that makes her man go astray. Therefore, the burden is on the woman to adjust and make up for her lacuna either by satisfying her husband or by unquestioningly accepting his adultery. However church law blames both the adulterous man and woman responsible for the act, and thus ostracizes them equally from church activities for a certain period.

Violence against women

Hmar customary law is silent on issues of various forms of violence against women. There is hardly any recognition of existence of violence against women in Hmar

community. It is a taboo topic and there is near absolute silence on the matter. Women who are victims of such violence bear it silently and do not disclose such violence to anyone. One such incident is the case of Ms. Lawmi.

Ms. Lawmi said she faced violence at the hands of her drunkard husband who often beats her and even fractured two of her fingers. However, she dared not seek help from any other source, as she is scared of humiliation and dishonouring her family.

Gender norms teach women to treat family matters as private where the honour of the family is considered important. Women who disclose such “private” matters are stigmatized by society as *mani mawng hlim* (bringing shame to oneself). Like Lawmi, there are women who face violence, but because of such stigmatization, they do not dare to come out of it or look out for help. One female respondent shares the abuse that she experienced. She said:

I lived a very carefree life before marriage. However, my life changed after marriage. Though ours was a love marriage, after few years of our marriage my husband began to show his true colours. He became very dominating and wanted me to obey all his commands. At first, I accepted whatever he said. However, after some months, I could not pretend to be what I am not. When I began to reply him back and ignore doing things that I do not agree, he tortured me physically and mentally. If I don't obey his directions he would mock me with vulgar words, if he is hungry at the middle of the night, he would wake me up to give him something to eat. He often used to say, 'obey me, I am the only earning member of our family'. Though I faced all this pain and torture, I did not dare utter a word about it to my natal family. I did not want to

expose my own family problem to anyone. Moreover, I am financially dependent upon him. I feel that it is my responsibility to bring a change upon the life of my husband. I put my trust and hope in God and it is my daily prayer that he will change my husband for good.

In another case, a woman respondent shares,

My husband is a drunkard and he expects me to give him money whenever he needs. As long as I give him money he is satisfied, but the moment I cannot provide him money, he scorns me with abusive words and beats me. When asked if she sought help from anyone, she replied, it is my family matter, why should I expose my family problem?

Violent 'behavior towards wives when husbands are in fits of alcoholic rage shows how such violence is an explicit manifestation of male power' (Vindhya: 2002: 342).

Another woman laments on the way her husband treats her. She said,

*My husband often uses abusive words. Sometimes if I do not respond to his calling, he would shout at me calling me *zawngnu*²⁴ (monkey). It is very degrading to be called *zawngnu*. He is very dominating. I am very unfortunate person.*

Even though she faced abusive words and feels so unfortunate, she also shared that she does not want divorce. She said,

²⁴ For the Hmar, calling a person *zawng* (monkey) is a very abusive and humiliating word. It is often used to refer to a person as hopeless or good for nothing.

What good will it bring if I divorce him. I gave him the best years of my life. I should accept it as my fate. My only solace is that God knows my struggle and the pain I bear. He will be with me at all times.

Economic dependence of women also makes them more vulnerable to violence. Such dependence prevents women from challenging violence making them more susceptible to it (Coomaraswamy: 1995 cited in Wright: 2001: 1821). In this context, Gail Omvedt (1993) argues, 'economic dependence and exploitation render them unable to combat violence' (35). It 'keeps women subordinated and instills in them a continued sense of insecurity. This insecurity and subordination often keeps women bound to the home, economically exploited and socially suppressed' (Omvedt: 1993: 1). In such situation, religion becomes the solace for such women as seen in the above cases. They turn to God for comfort and peace of mind when the burden of their family becomes hard for them to handle. Despite customary law giving room for women to initiate divorce, however the response in the third case shows that gender socialization towards preserving family's honour compels women to remain in their marital home despite all the torture.

Another reason that prevents women from reporting such violence is the poor response of the church towards such violence. Church focuses on restoring marital relationship and does not give liberty to women to walk out of abusive relationship. Below is one such church sermon collected from my field that normalizes subordination of wives.

As Christians, we should be kind and compassionate towards others. In a husband-wife relationship, as seen in the Bible, there are certain responsibilities that they need

to carry out. One should not only be the giver and the other receiver. Both of them should give and receive. For instance, wives should be submissive to their husband in everything as the husband is to Christ. On the other hand, a husband should love his wife as he loves himself. They are one flesh after marriage. There should be peaceful co-existence between them.

Church socialized its members towards the role of husband and wife in saving marriage. It is seen in the field that biblical text on wife's role: to be submissive, docile, respect her husband is more focused than a husband's role. Such role expectations from wives reinforce gender hierarchy as women are judged according to such standards.

The Church committee, comprising only male members, considers that such violence occurs because husband and wife deviate from their prescribed roles. They advocate proper counseling as the right solution to violence against women. According to a church pastor,

In marital relationship, it is the responsibility of husband and wife to work together for their peaceful coexistence. They should be considerate of the needs of one another. When they are more concerned of their own comfort or when they expect more from the other, it results in quarrelling and even to violence. As men are more aggressive than women, in such situation, the wife should be the one to control or avoid the situation by maintaining silence rather than arguing with her husband. In case of violence, it is the responsibility of the church committee members to give counseling to

both of them (husband and wife) either together or separately for reconciliation and save their marriage.

A member of the church administration feels that,

Married couples need to adjust with one another. In such situations of violence, if a woman seeks church help, we can help them by giving counseling.

Church focuses on saving marriage and considers counseling as a form of mending relationships. No matter how violent a husband is, he is accepted as member of the church. Unlike in marriage or divorce, where the breach of violating church law amounts to punishment such as ostracizing them for certain period, such punishment is not imposed upon husbands who use violence against their wives.

Women who are victims of abusive relationships at home share that, they have little or no option to turn for help. According to one such respondent,

Even if I want to redress my problem, what option do I have? If I speak out my problem, society will mock at me for bringing shame upon my family and not protecting the honour of my family. Rather than blaming my husband for his ill treatment, the blame will fall upon me for neglecting my duty in disobeying my husband.

Similar opinion was shared by another respondent,

How can we run away from such relationships? If I want my issues to be discussed at

the level of kinsmen meeting, in a meeting comprising of only male members, what would they decide about my abusive relation?

Members of women's organizations too, expressed their perplexity over the absence of customary laws on violence against women. One of them shares her doubt,

If a woman files a case against her husband regarding his violent treatment in kinsmen meeting, the question is, what reference in customary law will they have to deal with such issues? As there is no such law, it is very likely that they will decide the matter based on their chauvinistic mindset by putting the blame upon the woman.

