CHAPTER 3
CUSTOMARY LAW IN CONTEXT:
ITS ORIGIN AND NATURE

In the previous chapter an analysis was made on the meaning of customary law in Western Jurisprudence and in the discipline of Anthropology. Since there was no unanimity regarding the meaning and definition of customary law, certain essential attributes of customary law were drawn from the conflicting views of scholars. This chapter attempts to elicit the views of the practitioners of customary law.

This first section of this chapter begins with a brief introduction to the tribal communities of the Northeast in general and then attempts a short sketch of the Angami of Nagaland and the Garo of Meghalaya. The second section discusses the origin of customary law, the third section its nature in terms of change from the perception the Angami and the Garo people. The data for section two and three is primarily gathered from in-depth interviews.

The Tribal Communities of Northeast India

Of India’s 84,326,240 tribals, around 10,465,898 or 12.4 % live in Northeast India (Census of India 2001). Compared to the tribal population of the Central States of India, the proportion of the tribal population in the Northeast is small. Over 80% of the tribal population of the Indian Union lives in the central belt comprising the states of West Bengal, Jharkhand, Madhya Pradesh, Chhattisgarh, Rajasthan, Gujarat, Maharashtra, Andhra Pradesh and Orissa (Ghosh 2007: 139).

According to Census of India 2001, the total population of Northeast India is 38,866,769. Of this, the tribal population accounts for 26.9% of the total population, or 10,465,898 in all. The tribal population is unevenly spread across the region. They are
thinly populated in the plains while having a predominant presence in the hills. In Mizoram their proportion is 94.5%, in Nagaland 89.1%, in Meghalaya 85.9%, in Arunachal Pradesh 64.2%, in Manipur 34.2%, in Tripura 31.1%, Sikkim 20.6% and in Assam 12.4%.

Table 3.1: Tribal Population in India and Northeast

<table>
<thead>
<tr>
<th>States</th>
<th>Population</th>
<th>Tribal</th>
<th>Tribal (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All India</td>
<td>1,027,015,247</td>
<td>84,326,240</td>
<td>8.2</td>
</tr>
<tr>
<td>Northeast</td>
<td>38,866,769</td>
<td>10,465,898</td>
<td>26.9</td>
</tr>
<tr>
<td>Assam</td>
<td>26,655,528</td>
<td>3,308,570</td>
<td>12.4</td>
</tr>
<tr>
<td>Arunachal</td>
<td>1,097,968</td>
<td>705,158</td>
<td>64.2</td>
</tr>
<tr>
<td>Manipur</td>
<td>2,166,788</td>
<td>741,141</td>
<td>34.2</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>2,318,822</td>
<td>1,992,862</td>
<td>85.9</td>
</tr>
<tr>
<td>Mizoram</td>
<td>888,573</td>
<td>839,310</td>
<td>94.5</td>
</tr>
<tr>
<td>Nagaland</td>
<td>1,999,036</td>
<td>1,774,026</td>
<td>89.1</td>
</tr>
<tr>
<td>Sikkim</td>
<td>540,851</td>
<td>111,405</td>
<td>20.6</td>
</tr>
<tr>
<td>Tripura</td>
<td>3,199,203</td>
<td>993,426</td>
<td>31.1</td>
</tr>
</tbody>
</table>

Source: Compiled from Census of India 2001 CDs

There are some commonalities among the tribal communities, but each one also has a distinct cultural, linguistic, religious and historical identity. This diversity has made the region different from the rest of the country, most easily noticed in the wide variety of languages. It is also an indication of the complexity of the ethnic situation in the region (D’Souza and Kekrieseno 2002). Besides ethnic complexity, the region has witnessed social unrest in the form of nationalist movements and political upheavals as a result of real or perceived threats to their culture and because of economic changes, especially land alienation (Sanyu 1996). That makes the ethnic diversity in the Northeast region more complex than in Central India.
Table 3.2: Number of Schedule Tribes in Northeast India

<table>
<thead>
<tr>
<th>States</th>
<th>No. of Schedule Tribes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arunachal Pradesh</td>
<td>100&lt;sup&gt;95&lt;/sup&gt;</td>
</tr>
<tr>
<td>Nagaland</td>
<td>20&lt;sup&gt;96&lt;/sup&gt;</td>
</tr>
<tr>
<td>Manipur</td>
<td>29</td>
</tr>
<tr>
<td>Mizoram</td>
<td>14</td>
</tr>
<tr>
<td>Tripura</td>
<td>19</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>17</td>
</tr>
<tr>
<td>Assam</td>
<td>23</td>
</tr>
<tr>
<td>Sikkim</td>
<td>2</td>
</tr>
<tr>
<td>Total STs in NE India</td>
<td>224</td>
</tr>
</tbody>
</table>

Source: http://www.censusindia.gov.in/Tables_Published/SCST/scst_main.html

Diversity and Unity among the Tribes

Religious differences add to the diversity of the region. Animism and tribal religion are on the decline but most tribes have learnt to combine macro-religious practices with their traditional customs and beliefs. Hinduism, Christianity and Buddhism, the religions to which they have been converted in recent decades, have been influenced by tribal religions and have, in their turn, influenced the tribal ethos (Fernandes and Barbora 2002a: 186-189). For example, a majority of the hill tribes were converted to Christianity at a time of a crisis in their society caused by the intervention of the colonial regime and its Indian collaborators. Amid such disruption, the change of religion could give them a new identity (Ruiyav 2002: 167). In that sense the acceptance of Christianity by the hill tribes, and of Brahma Samaj by the Boro in the Assam Plains was a mode of modernising themselves and of finding a new identity without losing their past completely.

<sup>95</sup> The list of STs in Arunachal Pradesh is open in nature. Census of India 2001 has enumerated a list of 100 STs. Twenty-five of them have returned 5,000 and above in population.

<sup>96</sup> For Nagaland, the number 20 is arrived at by adding 16 major Naga communities to 4 non-Naga tribal communities (Garo, Kachari, Kuki, and Mikir).
Despite these religious trends, tribal communities have retained their identity intact in their egalitarian societies. The North Eastern hill tribes do not have caste-based stratification and social cleavages, though some of them have been Hinduised. For example, many Kacharis, Miris, Dimasa and Jaintias of Assam have assimilated Hinduism from the Assamese plains inhabitants and have adopted some Hindu customs and beliefs, but have also retained many of their traditional characteristics such as a society without the caste system. However, they are attributed a low status in the Assam plains (Horam 1990: 69). In the hills, where they are the overwhelming population, they retain their egalitarian society and also feel economically secure. They did face a threat to their identity in the 20th century but they have not witnessed the type of insecurity to their identity and economy that the tribes of Middle India have faced for a century. Their social institutions are relatively intact and they remain in possession of their land and forest. However, new processes of land alienation are visible among them, much of it through class formation in their own societies. Thus modernisation poses a threat both to their economic security and social identity (Fernandes and Pereira 2005: 115-118).

Because of their relative isolation from the political system and cultural influences of the rest of India, the tribal movements of the region have been essentially political in nature, seeking goals ranging from autonomy to independence and relying on means ranging from constitutional agitation to armed insurgency. At times several tribes combined in this effort to form new ethnic-territorial identities. That has both given them a new political identity and has led to ethnic conflicts. For example, from the early 20th century the educated leaders of different hill tribes in present-day Nagaland came together to form the Naga Club in 1918. This soon assumed political dimensions and
became a centre of their search for a new identity or autonomy. During the decisive era of the Japanese invasion in the 1940s, A. Z. Phizo, a traditional Angami leader, succeeded in bringing 27 tribes together under the Naga umbrella (Sanyu 1996: 115-126). That laid the foundation of later nationalist struggles among the Naga, Mizo and others.

