CHAPTER 5

INTERFACE OF TRIBAL INSTITUTIONS WITH STATE LAW

Has state formation in Northeast India resulted in weakening customary law? Much preliminary evidence seems to suggest that this is the case. To probe this issue a series of questions were formulated in the interview schedule, especially from the point of view of management of conflict resolution within the community. The idea was to unravel the option people make in choosing the system of conflict resolution. In order to settle conflicts, do they approach the customary law courts or do they take recourse to police stations, which apply the state laws? Or is there a third option of combining both customary laws and state laws in order to resolve disputes?

The first part of the chapter will give a brief introduction to the Angami and the Garo legal structures, both in the past and at present. The second part will discuss the interface of customary law institutions with state law apparatus.

Angami Legal Structure: A Brief Sketch

Original polity of Angami villages probably centered on a sacral headman, the phicū-u, a descendent of the village founder. His role was to regulate events in the agricultural cycle, deciding when to begin planting and harvesting, for instance, and leading religious rites (gennas) on those days. Aiding the phicū-u was his phicūmia or council, older men selected by their sub-clan, or chienuo, each of which sent a representative (Horam1975:51). Of these, 6 or 7 were named peyu, or leaders, based on their wisdom, virtue and oratorical skills, and without respect to their sub-clan. Matters that could not be settled easily were appealed to the council, where the peyu decided in consultation with the rest of the council in accord with customary laws, ideally in an
amicable way but always with an eye to both matter and motive of the problem or crime. With each village completely independent from others (and often hostile to them) this structure endured from time immemorial (Dzüvichü 2003: 89-90).

With the arrival of the British in Nagaland, the need for the new administrators to communicate with the Angami arose. Peyus who spoke Assamese, and so could do so, took this role, serving as intermediaries. All administrative decisions were passed to the people through these peyus, who were called dobashis (interpreters), who were provided with red waistcoats as a mark of their office. In light of the somewhat contradictory British policy of non-interference among the Nagas, administrators appointed the dobashis as judges of tribal conflicts, establishing Dobashi Courts in District and Sub-divisional headquarters at Kohima and Mokokchung to make decisions on the basis of tribal laws, decisions that could rarely be appealed to the larger imperial legal system (Sema 1986: 170). Even if applied the British administrators generally confirmed the decision of Dobashi Courts. For tax collection, on the other hand, members of the traditional phicümia were roped in. They were named gaonburas (village headmen in Assamese) who received 12 ½% of the collected tax and a red woolen shawl as a mark of office. This dual system was in effect until World War II (Sanyu: 1996-76; Dzüvichü 2003: 94-9).

After World War II, gaonburas were also given responsibility in the legal system. These gaonburas are still elected by their sub-clan (chienuo), and appointed by the Deputy Commissioner in consultation with the Village Council, which is comprised of these representatives. Among other qualifications, they are expected to be absolutely honest and unattached to a political group. The gaonbura serves as long as he wishes.
As a village official, he settles disputes within his sub-clan, collects the house tax, and informs his group about village events and decisions, traditionally by shouting from the highest part of his sub-clan's territory (Dzūvichū 2003: 96-97).

The institution of the *dobashi* developed after the war. Every district now has a *Döbashi* Court to deal with disputes, and they are now the primary interpreters of customary law. In this way, the state implements Article 371A of Indian Constitution, which holds that customary laws be given prominence in the administration of justice. *Dobashis*, who in theory are from each village, are appointed by the government usually on recommendation of the Village Council. A recent rule states they must also have matriculated. Candidates should know customs, folks songs, dances, and festive shouts (*mepfsvu*). They are part of a seniority system, and wear red vests and badges, particularly when in court. They intervene in cases of serious law and order breaches, and administrators seek their advice in most matters (ibid 98-102).

Village Courts are very powerful. They decide difficulties between wards, or *khels*, of the village and almost every other case. Disputes between people of different villages are also dealt with here, always in the village of the defendant or a neutral village. Decisions cannot be appealed to the Dobashi Court without the approval of the Village Courts. If a person refuses to comply with its decision, the Village Court can request imprisonment or other action by the Deputy Commissioner. Village Court also deals with inter-khel disputes. In such cases, the Village Court officials who are part of the disputing khels are kept away from officiating in the dispute resolution process (ibid: 110-111).
Diagram 5.1: Representation of Legal System among the Angami

SC: Supreme Court
Dobashi enjoys the status of III Class Magistrate. Serious civil and criminal cases usually are heard by the Dobashi Court. He also hears cases that are sent by the ADC or DC. All cases must be presented in writing. The complainant and defendant and any witnesses make statements and are questioned by the dobashis. They then discuss the case and give a verdict, always with an eye to both crime, motive and the traditions of customary law. If the Court members cannot decide, the contestants are asked to take an oath; failure to do so admits guilt. Oath-taking is considered the most serious penalty, worse than seven times restitution or seven years banishment. Appeal to ADC and DC courts is possible within 30 days of the verdict, but appeals in areas of land, water and boundaries are rarely granted, due to the inability of state courts to deal with customary law (Dzüvichū 2003: 112-113).

Garo Legal Structures: A Brief Sketch

During pre-British times, Garo hills was divided into hundreds of a.kings, each a small kingdom of 10 to 15 villages belonging to a machong or motherhood. The administration of an a.king was under the care of Nokma. He was the head of the machong. As the husband of the inheritress daughter of the oldest family in the village, he assumed socio-political authority. Nokma commanded respect and authority from his subjects in the a.king because he was the temporal and spiritual head of the a.king. He was the custodian and supervisor of the a.king land. He allotted land to different families in consultation with chras, the brothers of his wife. He resolved inter mahari conflicts and defended the a.king against external aggression. In the disposal of disputes he was assisted by mahari elders (Battacharjee 1978: 1-22; Sangma 198: 92-107).
The Garo on the hills were comparatively independent but those in the border areas came under the control of zamindars or land lords in the plains. There was constant tension and skirmishes between Garo Chiefs and zamindars in the plains. The British entered the scene in 1765 when East India Company secured the administration of the Presidency of Bengal. In keeping with colonial interests, they followed the policy of cautious non-interference. Gradually under the guidance of David Scott British made inroads into the administration of Garo Hills through the introduction of officers like laskars and sardars. Laskar had authority over 8 to 10 a.kings or small kingdoms ruled by nokmas. Sardar was Laskar's assistant in each a.king. The primary duty of the laskars was to collect taxes from a.king. They gradually were given responsibility to resolve conflicts between a.kings (Bhattacharjee 1978: 23-85; Sangma 1981: 66-79).

After India gained independence, Garo hills district came under the provisions of the Sixth Schedule of the Constitution of India. An Autonomous District Council was to look after the administration of Garos in the hills of Garo district. The District Council was both an administrative and legislative body. It has power to legislate on land (other than the land under the Stare reserved forest), establishment of village councils and their powers, appointment of Nokmas and on social customs. Laws passed by the District Council have to receive the assent of the Governor to take effect. District Council also acts as a judicial body especially to deal with cases that arise in the realm of customary law (Sangma 1981: 111-117).

There is a Subordinate District Council Court located at Tura. It is presided over by judicial officer appointed by the District Council. It has both appellate and original jurisdiction over cases that take place throughout the district. It has original jurisdiction
over cases that come directly from the villages, in case the parties to the conflict believe that they cannot get justice in Laskar Courts. It has appellate jurisdiction over cases that are referred to it by parties against the order of Village Courts (Sangma 1981: 109-110).

Diagram 5.2: Representation of Legal System among the Garo

At the lowest level there are village courts or Laskar Courts, one each for an elekha of the district. Each elekha consists of about 8 to 10 a.kings or villages. Laskar is
the president of the Village Court. Apart from Laskar there are two other members who are elected by the members of the village council. The jurisdiction of the village council comprises hearing cases that come from the elekha. It can hear civil cases and criminal cases that come within the purview of Achik laws and customs. It can also try petty offences and impose fine to a maximum of Rs. 50 (Sangma 1981: 107-109).

Apart from these courts which receive state patronage, the Nokma Court too settles disputes according Achik Niyoms. If Nokma cannot settle the case then mahari elders are called on to help him resolve the conflict. There are times when mahari mela or assembly of the maharis takes place to settle complicated cases, or cases which have bearing on important issues that affect the machong. In remote villages, disputes are still settled according to Achik Niyoms and nokma continues to play an important role in the administration of justice. These villages have refused to be allured by the temptation of state political institutions. 166

Extent of Acceptance of State Law Institutions among the Garo and the Angami

In the interview schedule, the section dealing with the interface of customary law with the state legal regime posed two questions about approaching the police station for the resolution of conflicts. Table 5.1 shows that except for 8 Angami respondents, almost all respondents across the Garo and the Angami communities agree that they approach the police station for the resolution of disputes. This shows the dent state laws have made during post-colonial times into tribal self-governing mechanisms despite the presence and functioning of customary law courts.

166 The researcher had the chance of visiting Dingnapara (near Selsella, Tura) where the Achik political, social and religious practices are still in vogue without being affected by state institutions. The villagers in Dingnapara were proud that their village was not affected by external influences and that they have held on to Achiks niyoms.
While all the Garo respondents agreed that they approach the police station to find a solution to the dispute, 8 Angami respondents mentioned that they do not go to a police station in order to resolve conflicts. Among the 8 Angami, 4 were village council members, 2 village elders and 2 women, all belong to above 60 age-group. The respondent’s age in responding to this query could be an indicator that the elderly among the Angami hold that customary laws are adequate to meet the legal requirements of people in Angami villages.

Table 5.1: Do People Approach Police to Resolve Conflicts?