The socialization of individual into an acceptance of patriarchal hierarchical order allows such violence to persist. Violence is often 'a tool that men use constantly to control women as a result of highly internalized patriarchal conditioning' (Subhadra: 1999: WS: 28). Given the absence of provisions in customary law and church law, which are two influential legal systems in Hmar society, there is hardly any choice for a woman to seek help in such conditions. The absence of customary laws on such forms of violence, as discussed, creates vulnerability for women. Women who are 'subjected to fatal violence are victims of not only the unequal power relationship within the family, but also of the legal system' (Vindhya: 2002: 334). Commenting on how to deal with such issues given the absence of law, it is the opinion of community elders and male respondents that such issues will be dealt by their kinsmen. One of the community elders remarked,

These are family issues, which should be dealt by kinsmen. If a woman is submissive, towards her husband, such violence will never occur. A man may get angry or may shout at his wife, but if she remains subservient her husband will never torture her. A wife should know to how deal with her husband.

In kinsmen meetings, comprising only male members, gender norms will serve as a legitimate base in deciding such cases. Unless a woman receives support to speak about violence faced by her, as an individual, a woman will not have the courage to speak out, as such violence is considered 'private' affair.

Violence against women is understood not as a 'violation of an individual woman's right to bodily autonomy, but rather, in a more traditional and patriarchal discourse as a violation of woman's honour. This honour is in turn associated with family's honour, and the honour of the broader community' (Kapur and Brenda: 1996: 250). As long as violence is within the four walls of the house, it is considered as private matter. However, when violence is by an outsider, the case is brought to limelight. Violence by outsiders is taken up more as a matter of Hmar identity and honour rather than women's right to their body and sexuality. As women are considered as the custodians of tradition and culture, at times of conflict, the enemy or the opponents hit out at the honor of the community by targeting women's sexuality.

In times of violence, women are victimized on three fronts-from the state, the militants and the escalation of violence within their homes. Armed conflict situations, in particular, are not gender neutral for a variety of reasons. Women face more vulnerability as they are more susceptible to marginalization, where they greater

restrictions on their movement and resources (Gill: 2010). In case of violence by outsiders, ‘protection’ of women is considered important. As women are marked as repositories of the community, the idea of protection over women seems more enhanced at times of conflict (Haripriya: 2013). The incidence in Lungthulien, Parbung and adjoining villages of Tipaimukh sub-division in Manipur where more than 21 Hmar girls and women were raped and molested by armed militants in January 2006 is one such case where women’s sexuality is targeted to defame the name of the community. Hmar Women’s Association (HWA) plays an important role in fighting for justice for these young girls. Despite the important role played by HWA in fighting for justice of the young girls who are victims of violence by outsiders, however, they are reluctant to interfere with issues relating to violence faced by women at home. Sexual assault at home is considered as private affair, in which HWA and community members feel that they should not intervene unless the victims seek their help. This is visible in absence of reported cases of sexual assault from within the community.

Hmar Women’s Association (HWA)

Issues that HWA and the larger women’s organizations in Manipur take up are in the light of conflict and its impact on women’s lives. Conflict²⁵ takes a toll on women’s lives by destroying families, economies and communities, which doubly affect and

²⁵ Manipur has witnessed a number of violence. ‘It has accumulated conflicts between different ethnic communities that are residing in the state; between the tribes and non-tribes and within tribes themselves’ (Rohluahpuia: 2013: 239). As Rajendra Kshetri (2013) observed ‘for more than two full decades ethnic conflicts had become synonymous with Manipur. The ethnic clash between the Nagas and the Kukis, the Meiteis and the Pangals (Manipuri Muslim) in the early 90’s had already claimed hundreds of thousands of innocent lives. Villages had been uprooted, houses burnt down and thousand rendered homeless’ (5). As Roshmi Goswami (2010) writes, ‘in situation of conflict where the conflict is integrally linked to the whole question of identity and ethnicity, there is an underlying attempt to control women’s sexuality-control their bodies’ (92).

burden women. Women's groups place most of their energy in handling such aspects. Such zeal for peace building and conflict intervention of women's group belonging to different ethnic groups in the state of Manipur as Sitlhou (2015) mentioned 'is inspired by the Meira Paibis, the torch-bearing Meitei women, who spearheaded peace initiatives and dealt with many societal calamities' (104). Women in Manipur have 'spearheaded a number of successful movements and have worked for peace on their own' (Banerjee: 2010:179). They have been successful in forming a common platform in fighting against discrimination, abuse and violence especially from early stages addressing social issues of freedom from forced labour, illegal tax, artificial scarcity of essential commodities, alcoholism, rape, drug abuse, and others (Zehol: 1998). They have also played an active role in resolving disputes and conflicts and maintaining social harmony. Vijayalakshmi Brara (2002) in, 'Breaking the Myth: The Social status of Meitei Women' makes an appraisal of women's contribution in the society. She writes, 'Manipuri women's groups are the watchdogs of their society. They can go to any extent to safeguard the lives and interests of their children-their society' (Brara: 2002: 194). However, she also pointed out that, 'these women are reluctant to touch the social norms of their society. They neither address nor do they have a policy or ideology regarding domestic violence that is prevalent in their society. Nor do they address women's issues in general. They are the organization only of women but not necessarily for women' (195). Commenting on the various issues taken up by women organization among the Nagas, Ajailu Niumai (2015) commented, 'Naga women are able to achieve their goals as peacemakers because they act as agency for spaces and shun to challenge the traditional role of women'

(363). Commenting on such gendered ways of doing things, in the context of Meitei women, Brara (2002) writes, 'their "outside" image is that of an aggressive, organized force fighting for justice, the caretaker of society while in their inside worlds the traits such as submissiveness and subservience are the accepted behavior. Inside their homes, their male relations, especially the husbands, become their caretakers' (199). Similar gender ideology is prevalent in the functioning of HWA. In the outside world, HWA plays an important role in ensuring security, dealing with external and internal force. They play an important role in peacekeeping and conflict resolution. They work for the welfare of the community and deal with disruptive behaviors such as prohibiting selling of liquor. In the context of Mizoram, Sawmveli and Ashley (2010) pointed that 'women organization such as Mizo Hmeichhe Tangrual Pawl (MHTP), Mizo Hmeichhe Insuikhawm Pawl (MHIP), and Puitu Hmeichhe Pawl (PHP) have not challenged patriarchal hegemony, but have shown works within limits prescribed by Mizo/Christian patriarchy and play no more than a supportive role' (138). The same applies to HWA too. Members of HWA state that their participation in the organization is possible because their husbands permit them to do so and they act according to the advices of their husbands. One of them describes her husband's support in these words. She says,

My husband often advices me what I should speak and what I should not when I go for any public meeting. I have a supportive husband who helps me deal with public issues.

According to another member of HWA,

I am happy that I can work for the society. But this is possible because my husband

supports me. He takes care of our children during my absence. Had he not supported me and permitted me, it will not be possible for me to take up such responsibility.