The reaction of the Central Government has been to treat these movements initially as a law and order issue and so to suppress them. Alongside this policy, a second step created a number of new States in an effort to accommodate tribal aspirations of autonomy. In other cases, the provisions of the Sixth Schedule of the Constitution were extended to a few tribes. The Centre went beyond these moves when such steps did not work. For example, Nagaland and Mizoram were granted more autonomy than other states enjoyed. In Nagaland, no law of Parliament can apply unless it is approved by the State Assembly. Despite these commonalities, the tribes of the Northeast continue to remain relatively isolated from mainland India (Verma 1995: 63).

The reverse of the process is uncertainties some tribes face mainly because of what they feel is the increasing erosion of their rights over their land and the rest of their livelihood. They often enjoy constitutional rights over their rights and customs by virtue of their dependent relations on the Indian State that has promised through its Constitution to safeguard them. However, many tribes of the region feel that the State considers these to be welfare measures, not particular and established rights. Further, militarisation has resulted in special laws such as the Armed Forces Special Powers Act that seem to have become inseparable ingredients of maintaining such welfare enclaves (Imchen 1998: 199).
The Angami: An Overview

The Angami are the sixth largest tribal community in Nagaland after the Konyak, Sema, Ao, Lotha and Chakhesang. According to the Census of India, the Angami number 124,696 or 7.2% of the total tribal population of the state of Nagaland. The sex ratio of Nagaland state is 943, while the Angami have recorded positive sex ratio of 1004. Although the Census of India 2001 does not mention literacy rate according to tribes in Nagaland, the literacy rate of Schedule Tribes in the state is 65.8 and that of Kohima district is 74.28%. Going by that district literacy rate, i.e., 74.28%, one can reasonably conclude that the Angami, being the most populous of the three tribes in Kohima district, would have recorded literacy rate of around 74% in 2001. Incidentally, Census makes note that in 2001, over 80% of Angami children within 5-14 age group were attending school.

Like most other tribes of the State, they too have their own language, popularly called Tenyidie. Written in Roman script, it has a rich literature mostly related to Christian religious themes. It was the first Naga language to be introduced at the University level (Liezietsu 2009:7). The Angami are famous for their terrace cultivation of rice. Agriculture, which is their main economic activity, has been changing since the colonial age.

97 This information is available at Census of India website with the following URL. Of the total population in Nagaland, Konyaks are 243,758 (14%), Sema are 241,806 (13.9%), Ao are 231,823 (13.3%), Lotha are 148,210 (8.5%), Chakesang 134,646 (7.7%) and Angami are 124,696 (7.2%). http://www.censusindia.gov.in/Tables_Published/SCST/dh_st_nagaland.pdf.
98 Ibid., p.2.
99 Apart from the Angami, there are two other tribal communities inhabiting the Kohima district. They are the Rengmas and the Zeilangrongs. However, Kohima, the capital city of Nagaland, has a cosmopolitan touch with people of from many different tribal communities of Nagaland inhabiting the city. The total population of the Kohima district stands at 314,366 (Census of India 2001).
100 Ibid., p.3.
The Angami occupy the central and southern part of Kohima District in Nagaland. A few Angami villages are also to be found in Dimapur District along National Highway 39 which connects Dimapur to Kohima. According to Angami Student Union Magazine (1995-97)\(^{101}\), there are 62 Angami villages divided into four zones. The Southern or *Japhfûphicha* Zone has 12 villages, the Western or *Niakrakicha* Zone has 7 villages, the Northern or *Pesocha* Zone has 19 villages and 24 villages are to be found in the *Chakro* Zone, found on the slopes along National Highway No. 39, between Kohima and Dimapur.

The Angami were among the first tribes in Nagaland to experience the onslaught of colonial intrusion in the first half of the 19th century and were at the centre of Naga resistance to the British regime (Hutton 1969; Das 1993). After occupying Kohima in 1870, the British regime introduced protective measures in the form of the Inner Line Permit apparently to protect the Angami and other Naga tribes from outsiders (Singh 1994: 72-73), but in practice to protect the plainspeople from them (Sen 1987: 15).

After Independence the Angami led the Naga militant nationalist movement and played an important role in the ethnic movement and conflict under the leadership of Z. A. Phizo. In the process they underwent rapid social change and have gained access to modern education and political systems, in the course of which also changing many of their traditions and customs. Today they are more circumspect in their participation in the struggle, partly due to the level of militarisation and partly because of the efforts of development agencies. Through the Village Development Board, almost every Angami village has been covered by the Integrated Rural Development Programme. It is the only

institution that has women representatives. The area they inhabit is also experiencing the impact of advancing globalisation.

Land and forests are the Angami's major economic resources. They are traditionally prosperous and economically self-reliant. Every individual in the community has his/her own property, thus they are basically a landowning community in which landlessness is not found (Singh 1994: 69). Every plot of land has an owner. The Angami are skilled craftsmen in wood carving and bamboo work. Weaving is a must for Angami women. Most of their families are nuclear. As its head the husband exercises the highest authority in it. In theory the wife enjoys equal status in the family with her husband but in reality she considers her husband superior and respects him as such. Traditionally women have been confined to the four walls of the house but with progress in education, many of them are becoming salaried wives and daughters (Kelhou 1998: 56) and are at par with men.

Christianity is the dominant religion among them, though a substantial number of families practise the traditional animist religion. After Christianisation many have not given up all their traditional practices, and many of them participate in the genna, which is a day of rest for the Animists in the village. No outsider may enter the village on that day. Thus tradition and modernity live side by side (D'Souza, Kekhrieseno and Nokhwenu 2002: 26-27).

Traditional Angami religion is animistic with beliefs in benevolent and malevolent spirits. The Kemevo is the chief religious specialist in an Angami village. Their main festival is Sikrenyi. Its religious implication is that it is a festival of cleansing and purification. It belongs to the agricultural calendar and the time of its celebration
varies from village to village. Even Christians follow this calendar, announced by the
traditional religious leaders. Some of its rituals are performed also by female religious
specialists (Singh 1994: 71). Even in the church, women are allowed to perform some
functions in the religious ministry. Many women show more zeal and concern than men
in the church's spiritual growth and welfare. Traditionally women were not encouraged
to go to school for fear that they might go astray. But with Christianisation education has
become accessible to them. Today women fare as well as their male counterparts in their
academic and professional pursuits. In fact, more women than men go for higher studies
(Kelhou 1998: 60).

According to field-notes, each village has its own myths of origin and some of the
oral traditions of villages have myths narrating the founding of the village. Some
respondents mention that the customary law of each village was usually agreed upon
during the setting up of the village during elaborate religious rituals and ceremonies.102

A typical Angami village is divided into two to four khels or wards, depending on
the number of clans. Clans are divided into lineages; lineages are sub-divided into sub-
lineages and sub-lineages are further sub-divided into families (Das 1993: 3). For
instance, Kohima village has four khels, namely, Dapfisumia, Lhisemia, Pfuchatsumia
and Tsituenuomia. They are popularly known by the first letter of each khel, i.e., D, L, P
and T. Each khel is sub-divided into clans on the basis of patrilineal descent.

In an Angami village, a khel used to be an autonomous political unit within the
village. According to Hutton, the khel was so distinct and so powerful that it stood out as

102 Interview with Mr. Khatso of Jakhama village, Nagaland.
an independent village in itself (Hutton 1969: 109). During pre-British days, each *khel* was well fortified with gates defended by the young warriors against the intrusion of outsiders. In his monograph on the Angami Nagas, Hutton mentions that periodic inter-*khel* war was normal in the olden days (ibid; also Marwah & Srivastava: 1992).

Their clan organization is exogamous; no person can marry a member of the family on the father’s side. Monogamy is the accepted pattern. An Angami woman is strictly bound by monoandry but men may practise both monogamy and polygamy. This traditional practice is not accepted by the Christian churches. With the introduction of Christianity, marriages have been formalized and have replaced their earlier tradition. Adultery is not common among them, but if it happens, there is no punishment as such. They believe that, God will punish the offender with a crippled child. No bride price or dowry is practiced.