<table>
<thead>
<tr>
<th></th>
<th>Angami</th>
<th>Garo</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Village Council Member</td>
<td>46</td>
<td>4</td>
</tr>
<tr>
<td>Women Association Member</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Youth Association Member</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Church Leader</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Teacher</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Village Elder</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>142</td>
<td>8</td>
</tr>
</tbody>
</table>

To further examine the ease with which people in Garo and Angami areas approach police, a second, related, question was posed to determine at what stage people approach the police. Do they approach the police at the first instance after the conflict or do they approach them after the case has been referred to the customary law court? Table 5.2 shows the glaring difference in response between the Angami and the Garo. While
only two Angami respondents pointed out that they approach the police first, all Garo respondents mentioned that in their area people do approach the police first without even bothering to refer the dispute to the customary law court.

Table 5.2: When Do People Approach the Police?

<table>
<thead>
<tr>
<th>Designation</th>
<th>At the First Instance</th>
<th>After the Verdict of Village Council</th>
<th>Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angami</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Village Council Member</td>
<td>1</td>
<td>46</td>
<td>4</td>
</tr>
<tr>
<td>Women Association Member</td>
<td>1</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Youth Association Member</td>
<td>0</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Church Leader</td>
<td>0</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Teacher</td>
<td>0</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Village Elder</td>
<td>0</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>2</td>
<td>142</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Designation</th>
<th>At the First Instance</th>
<th>After the Verdict of Village Council</th>
<th>Not Applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garo</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Village Council Member</td>
<td>50</td>
<td>50</td>
<td>0</td>
</tr>
<tr>
<td>Women Association Member</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Youth Association Member</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Church Leader</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Teacher</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Village Elder</td>
<td>20</td>
<td>20</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>150</td>
<td>150</td>
<td>0</td>
</tr>
</tbody>
</table>

As a rule, both in the state of Nagaland and Meghalaya, complaints about a dispute has to be referred first to customary law courts before it goes to police station or to state law courts. The responses in table 5.2 highlight the change that is taking place, especially among the Garo. They seem to be bypassing the requirement of referring the case in the first instance to customary law courts.
Table 5.2 also shows that 142 Angami respondents and all Garo respondents concede that people appeal to the state law institutions once the verdict has been given by the village courts. Such a provision of appealing to state law institutions is made available to them once a case has been dealt at the village council level. The response of Angami and Garo participants in the interview schedule accepting state law courts as appellate courts reveals the extent of acceptance enjoyed by the state law institutions.

Table 5.1 and 5.2 shows the acceptability enjoyed by the state law institutions among the Garo and the Angami tribal communities. This acceptability of state law bodies exists despite the simultaneous functioning of the customary law courts. What are the reasons behind such a high degree of acceptability enjoyed by the state law institutions?

**Reasons for Approaching State Law Institutions**

This question was open ended, with the purpose of eliciting multiple responses from the respondents. Table 5.3 shows various reasons that have led people to take recourse to state law institutions. An overwhelming number of respondents (101 among the Angami and 104 among the Garo) mention that the dissatisfaction with the verdict of the village council or customary law court leads them to appeal the case in a state law institution. In such a case, it would be pertinent to note the causes of such dissatisfaction with the verdict of the village council. Another related question concerns allowing the
disputing parties to refer or appeal the case outside the customary law system to state law institutions in search of resolution to the conflict.

Table 5.3: Why do people approach police station or state courts?

<table>
<thead>
<tr>
<th>Designation</th>
<th>Angami</th>
<th>Garo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not Happy with Village Council decision</td>
<td>33</td>
<td>35</td>
</tr>
<tr>
<td>To avoid Customary Law</td>
<td>35</td>
<td>14</td>
</tr>
<tr>
<td>Village Council Officials party to conflict</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>People want to show off their wealth</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Issues beyond Customary Law</td>
<td>8</td>
<td>4</td>
</tr>
<tr>
<td>People are ignorant of Nokma's powers</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Village Council not able to settle dispute</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Nokma is illiterate and incapable</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Penalty not proportionate to crime</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>In order to avoid taking oath</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>To take vengeance</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>101</td>
<td>104</td>
</tr>
</tbody>
</table>

This question was posed to elicit multiple responses

VCM: Village Council Members
YAM: Youth Association Members
CL: Church Leaders
TR: Teachers
VE: Village Elders

Why are people unhappy if the verdict was reached applying the principles of customary law? Such a question was posed to interviewees in the in-depth interview. The responses it elicited were varied.
Why Unhappy with the decision of Customary Law Court?

It has already been noted that the majority of respondents mention dissatisfaction with the decision of the village council as the primary reason for people approaching the state law institutions in search of the resolution of conflict. According to Mrs. Apralie Richa, “People go to the police station because they are not happy with the decision of the village Council. Sometimes the village council might give a verdict which is faulty or unfair. In such cases the party which is unhappy with the decision of the village council appeals to the police station or EAC’s [Extra Assistant Commissioner] court.”167

Echoing Mrs. Richa’s reasoning, Mr. Pudusil Zhotso, a dobashi at Jakhamo Dobashi Court, thinks that it is an unfair decision of the village council that leads the aggrieved party to go to the police.

Sometimes the decision of the village council is not just and fair. There are times the village court officials themselves become party to the conflict. There are also times when a party refuses to take an oath in the village council and the case cannot be settled. And sometimes village council out of pity does not administer the oath and tries to settle the conflict through compromise. This might lead to unhappiness in one of the parties which is seeking a just decision in a particular case.168

Why is the decision of the village council unfair? Mr. Zhotso points out two reasons. The first reason for unfair judgement is in the context of village council members becoming party to a conflict. An element of nepotism enters the picture and the judgement is reached on the basis of familial connections of a conflicting party to a member of village council. In such a case, facts of a particular case and even the tenets of customary laws are set aside and an unfair verdict is pronounced.

167 The Interview with Mrs. Apralie Richa took place in Jakhamo on 12 September 2006.
168 The Interview with Mr. Pudusil Zhotso took place in his house in Jakhamo on 11 September 2006.
The second reason is a lack of attention paid to the procedural aspect in settling a case. In the Angami tribal community, if a solution is not arrived at after listening to the parties to the conflict, then an oath is administered. The accused party is administered the oath during which he or she has to reject the accusation or offence brought against him by taking an oath on his life or on the lives of his relations. According to Mr. Zhotso, sometimes village council officials do not administer this oath for reasons known only to themselves, thus violating the procedural aspect of settling the case. There are also times when the accused party refuses to take the oath. In either case, the absence of the administration of the oath leads to discontent.

Miss. Vihelie substantiates the point made by Mr. Zhotso when she says, "...in some cases when the village council cannot solve the dispute and both parties do not take an oath, the verdict goes against the contestant. Since the contestant is unhappy about the verdict, he takes the case to Extra Assistant Commissioner (EAC) or to Additional Deputy Commissioner's (ADC) court." Thus among the Angami, two main reasons for the unhappiness over the decisions of the village council are an element of nepotism and a lack of procedural rigour.

Among the Garo, the main reason for the dissatisfaction with the verdict of village council is the unfair decision of the nokmas. "The nokmas are illiterate and in some cases incapable. Sometimes they tend to err in judging the cases. So people are not happy with the settlement of cases. In such a scenario people are left no option but go to the police

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169 Miss Vihelie is a lawyer practicing at Kohima District Commissioner's Court. The interview with her took place at her residence in Bada Basti, Kohima, Nagaland, on 18 August 2006, between 1.30 to 2.15 pm.
seeking justice." The office of nokma has been critiqued elaborately by the interviewees in in-depth interviews. This aspect will be delved into deeply a little later.

Avoidance of Customary Law Regime

Table 5.3 shows the desire of some people to avoid the rigorous application of customary laws as the second important reason among the Angami community for taking recourse to state law institutions. 104 Angami respondents in the interview schedule mention that people go to state law institutions in order to avoid the customary law so that they can win a favorable judgement. According to Mr. Ketshukietuo Dzūvichū,

The aggrieved party has to be given a chance to appeal and there is no harm in it if the case was not dealt properly in the village court. But there are some people who will never accept the decision of the village court. Even if they are wrong, they will go on appealing to higher courts. Mostly these people are rich and have money and at any cost they want to win the case and that is why they go on appealing. In the higher courts they win the case by hiring the best lawyer available. This is happening in our times and all this is because they want to avoid the strictness of customary law courts.

The field notes recorded in the Angami area mention that in the customary law system it is difficult to bring false allegations or to hoodwink the officials. The officials of a village council know the families of the village well. They are aware of the past conflicts regarding matters like land, inheritance and marital ties. So a person who wants to deceive and win the case will think of bypassing such a system.