Members of HWA are actively involved in the church. They carry forward church teachings of an 'ideal Christian woman' who adheres to the gender roles and unquestioningly accepts dominance of the husband within the family and men in the community. Patriarchal hegemony is accepted in such groups without much challenge. The aim of HWA is to promote women's welfare by making women conscious of their status. They sought to protect and safeguard women against exploitation by educating them and providing employment for the women through self-help group. Even in the church, as discussed in the earlier chapter, women's group (*Kristien Nuhmei Pawl*) makes a great contribution towards the income of the church through *bufaitham*²⁶. Such 'women's organizations within and outside the church were created alongside other male-centric positions within the church and society, they were not entirely oppositional or resistant to the patriarchal character of the system with which they were associated. So, the patriarchal norm was reinforced within the church setting' (Sitlhou: 2015: 111).

As long as their involvement is within the level of women's group, they are accepted. But when it comes to leadership at the level of the community, they are not provided the platform to speak or raise their voice. Interview with the members of the HWA

²⁶ Every family keeps aside a handful of rice twice a day called *bufaitham*, which are collected by the church.

shows that they are not given the political space for their active participation, such as in kinsmen meeting. They shared that denial of participation to them in decision-making bodies handicapped them in raising their (women's) issues. As one respondent said:

When we are not included in the decision-making bodies, who will take up our issues?

Another respondent also said:

We are placed in subordinate position as far as our participation in decision making is concerned.

Such denial of women in leadership and decision making 'leads to a double discrimination since rendering them invisible also reduces the opportunities to publicly lobby for change' (Phadke et. al.: 2011: 69). This is true of the review process of customary law that is being undertaken in Hmar community where women and their groups do not find any representation.

Review of Hmar Customary Law

Data collected from field endorses that customary law is not always conducive to the interest of women. However, as discussed in the previous chapter, respondents, both men and women, strongly feel the need to preserve customary law as they regard it integral to their identity. There is a sense of attachment to the culture as a component of a highly valued identity. Any intrusion with regard to their customary law is considered as a threat to identity. Community members strongly support continuity of customary law. They feel that such laws are formulated within the system - by the

people, for the people. One way of preserving customary law, from the viewpoint of respondents is to document the laws so that it does not fade away. As some of them put it:

One of the best possible ways to preserve our customary law is to keep them in written form.

It is with this intent of preserving the customary law that an initiative of reviewing the customary law is being taken up. The idea is that (as one of the respondents said),

We cannot just keep our customary law in its oral nature. Community elders with knowledge of customary laws are ageing out. So while they are alive, there is a need to have our customary law documented, in consultation with them, so that not much is lost.

‘Documentation refers to a comprehensive collection of the customs and practices that a tribe has revered and practiced for centuries. It can be done by the tribe concerned or by an external agency’ (Fernandes et al.: 2005: 48). Thus collection and review of existing Hmar customary law by community leaders is being undertaken for the past three years with the aim of coming out with a final document consisting of various Hmar customary laws. As already stated, the main intention of the review process as shared by community leaders is to preserve the age-old customs and tradition while taking into account the need to make customary law applicable to present times. One of the members of the Hmar Youth Association (HYA) said,

Hmar customary law was documented in 1990 by HYA to keep the age-old rules in writing and make it available for references to community members in dealing with various issues. In the first edition, 1500 copies of Hmar customary law was printed but was sold out within a short period. The second edition was brought out in the year 2000 with 3000 copies. As all the copies have been sold out and there is a demand to print more copies, we decided to come up with a new edition. For this purpose, a review committee was formed to have a detailed study of our customary law and incorporate those laws, which have been left out.

Over the past years, seminars were organized in various parts of Hmar inhabited states to discuss the relevance of customary law and if needed to come up with suggestions and recommendations. The report of these seminars, along with their suggestions was submitted to HYA, General Headquarter located at Churachandpur, Manipur. HYA selects community elders who are well versed in customary law as members of review committee. The review members comprise only of male members. In the ongoing review of Hmar customary law, one of the committee members said,

We attempt to bring about changes in certain sections of our customary law that are felt no longer relevant.

Respondents too, strongly support the need for review. Female respondents feel that there are certain sections, which need to be re-examined. They strongly demand increase in bride price, inheritance rights for daughters, giving property and maintenance rights to women in case of divorce, increase in *sawn-man* (fine payable by the father to illegitimate child's mother) and others.

Female respondents feel that in the ongoing review of customary law, though the aim is to formulate the law applicable to present times, however they are concerned whether ‘women’s issues’ will be addressed. One of the members of HWA expressed such apprehension,

I am asked to share my opinion on those sections of customary law, which need changes. I am happy to receive the invitation as I feel that there are changes needed on women’s rights. However, I know that even if I share my opinion my suggestions will not be taken into account in an all male chamber. Further, it is just opinion sharing and we are not made integral part of the process and decision making.

This respondent considers such invitation as a mere formality, as she is doubtful of inclusion of women’s issues in the review process. Female respondents and HWA are uncertain if the review will bring fruitful changes particularly with regard to gender issues. One of them shares her perplexity in these words,

In a society that is patriarchal, we are doubtful whether women’s issues will be taken into consideration. Why are women excluded in such review?

Another female respondent reiterated similar perplexity,

We often talk about the importance of gender equality, but when women are excluded in decision-making forums, I do not think there will be any gender just laws.

Female respondents are critical of the social exclusion of women that is implied in the ongoing review process. However, members in the customary review board

commented on the absence of women representatives in the committee, by saying, though they are not part of the committee yet at times, *we invite them to share their opinion.*

On the 19th century discourse on reforming women's status by colonial rulers and Indian reformers, Lata Mani (2008) writes that the context of women was missing in the legal intervention that took place in the realm of family. Though women were the site on which tradition and modernity was debated and formulated, yet they were absent in such debate- they were 'neither the subject nor the object of debate' (Mani: 1987: 152). Similarly, in the ongoing process of review of Hmar customary law, women's experiences, issues and their voices are sidelined and neglected. This is despite the fact that customary law affects women's lives adversely in more ways than that of men. Issues for discussion chosen by review committee are selectively done and include the use of traditional Hmar shawls, bride price, and regarding the role of interpreter of customary law. However, there is no mention in this review process either on bringing in laws on domestic violence, sexual harassment, and other such aspects, or reframing laws on inheritance, divorce, alimony, child custody and adultery. All these laws affect women's lives adversely and the absence of gender friendly laws will continue to make them vulnerable in several ways. The gender bias of members of such review process comes out in their opinions on certain issues pertaining women. Such apprehensions of women's groups seem to be true when one analyses the opinions of members of the review committee. The following comment by a member of the review committee is an example:

The customary law on sawnman (fine against illegitimately impregnating a woman), should remain same and the price of the fine should not be increased from Rs 40/-. If a woman is willing to be sawn-pai (illegitimately impregnated) with only Rs 40, then if the amount against illegitimately impregnating a woman is raised to say thousands, there will be disaster. There might be lots of women who willingly will be illegitimately impregnated just for the money they will get, which will be in thousands.