**The Garo**

The Garos were the first among the north-eastern tribal communities of India to come into contact with the East India Company. They are the second largest tribal community in the state of Meghalaya after the Khasi. According to Census of India 2001, they number 689,639 or 34.6% of the total tribal population of the state of Meghalaya. The sex ratio of Meghalaya state is even, i.e., a total of 996,567 have been returned as males and 996,295 as females. But the Garo have recorded a comparatively lower sex ratio at 979. Literacy rate of the Scheduled Tribes in the state is 61.3, and that of the Garo is 55.2%.

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104 [http://www.censusindia.gov.in/Tables_Published/SCST/dh_st_meghalaya.pdf](http://www.censusindia.gov.in/Tables_Published/SCST/dh_st_meghalaya.pdf)
105 Ibid., p.2.
The Garo in India occupy the western parts of the state of Meghalaya. They inhabit three districts in the said state, popularly known as Garo Hills Districts. These three districts are West Garo Hills headquartered at Tura, East Garo Hills centered in Williamnagar, and South Garo Hills with Baghmara as district headquarters. Some Garos also inhabit certain parts of the state of Assam, Tripura, Nagaland, Mizoram and West Bengal. There are also a sizeable number of Garos living in the districts of Mymensingh and Sylhet in Bangladesh (Marak 2000: 1-28).

The Garo Hills District was part of the state of Assam until 1970. On 12 January 1970, the state of Meghalaya was carved out of Assam. The Garo Hills in Meghalaya is a Sixth Scheduled District and thus, as per the provisions of the said Schedule of the Constitution of India, it is administered by the Garo Hills Autonomous District Council. The Autonomous District Councils (ADCs) in Meghalaya were set up in 1952. Apart from ADC for the Garos, there are two more ADCs for the Khasi and Jaintia tribal communities in Meghalaya. Thus the administration in these districts comes under the parallel jurisdictions of both the state and the ADC.

Garo are divided into a number of sub-tribes, primarily based on their varied dialects and some cultural practices (Marak 2000: 2-4). According to Sangma (1981: 134-138), it is their distinct locale in different parts of the Garo Hills district that has contributed to their diverse dialects and varied customs. According to Marak (2000), the main sub-tribes are twelve. They are the Chisak, the Matchi, the Matabeng, the Ambeng, the Dual, the Atongs, the Gara-Ganchings, the Chiboks, the Rugas, the Megams, the A'wes, and the Kochus.\(^{106}\)

\(^{106}\) Sangma (1981: 134-137) too has a similar list but does not make a mention of the 12th sub-tribe, the Kochus.
The Garo economy is predominantly agricultural. With the exception of those living in towns, most others begin and end their life in the fields. In the agricultural operations both men and women share the work. In other areas men do the heavier tasks such as iron work while women are involved in bamboo, carpentry and weaving.

The traditional Garo religion is Animist, based in the belief in a number of malevolent spirits. In that sense they are similar to all other animistic religions. They believe that the spirits control the growth of agricultural crops. Today most Garo have been Christianized and this has infringed upon their customary laws of marriage and divorce. Though they continue to have negotiations for marriage through traditional means, most no longer follow marriage by capture. Despite the many changes brought about by Christianity, most of their traditions and customs are very much alive in the society.

Most of the matrilineal Garo spread over the Garo Hills of Meghalaya and parts of Assam and Bangladesh are jhum or settled subsistence farmers. They use the name Garo only in conversation with outsiders and call themselves Achik, meaning 'hill man' (Playfair 1998: 7). Before the British annexed the Garo Hills, they governed themselves through their customary law and traditions. All cases and disputes were settled by their tribal agencies Nokma and his advisers known as chras. In their tradition lineage, habitat and property pass along the female line. Thus women enjoy a higher status than in patrilineal societies. Their status went beyond inheritance to include also some say in community decision-making. Thus they were a matrilineal but patriarchal society already before changes were introduced (Marak 2002: 22).
Their social organisation is based on the *machong*, whose members belong to the same motherhood (Playfair 1998: 65). All the blood relations belonging to a *machong* are usually designated by the same name. The responsibilities of the *machong* are carried out by a small group of closely related persons within it called the *mahari* (Kar 1982: 22). For the Garo, their *mahari* system is very important. It has two separate identities called the *Chra-Pante* and *Paa-Gachi*. The former consists of male members of a family like maternal uncles, nephews and brothers who belong to the same *machong* or motherhood; the latter consists of the husbands of the grandmother, mother, sisters, daughters and nieces of the same *machong*. The *chra* are the most respected persons in whom their matrilineal tribe vests authority. The *mahari* elects the *Nokma* to be its custodian and he is to uphold its interests (Marak 2000: 22).

As noted above, marriage in Garo society is strictly exogamous. The wife and the husband have to belong to different motherhoods. According to their customary law, the youngest daughter has to marry her father’s nephew or someone from her father’s *mahari* because of the inheritance of property. A man is allowed to marry more than once but with the consent of his first wife. He may marry two sisters but has to marry the elder one first (Gassah 1984:138-139). Anyone who breaks this law and marries within the same clan is considered to have committed a social sin. However, some of these rules are violated today (Playfair 1998: 66-67).

*Nokpante*, the house of the unmarried young men, is a unique and distinctive feature of Garo society. It usually serves as the dormitory of adolescent young men. The girls, according to custom, eat together with their lovers but have to enter the *nokpante* by the side door. While visiting the *nokpante* for the purpose of finding a husband, the girl
has to pay the boy some amount of cash and stay in the house of the bridegroom’s parents for a month or more before the date is fixed for the marriage. The nokpante system served as an important centre of arts and culture in ancient times, but it has all but disappeared today.

Thus the Garo are a matrilineal but patriarchal tribe. A woman is merely the vehicle by which property descends from one generation to another, but the man’s role is crucial in its use. With the introduction of rubber plantations in the East Garo Hills there is a move towards change in ownership in the nature of inheritance, specifically towards individual male-based pattas (Fernandes, Pereira and Khatso: 2006).

Origin of Customary Law

An important assumption of the study is that customary law is central to the tribal identity in Northeast India. If this is true then it is essential that its origin and nature be examined as they are perceived by its practitioners. This chapter will examine the origin and nature of customary law from the perspective of Angami and Garo tribal communities. The first section will deal with the origin of customary laws; the section that follows will deal with its nature.

The interviewees among the Angami and the Garo communities spoke in general of two sources of the origin of customary laws. Some mentioned that customary laws were given by gods or spirits, while the majority were of the opinion that these laws had a human origin. Those who referred to the divine origin of customary laws had differing views regarding the nature of divine intervention in the creation of these laws. While some spoke of the direct intervention of gods, others mentioned spirits indirectly guiding the process of the formation of customary laws.
On the other hand, the interviewees who stressed the human origin of customary laws emphasized the process of interpersonal interactions leading to the emergence of customary laws. They highlighted the gradual and evolutionary growth of these laws according to the needs and exigencies of the situation. The stand one took regarding the origin of customary laws had implications with respect to their nature, scope and application.

**Divine Origin of Customary Laws**

Statement 3.1 shows the stand of the interviewees in in-depth interview regarding the origin of customary law. 76 out of 100, that is more than three fourth of the interviewees, mentioned that customary laws evolved over a long period of time and have their origin in human interactions. 13 of them believe that these laws have divine origin, while 8 of them think that the gods have indirectly influenced their origin. 3 Angami hold that customary laws are place-specific and time-specific, that their origin is tied to a specific village.