Mrs. Neikievonuo Rūlho holds the determination to win the case even when a party is guilty as the main cause for people filing their cases in police station or in state law bodies. “Some people go to outside courts because they do not want to come under

170 The interview with Mr. Marcus N. Marak took place in Dawagre on 16 November 2006.
171 Mr. Ketshukietuo Dzūvichū, supra, n. 138.
the rule of village leaders and sometimes they do not want to respect customary laws. Some people just want to win the case even when they are guilty. In customary law such a case will not be entertained. So they go out to other courts bypassing the customary law institutions in order to win the case."\(^{172}\)

Compared with 104 Angami respondents, only 15 Garo respondents mentioned that people go to a police station in order to avoid the customary law system. For Garo respondents, it is the failure of the institution of *nokma* that has led people to the police station and state law institutions. In the in-depth interview too, the *nokma* institution has come in for heavy criticism. The institution of *nokma* as a reason for pushing people to the police station will be discussed soon. In any case, the *nokma* is the epitome of customary laws of Achiks. Since he is inefficient, people avoid him, which is equivalent to avoiding customary law. According to Mr. Sengson T. Sangma,

Some people go directly to police instead of going to the *nokma* because they are proud and stubborn. They have lost respect for the customary law system. Mostly these people are educated ones and had gone out of the village for education. When they come back they look down on this age-old system and find refuge in police and statutory law bodies. What is needed to settle disputes according to customary laws is not education but wisdom about the customary laws. Usually the *nokmas* are well equipped with the intricacies of these laws. Even if they are not knowledgeable there are mahari members who help him out in settling the disputes. Those people who accuse the Nokma and go to police want to win the case by hook or crook by avoiding the rigour of customary laws.\(^{173}\)

Mr. Sangma mounts a two-pronged attack on those who seem to belittle customary law and go to police. First, he holds that only those people who are educated outside the Garo Hills District tend to look down on customary laws. He attacks this group of people saying their basis of education is knowledge but the foundation of

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\(^{172}\) This interview with Mrs. Neikievonuo Rülho, Former President of Women Association, Nerhema, took place in her residence in Nerhema on 20 September 2006 between 10.15 to 11.30 am.

\(^{173}\) The interview with Mr. Sengson T. Sangma, took place in his residence at Dingnapara, Selsella, West Garo Hills District, on 11 November 2006 between 5.45 to 6.40.
customary law is wisdom. To settle disputes education is not necessary but wisdom is. And the officials of customary law courts do not lack wisdom.

Secondly, even if the nokma lacks wisdom, for sometimes he can be young in age, there are elders from the mahari who advise and guide him. He is not alone in assessing the case. He is aided by the wisdom of other mahari leaders. Thus it is unfair to criticize the office of nokma who in a way is the bearer of customary laws of Achiks.

This comparative discussion on avoidance of customary law among the Garo and the Angami has revealed an interesting insight. While the Angami seem to be avoiding customary law because of its rigour and strictness, the Garo seem to be avoiding customary law courts because they are weak and toothless. At this point, this is a tentative observation which needs solid empirical corroboration and substantiation.

**Cases beyond the Scope of Customary Law**

In Table 5.3, 17 Angami and 25 Garo respondents in the interview schedule hold that there are certain cases which are beyond the scope of customary law. By this they mean that customary laws have no answer to certain cases which are of recent origin. According to Mr. Kezhazer, "...certain cases we directly refer to the police station. Suppose if I have lost my vehicle. Even if I refer it to the village council, I don't think the village council will be in a position to nab the culprit. In such cases we report it to the police station. There are also certain cases which are directly referred by the village council itself to the police station. These cases are mostly regarding grave crimes, big robberies, and other felonies."174

174 Mr. Kezhazer is a former president of Angami Student Union. This interview with him took place in the residence of Mr. Neiba Bernard Pienyü of D Khel, Bada Basti, Kohima, on 15 August 2006, between 12.20 and 1.30 pm.
Mr. Kezhazer is aware of the limitations of customary law. Customary laws do not have mechanisms to tackle new disputes and conflicts which are alien to them. “No doubt customary law courts can settle most of the cases but there are some cases like highway robbery or murder etc. These cases need attention of the police. Again, there are cases involving the non-Angami. How can one impose Angami laws on outsiders? So therefore we need the statutory courts along with customary law courts in Nagaland.”\(^{175}\)

Mr. Nesia makes two important points. First, he finds customary laws inadequate, archaic and perhaps barbaric to deal with cases which are grave. He gives the example of murder. Customary laws had a way of handling murder in the past but that seems to be too cruel according Mr. Zhashúmo. “There are guidelines in our customary laws to handle murder, killing and suicide. But some of them need change. According to its provisions when deliberate killing takes place, the perpetrator can be mercilessly killed. This is an inhuman way of handling a situation. Therefore in certain cases it is better that we approach the statutory courts.”\(^{176}\) The nature of punishment, which according to Mr. Zhashúmo is inhuman and outdated, is one reason for the limitation of customary law.

Secondly, he points out to the presence of non-Angamis in Angami territory. Can Angami customary law be applied to them? He answers in the negative and holds that in such a situation customary laws will be helpless. There are certain cases which are beyond the reach of customary laws. Thus the need arises for an alternative legal system. In Nagaland, the state legal institutions have been an alternative mechanism of conflict resolution for decades.

\(^{175}\) The interview with Mr. Neisa Zashúmo took place in his house in Phesama on October 7, 2006.

\(^{176}\) Ibid.
Among the Garo, similar reasons were expressed regarding the limitations of customary law in dealing with grave disputes. "These days the police and regular courts handle criminal cases. Cases like murder and suicide cannot be handled by nokma and laskars. The customary law or village courts can handle only silly and petty cases."\textsuperscript{177}

Echoing similar sentiment Mr. Beharam A. Sangma observed:

It is very difficult to handle all disputes according to customary laws. Difficult cases like murder automatically go to police. People would not appreciate having a murderer in the village. He is usually arrested and put in prison. Even in the past, murder led to headhunting. Eye for an eye was the rule then. This cannot be the case now. Yes, people talk of maharis sitting to settle disputes. It will work for simple cases but for cases like murder etc this will not work. The police and regular courts are the right places to deal with these cases.\textsuperscript{178}

Like Mr. Zhashümo in the Angami context, Mr. Sangma finds Garo customary law inadequate to tackle grave disputes. As he points out, "an eye for an eye" cannot be a worthy way of handling criminal acts. Since the customary law system has not come out with an alternative to handling grave cases, referring the case to the police seems to be the best alternative. Secondly, Mr. Sangma points out that customary laws as they are practiced now are fit only to tackle silly and petty disputes. The reasons for such a state of affairs of customary law will be discussed soon.

\textbf{Nokmas are illiterate and incapable}

As noted earlier, among the Garo \textit{nokma} played an important role in maintaining law and order within his \textit{a.king}. In the past, he was all powerful within his \textit{a.king}, managing judicial, legislative and administrative functions (Sangma 1981: 63-66). With the coming of the British, his powers and influence over his \textit{a.king} gradually decreased.

The British introduced a new official called the \textit{laskar} who was vested with the judicial

\textsuperscript{177} This interview with Fr. Battista Bushelin, SDB, took place in Don Bosco College Hostel, Tura, on 24 October 2006 between 9.30 and 10.40 am.

\textsuperscript{178} The interview with Mr. Beharam A. Sangma took place in his house in Dalu on 28 October 2006.
powers and functions exercised by the nokma (ibid 66-78). This process continued after India gained independence. The ADCs established according to the provisions of Sixth Schedule of the Indian Constitution, too, continued exercising control over nokmas thus diminishing the nokmas influence in society.

The weakening of the office of the nokma has been articulated by almost all Garo respondents. Apart from the decrease in their powers and functions, lots of respondents have found them illiterate, inefficient and incapable of officiating at the customary law courts. Table 5.3 shows that 58 respondents (38.66%) among the Garo in the interview schedule have found the nokma illiterate and incapable of dealing with disputes. In the in-depth interview among the Garo, the Nokma’s limited ability to deal with disputes repeatedly came in for discussion. According to one of the interviewees, “Nowadays nokmas are not that skilled in their work. I think the majority of them are illiterate. The educated people in the village do not respect them much because they find them incompetent and incapable. This naturally makes people go to the police who are much more capable and efficient compared to the nokmas.”

Mr. Hubert B. Marak bemoaned the situation that has arisen due to the illiteracy of the nokmas.

It is sad that this situation has arisen. One of the reasons for such a scenario is that the officials of customary law courts are not educated but the litigants are educated. So the affected parties think that officials of the customary law courts are not capable since they are uneducated. This may be true or may not be true. As a result people do not have much faith or trust in the native system of settling disputes. Secondly, the power of nokma and laskar is less compared to police. For instance they can impose fine up to rupees 50 only. This is silly. So the punishment and the penalty are not proportionate. So people prefer going to the police where the accused is nicely thrashed. In fact the customary law system also

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179 Ms. Bridgit G. Sangma is the Former District Social Welfare Officer, Tura, Meghalaya. The interview with her took place at the residence of Mrs. Beatrice N. Sangma in Rengregitam, Tura, on 4 November 2006 between 5.30 and 6.15 pm.
has a police force called as the rural police. But he is not armed. He is just given a uniform and a baton but this is as good as useless.\textsuperscript{180}

There are two perceptive observations made by Mr. Marak, namely, the lack of education of \textit{nokmas} and the penalty imposed by nokmas not being proportionate to the offence. Litigants who are literate lose trust in a nokma who is not educated. From the field notes and the interactions with the respondents it seems clear that most \textit{nokmas} are not educated. Such a situation discourages those who are well-educated to go to \textit{nokmas} to settle disputes.

Secondly the power of \textit{nokmas} as well as \textit{laskars} is limited, especially in imposing penalties. Rupees 50 is a paltry sum to be imposed as compensation or punishment. People with a mentality to settle scores with the opponent would naturally opt for a state law system which imposes higher fines and which has jails to arrest the culprits and mete out punishment.

On the observation that \textit{nokma} is illiterate and therefore incapable Mr. Julius L. R. Marak says, "No doubt that there are nokmas who are uneducated and hence ignorant. But they are not alone in settling cases. There are \textit{maharis} and \textit{chras} involved who advice the \textit{nokmas}. One cannot say that the entire \textit{mahari} is illiterate and incapable. So as far as I understand there is no basic love and commitment to one’s traditions and practices among the \textit{Achiks}. And that is why people go out to police to settle disputes."\textsuperscript{181}

Mr. Julius L. R. Marak agrees that a \textit{nokma} might be illiterate but that need not make his decisions faulty. He is not alone in arriving at judgement. He is supported by

\textsuperscript{180} Mr. Hubert B. Marak, is Former Additional Deputy Commissioner, Tura, and at the time of the interview an Officer on Special Duty, Shillong, Government of Meghalaya. The interview with him took place at his residence in Araiain, Tura, on 5 November 2006 between 11.15 am and 12.15 noon.