The inherent sexism and gender bias among review committee members is reflected in such opinions whereby women are seen as manipulating and greedy beings who cannot be trusted with laws. Such attitude reflects the patriarchal belief that power in the hands of women is dangerous and therefore they need to be kept subordinated in various ways, of which, absence of laws giving women equal rights is one. With such patriarchal mindset, laws that require taking into account the experiences of women are neglected. From the point of view of women's rights, 'much has still to be changed, as the basic assumptions and associated structures of patriarchy are still strongly entrenched' (Waal: 2006: 153).

Conclusion

Existing jurisprudence within Hmar community is an intersection of church law and customary law without any clear-cut dominance of one over the other. If on the one hand church law has sidelined certain practices of customary law, on the other hand one finds that the church has accepted, albeit in its own terms, certain customary practices that may be contrary to its ideology.

In the name of preserving traditional customs and tribal identities, very often individual choices get foreclosed, and women are relegated to the lower status. Women's status continues to remain secondary both within customary and church law. Christianity brought in new forms of patriarchy. Existing Hmar patriarchy converged with patriarchy of the church, thus reinforcing women's subordination.

Legal pluralism within which customary laws operate, acts as both enforcers of patriarchal values as well as grants certain amount of space to women, though negligible, to manoeuvre and make their voices heard. One strand in the debates on legal pluralism emphasizes that individuals and groups in power within legal pluralism do understand the conflicting aspects of different legal orders and often use it accordingly to further their interest, pitting one system against the other (Driemeier and Tazeen: 2013, Kameri-Mbote: 2003; Tamanaha: 2008). Contrary to such argument, church and customary law functions almost integral to each other not granting much space to access one law over the other. However, in matters of divorce, and child custody, despite the larger overlap of patriarchies, given the immediate nature of the customary law board members, which consist of kinsmen from both parties, women do create space to negotiate and further their interest.

Women's groups though aiming to improve the status of women, largely function within the dictates of the church and customary law, and eulogize notions of ideal woman and "good" wife. Further, the documentation and review of Hmar customary law, which is seen as a necessity to maintenance of Hmar identity is taken up by all men's review committee and is gendered both in ideology and in membership.

Women's voices are systematically marginalized within this review process. There is no intention of reviewing customary laws on inheritance, bridal gifts, child custody and divorce which are inherently discriminatory towards women, or, to bring in new laws on gender violence.



CHAPTER-V

CONCLUSION

This study has been an attempt to understand the functioning of customary law and the effect of the intersection of the three different kinds of laws, customary law, church law, and state law, on women's lives. The everyday experiences of Hmar women within the larger institutions of family and community as well as with the customary and church laws have been at the center of this study. This study was propelled by feminist methodology's emphasis on the standpoint approach which helps in understanding the social realities of women as actors whom previous research amongst the Hmar community has rendered invisible. I situate my study within the theoretical framework of legal pluralism with emphasis on delineating the ways in which different legal orders collate and contradict each other when dealing with women's issues.

Primary data were collected through ethnographic method encompassing several techniques of data collection such as interviews (both formal and informal), group discussions, participant observation and case study. Cases solved through customary law were collected from Hmar community elders and members. Both state and private archives were accessed to collect documents related to customary laws in Manipur. Official records and reports, as well as newspaper, magazines, journals, and other popular writing containing relevant materials and information on colonial and missionary interventions of law; customary laws and women's position; and the

women's movement in Manipur were also collected. Content analysis of church manuals and church records was also conducted.

Legal pluralism recognizes the existence of non-state legal systems other than the state formal law. Such legal systems offer opportunity to individuals and groups to choose the legal forum from which to advance their aims. Feminist research however shows that although such plurality of law offers choice, such systems treat women and men differently. Women largely remain outside the construction, interpretation, and administration of customary and other forms of law and positions of power. Legal pluralism can be a double-edged sword when it comes to jurisdiction related to women's rights and issues. Given the history of the powerful and the elite of any society exploiting multiple legal systems for their benefit, it is important to understand the ways in which women access this plurality and the spaces and agencies they create for themselves. This study brings forth these questions of access and negotiation that women undertake within multiple legal systems to address their issues and the response of such systems both singly and in intersection with each other. The study also brings forth the patriarchal nature of law in its different forms and the ways in which women and their rights are subordinated.

In the "Introduction", I have tried to bring forth the sociological relevance of the study. Customary law acts as a powerful tool to define the roles of men and women and dictate acceptable standards of behaviour. Women's social and economic status continues to be influenced by customary rules. Customary laws are treated as obligatory rules to be accepted by all members. Women's lives become central to this

discourse as their lives are to a large extent confined to the personal sphere. I have also discussed how, in a setting of legal pluralism, the understanding of the ways in which plural legal orders influence each other and affect women's lives makes an important sociological study. This chapter also elaborates on the socio-cultural and historical background of Hmars and the impact of Christianity is also traced. Gender norms traditionally relegated Hmar women largely to the private sphere and kept them from achieving any form of power and fame except in the fulfilment of their domestic roles. This ideology continues to have its hold on Hmar society to a large extent. However, the influence of Christianity resulted in changes in Hmar traditional religious beliefs and social practices. I also discuss the need to understand the effects it had on gender norms and women's lives and whether Christianity challenged such gendered norms or reinforced it. The methodology of the study is taken up in the last section along with a discussion of the following chapters.

The second chapter, "Review of Literature", was divided into three sections. In the first section, I have discussed features of customary law and the ways colonial rulers influence the functioning of customary law. Despite colonial rulers bringing about formal law for their administration, they do recognize the existence of customary law. Colonialism opened new avenues towards the spread of Christianity. The second section delineates the debates on legal pluralism. Legal pluralists acknowledged the existence of the plurality of laws within a given territorial area. Such legal systems influence and control people's lives. They suggest the need to give attention to such forms of legal systems and their interaction with state law. Legal pluralists critique the

legal-centric ideology of one law for all as a myth. They consider that such ideology fails to take into account differences in cultural background, religious belief or personal choice. Given the presence and functioning of church law as well as state laws along with customary laws in the Hmar community, a study of women and law necessitates the placing of such study within the framework of legal pluralism. This study attempts to examine legal orders and the influence that they have on women's lives within the larger context of legal pluralism. The third section is a detailed analysis of the various debates and discourses within Indian feminist jurisprudence with special emphasis on their understanding of gender, customary law and legal pluralism. Beginning with the understanding of colonial influence on law in India and its impact on women's lives, feminist scholars have studied continuity and change in law vis-à-vis women. In this section, I bring forth the ways in which women access, negotiate and deal with challenges they face both within and outside the ambit of law.