**Statement 3.1: Origin of Customary Law**

<table>
<thead>
<tr>
<th>Source of Origin</th>
<th>Angami</th>
<th>Garo</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Divine Origin</td>
<td>8</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Indirect Divine Origin</td>
<td>6</td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>Evolutionary Origin/Human Origin</td>
<td>33</td>
<td>43</td>
<td>76</td>
</tr>
<tr>
<td>Village Specific Origin</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>50</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

As noted above, those who pledged support for the divine origin of customary laws fell into two groups: the first group vouching faith in the direct divine intervention in the design of customary laws and the second group holding that gods were indirectly involved in inspiring human beings towards the selection of appropriate rules and regulations. The former group traced this history to an era during which human beings
and spirits interacted directly with each other. One of the Garo elders in the village of Chokpot in South Garo Hills District, referring to this divine-human intermingling had this to say regarding the divine origin of customary laws:

God gave these laws to our ancestors. There was a time in history when gods and human beings lived together. During that time the spirits taught the human beings how to live together in harmony as a human family in this world. These instructions of the spirits to human beings were passed on orally from one generation to the other among the Achiks [Garos] and they have come down to us as customary laws. Therefore the origin of Garo Customary Laws goes back to gods. We believe in the divine origin of our customary laws.  

Among the Garo interviewees, all Songsareks, those who followed the Garo indigenous faith, held on to this view. This phenomenon was no different in the Angami community. Those Angami interviewees who followed their indigenous faith, which they call Naga faith, echoed sentiments similar to their Garo counterparts. One of them said, “The customary laws came into existence at once and they were given to us by gods. They were not put together over the centuries, as some people tend to say. We have proof of this in our folk stories.” Quite a few Angami elders narrated a folk story when tracing the divine origin of customary laws. For the purpose of the study, we have the version as narrated by an elder from Khuzama, Nagaland.

In the beginning there was an old lady who gave birth to three sons. One was a tiger, the second one was a spirit and the third one was a human being. They lived

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107 Part IV and V of J. H. Hutton’s The Angami Nagas (1969) dealing with Religion and Folklore has rich information on Angami belief in spirits. For the Garo belief in spirits refer to Major A. Playfair’s The Garos (1975). Playfair too dedicates section IV and V to Religion and Folklore which has information on the influence of supernatural forces on Garo society. Both authors have a rich collection of legends and myths referring to an era of divine-human intermingling.

108 This interview with Mr. Winring Ch. Marak took place on 8 November 2006 at the Chokpot Catholic Church between 2.10 and 3.30 pm. Fr. Joseph Ch. Marak was the interpreter.

109 This interview with Mr. Vilhűsa Khatso took place on 11 September 2006 between 8.45 and 9.40 am in the residence of the interviewee. Miss Vizalenu Khatso was the interpreter.

110 According to Borrows, indigenous laws are “enunciated in the rich stories, ceremonies, and traditions within First Nations. Stories express the law in Aboriginal communities, since they represent the accumulated wisdom and experience of First Nations conflict resolution.” (Borrows 2002: 13)
together for many years. The tiger always guarded the mother and told her, "Mother, if at all you die...I will eat this part and the other of your body." Whenever the spirit took care of the mother, she would always be ill with fever. But whenever she was looked after by the human being, she was always happy and fine. This went on for many years.

One fateful day, when the man was taking care of the mother, she died. The man knew that his elder brothers were eager to eat her body, so he hatched a plan. He buried the body of the mother under the oven. But to mislead his brothers he dug some graves here and there.

When his elder brothers returned home, they came to know about the death of their mother and asked the man where she was buried. The man told them to search around the house. They started searching for the dead body of their mother. They dug in places where they saw fresh mud unearthed, but this was all in vain. After searching for a while, they got tired and came back home.

After a couple of days, they all sat together and decided that they would have to disperse. So once, when the tiger was fast asleep, the spirit and the man tied a pot like thing on its tail and banged the tiger with a stick. The tiger got up with a terrible shock. When it got up, its tail started hitting the object. The tiger got scared and started running for its life. It ran endlessly until it reached a thick and dark jungle where it got lost.

Now the spirit and man were left alone. Slowly spirit became invisible and they were separated. The man took care of the house. Whenever the man cooked he always put some food in the oven. This was for the mother whom he had buried under the oven. This practice is still in vogue.

The man and spirit lived on as neighbors and they kept cultivating the land. The spirit used to get good crops but the man struggled hard to cultivate anything. So the man asked the spirit the secret behind getting good crops. The spirit would not tell him easily. He would tell the man to meet him in such and such a place next day. But when the man went to the appointed place, the spirit was not there. One day, the man caught hold of the spirit and pleaded with it to tell the secret. It is then that the spirit told the man when to cultivate and when not to. It told him when to make fire and carry firewood and when not to. It told him about various gennas (taboos) and to follow them. Once the man got all these instruction he left the spirit free. The man carefully followed the instructions given by the spirit and he started getting abundant crops.

Now these instructions were faithfully followed by his descendants. The elders of the village made it a point to transmit these instructions to their sons and daughters. For centuries these laws have been orally transmitted. This was how the customary laws originated.  

Reiterating the active part played by gods in the origin of customary laws, another Angami elder found parallels between the Ten Commandments in the Bible and Angami

\[\text{\footnotesize 111 This interview with Mr. Holasul Khizo took place on 4 September 2006 between 9.10 and 10.30 am in his residence in Khuzama. Mr. Keleseho Stephen was the interpreter.}\]
customary laws. According to him, “Our customary laws are similar to the Ten Commandments of the Old Testament in the Bible. Like the Ten Commandments, our laws too were given to our ancestors by gods. We were taught about this fact by our elders. Since these laws are given by gods, they are just, truthful and infallible.”

While these two Garo and Angami elders spoke confidently of the divine-human collaboration in the origin of customary laws, another Garo elder was hesitant to say so, although he too alluded to the divine origin of these laws: “I cannot talk confidently about the divine origin of customary laws. I can tell you what our grandfathers and grandmothers have taught us about these laws. They told us that gods have given these laws to us. We were told to be faithful in the observance of these customs and practices. We dare not violate them for fear of being punished by the gods.”

Indirect Divine Origin of Customary Law

There are others among the Angami and the Garo communities who hold to the divine origin of customary laws in which spirits play an indirect role. They feel that gods indirectly inspired their ancestors to come out with a set of rules and regulations which could later guide the community in harmonious living. Mr. Zhavise Vihenuo from Chiechama, Nagaland, mentioned that divine forces were guiding the ancestors in articulating rules and regulations for the community.

It is not sure whether we received these laws from Gods. But our people knew that there is a God who looks after and takes care of our needs. They called him

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112 This interview with Mr. T. L. Angami was held on 16 December 2006 between 1.05 and 2.25 pm at his residence in Dimapur. (Henceforth, if an interpreter is not mentioned for an interview, it is understood that the interview took place in English).
113 This interview with Mrs. Polgi Ch. Sangma took place in her residence in Selsella in West Garo Hills District on 11 November 2006 between 1.15 and 2.05 pm. Mr. Benabet Ch. Marak was the interpreter.
114 In an interview Mr. Neivose Dzăivichü, Gaonbura, Kohima, Bada Basti, said: “I can say with certainty that our forefathers were divinely inspired to come out with these set of customary laws. Our ancestors definitely received wisdom and knowledge from divine powers to formulate and pass on these rules of justice to the succeeding generations.”
This God always looks at us from the heavens. We are supposed to follow the right path and then things go on well for the family and village. If we do not do things properly things go bad for the family and village. Therefore our people started doing right things day after day which pleased UkepenuopjU and these right things they put together and handed down to us. Today we call this as customary laws.\textsuperscript{115}

There was also fear of spirits behind the shaping of customary laws. According to a Garo elder from Bawigre, Jengjal, West Garo Hills District, “We had fear of the gods and from this fear the ancestors learned to do certain things, which pleased the gods. Those practices which pleased gods were retained and those practices which did not please gods were avoided. In the initial stage, rules for worship, rituals and sacrifices were formulated. Later on, laws for right behaviour were put together. This has been passed on by word of mouth for generations.”\textsuperscript{116} Referring to the past, this elder mentioned the extent of fear in the ancestors regarding the wrath of spirits. Any natural calamity or tragedy that stuck the village was seen as the curse of gods. The only way to avoid the curse of spirits was to practice right conduct.