\textsuperscript{181} Mr. Julius L. R. Marak is an author on Garo Customary Law and Culture. This interview with him took place in his residence near Polo Grounds, Shillong, Meghalaya, on 6 February 2006 between 9.35 and 10.20 am.
the leaders of the mahari. It is a corporate decision. Thus the complaint that he is incapable and incompetent does not hold water.

Commenting on the powers enjoyed by the police and the state law institutions vis-à-vis customary law institutions, Mr. Santhosh R. Marak has this to say:

Traditionally nokmas were very powerful. But these days leave alone nokma, even laskar who is a third class magistrate is bypassed! This is so because we have another system working simultaneously with Achik political structures. The police and regular courts have been established who have taken over the function of law and maintenance. The customary law courts settle only petty cases. So most of the criminal cases are to be reported to the police and then to the statutory courts. Still civil cases are handled by the customary law courts. Then again laskar cannot fine more than 50 rupees. So he cannot entertain grave cases. That is why people go to police and regular courts to settle their cases.182

Reiterating this imbalance in penalty between the customary and state law systems, Miss. Bulbully S. Marak, made the following appropriate observation. “A nokma’s approach to settling a dispute is not to punish the guilty thoroughly but to find a solution to the problem through negotiation and compromise. The idea is to bring the person who has gone astray back to the community. To that extent the criminality of the act is downplayed and penalty given is not severe. Whereas the penalty imposed by police is severe and effective too. Hence people are attracted to police system.”183

Mr. Kollaram T. Sangma, a nokma himself, expressed helplessness about people going to police and the penalty imposed by nokma. “Though I am a nokma I find myself helpless in this regard. How can I stop people from going to police? They are free to approach me. But if they do not approach I am helpless. People seem to be not happy

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182 Mr. Santhosh R. Marak is the Additional Deputy Commissioner of South Garo Hills District, Meghalaya. The interview with him took place at his residence in Bhagmara, South Garo Hills, on 31 October 2006 between 11.25 am and 12.15 noon.
183 Miss Bulbully S. Marak is a Touring Officer of South Garo Hills District, Bhagmara. This interview with her took place in her residence in R. C. Compound, Bhagmara, Meghalaya, on 31 October 2006 between 4.35 and 5.25 pm.
with the penalty and punishment given by the customary law officials. Hence they want to go to police who nicely beat up the guilty."\textsuperscript{184}

Some of the interviewees in the in-depth interview mentioned that apart from being illiterate and incapable, some nokmas are ignorant of their powers and functions. This lack of awareness of their functions is made use of by the police. "...there is the ignorance of nokmas about their powers and functions. They are not aware of their responsibilities. Since they do not efficiently exercise their powers due to ignorance, people too consider them useless and go to police to settle cases. Police are just waiting and people easily get hooked."\textsuperscript{185}

Ignorance on the part of nokma is one side of the story. The other side of the story is that Achiks themselves are ignorant about the powers and functions of the nokma. "There are two points here. One is that the nokmas themselves are not aware of their powers and functions. If they are not aware of their powers, then how can they exercise them? On the other hand, people too are not aware of the powers of Nokma. This too has contributed to the weakening of nokmas. I think nokmas being illiterate has contributed a lot. If maharis take care to select able educated nokmas, this institution can be effective."\textsuperscript{186}

\textsuperscript{184} Mr. Kollaram T. Sangma is an a.king nokma of Bawigre, Jengjal, West Garo Hills District, Meghalaya. The interview with him took place at his residence in Bawigre on 22 October 2009 between 7.15 and 8.45am.

\textsuperscript{185} Mr. Skylance G. Momin, is a retired Inspector General of Police of the state of Meghalaya. Currently, he is the President of Council of Nokma of West Garo Hills District. The interview with him took place in the office of the Council of Nokma, Ringre, Tura, on 6 November 2006 between 11.45 am and 12.35 noon.

\textsuperscript{186} Mrs. Beatrice N. Sangma is Ad Hoc Judge, Fast Track Court, Tura, Meghalaya. The interview with her took place in her residence at Rengrigitam, Tura, on 4 November 2006 between 4.15 and 5.10 pm.
Many interviewees made it a point to mention that the penalty imposed by *nokma* is very light compared to the state law institutions. As noted, the highest penalty that a *nokma* or *laskar* can impose is Rs 50. This, according to most interviewees, is silly. The police can be tougher in their punishments. They can beat up culprits and put them in jail. This has made the police more attractive compared to the *nokmas* in dealing with disputes. Thus the powers of police are superior to that of *nokmas*.

Therefore the nature of power that embeds customary law is singularly different from state law. In the first power belongs to the community and is employed to reproduce it. In the second case power is the attribute of the state institutions.

**Impact of State Formation on Customary Laws**

The first hypothesis of the study states that state formation in Northeast India has resulted in the weakening of customary laws of tribal communities. To test the hypothesis two tribal communities, namely, the Angami of Nagaland and the Garo of Meghalaya were chosen as representative sample of Northeast Indian tribal communities. The Angami in Nagaland come under Article 371A while the Garo of Meghalaya come under the provisions of Sixth Schedule of Indian Constitution. One of the intentions of the study was to find out to what extent these two different political packages have helped build a state with strong customary law moorings.
A question was posed to the respondents in interview schedule to find out to what extent state formation in Meghalaya and Nagaland has led to the weakening of customary laws. Pie chart 5.1 displaying the data from interview schedule shows that among the Angami 46 respondents out of 150 (31%) and among the Garo 134 respondents out of 150 (89%) agree that the entry of liberal democratic institutions in their areas has resulted in the weakening of customary laws. Pie Chart 5.2 displaying the data for the same question, but from in-depth interview, shows that 13 Angami interviewees out of 50
(26%) and 49 Garo interviewees out of 50 (98%) agreeing that customary law system has weakened in the process of state formation in their respective states. A high proportion of Garo respondents seem to be hinting at the deterioration of customary laws in the process of state formation. On the other hand, among the Angami, 69% in interview schedule and 74% in in-depth interviews, point out that their customary laws are sturdy in the midst of liberal democratic institutions.

Is there a difference in opinion across various designations or professions chosen for the interview schedule? Graphs 5.1 and 5.2 display the disaggregated form of the same data across professions among the communities under study. Graph 5.1 shows that among the Angami, in all groups - whether village council members or women association members or youth association members or church leaders or teachers or village elders - a majority of them have agreed that customary laws have not been weakened with the introduction of liberal democratic institutions in their society. In all groups except the village elders, nearly 75% of them have voiced their opinion in favour of the resilience of customary laws.

Among the Angami, out of the 20 respondents from village elders group, 9 (45%) hold that the native institutions have lost out in the interface with state law institutions. This group champions the cause of customary laws among the Angami. This group is comprised of knowledgeable people from each village, some of them still holding on to indigenous faith and beliefs. Unlike other groups, their perspective on the status of customary law is pronouncedly in favour of continuation without much change, as was noted in chapter 3. This is an indicator that not everybody across age-groups has the same perception regarding the status, applicability, and reach of customary law.
Among the Garo, the opinion seems to be unanimous across all groups that the influence of customary laws has declined in Achik society in the process of state formation. It is appropriate to note here that the Garo tribal community comes under the provisions of Sixth Schedule of the Indian Constitution. The provisions of Sixth Schedule were formulated by the Fathers of the Indian Constitution in order to assuage the fears of Northeast Indian tribal communities that they would be assimilated into the social, political and cultural ethos of mainland India.
The offshoot of the Sixth Schedule was the Autonomous District Council (ADC), which was given some degree of autonomy to administer the district safeguarding tribal social practices and political organizations. The ADCs were a political package which was supposed to safeguard the tribal social, political and cultural practices as well as prepare tribal communities for the introduction of liberal democratic institutions of Indian state (Stuligross 1999; Hansaria 2005).

There is a popular conception in India that the Sixth Schedule of the Indian constitution through the mechanism of ADCs bestows maximum autonomy on tribal communities to govern according to their social customs and political organizations. An account of the constituent assembly debates about the origin of the Sixth Schedule would drive away such a misconception. The Sixth Schedule of the Indian Constitution ultimately was a compromise between those who favored assimilation of tribal communities of the Northeast into the Indian mainstream and those who favored the approach of gradual integration of these communities into the Indian political system. “ADCs were intended to be a mechanism by which distinct tribal practices could be supported at the same time that those tribal communities gained access to individual-oriented political institutions.” Thus ADCs were to play a balancing act between tribal self-governing organizations and the liberal democratic institutions of India.

One needs to examine and assess the opinion of Garo respondents with this foundational background of Sixth Schedule. The responses of Garo participants in the

187 The Sixth Schedule of Indian Constitution applies to two hill districts of Assam, three districts of Meghalaya, and to Tripura. In a limited way it also applies to some regions of Mizoram and to some plain tribal communities of Assam. The states of Arunachal Pradesh, Manipur and Nagaland do not come under the provisions of Sixth Schedule. Refer chapter 3 to note the different administrative structures and political arrangements that are in place in the states of Northeast India.

interview schedule as displayed in pie chart 5.1 and graph 5.2 shows that customary laws have taken a back seat while making way for liberal democratic institutions. Nearly 90% of Garo respondents agree that the hold of customary law on Achik society has diminished, making way for state law institutions. This is not surprising if one has in mind the intentions of Sixth Schedule which aim at integrating tribal communities which are at the periphery. It seems to be clear from the data that to a large extent the intention of the government of India to establish its political and legal institutions in Garo Hills Autonomous District has been a reality. But this, as is clear from the data, seems to be at the cost of weakening the Garo self-governing institutions.