The following two chapters (Chapter-III and IV) were based on the analysis of data collected from field. The third chapter, "Legal Pluralism among Hmars" deals with understanding legal pluralism, its nature and functioning among Hmars. It discusses important characteristics of customary and church law, and their inter relationship. Through data, it is shown that despite being two separate forums of jurisdiction, yet in their functioning, customary and church forums overlap in many ways with each other, and are largely patriarchal in nature. Members of customary law boards are simultaneously members of the church, thus inevitably bringing in teachings of the church into customary decision-making. Both customary law boards and the church

exclude women from decision-making and operate as exclusively male spaces. This chapter also emphasizes the fact that, despite socio-economic and political changes, customary law remains intrinsic to Hmar life, so much so that stigma is the result of any attempt to bypass it.

The fifth Chapter, “Gender, Customary law and Church: Legal Pluralism and its Impact on Hmar Women”, elaborate on the relationship between customary law, church law and women’s lives. I discuss the nature of women’s access to the existing laws within the context of legal pluralism. Responses of these legal institutions to women’s issues both individually as well as in intersection with each other are also brought forth. Data collected from field endorses that functioning of legal pluralism in the Hmar community is not an exception to the gendered nature of law. Like in any other society, both socially and legally Hmar women are relegated to the “private sphere”. This ensures that their cases are adjudicated within the framework of prevailing gendered norms, constitutive of the idea of Hmar identity, culture, and family values as well as that of a good Christian woman and wife. The gendered nature of the documentation and review of Hmar customary law are also brought forth.

Women and legal pluralism

Reflecting on the analysis of data collected from the field, it is evident that there is a close sense of attachment to the culture as a component of a highly valued identity. The elements of Hmar culture are considered to be closely knitted with their way of life, which are expressed in the form of customary law. Respondents strongly feel the need to preserve customary law as they regard it integral to their identity. One of the

major characteristics of Hmar customary legal system, like any other customary system, is that the effort is to set right the disturbed equilibrium in the community by reconciling the warring parties (Harper: 2011; Scharf: 2003; Sheleff: 2009; Sonkosi: 2004). The foundation of customary law is not based on 'truth is the truth', or who is telling the truth. Rather it aims to balance these forces and look out for ways in which social harmony can be maintained without allowing one party to win. The Hmar customary legal system thus functions on the principles of reconciliation, balance and cohesion rather than justice, truth or evidence.

To bring about amicable settlement, the flexible nature of customary law opens up ways for solving cases to the satisfaction of both parties (Pereira: 2009). The collaboration of Hmar customary law boards to solve cases amicably and the church propagating reconciliation and mutual agreement makes community members accept kinsmen decisions at all cost. However, in the zeal to uphold customary law, tie it to Hmar identity, and bring about amicable solutions at all costs, women and their rightful claims are diluted. Maintaining cohesion is preferred over women's rights.

The high reverence for Christianity and the missionaries' way of life makes Hmars understand their past as barbaric and dark to which Christian missionaries brought transformation. Despite the constant claim to preserving customary law in its "original" form as a marker of Hmar identity, respondents are not critical of the changes that Christianity has brought to their customs and law. There is the simultaneous existence of zeal to preserve Hmar social order as it was from time

immemorial and unquestioning acceptance of Christianity's influence on Hmar customs and norms.

The conversion to Christianity continued to uphold patriarchal ideology and brought in new forms of patriarchy. One of the manifestations of such collaboration of patriarchies is the complete restriction on women from participating in decision-making bodies. Such restrictions prevent women from enjoying any sort of power thereby relegating them to further subordination. Having unilateral power over decision making, on the other hand, empowers men to use these legal forums for furthering their interest.

Data shows that amongst the three different legal orders present in the Hmar community, it is the state legal system that is accorded the status of "other"/ "outsider" and all efforts are directed towards refraining from its actual use. The presence of the state court is used as a pressure tactics to negotiate one's case and bring a desired outcome through customary forums. Further, filing a case in the state court is used more as a threat to bring obedience to customary jurisprudence rather than actual usage of it. Apart from social factors preventing people from approaching state legal systems, factors such as lack of legal awareness, the unfamiliarity of the language used, lack of immediate access to family court, long procedures and the heavy expenditure involved keeps people away from state legal systems. Despite the stigma attached to people taking their cases outside the customary forum, as the study shows, there are times when individuals exercise their choice of going to the state court for various reasons. Majority of such cases which was taken up to the state court,

however, was taken up only for needs of official papers, and not because the litigants disagreed with the customary board's decision and exercised their choice to approach the state court.

Patriarchal ideology in Hmar society both through customary and church beliefs consider women as biologically and socially inferior to men thus relegating women to the private domain. Church law and customary law function almost integral to one another. Church law with its prescribed patriarchal ideology, overlap with the existing patriarchy of Hmar society. Rather than liberating women from the grip of patriarchal norms, it reinforced existing gendered ideology and brought in new gendered norms (Sawmveli and Ashley: 2010). Though Christianity provides equality of access to church unlike the traditional religion, by allowing them to participate in certain church activities, yet such access is again not egalitarian. The "public" and "private" divide which was already prevalent in certain aspects of Hmar society and reinforced in more marked ways by Christianity; gendered socialization of the church; and the creation of a standard ideal Hmar Christian woman; together collaborate in subduing women to the secondary status in comparison with men. Such gendered ideology of both customary and church law results in the curtailment of women's equal access to law and designates a secondary status to their rights and issues.

In terms of notions of saving the marriage and family, control over women's sexuality, especially of wives, in the Hmar community is not very different from that of rest of India especially with the church influence being one of the important deciding factors. Liberal marriage norms earlier present among Hmars, which accepted different forms

of man and woman relationships and were not bound by the necessity of religious rituals of marriage were either completely sidelined or relegated to a secondary or inferior status with the acceptance of Christianity. Thus in the co-existence of various legal orders within Hmar society, customary law in certain spheres were relegated to the background.

The church is very rigid about people engaging in pre-marital sex and marriage by elopement, but is silent on practices such as bridal gifts taking new shape and burdening people. It remains indifferent to issues affecting its members financially and tasking them with material burden by not being pro-active in banning the practice of bridal gifts. Maintenance of sexual morality is prioritized over economic burden and exploitation. Such silence makes obvious the fact that religion is largely bothered about maintaining gendered norms, patriarchal sexual morality and the heteronormative monogamous family structure rather than economic ethics.

