

Exploring the Mizo women's Property and Inheritance Rights

Lalrinsangi Nghinglova
Associate Professor
Department of English
Government Zirtiri Residential Science College

K.C. Lalthlamuani
Professor
Department of English
Mizoram University

Mizoram is a state in North East India with Aizawl as its capital and the inhabitants of the state are called Mizos. The Mizo Society is basically patriarchal in nature where the eldest male member or the husband, being the head of the family exercises unfettered dominance over his family and other members of the family. In the past, women undertook all responsibilities in the family without any authority. They had virtually no say in the family and had no rights over the family property. The Mizo society was governed by the Mizo Customary Law in which the values and attitudes were largely patriarchal in nature and women were marginalised by this patriarchal structure and male dominance in almost all aspect of life including inheritance of property. A customary law is the habitual course of conduct based on the norms, practices and usage of a society. These norms restrain and regulate the pattern of behaviour of a society. The enactment of The Mizo Marriage, Divorce and Inheritance of Property Act, 2014 which came into force w.e.f 13.2.2015 gave the wife the right to share the family property. This paper will examine the transition of women's right over property through a study of the Mizo customary law.

The history of the Mizo was not properly documented but many aspects of their lives are reflected in their literature. The paper will also explore select Mizo writing in English. It will attempt to situate the select writing in the real life context to illustrate the position of the Mizo women in a strictly patriarchal society.

Keyword : Customary law, Mizo, Patriarchy, Inheritance, Property

FEMINIST LEGAL THEORY

Feminist Legal theory proceeds from the assumption that gender is important in our everyday lives and examines how gender has mattered in the development of law. It also examines how men and women are differently affected by the power in law. According to Chamallas, "The subject matter that forms the central core of the feminist legal theory is the exploration of women's subordination through the law" (XX). She goes on to explain that the term "subordination" has been used to convey the systematic nature of women's inequality. Feminist scholars have been analysing legal doctrines and court opinions and statutes to find hidden

mechanisms of discrimination that are implicit within a body of law. According to feminist legal theorists, gender inequality is a problem produced through women's unequal treatment by the law and women's best attempt is to eradicate these legal barriers.

The Mizo context

The Mizos are inhabitants of Mizoram, a state in the North East Region of India. As most other societies of India, the Mizo society is Patriarchal and Patrilineal in nature. In matters of marriage, divorce and inheritance of property they were governed by the customary laws until the enactment of The Mizo marriage, Divorce and Inheritance of property Act, 2014 which came to force on the 13.2.2015. Customary laws can be defined as age old code of conduct which are unwritten or uncodified. N.E Parry, the then Superintendent, Lushai Hills made the first attempt at a written record of the Mizo customs in 1928. Laws based on customs are customary laws and are a recognized source of law within the jurisdiction of the civil law tradition, where they may be subordinate to both statutes and regulation. The customary laws are part and parcel of tribal Jurisprudence. They are approved, acknowledged and sanctioned by members of the society. They are established social practices that function as modes of social control and social sanction.

As with most other Indian societies, there was discrimination against women on ground of sex in the traditional Mizo Society. Women had virtually no say in any decision making, in the home or in the public domain. There is a very well known adage which goes -“The wisdom of women does not reach/cross beyond the village spring”. This saying refers to the traditional belief that there is a limit to the wisdom of women thus creating a glass ceiling for women. There is another saying which translates as -“Crab's meat is not counted as meat as a women's word is not counted as word”. These maxims alone reveal the attitude of men towards women in the Mizo society of the past. Women, obviously had no voice in social administration and even if she had, her words were never accepted.

Mizo customary law

The Mizo customary Law disfavoured women from inheriting property. A few illustrations from the compiled edition of Mizo Customary Law 2005 will throw light on this aspect. Verse 180 of the said compilation clearly state that, since the Mizo society is patrilineal in nature, the customary law of Inheritance favoured the Mizo men. The property of the family belonged to the patriarch and on his death the matriarch will occupy his position (chapter 181(1) under certain conditions. On the death of the property owner, the property naturally

devolves upon the son in whose absence only can the daughter be considered. Mizo women had little or no right in matters of succession and inheritance and a male heir was always sought for, to succeed his father as the head of a clan or a lineage. Irene Colbert had pointed out that it is observed that even though in recent times some families have on their own begun to think about a share of the inheritance for their daughters, a majority especially in rural areas, maintain the traditional practice (Colbert 343)

Succession to property under the Mizo customary law

Verse 176 of Mizo Hnam dan (Mizo customary law) defines property as “*In leh lo sum leh pai*” which translates as “household and landed property, money and wealth”. Three kinds of property are identified i.e., Inherited (*Thalhtute atanga ro*), Acquired (*Thawhchhuah*) and Others (*chhungkaw ro dang*). Following is the rule of intestate succession under the customary law:

- Verse (*chang*)178 defines Ownership (*ro neitu*): “*Pa ber chu ro neitu ani*” which translates as “the patriarch is the owner of property”. Since the Mizo society is patrilineal in nature, property belongs to the male heir or “*pa*”.
- Verse (*chang*) 91 provides that children belong to the “*Pa*” (*pa ta an ni*) in case of divorce or separation.
- Verse (*chang*)190 states that with the death of the patriarch, the wife can take the position of the patriarch under certain conditions and the property will devolve based upon kinship i.e., children, fathers, siblings, father’s siblings, father’s father, son’s sons, daughters and grand-daughters. However, Verse 181 specifically provides that the matriarch who is to inherit the family property must be ‘chaste’ and must be able to look after her children and grandchildren; must be faithful and righteous, respectful and must be someone to be proud of.
- The youngest son who looks after the parents will inherit the family property. If the youngest son lives separately from the parents (*indang*) the son who looks after the parents will inherit the family property. In the absence of sons, the daughter who looks after the parents may also inherit the property.
- If the son who is to inherit dies before inheritance, his share will devolve upon his children.