The emergence and practice of customary laws as a mechanism to please the spirits was expressed by quite a few interviewees, both among the Garo and the Angami communities. Mr. Khrietsielho Üsou, the village council president of Nerhema, Nagaland, explained this phenomenon in following words:

In the early days, human beings had fear of the spirits. They believed that if one of the members of the community did something wrong, the spirits would punish them by causing some natural calamity or by sending some diseases. In order to avoid punishments from the spirit, our elders made a list of things which would please the spirits which gradually became customary laws. They were faithful in practicing these laws lest they be cursed by the spirits. The same thing has been

\textsuperscript{115} This interview with Mr. Zhavise Vihenuo took place in his residence in Chiechama on 22 September 2006 between 10.15 and 11.05 am.

\textsuperscript{116} This interview with Mr. Kollaram T. Sangma took place at his residence in Bawigre, Jengjal, West Garo Hills District on 22 November 2006 between 7.15 and 8.45 am.
taught in our *morungs* [bachelor dormitories] for generations and has come down to us.  

One of the field notes recorded in Khuzama, Nagaland, makes a distinction between the spirits of ancestors and the spirits of deities. In his monograph on the Angami Nagas, Hutton, too, makes this distinction between the souls of human beings and the spirits of deities (1969: 178). The informant mentions that both these spirits had influence on the day-to-day life of ancestors. People were scared of the souls of the dead and spirits of deities. They took care to obey the code of morality passed on from generations so as not to anger either of these species of spirits.

**Human origin of Customary Law**

Over 75% of interviewees, across tribes, age groups, and gender were of the opinion that customary laws had their roots in human interaction. Data collated from in-depth interviews in Statement 3.1 shows 33 Angami and 43 Garo interviewees holding on to the human origin of customary law. According to them, various norms and rules grew into customary laws in the interpersonal dealings of community members.

Referring to the interpersonal nature of customary laws, Fuller mentions the horizontal dimension of customary law versus the vertical dimension of enacted law (1969: 233). The horizontal dimension, as the very term connotes, refers to the constant interaction between members of a community resulting in a code of conduct which guides the daily transactions of its members. On the other hand, the enacted law, which lays stress on vertical dimension grounded on top-down approach, pays scant attention to human interactions as foundation and origin of laws.

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117 This interview with Mr. Khrietsielho Usou was held at his residence in Nerhema on 21 September 2006 between 6.30 and 7.45 am. Mr. Marcus was the interpreter.
These interviewees took pains to argue that these laws are terrestrial in origin and application. There was no supernatural being brooding in the skies and guiding the process of creation of these norms and rules. According to them, customary laws were rules which took shape in day-to-day dealings of human beings in a community set up.

Mr. Pukron Kiki, a judge in Kohima District Customary Law Court, said:

At first there were land disputes. These were between neighbours. When these disputes took place, they had to be solved through compromises. The elders were the best to settle these disputes because they were blessed with wisdom. So when they sat together to resolve these disputes they came out with some solutions. These solutions were applied again and again in settling similar conflicts encountered by the members of the village. Gradually these solutions attained the status of customary law.118

While stressing the interpersonal nature of these laws, Kiki insisted that these laws evolved gradually and were tested by changing times. It is the usefulness and effectiveness of a particular custom which decided its longevity. Echoing similar thought, Mr. Garfield N. Marak said: “Customs naturally are of the past - coming down to us from our ancestors. Our ancestors found them useful and thought that their sons and daughters will find it useful and so handed them over to their descendants. Those laws that are relevant are still in vogue. Those laws that are not relevant have disappeared. I think changing times and utility are the ultimate judges that decide whether a law should be retained or gotten rid of.”119

The criterion of utility and effectiveness as the basis for longevity was expressed by another Garo elder. “We have been practicing customary laws for centuries together. Our ancestors have passed them on to us. They evolved slowly and not at one point in

118 This interview with Mr Pukron Kiki, Dobashi in Kohima District Customary Law Court, took place in his residence in Kohima on 15 September 2006 between 5.45 and 6.45 pm. Mr. Khriezhapu was the interpreter.
119 The interview with Mr. Garfield N. Marak took place at his residence in Araiime, Tura, on 10 November 2006 between 3.45 and 4.35 pm
time. Those laws that were useful lasted and those laws that were obsolete disappeared.\textsuperscript{120}

Emphasizing the fact of the exigencies of time, Prof. Milton Sangma traced the history of matriliny among the Garo to an era during which men folk were busy defending the community against its enemies.

These laws gradually evolved according to the exigencies of time. But the first evidence of the evolution of matriliny is when the Achiks [Garos] were in a migratory stage. According to tradition they had a big meeting because during migration they were fighting with local rulers and so menfolk were dying. So womenfolk were worried about what would happen to the property. So they said let women inherit property and let the descent be traced through the female line. This is the tradition that we have regarding the matrilineal roots of Garos. The other customary laws gradually developed as the ancestors settled down on a particular plot of land. We have so many customary laws. They are unwritten and today they still remain unwritten. People are trying the cases in the village courts according to the oral tradition of the customary laws. So we have a set of rules and customs on any matter pertaining to life...marriage, divorce, inheritance, adoption of children...so for all kinds of living there have evolved the customary laws and so some books have been written to on this subject.\textsuperscript{121}

It was mentioned in the interviews that the elders of each village took care to impart this ancient heritage to their younger members. The morungs or bachelor’s dormitories were the forum in which this traditional wisdom was imparted to the youngsters. This training was mandatory for every youngster of the village. The youngsters were a witness to the process of conflict resolution since this had the educative value of learning the rudiments as well as the intricacies of customary law in action.

\textsuperscript{120} This interview with Mr. Llewellyn R. Marak took place at his residence in Chandmari, Tura, on 18 November 2006 between 3.45 and 4.30 pm.
\textsuperscript{121} The interview with Prof. Milton Sangma took place in his house in Tura on 18 November 2006 between 6.15 and 7.30 pm.
Village Specific Origin of Customary Law

According to one of the Angami interviewees, customary laws are unique to each village. When a village is set up, the founders of the village decide upon a code of conduct and a set of customary laws to be followed. Once the customary laws are agreed upon by the founders of the village, the inhabitants of the village faithfully adhere to these laws generation after generation. "The customary laws were started during the setting up of the village itself. The people who established the village put together certain instructions and guidelines as to how to live together as community and how to maintain peace. These guidelines came to be known as customary laws and have been handed down to us from generation to generation." 122

During the fieldwork, it was noted that even though there were many common elements in customary laws, there was an element of uniqueness to customary laws of villages. Some neighboring villagers would point out the differing nature of their customary laws. They would attribute the difference in customary laws among villages to the different choices of customary laws and norms made by founders of each village.

In the section above we took note of the opinion of interviewees regarding the origin of customary laws. Age, religion and education of the interviewee are the factors that played a crucial role in determining an interviewee's view on the origin of customary law. Most of those interviewees who advocated the divine origin of customary laws were above 70 years of age, were followers of indigenous religion, and did not have a formal education. Those who held that these laws evolved gradually in human interaction were below 70 years of age, were adherents of Christianity and had formal education.

122 Mr. Zhavise Vihenuo, supra, n. 115
Nature of Customary Laws

This section of the chapter will describe the dynamics of change vis-à-vis customary law. It deals with the nature of customary laws from the point of view of change and reform. What do the Garo and the Angami feel about the nature of customary laws? Are customary laws subject to change? Or are they beyond change? The opinions of the interviewees on this question depended on their views of the origin of customary law, their age group, education and gender.

Customary laws have been characterized as static, rigid and unchangeable, especially during colonial times (Chanock 2005: 340-344; Orebec 2005: 19). Such an understanding of customary laws has been carried on even to our times. Sheleff (2000) finds that some anthropologists, scholars who are supposed to be sensitive to tribal communities, tend to portray customary laws as inflexible and frozen. “Often even when stressing the nature of custom as law, they would tend to describe it as an inflexible framework, basically as it was at the time of the research.”