Child custody is a right of the father and is not granted by customary law to the mother. Exceptions can be made depending upon the kinsmen, although these have been established to be largely patriarchal in nature. Flexibility is part of the customary decision making bodies. Given the fact that kinsmen members are closely associated with the parties, giving them the advantage of knowing the context of the dispute closely, women's voices and needs are not completely rejected. However, such acceptance and rejection of women's request for child custody depends on what the kinsmen think are appropriate conditions. As Kane et al. (2005) argue, 'the interpretation of customary law remains deeply rooted in patriarchy and ageism' (15).

Women's groups, as the study shows, work within the framework of an 'ideal Christian woman' given by the church. Thus despite claiming to address women's issues, members of the Hmar Women's Association (HWA) largely adhere to assigned gender roles and unquestioningly accept dominance of the husband within the family and men at the community level. Further, in the ongoing review of customary law, while HWA expressed the need for gender just laws, the exclusion of women in the review board ensures that such demands are not even considered for discussions. As the review process is still an ongoing process it remains to be seen if the resultant customary law guidelines will be inclusive of women's voices, needs and rights.

Based on the study conducted and also drawing from the opinions of respondents, some suggested changes to the customary legal system are put forth. Such suggested changes, as discussed below are in matters of the laws on inheritance, child custody rights, bridal gifts, laws on violence against women and inclusion of women in decision making.

As the study shows, the evolution and advancement in the economic sector has led to accumulation of self-acquired property. However, the chance of daughters receiving such share of property is still very limited as customary law has clauses which state that in the absence of sons, the property should devolve to the nearest male relatives. Thus, there is a need of reframing such laws and entitling daughters to inheritance rights especially in the absence of sons. The right of the relatives and community members to challenge the will of the father should be revoked especially in terms of self-acquired property. Given the continuing debates on women's individual right to

property and community right to maintaining its identity and property, more deliberation on this is necessary, especially in the changing context of growing individual property ownership among tribes and the waning of communal land holdings.

Along with changes in both social and economic living conditions, there are changes in the forms of bridal gifts. It now includes both movable and immovable property. This burdens the bride's family, often leading to financial inconvenience and debts. Though bridal gift is an important component of Hmar customs, the present form it has taken has become an economic burden to most families. Customary law and the church can collaboratively discuss ways to tackle this issue instead of turning a blind eye to it. In matters of child custody, women get child custody only when the customary board feels that social morals are broken by the man. Such decisions are not based on the concern for women's right to their children or their need and emotions relating to their children. Such law needs to be more inclusive, by granting women equal child custody rights, and entitling them to maintenance rights.

Importantly, there is a need to first recognize the violence faced by women within both the domestic sphere and the community, and then bring in gender-just laws on such violence, both in customary and church laws. Interrogation of the gendered ideals of ideal Hmar woman as well as other gendered norms needs to be taken up by all forums including women's groups.

Given the structural inequalities between traditional Hmar leaders and grassroots women's groups, there is a need to minimize barriers to women's meaningful

participation in community affairs and decision-making. Inclusion of women at the level of decision-making, both in customary and in church forums, is important to make women's voices heard. In such plurality of law there is a need to work towards improving the situation of women. Given the fact that church and customary laws are two influential legal systems, if both laws work together to include women as equals; effective and substantial changes can be brought about in status of women within the Hmar community.

Relevance of the study

This study shows that customary law is intrinsic to Hmar life and is considered integral to Hmar identity, so much so that, any attempt at circumventing customary law is stigmatized. Despite importance attached to customary law, women are kept within the sphere of the family and are given limited or no space in political, religious, and other social institutions. Christianity brought in new forms of patriarchy, whereby existing Hmar patriarchy converged with the patriarchy of the church, thus reinforcing women's subordination. As church and customary law functions are almost integral to each other, it does not grant much space to access one law over the other. However, in matters of divorce, and child custody, despite the larger overlap of patriarchies, women do create space to negotiate and further their interest. Existing jurisprudence within the Hmar community is thus an intersection of church law and customary law without any clear-cut dominance of one over the other. Women's groups, though aiming to improve the status of women, largely function within the dictates of the church and customary law, and eulogize notions of the ideal woman and good wife.

Given the need felt by Hmars to preserve customary law, the process of reviewing of the customary law is ongoing. However, as the documentation and review of Hmar customary law is taken up a review committee wholly comprising men, it is gendered both in ideology and in membership. Women's voices are systematically marginalized within this review process..

My study thus brings forth legal pluralism, its nature, and functioning among the Hmars. It also shows the overlaps and contradictions between Hmar people's identity as Hmars as well as devout Christians. This has a direct bearing on the ways customary and church law operate through the lens of intersectionality. This study conforms to the feminist understanding that law is patriarchal and does not treat women as equal. It shows how law affects women when it is largely interpreted from an androcentric perspective. Although accommodating the interest of both parties is an important factor in customary law forums, the study shows such accommodation has hampered women's interests more than benefitted them.

To conclude, contrary to existing literature (Driemeier and Tazeen: 2013, Kameri-Mbote: 2003; Tamanaha: 2008), which argued that legal pluralism is often exploited by the powerful and the community elite to further their interests, this study shows that legal pluralism as it exists among Hmars, do not provide advantage to the elites to exploit one system over the other. This is because church and customary law function largely in coherence with each other. However, if the church has an upper hand in influencing the familial and gender ideologies among Hmars, customary law does in some, albeit minor, ways provide alternative solutions to the moral dilemma created

by the church. Importantly, it needs to be noted that when it comes to women and their issues, overlapping gendered ideologies of both these legal orders invariably benefit men compared to women. Thus, there is a need for creating gender sensitive laws in such legal systems where women's needs and rights are included.



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APPENDIX – A

INTERVIEW GUIDE

I. Community Elders

- What is your opinion on the impact of Christianity in our society?
- Does the impact proved favourable for women and men?
- Does Christianity affect the functioning of our customary law? If yes, can you elaborate?
- What is your opinion on our customary law?
- What are the changes that you find in the present customary practices?
- What do you think are the reasons for such changes?
- What kind of cases is most common among the Hmars?
- How are conflicts resolved in the village?
- Whom do people approach to solve their disputes?
- Can you tell how cases are solved through customary law?
- When cases are decide, do the concerned parties participate?
- Do you think there is any need for change in the customary law?
- What is your opinion on the ongoing review of our customary law?
- What is your opinion on the use of customary law as we have state law?
- Do people approach police station for their grievances?
- What is your opinion in your involvement in church and customary law making? Do you think it contradicts?
- Can you elaborate on church law?
- Do church members give importance to church law?

- We have customary law; at the same time we also have church law, what is your opinion on the existence of different legal system?
- Do church leaders participate in customary decision- making?
- Can you tell about the history of Hmar community?
- What were the responsibilities of men and women?
- Were there any changes brought by the British rulers into Hmar society?
- Does British rule have any effect on our customary law?
- Can you tell me about our customary laws and its origin?