- If the property owner has no sons, the property will devolve upon the daughter.
- Next in line are the parents of the property owner, if they are still alive.
- Next in line are the brothers and children of the property owner.
- Next in line are the sisters of the property owner and their children.
- In the absence of the all of the above, any blood relation from the father's side may inherit the property.
- In the absence of kindred from the male side, kindred from the female side may also inherit.

Illustration from literature

Law and literature is a movement that focuses on connections between Law and Literature. In the early stages of the movement, the focus was on the law in literature theory in which the concern was on the presentation of legal situations in works of literature. It was based on the belief that such works of literature have a lesson to teach to legal scholars and lawyers. In this context illustrations have been taken from a well-known work in Mizo literature *Silverthangi*, authored by KC.Lalvunga. *Silverthangi*, the female protagonist, upon finding out that the husband she eloped with, Lalhnuna was actually a criminal who had been sentenced to serve a year and a half follows him to court secretly. As the court reads out his sentence, he caught sight of his wife and cursed in anger "You can go back now....you are no longer my wife!"(Pachau150). Under the Muslim law, the pronouncement of the word Talaq three times in a row is enough for a couple to divorce legally. Likewise in the traditional Mizo society, a man could simply say to his wife "I divorce you" (*Ka ma che*) to be separated from his spouse. According to Mizo Customary Law, a simple statement of intent is enough for a Mizo man to divorce his wife. The woman does not have any say or share in the acquired property of the family in Mizo society. Further, if the couple had not been settled in separate houses and the husband died before having children, the widow had to stay there for at least three months among her husband's family after which she had to go back to her parent's house with only the property that she brought on the day of her wedding. The widow however had the option of remarrying and she was free to have a new husband as there being no strict rules regarding remarriage in Mizo society. The novel narrates how Thangi, upon being divorced by her husband "hoisted her meagre bundle atop her head and placing her little daughter atop the bundle she meekly followed her uncle home (151) . Women being

purchased with a bride price of Rs. 400-500 can be divorced at the husband's wish with no claims for anything except the property brought by her to her husband's house at the time of marriage, if the couple are still residing in the husband's house as everything belongs to the husband's father including those earned by both the husband and wife.

The Mizo Marriage, Divorce and Inheritance of Property Act 2014

The act which was unanimously passed by the state legislature was lauded by women bodies as instrumental in emancipating womenfolk who had been reeling under the Mizo customary law. Some of the provisions of the act which provided relief to the womenfolk have been highlighted below:

- Property will be inherited by the sons who are not “indang” (not separated from the ancestral home) and the wife of the head of the family in equal share.
- The Youngest son will get one extra share provided he looks after members who are not “indang”. (not separated from the ancestral home)
- An unmarried daughter who has been looking after her parents and siblings being the main bread earner will also get a share of the property equivalent to the sons/mother.
- If the head of the family has no son, the property is to be divided equally between the surviving wife and unmarried daughters who are living with the surviving wife. In the event that all sons are ‘indang’ (living separately from ancestral home) and there being unmarried daughters, then the property will be shared between the wife, unmarried daughters and surviving sons.
- In the absence of unmarried daughters or wife, the property will go to the married daughters.

The act was also welcomed because women who could never inherit properties in the event of divorce were now entitled to inherit properties. This would hopefully ensure protection of women from being divorced at the drop of a hat as illustrated in the selected text. The act gave the following rights to women upon divorce:

1. Right of women on “*Sum Chhuah*” (When the wife leaves her husband on her own accord)
 - She has no right over acquired property except her personal property (v.25)
2. Right of women on “*mak*” (when the husband divorces the wife)

- Personal property will not be disturbed
- Share of acquired property not exceeding 25 % (if divorced on ground of adultery and deprivation of conjugal rights)

3. *Kawngka sula mak* (when the husband brings in another woman)

- Women will have a share not exceeding 50%.

In a sharp contrast to the provision of the Mizo customary law in Verse (chang) 91 which states that children belong to the “*Pa*” (*pa ta an ni*) in case of divorce or separation, under the said act the custody of children shall be given with the “child’s interest” in mind.

The contention put forth by feminist legal theorists that law itself is responsible for women’s subordination is evident when one examines the Mizo customary law. The difficulties posed by the customary law were removed with the enactment of “The Mizo Marriage, Divorce and Inheritance of Property Act 2014”. However, the Act has been criticized on the ground that it still favours men implicitly by setting conditions for women while it does not do so for the men folk. Verse 32 provides that “If a woman predeceased her husband, her personal property will devolve to her surviving husband”. However verse 31 provides that, on the death of the head of the family, the wife will automatically become the head of the family if she remains a chaste widow and looks after the welfare of her minor children. If the children have become majors, she needs to obtain no objection from the children to recognize her as the head of the family. These conditions make the woman vulnerable to those that may want to disinherit her. Hence, the act needs to re-consider this aspect and recognise the right of a woman without creating unnecessary fetters. If conditions are necessary to ensure fairness, it ought to apply for both genders.

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