This is not the case with the Angami community, as can be seen from the data in pie chart 5.1 and graph 5.1. Only 46 Angami respondents (31%) agreed that the influence of customary law has decreased over the decades. The Angami community which is part of the state of Nagaland comes under the provisions of Article 371A of the Constitution of India. According to Article 371A,

(1) Notwithstanding anything in this Constitution - no Act of Parliament in respect of (i) religious or social practices of the Nagas; (ii) Naga customary law and procedure; (iii) administration of civil and criminal justice involving decisions according to Naga customary law; (iv) ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.189

These provisions of Art 371A make space for the governing of villages in Nagaland according to customary laws of Naga communities. The state or the liberal democratic institutions that emerged out of Art 371A have the agenda of defending the Naga customary law regime. Their very existence and functioning is defined in terms of

defending the customary law institutions. Have these provisions of Art 371A worked in favour of the customary law system in Nagaland? Has there been a meeting ground between customary laws and state laws? As noted in Graph 5.1, respondents across professions have asserted that customary laws have not weakened in the presence of state law and its institutions. If Angami customary laws have remained strong despite the presence of state law, what has contributed to its strength? On the other hand, if Garo customary laws have been weakened in the presence of state laws, what has contributed to its deterioration?

**Reasons for the Weakening of Customary Law System**

Such a question was posed to the respondents of interview schedule. This question was posed as a sequence to a previous question which had elicited a response on the status of customary law, whether they are weakened or not. The question was worded as “Why do you say so?” The question was open ended so as not to restrict the respondent to a set of pre-formulated answers. In many cases, it generated multiple answers. The answers were aggregated in one table. For the sake of clarity, the table was split into two, one highlighting reasons for the weakening of customary law (Table 5.4) and the other, reasons for the survival of customary laws amidst the presence of state laws (Table 5.5).
Table 5.4: Why has Customary Law System weakened in your state?

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<td>VCM</td>
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<tr>
<td>People have lost respect for CLS*</td>
<td>8</td>
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<td>Police are powerful</td>
<td>7</td>
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<td>4</td>
<td>25</td>
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<tr>
<td>People trust police more</td>
<td>3</td>
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<td>1</td>
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<td>1</td>
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<td>People have lost respect for CLS*</td>
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<td>Police are powerful</td>
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<td>People trust police more</td>
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<tr>
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<td>31</td>
<td>229</td>
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This question was posed to elicit multiple responses.

*CLS: Customary Law System
VCM: Village Council Members
WAM: Women Association Members
YAM: Youth Association Members
CL: Church Leaders
TR: Teachers
VE: Village Elders

People have Lost Respect for Customary Law

Table 5.4 shows 33 Angami and 84 Garo respondents mentioning that people have lost respect for the customary law system. What do they mean by losing respect for the customary law system? It cannot be losing confidence in the tenets and philosophy of customary law itself. Chapters 3 and 4 have noted the meaning and relevance customary laws have for both the Angami and the Garo. They have endorsed the significant role played by customary laws in their life in no uncertain terms, though for different reasons.

One of the Garo elders clarified this point.

The institution of nokma is undergoing crisis for sometime now. Even in my village too we are facing crisis. The relatives of nokma in the village are not in a majority. As a result, he has lost his support base and people do not listen to him. In the past nokma was supreme in his a.king. The mahari of nokma was in majority in his a.king and hence he was solidly supported by it. These days he has lost that support base. Everybody wants to have power and hence politicization of this post is taking place. This has led to the division and dissensions in the village.
Nokma succession itself has become a contentious issue. All these things have led to people losing trust in the customary law system.¹⁹⁰

The interviewee, who wishes to remain anonymous, makes it clear that customary law per se has not lost respect among the people. What has lost respect is the office which interprets and applies customary law. In this case, it is the office of nokma which has become unreliable. We have noted above the disappointment expressed by interviewees about nokmas being illiterate and incapable. In the above quote, there is a new insight about internal squabbles among the maharis leading to a power struggle which has bought down the stature of the office of nokma. The succession of the nokma itself has become a divisive issue. The interviewee mentioned that in his village there are two nokmas vying for power and the two nokmas have gone to District Council Court to decide on the succession issue.

A field note also mentions another problem that is affecting the office of the nokma.¹⁹¹ This refers to the lack of support a nokma receives from his wife’s mahari. The chras or his wife’s brothers are an influential group in an a.king. Any major decision on a.king has to be taken in consultation with the chras. According the informant in some a.kings the chras do not support the nokma and this leads to tension between them. When this tension is taken note of by the subjects of an a.king, they naturally would like to avoid going to nokma, who is embroiled in a controversy, to resolve their disputes.

A large number of Garo respondents, that is, 84 out of 150, find the customary law system unreliable to give just and fair decisions. By this they mean that the devices

¹⁹⁰ The elder who shared this information wanted to remain anonymous. He did not even want his village to be mentioned. He hails from one of the villages in West Garo Hills District. The interview took place in his house on 22 October 2006.

¹⁹¹ This information was given by a respondent of interview schedule on 4 Nov 2006 in his residence in one of the villages of West Garo Hills. He wished to remain anonymous.
employed to administer customary law system are deficient or faulty and not customary law in itself. A similar situation is replicated among the Angami regarding the officials of customary law courts. "It depends on the effectiveness of concerned village institutions. Where people have trust in the traditional tribal institutions there the customary law structure has remained effective. Where people have lost trust in them, the traditional political structures have become weak. Much depends on the officials of village courts. If they are faithful to customary laws and their interpretation, there is no reason why people should shun customary law courts." 192

A similar comment is made by Mr. N. Z. Makritsü, former DC of Tuensang, that much depends on the officials of a village court to make customary law system work. If they are well versed in the knowledge of customary laws and are capable, then people will not lose trust in the customary law system. "If it has become weak the reason may be that either the officials of the customary law court and the village elders may not be having the full knowledge of the customary law or they may not be capable and efficient. Because of this some people may get disheartened with the native system. So some of them go to the statutory courts and this might have led to the weakening of our system." 193

In both Angami and Garo tribal communities, elders play an important role in transmitting customary laws to the next generation. Again, it is the elders who represent the clans and khels, thus becoming the members of village council. If they are not certain of the tenets of the customary laws and if their decisions are not based on customary

192 Mr. Tsievilie Mechoe is a former Minister for Rural Development of the state of Nagaland. This interview with him took place in Kohima College, Kohima, on 9 October 2009 between 9.15 and 10.15 am.
193 Mr. N. Z. Makritsü was a District Commissioner of Tuensang, Nagaland. The interview with him took place in Kohima at his residence on 15 September 2006 between 8.15 and 9.00 pm
laws, the members of the community are sure to lose trust in them. Earlier, it was also noted that in some villages, the members of a village council become party to the conflict and become a cause for passing a biased judgement which undermines the prestige of customary law courts.

In recent years, young men are appointed as *dobashis*. This too has negatively affected the customary law system in Angami society. Some feel that youngsters have limited knowledge of customary law.

If you have a look at the *dobashi* court you will realize that some of the *dobashis* are young and know mighty little about the Angami customary laws. They are really not groomed in that whole adage of what customary laws and how they should be applied. I have been told that sometimes the judgments given by these *dobashis* are not in keeping with the customary laws. Such instances result in people losing trust in our native institutions.\(^{194}\)

The knowledge of past cases and conflicts, which acts as precedent, is crucial in interpreting customary laws. Youngsters lack such knowledge. This in turn must have led to the lessening of trust in customary law institutions. In the past, imparting of knowledge of customary law was done in morungs. Such a forum has disappeared and the curriculum in the modern education system has no made space for the dissemination of knowledge of customary laws.

People losing respect for customary law due to the inability and inefficiency of some customary law court officials is an internal reason for the weakening of the customary law system. Some have put the blame on government for not training these officials, while others have called for internal reform. This aspect will be looked into a little later.

\(^{194}\) Ms. Rosemary Dziivichü is a member of National Commission for Women, Northeast, and on the faculty of Department of English, Nagaland University. The interview with her took place in Kohima, at her residence on 4 October 2006 between 6.10 and 6.55 pm.
State Law Institutions are Powerful

Table 5.4 highlights data on the causes for the weakening of the customary law system. It shows that 25 Angami and 95 Garo mentioning that police and the state law institutions have reinforced themselves, leading to the weakening of customary law. Just one sixth of Angami respondents mention this as against nearly two thirds of Garo respondents. There is glaring difference in proportion between the Garo and the Angami, who say that customary laws have weakened due to the presence of state law institutions, which indicates the extent of inroads state laws have made especially in Garo society.