Statement 3.2: Nature of Customary Law

<table>
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<tr>
<th>Do Customary Laws Change?</th>
<th>Angami</th>
<th>Garo</th>
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<tr>
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<td>5</td>
<td>13</td>
</tr>
<tr>
<td>No Change due to Ancestral Wisdom</td>
<td>22</td>
<td>7</td>
<td>29</td>
</tr>
<tr>
<td>No Change due to Village Specific Origin</td>
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<td>0</td>
<td>12</td>
</tr>
<tr>
<td>No Change Lest Community Cohesion is Affected</td>
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<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Change But Not in Core Principles</td>
<td>25</td>
<td>37</td>
<td>62</td>
</tr>
<tr>
<td>Change in Favour of Development</td>
<td>21</td>
<td>13</td>
<td>34</td>
</tr>
<tr>
<td>Change in Favour Purging Outdated Practices</td>
<td>0</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td><strong>Total (N=100; multiple response coded)</strong></td>
<td><strong>93</strong></td>
<td><strong>87</strong></td>
<td><strong>180</strong></td>
</tr>
</tbody>
</table>

* Because multiple responses were coded for each respondent, the total number of responses is greater than the total number of respondents.

Statement 3.2 displays the position of interviewees regarding the nature of customary law from the point of view changes that it might undergo. A sizeable number of interviewees defended the unchanging nature of customary laws, although their reasons for such a stand differed widely. 13 interviewees felt that customary laws cannot be changed due their divine origin; 29 interviewees held that change in them is not possible because these laws contained ancestral wisdom; 12 of them opposed change in customary laws since these laws have village-specific origins; and 15 of them were against change in customary laws because it would affect the unity in the village.

Those who upheld a divine origin of customary laws categorically stated that customary laws are beyond change, since they are given by gods. A Garo elder voiced his opinion in this way:

"Customary laws are unchangeable... We believe that these laws have come down to us from the gods and what has come from the gods cannot be changed. It has eternal value. Our ancestors were frightened to violate them for fear that the spirits will take revenge. Even our elders who taught us these customary laws told us that we have to follow them without any change. Otherwise the spirits will harm us by sending natural calamities or diseases of all sorts. So I am of the opinion that we should not touch them."

The above-quoted Garo elder puts forward three reasons why customary laws should not be changed. First, since gods gave the customary laws, human beings have no right to tamper with them: only gods can change them. Second, customary laws are eternal since their origin is divine. If they are eternal, then they are not subject to vagaries of time. Third, the gods will take revenge if the practitioners of customary laws try to change the laws.

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124 This interview with Mr. Sengson T. Sangma took place at his residence in Dingnapara, West Garo Hills District, on 11 November 2006 between 5.45 and 6.35 pm. Mr. Benabet Marak was the interpreter.
Stressing the first point of divine authorship of laws, an Angami elder said: “No one can change customary laws. Gods have given them to us and only gods can change them. No human beings can change customary laws.” It is interesting to note that most elders backing divine authorship of customary laws have proposed the third reason for the unchangeable nature of customary law. Fear of divine anger and vengeance seems to be the overwhelming reason why they would not like to see any change in customary law.

Ancestral wisdom was another ground on which the sacrosanct nature of customary laws was defended. The ancestors had a comprehensive grasp of a specific problem and suggested the best solution for it. If this solution worked well for centuries, the need for their change does not arise. The argument here is that changing customary laws would be tantamount to disrespecting the wisdom and advice of ancestors contained in customary laws. According to Mr. Neiketuo Ziephrō, “Our customary laws are not subject to change. They have come down to us from our ancestors. Our ancestors foresaw what was good for the community down the centuries and put together these laws for the benefit of the community. This has come down to us without any change and we have the responsibility to preserve them.”

Mr. Jengnang N. Sangma, a Garo elder from Songsak, East Garo Hills District, maintained that the ancestral wisdom contained in the customary laws can withstand any change the community faces: “Achik customary laws cannot be changed. The need does not arise. As I mentioned earlier, they contain the wisdom of our ancestors. This wisdom surpasses time and can bear the brunt of crises that the community might face in the

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125 Mr. Vilhūsa Khatso, supra, n. 109.
126 Mr. Neiketuo Zeephrō, is a village elder in Chiephobozou, Nagaland. This interview with him took place at his residence on 19 September 2006 between 11.05 and 12.10 pm. Mr. Kevin was the interpreter.
Sangma seems to uphold the ingenuity and resourcefulness of ancestors in storing such a wealth of wisdom and knowledge in customary laws.

Mr. Vilhüsa Khatso argued that customary laws were agreed upon by the founders of a village when the village was set up. There was an elaborate religious ceremony held during which customary laws were sanctified and oaths were made to be faithful to these laws. According to him, with such history behind the origin of customary laws, one should not think of changing them:

Customary laws are closely related to the origin of a particular village. Once the village is settled, no one can change the laws. The village started here and customary laws also originated here. We just cannot change them. During the starting of the village lots of sacrifices and rituals were performed. Customary laws also were sanctified and our ancestors vowed to be faithful to them. Therefore if some village does not follow customary laws, then in that village lots of natural calamities will take place. This is one reason why we should not change customary laws.

The elders, who argued the case for the unchanging nature of customary laws on the basis of ancestral wisdom and the auspicious occasion of setting up the village, defended such a stand on the ground of the inaugural moments of these laws. To them, the inaugural moments were precious and shrouded in an aura of inestimable wisdom appropriately sanctified by religious ceremonies. The wisdom of these defining moments has to be respected and guarded against any contingency that arises in the course of history.

Some Angami elders made a case for the unchanging nature of customary laws on grounds of truth and justice. According to them, Angami customary laws have upheld truth and justice for generations and, therefore, the need for altering them does not arise.

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127 The interview with Mr. Jengnang N. Sangma took place at his residence in Songsak, East Garo Hills District, on 19 November 2009 between 5.30 to 6.30 pm.
128 Mr. Vilhüsa Khatso, supra, n. 109.
"We may change our life style and food habits and even our religion. But customary laws cannot change. They are deeply ingrained in our mind and thinking. Nothing can wipe them out because they are based on truth and justice. So there is no need at all of their being changed." Mr. Pukron Kiki echoed the same argument when he said, "Customary laws cannot be changed. There is nothing to change in them. It is based on truth and no one should tamper with truth."

The argument here is mounted on the grounds of truth and justice. According to the initiators of this argument, truth and justice are values that are enduring and perpetual. If these values are unchanging, the laws that are derived from these values are also immortal in nature. If they are immortal, the reason for their change does not arise.

For Mr. Visalie Theruo, Political Assistant to District Commissioner, Kohima, Nagaland, the ultimate value of customary laws is the cohesion of community, and any alteration in customary laws will adversely affect the unity of community.

The customary laws are such that even the guilty or the accused has the confidence that there is always enough space for forgiveness and consideration in them. The accused, in spite of his guilt, feels in his heart that the judgment is such that he will not be overburdened with the penalty and that the community will claim him back. The complainant also is very much aware that he should forgive. There is an element of give and take in our customary laws so as to keep the community united. This aspect highlights the great wisdom stored in our customary laws and for this reason I feel that we should not change them.

Although Mr. Theruo’s position might sound romantic, (for it is critiqued later by other interviewees), one cannot disagree on the strong communitarian thrust of these

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129 This interview with Mr. Vileo Rutsa, Former Chairperson of Village Council, Kohima, took place at his residence in Bada Basti, Kohima, on 4 October 2006 between 8.15 to 9.20 pm. Mrs. Azenuo Concepta was the interpreter.
130 Mr. Pukron Kiki, supra, n. 118.
131 This interview with Mr. Visalie Theruo, Political Assistant to District Commissioner, Kohima, took place in his chamber in DC office Kohima on 5 October 2006 between 1.25 and 2.10 pm. Mrs. Azenuo Concepta was the interpreter.
laws. The emphasis of customary laws on claiming back the errant individual who has disturbed the equilibrium of the community has been well documented by anthropologists (Driberg: 1934; Gluckman: 1973). Mr. Theruo’s fear was that if the changes introduced in customary laws are too far-reaching, it might affect the underlying community ethos. This fear might have led him to oppose change in customary laws.