II. Hmar Women

- Can you tell me about Hmar women?
- What is your opinion on the position and status of women in our society?
- Do you think there is a transition in women status compared to olden days?
- What influence did Christianity have upon Hmar women?
- Can you highlight your responsibility in the family?
- Does your husband help you in household chores?
- Do you go to church regularly?
- Can you explain your involvement in church?
- Have you ever been selected as speaker in the church?
If no, has there been any woman selected as speaker?
If no, what is your opinion on such exclusion of women?
- In the church, are women included in decision-making bodies? If no, what do you feel about it?
- Do you feel important to obey church laws?
- What do you think about church law? Do you feel it takes into concern the issues of women? Is it gender sensitive?

- Do you feel there is any contradiction between customary law and church law?
- What is your opinion about our customary law?
- What kinds of issues are most common among the Hmars?
- What is your opinion on our marriage practices / bridal gifts?
- What is your opinion on customary law on child custody rights ?
- What is your opinion regarding the decision making process in our customary law?
- Do you think customary law takes into consideration the issues of women?
- Have you ever approached customary law for dealing with your issues?
If yes, can you explain in detail?
- Are you aware of the ongoing review of our customary law? What is your opinion in this regard?
- Are you satisfied with our customary law?
- Is there any section in customary law that you feel needs change?
If no, why?
If yes, what are the areas that you feel need changes?
- What is your opinion on state law?

III. Hmar Women's Association (HWA)

- Can you tell the aims and objectives of HWA?
- What are the notable works that HWA has taken up?
- What is your opinion about the position and status of Hmar women?
- What influence does Christianity have upon Hmar women?
- Are you involved in women's group in the church?
- Do you think your involvement in the church contradict with your involvement in HWA?

- Have you even been a speaker in the church?
If no, what can be the reason? Do you think women need to be included?
If yes, do you think such practice should continue?
- What do you think about our customary law?
- What is your opinion of the decision making process in customary law?
- Do you think customary law takes into consideration the issues of women?
- Has there been any woman who approached HWA seeking help for solving their issues or problems?
If yes, can you explain?
If no, what can be the reason?
- What is your opinion on our marriage practices / bridal gifts?
- What is your opinion on the customary law of child's custody rights?
- Has there been any case of violence against women?
If yes, can you elaborate?
If no, does it mean that there is no such violence?
- What are the issues that women approached HWA?
- What is your opinion on the ongoing review of customary law?
- Have there been any issues raised by HWA in the ongoing review?
- Is HWA involved in the review process? If no, what can be the reason(s)?
- Is there any section in customary law that you feel needs change? If yes, what are the areas that you feel needs changes?
- What is your opinion of state law?

IV. Hmar Youth

- Who does most of the household work in your family?
- Do you think boys and girls are given same treatment from their young age?
- Who takes the final decision in your family?

- What types of marriage are most common today?
- What type of marriage do you prefer? Why?
- What is your opinion on bridal gifts (*mo thilsawm*)?
- Who inherits landed property in the family?
- Do you think it is appropriate for parents to give property to their daughters in the absence of son?
- What is your opinion on our customary law?
- Do you think that our customary law is still relevant /practicable?
- Are there any changes that you feel customary law should bring about?
- Are you aware of the review process?
- What is your opinion on it?
- What is your opinion on state law?
- How many members are there in your family?

V. Hmar Customary Review Members

- What is the main intention of the review process?
- How many members are there in the review process?
- How is the appointment of the members?
- Do you take into account the opinions of community members in the review process? If yes, can you explain in detail?
- Are there any female members in the review committee?
- Are there any issues brought up by women or by women organisation?
- What are the major issues that you focus in the review process?
- Is there any intension of framing in new laws?
- Can you tell me your opinion of customary law?

- What is your opinion on state law?

VI. Advocates

- What kinds of cases do you dealt with?
- Do women ever come to Family court? If yes, can you explain in detail?
- Do they come alone or they bring along someone to accompany them?
- Has there been any case that you handled from Hmar community?
If yes, what issues are such cases?
If no, what do you think is the reason for absence of cases from Hmar community?
- Are there cases of registered marriage among the Hmar? What are the reasons for it?
- Do you think there is awareness of the state law?
- What do you think about customary law?
- Do you think customary law is applicable given the existence of state law?
- Do judges take into consideration customary law when dealing with such related issues?

APPENDIX – B

ABBREVIATIONS

AG	:	Assembly of God Mission
EAC	:	Evangelical Assembly Church
HWA	:	Hmar Women Association
HYA	:	Hmar Youth Association
ICI	:	Independent Church of India
KNP	:	Kristien Nuhmei Pawl
NEIGM	:	Northeast India General Mission
NGO	:	Non-Governmental Organisations

APPENDIX: C

GLOSSARY: HMAR TERMS

Busung-sadar	:	The practice of paying to the chief every year a certain quantity of paddy and of surrendering the fore-legs of every animal shot or trapped within the chiefdom.
Bufaitham	:	Every family keeps aside a handful of rice twice a day, which are collected by the church
Chawngmolaka Innei	:	Engagement of the girl and boy by their parents from childhood
Dawrawn	:	A closely woven bamboo basket specially for carrying unhusked rice
Farnu	:	Female relative from the same clan
Hnamsiper /Hnam kaupeng	:	Lineage
Hmar	:	North or Northerners
Hmar Inpui	:	Hmar supreme house
Hmar hnam dan	:	Hmar customary law
Inremna ruoi	:	Feast of pacification
Inruk Innei	:	Marriage by elopement
Inthat the	:	Incompatibility as a ground for divorce
Kawngvar	:	An open bamboo used for carrying firewood and water

Khawnbawls	:	Councilors
Khawnbawl upa	:	Chief councilor
Khawtlang Ensan	:	Social ostracization
Khawtlang roreltu	:	Village council
Kohran Dan Innei	:	Church marriage
Lal	:	Chief
Laibung	:	Kinsmen (male relatives from the same clan)
Laibung inbiekna thurel	:	Customary board decision
Leidar	:	Winnowing basket
Mak	:	Divorce initiated by the husband
Makpa	:	Female relative's husband
Man-fa	:	Relatives who receives a share of bride price
Man le muol	:	Bride-price
Mo thilsawm	:	Bridal gifts
Nisum	:	Portion of bride price given to the bride's father's sister

Pahnam	:	Clan organisation
Palai	:	Mediator
Panghak	:	Portion of the bride-price given to the bride's father kinsmen
Pathien	:	God
Peksachang	:	Divorce by agreement. In this case, there would not be any further transaction with regard to the bride price wholly paid or unpaid
Pielral	:	Paradise
Pindan Innei	:	Eloped couple receive the blessings and prayer of church pastor for their married life either in the house of the church elder or in church vestry
Puonri	:	A special type of blanket made of unspun cotton and cotton thread
Pusum	:	Portion of bride price given to the bride maternal uncle
Rel	:	Traditional bamboo basket
Sawn-man	:	Fine payable by the father to "illegitimate" child's mother
Sawn-pai	:	Illegitimately impregnated
Sawngpuia Innei	:	Marriage with parental approval
Siel	:	Mithun
Suminsuo	:	Divorce initiated by the wife