In the in-depth interview among the Garo, the sense that the police and state courts have become powerful vis-à-vis the nokma was the constant refrain. The interviewees were asked what makes the police powerful. The reasons given by them were varied except that most were of the opinion that laskars, police, district council and DC have appropriated the powers of the nokma, thus making him a spineless leader of Achik political institutions. “In the past, the nokma was supreme in the village and his decisions were final. But with the coming of the British, they appointed laskar as someone superior to nokma. This curtailed the powers of the nokma. Gradually laskars, police and courts shared more and more of the nokma’s powers. This has weakened the office of the nokma who is the interpreter of our customary laws.”195

Mr. Marak represents the opinion of many Garo interviewees that the nokma has become a spineless office because his powers are appropriated by officials of state law institutions. Some would say that it all began with the creation of office of the laskar by the British. “The Nokma’s powers were limited by laskars during the British rule. And

195 The interview with Mr. Llewellyn R. Marak, an Achik elder, took place in his residence in Tura on 18 October 2006 between 3.45 and 4.15 pm.
now with the introduction of modern judiciary and autonomous district council, the
*nokma* seems to have lost many of his powers. *Nokmas* are definitely not as powerful as
before.”

There is a distinction that has to be made between the *laskars* and the police. *Laskars* are members of Garo village councils and judicial officers of Garo village
courts. They enjoy the status of third-class magistrate. As judicial officers, they resolve
the disputes according to customary laws. Police are law and order officials of the state
who resolve the disputes according to state laws whether they be IPC, CPC or CrPC.
While the appointment of *laskars* is made by the ADCs, the appointment of police comes
under the jurisdiction of state government. During the interview some people found fault
with *laskars* while others endorsed their contribution to Garo culture for/by being faithful
to the customary laws.

Some trace the history of *laskars* to British times to drive home the point that the
*laskar* is an alien institution. The *laskar*’s office was created as a regulating arm of the
British in the erstwhile Garo Hills District to collect taxes for them and to maintain law
and order on their behalf (Sangma 1981). In many ways, the *laskar* was the first non-
native office created by the colonial rulers to curb the powers of *nokma*.

The *nokma*’s authority was not limited in the past. It is after the coming of British
that some limitations were imposed on them. Officers like *laskar* and *sardar* were
introduced to curb the powers of *nokma*...British tactfully introduced these
officials into Garo administrative system. For instance, *laskar* was put in charge
of 10 to 15 *nokmas*. This was never heard of earlier. For the first time, a superior
authority curbed *nokma*’s powers.

196 Mrs. Beatrice N. Sangma, supra, n. 186.
197 For a historical account of the origin of *laskars* refer Milton S. Sangma. 1981. *History and Culture of
198 Dr. Caroline Marak is faculty member of Department of Garo, Tura Campus of North Eastern Hill
University (NEHU). The interview took place in her office in Tura Campus on 23 October 2009 between
3.30 and 4.30 pm.
Over the decades, *laskar* and *sardar* have become part of *Akich* culture. Since they, too, resolve disputes according to *Akich* customary laws, people have come to respect them. Mr. Jengnang N. Sangma stoutly defends the constructive role played by *laskars* in Garo society when he says,

While *nokma* is the leader of one *a.king*, *laskar* is the leader of many *a.kings*. They settled disputes between two *nokmas*. Before the coming of British, there was no mechanism to settle the *inter-a.king* conflicts. Therefore *laskar* post was established. I do not know how the *laskar* has weakened the *nokma*. Rather he has helped him, strengthened him. Cases that are not settled by *nokma* are settled by *laskar*. So according to me the question of *laskar* weakening the *nokma* and *Akich* customary law does not arise at all.

So the opinion among the interviewees regarding the role played by *laskar* in Garo society is divided. While some see them as key players in weakening *Akich* political organization during British times and later, others have come to accept them as part of Garo lore. But on the negative role played by police and other state law institutions in diminishing the influence of customary law in Garo society there seems to be near unanimous opinion among the interviewees in in-depth interviews.

It is a fact that the customary law courts have become weak due largely to police and other state organizations usurping their powers and functions. In *Akich* society, the crucial role played by *nokma* and *mahari* has been relegated to nothing with the establishment of police and legal institutions of the state. For example theft cases are to be tried by *nokmas* and then by the *laskars*. But people are taking these silly cases to the police and police are happy because this is easy income for them. Why should the people go to police while there is customary law system to handle these cases in the village? It is because police have slowly grabbed the powers of *nokma* and *maharis*.

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199 Mr. Jengnang N. Sangma is *laskar* of Songsak (Laskar No. IV: 55). The interview with him took place in his residence at Bonesongma, Songsak, East Garo Hills District, on 19 November 2006 between 5.30 and 6.30 pm.

200 The interviewee wished to remain anonymous. The interview took place on 6 February 2007 in Shillong, Meghalaya.
From the views of the interviewees it can be noted that police seems to be having a free hand in dealing with disputes. Some mentioned that police have redefined their powers and functions by taking control and bypassing the powers and functions which legitimately belonged to the native political institutions.

Yes, it is true that the customary law system has lost its sheen due to the presence of police. This is not good...In the villages some people take prestige in going to the police! This also frightens the opponent. We are aware how cruelly and brutally police deal with the villagers. This is the tendency in the villages today. From police side, in the past if any case came to them, they used to first go to the nokma and verify what exactly happened. But nowadays the police do not go to the nokma. They go to the village without the permission of the nokma and take action. This naturally offends the nokmas and weakens them.201

Apart from the police department which is a state organ, even the Autonomous District Council (ADC) came in for severe criticism from interviewees. ADC was created to be a body to bridge the gap between state and customary law institutions. It was a high level elected body of the district which had the function of preserving the distinct character of Garo tribal community. A majority of the interviewees saw its existence in a negative light.

It is true that over the years nokmas powers have been usurped by various governmental bodies whether it be laskar, District Council or DC. In all the tax collections District Council is interfering and is not giving the share of the nokmas. A part of the taxes collected on stones, stone chips, sand and timber are to be given to the nokmas. I do not think this has been paid. So naturally they feel their powers are snatched away by a body which is supposed to safeguard their rights.202

201 Prof. Milton S. Sangma was former Vice Chancellor of Tura Campus, NEHU, and retired of Professor, Department of History, NEHU. The interview with him took place at Tura in his residence on 18 October 2006 between 6.15 and 7.30 pm.

202 The interviewee desired to remain anonymous. He is a politician from William Nagar, East Garo Hills. The interview took place in William Nagar on 16 November 2006 between 2.15 to 3.05 pm.
Although most interviewees noted the adverse impact of police on customary law regime of the Garos, there were some others who mentioned that it is certain inevitable situations that prod them to appeal to the police. In some circumstances, the complainant is left with no choice but to go to the police in search of justice because they deal with the case effectively. In a perceptive intervention, Mrs. Beatrice N. Sangma said:

I think the mahari system is not as effective as the police. In the police station people get beaten up nicely and this creates fear factor in their mind, whereas in the mahari system, they are advised not to do unwanted things. Since the degree of coercion is much less in the customary law system, those who want to teach a lesson to the culprit take recourse to the police station. There are also times when there is disunity and infighting within the mahari. Then people have no option but go to the police. Then there is the factor of the penalty not being equal to the crime. People would like the culprit to be dealt properly and not let loose lightly.\(^{203}\)

Mrs. Sangma makes two pertinent points. First, she mentions the reconciliatory approach based on compromises in Garo society which does not result in proportionate penalty for an offence. This makes the accuser think of another forum which in tackling the case matches the offence with the penalty. Secondly, she mentions of the internal squabbles within and among the maharis. In such a situation, it would be hard to get a fair verdict and the affected people might contemplate on approaching an alternative conflict resolution mechanism. There is a positive note that is emanating from her intervention regarding the presence of the police and other state legal bodies.

A similar point of view was reflected in the opinion of a youth leader. According to him people discern before deciding which forum to go to in order to resolve the conflict.

In some cases people go with right intentions to the police so that the accused is really better dealt with by the police by tough penalties. This does not mean they are showing less respect to the customary law system. Another reason is that the

\(^{203}\) Mrs. Beatrice N. Sangma, supra, n. 186.
approach of the customary law court is reconciliatory based on compromises and negotiations. Therefore penalties imposed are light. So to punish the accused severely some people take the case to the police station.204

This youth leader seems to appreciate the presence of the police as a force which can deal with the offenders of law in a much more fitting manner than the customary law courts, which use the plank of negotiations as their primary base to tackle problems. He does not seem to see the police department decreasing the hold of the customary law system.

An official of the state law institution, Mr. M. R. Marak, agrees that police are powerful and have appropriated the space of the customary law regime, but soon adds that the real problem lies elsewhere:

It is true that the nokmas and laskars have become weak due to more powers enjoyed by police and others in state hierarchy. The police can wield lathi [baton] and put culprits behind bars. This creates fear in people. Such a scare of nokma or laskar is not there. So naturally police are far more effective than the nokmas. But this is part of the story. The real problem lies elsewhere. There are many factors that have contributed to this sorry state of nokmas. I would say that their powers and functions are not clearly defined by GDC [Garo District Council]. Due to this there is confusion between customary law courts and state law courts about their powers and functions. In such a situation, nokma does not have the confidence because he is not sure whether he has the power to settle disputes. His jurisdiction has not been clearly demarcated. So he thinks it is best for him not to entertain cases and send them to the police. This is what is happening at the village court level.205

Mr. Marak’s observation that there is no clear demarcation of powers and functions between state and customary law institutions is reiterated by others too206. In

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204 Mr. Gerilius Ch. Sangma is a youth leader in Jengjal. The interview with him took place at his residence in Baljek Agal, Jengjal, West Garo Hills, on 23 October 2006 between 6.15 and 7.15 am.

205 At the time of interview, Mr. M. R. Marak was ADC (Additional Deputy Commissioner) of East Garo Hills District, Meghalaya. The interview with him took place in William Nagar at his residence on 16 November 2006 between 8.35 and 9.20 am.