As already noted, those who believe in the sacrosanct nature of customary laws were elderly people, most of them above 70 years of age. The rest held that customary laws change and are subject to a process of review. But their reasons for justifying change varied depending on age-group, gender and education.

Some held that customary laws by their very nature are dynamic. The internal dynamics of these laws are such that they cannot but change. Change is an important component of these laws, without which these laws will lose their relevance to a community. “Change and reform is in the very nature of customary laws. It is due to this dynamic aspect that these laws have gradually evolved over centuries. The moment these laws become stagnant, they become outdated and this in turn will affect society negatively.”132 Change is the hallmark of customary laws; it is this feature which makes customary laws dynamic. Shorn of this aspect, customary laws would stagnate and it would negatively affect the community.

Mr. Rupert, lecturer in Government College, Karkutta, East Garo Hills District, echoed a similar argument: “Customary laws kept on adapting to changing circumstances and times. It has always been like this. It never was rigid but it grew, adapting to people’s

132 Mr. Selavilie Hibo is the president of Khuzama Student Union. This interview with him took place in the Student Union Office in Khuzama on 2 September 2006 between 6.25 and 7.10 pm.
needs and requirements, always keeping the welfare of the community as its goal. The change in laws was always brought about by the collective opinion of the community.\textsuperscript{133}

The above interviewees justified the dynamic nature of customary laws on the ground that change is intrinsic to such a system. The internal dynamics of customary laws is such that it includes an intrinsic dynamic of change. Mr. Livingstone Momen, a senior advocate in Tura District Court, while upholding the built-in factors that led to change, mentioned that external factors, too, play a crucial role in shaping and reforming these laws. "...everything in this world is subject to change and modification. This change may be self-generated or may be due to external interventions like education, religion or the growth of civilization. It is not correct to say that the customary laws cannot change. Whether we like it or not, customary laws undergo change because forces of change are beyond their control."\textsuperscript{134} Momen holds that change is universal, and customary laws are no exception to change. Further, customary laws cannot shield themselves off from the influence of external factors. If they do so it will be at the cost of the law's degeneration and stagnancy.

Other interviewees also drew attention to the internal and external factors playing an important role in shaping and reforming customary laws. Mr. Sanggra A. Marak, lecturer in Don Bosco College, Tura, said, "Customary laws have to adapt to changing times and situations. In fact, over centuries they evolved gradually, adapting themselves to changing times. If they do not change in response to a changing context, then they will lose resilience. I would call these laws living laws. As living laws they are dynamic.

\textsuperscript{133} Mr. Rupert is a lecturer of Government College in Karkutta, East Garo Hills District. This interview took place in Christ King School, Karkutta, on 28 September 2006 between 11.15 and 11.55 am.

\textsuperscript{134} Mr. Livingston Momen is a senior advocate in District Court, Tura, West Garo Hills District. This interview took place in his chamber in Chandmari, Tura, on 23 October 2006 between 6.30 and 7.30 pm.
When they get nourished by new experiences, they grow and mature into sturdy laws. Marak’s observation that customary laws are living laws finds resonance in the views of some anthropologists and scholars in legal studies (Hart: 1995; Sheleff: 2000). According to these authors, customary laws are living laws because these laws are perpetually in a dynamic tension between stability and change.

Many interviewees held that obsolete and outdated elements in customary laws should be purged, but with a rider that this should be done without touching the core principles on which customary laws are founded.

Every law to be practical and to be effective has to adapt itself to changing times according to the needs of a community. If it does not adapt itself, it loses its use and relevance. So it is with our customary laws. These laws, too, underwent lots of changes in the course of history. They evolved, slowly responding to the needs of the times. Therefore it is misleading to say that customary laws are beyond change. There are some practices that we need to root out and some others which we need to preserve. It is for the community to decide which customs have outlived their tenure and therefore should be abolished immediately. In the same breath, we should not turn a blind eye to some laws which have kept the community united, and all out efforts should be made to preserve them.

Reiterating Mrs. Marak’s point, an Angami politician felt that customary laws have to be attuned to changes taking place in society and in the larger world. While advocating change he too insisted that some core principles remain untouched no matter what changes take place in the world.

Well...there are customary laws which are to be preserved and there are some of them which need to be reformed. One cannot simply say that they need to be totally changed or they should not be touched. As far as I understand, the customary laws adapt themselves to the changing times. They grow and change but certain core principles remain with them no matter what changes might take

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135 Mr. Sanggra A. Sangma is a lecturer in Don Bosco College, Tura. The interview with him took place in the college between 11.45 and 12.40.
136 Mrs. Fridina K. Marak is an elderly woman in Tura. This interview with her took place at her residence in Tura, West Garo Hills District, on 19 October 2006 between 9.40 and 10.30 am.
place in the world. For example, when someone steals an item he is supposed to pay back seven times the cost of the object. This needs to be preserved.  

What do the interviewees mean by “core principles”? When such a question was posed to Mr. Ketshukietuo Džűvichų, principal of Oriental College, Kohima, he said: “There are some laws which are closely linked to our culture and religion. I call these as core principles on which customary laws are built. They are the unifying elements underlying the customary laws, without which customary laws will collapse. I am a little vague here. I cannot pinpoint straightaway which are those laws. A law like seven times penalty for stealing should remain with us. This is something unique to our system.”

Many Angami interviewees expressed that the penalty of seven times the value of the object of stealing is something unique to the Angami and an intrinsic part of their identity as people; thus it should not be touched. Some others held that laws of inheritance should not be changed, while some laws applied to crimes can be changed. Mr. Ruokuongulie Iralu, senior advocate in Nagaland Bench of Assam High Court, held that customary laws dealing with murder might need change, while inheritance laws should not be tampered with.

According to our customary laws if a person accidentally murders someone then he has to be exiled from the village for seven years. But if it is an intentional murder, then the only remedy is to take revenge. Now I cannot say that this is a good custom and I feel that this needs change. But on the civil side, our customary laws are clear and effective. Like our laws on inheritance and marriage are very good and those should not be changed. In our society, the youngest son will inherit his father’s house and no female members of the family can inherit ancestral property, because ours is a patriarchal society. If a female is married to a person from another village and if she inherits land, the land will belong to

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137 Mr. Medokul Sophie is a Member of Legislative Assembly, Nagaland, representing Jakhama constituency. The interview with him took place in his residence in Kohima on 6 October 2006 between 8.05 and 8.55.

138 Mr. Ketshukietuo Džűvichų is the principal of Oriental College, Kohima, Nagaland. The interview with him took place in the residence of Mrs. Azenuo Concepta in Kohima village, on 5 October 2006 between 8.45 and 9.30 am.
another village and this will lead to a fragmentation of ancestral property. This should not be allowed, and therefore we should not change the inheritance rights.  

Most Angami interviewees stated that inheritance laws and the “seven times” penalty are examples for core principles of Angami customary laws. According to Mr. Iralu, sharing ancestral property with daughters leads to fragmentation of the land and conflict within and between families and villages. The rationale behind defending inheritance laws is, therefore, primarily village unity and preservation of ancestral lands.

Some respondents defended inheritance laws on the grounds of ethnic identity. Mrs. Visakonuo Hibo, lecturer in Japhii College, Kigwema, expressed this opinion.

As far as inheritance law goes, I still feel that we should uphold it though it does not give property rights to women. What we are practicing is the best solution for keeping the land intact and preserving our ethnic identity...I dare not suggest any change in this regard. Sharing property with daughters leads to conflicts between villages, khels and clans. Lots of problems related to land ownership would arise. That is why I feel that this law should be kept in tact.  