Suonmawng	:	Couple without a male inheritor
Sutpui	:	Middle post
Thaibawi	:	Hen-pecked husband
Thangسو	:	Lifetime Achievement
Thiempu	:	Religious priest
Thienghlim	:	Pure / Clean
Thirsut	:	Blacksmith
Thirdam	:	Engagement
Thurel	:	Decision
Tlangsam	:	Village Crier
Tluna Innei	:	Marriage by intrusion
Tuai	:	Feminine
Uire	:	Adultery
Upa	:	Elder
Ursun takin	:	Utmost solemnity

Vanram : Heaven

Val-Upa : Youth Commander

Zawlbuk : Youth Dormitory

Zu : Locally brewed rice beer

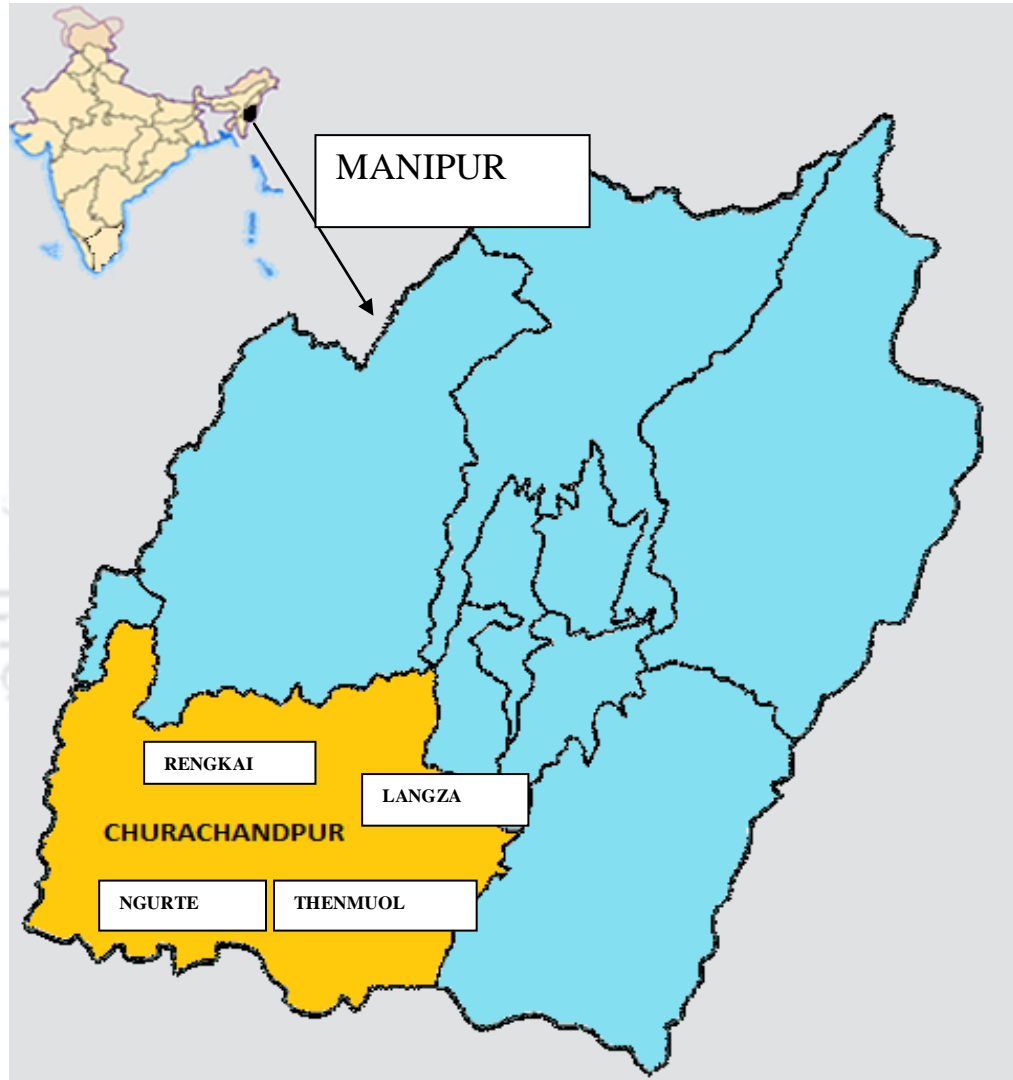
Zu-Dam : *Zu* means rice beer and *Dam* means pacification

Zuor : Kinswomen



APPENDIX-D

Map of field sites



Source: Google maps www.veethi.com (not to scale)

APPENDIX-E
PHOTOGRAPHS



Figure 1: Rengkai (www.hmarram.com)



Figure 2: Ngurte Village



Figure 3: Thenmuol village



Figure 4: Langza village



Figure 5: A woman selling sugarcane juice



Figure 6: Women from Thenmuol Village selling charcoal



Figure 7: Women engaging in construction work



Figure 8: Women selling vegetables



Figure 9: Woman with her son carrying vegetables



Figure 10: A Woman weaving *thanngsuopuon* (Hmar traditional shawl)



Figure 11: Woman working with men at paddy field



Figure 12: Training of Women's Group



Figure 13: Women's Group Church Service



Figure 14: A Woman giving *bufaitam*



Figure 15: Church in Langza village



Figure 16: Church in Ngurte village



Figure 17: Manipur State Archives



Figure 18: Family Court, Lamphel, Manipur

APPENDIX-F

Types of Administrative Structure for the Tribes of North East India

State	Special Constitutional Provision	Administrative Structure
Arunachal Pradesh	Art 371 H	No autonomous Councils, the State has to adopt the Panchayati Raj
Assam	Sixth Schedule Read with Art 371 B (for Schd. Areas only)	Three autonomous Councils: (i) Karbi-Anglong (ii) North Cachar Hills (iii) Bodo Territorial Council
Manipur	Art 371 C	The Manipur (Village Authority in Hill Areas) Act, 1956
Meghalaya	Sixth Schedule	Three Autonomous Councils: (i) Khasi Hills (ii) Jaintia Hills (iii) Garo Hills
Mizoram	Sixth Schedule Read with Art 371G	Three Autonomous Councils of Pawis, Lakher, Chakma, and other areas without the Autonomous Council
Nagaland	Art 371 A	No Autonomous District Council
Tripura	Sixth Schedule	Tripura Tribal Area Autonomous District Council, Khumulwang

Source: Nongkynrih: 2009: 19