206 Mr. POIjen D. Sangma, Assistant Chairman, Meghalaya Law Commission and Mr. Hubert B. Marak, former ADC, Tura, and Officer on Special Duty, Shillong, Government of Meghalaya, too made a similar observation that the powers and functions of state and customary law institutions have not been clearly defined.
such a fluid situation nokmas have become diffident while police have exercised limitless powers even to the extent of bypassing the rules of consulting nokma and laskars. For such a situation, these interviewees put the blame on Garo District Council for not adequately defining the area of jurisdiction for these parallel systems of legal regimes.

To sum up, for some Garo people police have come as an alternative conflict resolution mechanism and this gives the people an option to choose between two systems. They have noted the infrastructural facilities to deal with the offenders in the state law system which is far superior to that of the customary law system. On the other hand, a majority of the interviewees in the in-depth interview and in the interview schedule have mentioned that police and other related state organizations have usurped the powers of the nokma who, in a way, is the bearer of the customary laws of the Garos. By usurping the powers of the nokma, as one of the interviewees put it, “they have sounded the death knell for the Achik system of self-government.”

Among the Garo, if the respondents of the in-depth interview and the interview schedule have perceived the presence of state law institutions as weakening the customary laws, how have the Angami respondents noted such a presence of state bodies in their society? Table 5.4 shows 25 Angami respondents mentioning that the police are powerful, which has negatively affected the customary law bodies. In what way has the state law institutes negatively affected the status of customary law? According to Mr. Pudusil Zhotso,

Sometimes the decisions of the dobashi court are overturned by EAC or ADC courts even when the verdict of the dobashis court was right. When such a thing happens, people start questioning the credibility of dobashi courts. In EAC or ADC courts, what matters is the capacity of the lawyers and not the truth. If

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207 The interviewee desired to remain anonymous. The interview with him took place in Tura on 23 October 2006.
someone has hired the best brain available, then he is bound to win the case, even if he is not right. In this process, the correct decision given by the customary law court is overturned. When this happens people start losing trust in the customary courts.\textsuperscript{208}

Mr. Zhotso's observation that state law institutions sometimes overturn the correct decisions of \textit{dobashi} court is endorsed by Mr. Vileo Rutsa. According to him, rich and wealthy people deliberately by-pass customary law courts and go to state courts to win the case. “Sometimes the guilty is wealthy. Because he is rich, he appeals to higher courts and wins the case. This sort of thing weakens the customary law system. These cases are increasing and this has reduced the importance of customary law system.”\textsuperscript{209}

There are others who find the police department and other state institutions useful because they serve their legal needs better. They see the state institution superior to tribal self-governing bodies. “The customary law courts have definitely become weak. The modern administration is well established and founded on sound principles. Given a chance most people outside the village or even those educated from within the village would prefer this system to customary law courts. The customary law courts settle mostly petty cases.”\textsuperscript{210} The point of view expressed here is on utilitarian grounds, that the state law institutions are grounded on sound principles and therefore are efficient as well as effective. In the presence of these competent state organs, native organizations are bound to lose out.

This elaborate discussion on the reasons for the diminishing influence of customary law institutions among the Garo and the Angami, based on the interview schedule as well as the in-depth interview, drew attention to two important aspects. First,
there is an internal inadequacy of customary law bodies which are not consistently able to rise up to the expectations of its practitioners. This deficiency is due to the inability and inefficiency of customary law officials vis-à-vis state law institutes, which result in adversely effecting the status enjoyed by customary law institutions.

Secondly, there are external forces which negatively impact the native system. These external forces are state institutions in the form of police and state law courts who are vested with more powers and better infrastructural facilities compared to customary law organs. Among the Garo, most seem to perceive the police and other institutions dominating the native organization, thus engineering the gradual collapse of Achik self-governing organizations. But there are some Garo respondents who note the positive contribution of state law forces as an alternative system of conflict resolution.

Among the Angami, about one sixth of the respondents in the interview schedule and a small minority among the in-depth interviewees seem to perceive state law bodies working against customary law institutions. While there are some who do point out that appellate state courts overturn the decisions of customary law courts, there are others who find in state law bodies a competent system at work which takes care of their legal and administrative requirements efficiently.

**Reasons for Salience of Customary Law System**

The discussion on the status of customary law up to this point has focused on the factors that have led to the deterioration of customary law system among the Garo and the Angami. But there are others who think that the customary law system has been salient and has remained strong even amidst the presence of state law institutions. As the previous tables in this chapter showed, 104 Angami (69 %) respondents in the interview
schedule noted that customary laws have not weakened in their community. The proportion was very low among the Garo. Only 16 respondents (11 %) assented that customary laws have not lost out to state laws.

Table 5.5: Why has Customary Law System is Salient in your state?

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<thead>
<tr>
<th></th>
<th>VCM</th>
<th>WAM</th>
<th>YAM</th>
<th>CL</th>
<th>TR</th>
<th>VE</th>
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<td>10</td>
<td>10</td>
<td>11</td>
<td>11</td>
<td>7</td>
<td>76</td>
</tr>
<tr>
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<td>2</td>
<td>5</td>
<td>12</td>
<td>3</td>
<td>4</td>
<td>40</td>
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<tr>
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<td>2</td>
<td>2</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>13</td>
</tr>
<tr>
<td>Not Applicable</td>
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<td>7</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>9</td>
<td>46</td>
</tr>
<tr>
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<td>22</td>
<td>32</td>
<td>25</td>
<td>20</td>
<td>175</td>
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<th>WAM</th>
<th>YAM</th>
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<th>TR</th>
<th>VE</th>
<th>Total</th>
</tr>
</thead>
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<td>2</td>
<td>0</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>10</td>
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<tr>
<td>Police reinforce CLS</td>
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<td>1</td>
<td>2</td>
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<td>Both Systems can co-exist</td>
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<td>7</td>
</tr>
<tr>
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<td>17</td>
<td>18</td>
<td>19</td>
<td>134</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td>20</td>
<td>21</td>
<td>23</td>
<td>22</td>
<td>157</td>
</tr>
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</table>

This question was posed to elicit multiple responses.

*CLS: Customary Law System
VCM: Village Council Members
YAM: Youth Association Members
CL: Church Leaders
WAM: Women Association Members
TR: Teachers
VE: Village Elders

Table 5.5 shows the reasons for the salience of customary laws in the communities under scrutiny in this study. 76 (50.7 %) Angami and 10 Garo (6.7 %) mentioned that their customary laws are resilient and can stand challenges from other systems of conflict resolution. By resilience is meant the capacity of customary laws to withstand challenges from other systems of conflict resolution and still remain relevant amidst changing times. Since more than 50 % of Angami respondents have noted that their customary laws are robust enough to encounter the state laws and still remain meaningful to it practitioners, focus will be more on the Angami responses while not neglecting Garo point of view.
Customary Law System is Resilient

As can be seen from Table 5.5, more than 50% of respondents across all groups, except village elders, assert that customary laws of Angami community are resilient. The interviewees in the Angami area were asked what makes customary laws resilient and hold up to a seemingly advanced statutory legal system. Mr. Vilhūsa Khatso from Jakhama said, “As far as Jakhama village is concerned, no one can escape the village council. They first have to go through the village council before they go to other courts. Even when they appeal to higher courts, they have to take along with them the decision of the village council and, most of the time, the higher courts uphold the decision of the village court. Therefore I do not feel that our system is weakened.”211

Mr. Khatso’s observation that no one from the village can get away from the customary laws of the village is supported by some more interviewees.212 It can be recalled here that in table 5.1, only 2 out of 150 Angami respondents agreed that people go to police at the first instance, bypassing the village court. Field notes taken in Khuzama as well as Jakhama villages inform that those people who take the dispute outside the village for resolution are not respected in the village. Thus there seems to be an internal mechanism that helps preserve the significance of customary law governance.

Further, governance in villages by customary law is mandated by Art 371A of the constitution. It stresses that the customary law procedure be rigorously followed in the villages to deal with disputes. Such a statutory protective mechanism which prevents the

211 Mr. Vilhūsa Khatso, supra, n. 109.
212 Mr. Phelhukhwe Kirha and Mr. Phekhweho Richa from Jakhama village had the same opinion that no one can avoid the village courts. If they bypass the village courts, the higher or appellate courts, send them back to village courts for the first hearing. It is only after the village court has given its verdict that a party can appeal to a higher court.
influence of external interventions has also contributed to the salience of customary law in Angami villages.

According to some interviewees, despite the presence of state law institutions customary law courts will remain meaningful. Some from the village may appeal the case in higher courts but that does not diminish the stature of customary laws because they are tied to the very culture of Angami people.

It is only some people who appeal to statutory courts. There those officials are bribed and the decision of the customary law court is overruled. In the village court there will not be bribe and no false witnessing is possible. There will be no corruption and because of that the case will be judged in the right way without much delay. It is the most inexpensive and simple method of dispensing justice. And above all, even in the presence of statutory courts our customary laws will remain relevant because they are meaningful to our people and they are intimately linked to our culture.  

Mr. Kirha argues for the resilience of customary laws on the basis of utilitarian as well as communitarian grounds. From the point of view of utilitarian concerns he takes note of advantages like the easy access of native courts, simple methods understood by people, no delay involved in dispensing justice, the impossibility of false witnesses and the corruption free customary law officials. Anchoring his argument on communitarian concerns he says that customary laws form the very epitome of their values, worldview and culture. Mr. Kirha's arguments in favour of the resilience of customary laws were supported by Mr. Richa who said, “Very rarely our cases go to statutory law courts and even if they go, they are sent back to our courts to be settled. Only rich people seem to be fond of going to statutory law courts. Even if some wealthy people appeal the case in

\[213\] Ibid.
EAC or ADC courts, customary law courts are strong enough to face the onslaught of external forces and come out triumphant.\textsuperscript{214}

According to another interviewee, customary laws are so resilient that even the statutory courts find themselves helpless to resolve some customary law cases which were appealed to them and thus send them back to the customary laws courts.