According to Mrs. Hibo, tribal social organization based on the khel and clan system will be affected when daughters are given ancestral land. This process gradually triggers an erosion of ethnic identity. Therefore although Angami inheritance laws are male-oriented, they should remain untouched for the sake of village unity, conservation of ancestral land, and preservation of ethnic identity.

If inheritance laws and the seven times penalty were core principles of Angami customary laws, what are the core principles on which Garo customary laws are founded? Many Garo interviewees pointed out matrilineal descent, the nokma system and a.king land holding system as the defining principles of Garo society. These three principles are.

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139 Mr. Rokuongulie Iralu is a senior advocate at High Court Bench of Nagaland in Kohima. The interview with him took place in his chamber on 1 September 2006 between 6.30 and 8.00 pm.

140 Mrs. Visakhonu Hibo is a lecturer in Japhu college, Kigwema, Nagaland. The interview took place in her residence located in Kigwema College campus on 11 December 2006 between 5.05 and 6.15 pm.
interrelated to such an extent that one cannot stand without the others. On matrilineal descent one interviewee said: "I feel that matrilineal descent is an important dimension of the Achik customary law system. It is on this principle that most of our customary laws are based. Even the Nokma system is founded on this principle. Very few tribes are practicing the matrilineal system and therefore we need to preserve this system. We should be proud of this system."\(^{141}\)

Garo society is matrilineal, all siblings claiming descent from their mother. In Northeast India, most tribes follow patrilineal descent. It is in this context that Mr. Sangma makes his observation of being proud of the Garo matrilineal system and pleads for its protection against any change. Since matrilineal descent is a defining feature of Garo society, customary laws have taken shape around this unifying principle. The other two features, i.e., the institution of nokma and the a.king land ownership system, are built upon this all important principle of matrilineal descent. Nokma, the husband of the youngest girl in the senior most house of the village, becomes the custodian of a.king land or village land. A.king land refers to the land owned by the senior-most clan of the village, which virtually the entire land of the village. Now the nokma, being custodian of the a.king, is bestowed with religious, social and political powers. Commenting on the nokma institution, Mr. Salison R. Marak said, "I am very happy and proud of nokma system. It is very dear to Achiks. Nokma is the guardian of the A.king land. If there is no nokma then we will be completely under the government of India and our land will

\(^{141}\) Mr. Robinus T. Sangma is a teacher and is considered a village elder in Dobetkolgre, Dawagre, East Garo Hills District. This interview with him took place in his residence in Dobetkolgre village on 16 November 2006 between 6.15 to 7.05 pm.
belong to them. If this happens, then we will lose our identity and culture. We will not be able to practice our age-old customs and practices.” 142

Lots of power is concentrated in this institution of nokma. Mr. Marak’s words poignantly express the depth of attachment Garos have for the nokma system. As already articulated, the institution of nokma is tied to the a.king land. Without a.king land the post of nokma will have no administrative or political powers, nor, indeed, any meaning. Therefore many Garos submit that the a.king land system should be protected.

Nokmaship is closely tied to a.king land. Nokma has not much standing without a.king land. You know well how important Nokmaship is for the Achik culture. The nokma decides which area to cultivate this year and which area to cultivate next year. He allots land to people of his clan and village to cultivate. While fixing a plot of land for jhum cultivation, soil and water conservation is kept in mind. It is not reckless burning and slashing of trees as some tend to write. It is all planned and implemented scientifically. The number of years is counted and a jhum cycle is maintained. All this is done by the nokma. He plays an important role in all this. He fixes the dates for the agricultural related feasts. And our culture is wedded to this a.king tradition. 143

The significance of a.king land is contested by others. More about this will be dealt later when discussing the impact of a formal system on land holding patterns of the Garo and the Angami societies. Here we limit the discussion to the core principles of Garo customary law. The above-quoted Garo interviewees have highlighted that Garo customary laws are grounded around the principles of matrilineal descent, the nokma system of political administration and the a.king land holding pattern. These three principles are fundamentally interlinked, and any change in one will necessarily impact the others.

142 Mr. Salison R. Marak is a village elder in Siju, South Garo Hills District. The interview with him took place at his residence in Siju on 2 November 2009 between 4.50 and 5.45 pm. The interpreter was Mr. John A. Sangma.
143 Mrs. Fridina K. Marak, supra, n. 136.
The argument of no change in core principles of customary law implies a framework within which customary laws function, being sensitive and responsive to changing situations. Within this framework there is space for stability as well as change. As Dr. Caroline Marak put it, “The basic principles or theoretical framework of the customary laws remains the same but what is practiced might change adapting to changing needs of a community. Theoretically customary laws are sacrosanct but in practice they have to adapt to changing circumstances.”\textsuperscript{144}

In line with this dynamic tension between change and stability, some interviewees justified change from the point of view of development, gender justice, increase in penalty for crimes, and change in some outdated practices but all within the broad framework of core principles which remain unchanged. An extended discussion on these issues will be done in the following chapters. This section on the nature of customary law has dealt with the question of the possibility of change in customary laws and the reasons for change.

Although some interviewees stated that customary laws should not be changed, a large number of interviewees held that these laws need change so as to remain relevant to changing environment and needs of society. Change in customary laws was justified on the ground of internal dynamics as well as external factors with which customary laws interact. It was also stressed that all the changes in customary laws occur within a broad framework of the unique core principles of customary law.

\textsuperscript{144} Dr. Caroline Marak is Head, Department of Garo Language, Tura Campus of North East Hill University. The interview took place in her office at the Tura campus on 23 October 2006 between 3.30 and 4.30 pm.
It might be appropriate to conclude this section on the nature of customary laws with the observations of Mr. Frederick Schauer, who highlighted the inevitability of change in customary law in following words:

Customs change, and they generally do so in incremental response to new acts, events, decisions, and interpretations. And, although as a strictly logical matter any of these incremental changes could be for the worse as well as for the better, it is part of the account of the value of customary law, just as it is part of the account of the value of the common law, that changes will, over time, and on balance, be for the better.\textsuperscript{145}

Conclusion

An examination of the origin and nature of customary law from the point of view of the Angami and the Garo tribal communities was undertaken in this chapter. It was observed that within these communities customary law is subject to multiple readings, assessments and contestations. However, despite the multiple perceptions and interpretations of customary law, a majority of interviewees expressed the opinion that there are a set of core practices and customs that are vital for the survival and continuation of culture. Some interviewees stressed the overriding importance of these certain core customary practices and laws in defining a unique identity for themselves as members of Angami or Garo communities.

From the discussion above it would be interesting to note the notion of community that arises. Is it a community that is a homogenous entity, having a single voice on various issues? Are the Garo and the Angami community unified collectivities agreeing on all basic issues? Or do these communities represent diverse voices on various issues? Are they an amalgam of heterogeneous voices and different opinions?

It is obvious from the varied positions of the participants in the in-depth interview that they have diverse opinions on the origin and nature of customary law. It was also noted that there are multiple readings, perceptions and understanding of customary law based on one's age, sex, education, faith, and exposure to outside reality. Despite their diverse opinions, the Garo and the Angami participants in the in-depth interviews underscore the importance of certain core principles which cannot be changed. It was also noted that some interviewees underscored the importance that as members of the communities, individuals should endorse certain core legal practices and beliefs.

Such an understanding and interpretation of customary law echoes the communitarian belief that each community is defined by its commitment to shared meanings, worldviews and goals (Sandel, 1982; Walzer, 1983; Young, 1990; Taylor, 1994; Parekh, 2000). However diverse the worldview of a community might be, its members take part in it and exercise their choices on the basis of the meaning system that has been thrown up by the community. It is in this dialectic of interaction between the community and the individual members that the identity of an individual is formed and he or she in turn contributes his or her share in enriching the culture and meaning system of a community. The chapter that follows will elaborate on the idea of the dialectical relationship between the individual and community in the context of customary law.