Angami customary laws are still strong and are very relevant. I can give an example from my village itself. Jakhama village had some problem with Viswema village on water supply. It was not solved during inter-village meeting nor at the dobashi level meeting. It went to DC court, then to High Court and even to Supreme Court. The highest court of our land sent it back to the customary law court to be settled! This talks for the strength and solidity of customary laws. Therefore I feel we need not depend much on statutory law bodies for the maintenance of law and order situation in our villages.\textsuperscript{215}

The author of the above words makes an important observation, that customary law cases are unique. If someone appeals customary law cases in state courts, the judicial fraternity in those courts might find it hard to settle these cases and send them back to the customary law courts. The example he gives proves this observation. Thus he argues that to resolve cases from Angami villages one needs to apply the tenets and principles of Angami customary law. This proves the resilience of Angami customary law in its interface with statutory bodies.\textsuperscript{216}

10 Garo interviewees felt that customary laws have remained strong and resilient in the encounter with state law institutions. In the in-depth interviews, the interviewees have asserted that customary laws are resilient in the remote villages. It was difficult to

\textsuperscript{214} The interview with Mr. Phekhweho Richa took place in his house in Jakhama on 10 September 2009.

\textsuperscript{215} Mr. Medokul Sophie, at the time of interview, was a member of Nagaland State Legislative Assembly representing Jakhama constituency. The interview with him took place at his residence in Kohima on 6 September 2006 between 8.10 and 8.55 am.

\textsuperscript{216} Mr. Vimedo Rutsa, an elder in Bada Basti, Kohima, recalled a case in which the Supreme Court of India had to send a case back to Angami Premier Body to decide on the nomenclature of a village in Southern Angami Region, whether the name of the village should be spelt Kidima and Kedima.
find a single interviewee asserting that customary laws are resilient in the face of state laws. But there were some who made a strong case for the resilience of customary laws.

In fact customary law system has been in vogue for centuries together and it has worked well for Garo Community. They have been settling all sorts of cases right from stealing to murder cases. This they have been managing and settling all by themselves. Now if the nokma alone tries the case, then the clan is not involved. But if the nokma wants the help or assistance, then he will call the maharis to his court. If they cannot solve it at the nokma’s court, then they will take it to the laskar court. What I feel is that each and every case can be settled according to our customary law if proper procedure is followed.217

In case the nokma needs assistance, he can get advice from elders in the maharis and even send difficult cases to the laskar court thus managing to handle most cases according to customary law. What is required is to follow the customary law procedure and this should suffice to manage most of the disputes within native system of conflict resolution.

Against those who mentioned that customary laws are strong only in remote villages, Mr. Sanggra A. Sangma argued that these laws can be sturdy even in urban areas. “Why only in the villages? Even in the towns we can settle disputes according to customary laws. We have introduced the nokma system in our locality. My father is a nokma but he is not an a.king nokma but a nokma of the locality. He settles the disputes without the help of the police. I am confident therefore of the ability of customary law courts to settle all sorts of cases without the help of police.”218 Mr. Sangma contends that if people take customary laws seriously, as is done in his locality in Tura, police might turn to be redundant force even in urban areas.

217 Mr. Gerilius Ch. Sangma, supra, n. 204.
218 Mr. Sanggra A. Sangma, supra, n.135.
Police Reinforce Customary Law

About 40 Angami respondents hold that police and state law courts reinforce the decisions of customary law agencies. One of the EACs in Kohima mentioned that even in his court he applies customary law procedure to handle most cases that come from the villages.\(^{219}\) An Additional Deputy Commissioner (ADC) mentioned, "I do not agree that statutory courts overrule decisions of customary law courts. I am an ADC and I really make efforts to strengthen the customary laws. We are to gain by strengthening the customary law system. Otherwise we will be overburdened."\(^{220}\) An Angami judge also argued that statutory courts do not simply apply the state laws to customary law disputes that are brought to their attention.\(^{221}\) He mentioned that sometimes they reprimand the complainant for appealing the case in state courts and send the case back to the village courts to be resolved according to customary laws.

The opinions expressed by these state law officials highlight the collaborative approach that is prevalent between these parallel systems of conflict resolution. Is this collaborative approach expressed by state law officials shared by the practitioners of customary law? In Table 5.4, 25 out of 150 Angami respondents (17%) hold that state law organs dominate the customary law institutions, while 40 respondents (27%) uphold the cooperative approach that exists between these two sets of organizations. Thus a bigger number among the respondents tend to notice the collaborative approach between state and customary law institutions. Asserting the collaborative approach between these

\(^{219}\) Mr. Razouvolie Dozo, is an EAC (J), DC office, Kohima. The interview took place in his office on 5 October 2006 between 12.30 and 1.15 pm.

\(^{220}\) Mr. Kenilo Apon was ADC of Cheiphobozou, Nagaland, at the time of interview. The interview with him took place in ADC's office in Chiephobozou on 21 September 2006 between 6.15 and 7.00 pm.

\(^{221}\) The judge of a state court did not wish to be identified. The interview took place in his house in Kohima of 9 September 2006 between 9.45 and 11.30 am.
parallel legal systems, one of the interviewees mentioned, “Even the statutory courts do not simply entertain any case from the customary law courts. And even if they entertain it, in most cases they uphold the decision of *dobashi* courts, thus helping strengthen customary law system.”

Among the Garo respondents, a small minority of 6 mentioned that state law bodies reinforce the customary law system. Among the interviewees, not a single person voiced an opinion that the police agency or state organs played the role of reinforcing customary laws. Almost all Garo have perceived state law organizations, and for that matter even the Garo Autonomous District council, as usurpers of the powers and functions of customary law institutions. But this does not mean that they do not want to have the presence of state law institutions in Garo Hills District. As noted already in this section, the respondents have noted the benefits of an alternative conflict resolution system but they seem to point out that the encounter between the two legal systems has not been on an equal footing.

The discussion on the salience of customary law among two tribal communities in Northeast India showed two different realities about the status of customary law. Among the Angami community, customary laws have remained salient due both to the inner robustness of the system as well as due to the protective mechanism in the form of Art 371A of the Constitution of India. From the data from the interview schedule as well as the responses of the interviewees it was clear that there has been an encounter between state and customary law systems on an equal footing. To a large extent, the state law institutions have reinforced customary law bodies which have resulted in customary law getting a firm anchor in the Angami villages.

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222 The interview with Dr. Adino Vitso took place in her office in SIRD, Kohima, on 5 October 2006.
Among the Garo, for a variety of reasons, the encounter between the state and customary law institutions have not been on an equal platform. The police seem to have become powerful and, to some extent, usurped the powers of customary law institutions. This has not helped in reinforcing customary laws. Even ADCs, which were the offshoot of the Sixth Schedule of Indian Constitution, have come in for severe criticism from the practitioners of customary law for clipping the wings of nokmas and laskars, the principal interpreters of Achik customary laws.

Conclusion

The first hypothesis of the study holds that state formation in Northeast India has resulted in the weakening of customary laws among tribal communities, begetting deep unease among them. The analysis in this chapter of the interface of customary law with state law institutions has demonstrated that the Garo and the Angami have encountered the liberal democratic institutions of the state at different levels. The hypothesis is supported by an overwhelming majority of Garo respondents. Pie Chart 5.1 shows that 134 out of 150 Garo respondents (89%) endorse the hypothesis. Among the Angami respondents, only 46 out of 150 (31%) endorse it and hence it falls short of requisite support.

The same trends were confirmed by the data from in-depth interviews. Pie Chart 5.2 displays that 49 out 50 Garo interviewees (98%) agree that customary laws have weakened thus reinforcing the result of interview schedules and endorsing the first hypothesis of the study. Among the Angami only 13 out of 50 interviewees (26%) have agreed that customary laws are weakened in the interface with state laws thus failing to support the first hypothesis of the study.
The analysis of the interface of two parallel systems of administration of justice has shown that various factors have played a role in either weakening or strengthening the native system of administration and conflict resolution. One of the defining factors has been the political package provided by the Constitution of India. In the case of the Garo, the Sixth Schedule provisions seem to have had adverse effect on the office of nokma, the very embodiment of Garo customary laws.

ADCs were meant to be an institutional arrangement to mainstream the tribal communities into national political system while at the same time help reforming and strengthening the native social and political organizations. They have succeeded to a great extent in the function of integrating the Garo political set up with that of national political set up. However this success has been at the cost of erosion of Achik customary law institutions.

Among the Angami of Nagaland, Article 371A of the Constitution of India seems to have had the intended effect. The customary law courts are still effective and efficiently handle the disputes that arise in the villages. The initiative of Village Development Board which is a success story in Nagaland for more than two decades is founded on the values and ethos of both tribal and state laws. The communitization venture of the State Government which entrusted more responsibility to the village community to take care of education, health, and electricity needs of the village has been doing extremely well.\textsuperscript{223}

From the data above it can be inferred that the Garo Autonomous District Council, an offshoot of the Sixth Schedule, has watered down the mandate given to it to safeguard the social and political practices of the Garo. It has become more an instrument in the hand of the state to propagate the policy and agenda of the state. On the other hand, Article 371A has largely succeeded in its mandate of allowing the customary law institutions to function according to their terms. The state formation that has taken place in Nagaland is on an equal footing between the customary and state law institutions. The emergent state has taken initiatives to make space for customary law bodies and in some ventures both have worked together despite some tensions.