CONCLUSION

In its encounter with diverse tribal communities in the world, the liberal democratic project of universal rights addresses the demand that space be made for their distinct way of life and culture. One of the primary concerns of tribal communities is the domain of customary law. They demand that these laws, which have a predominant bearing on their identity, be given space in the legal regime of the nation-states. Liberal democratic states have responded to tribal communities’ demands that their cultural rights be recognized and accommodated in the public domain with various protective measures, ranging from devolution of powers in various fields to territorial autonomy within the framework of the constitutions of respective states. However, many of these protective measures introduced by liberal democratic states were tinged with the tendencies of mainstreaming the tribal communities.

Such an orientation of the liberal democratic project of universal rights at addressing the cultural rights of tribal communities has not always been to the satisfaction of the stakeholders of these rights. One of the important areas where this dissatisfaction seems to be articulated is in the domain of customary law because it is intimately linked to the identity of the members of the tribal communities. Tribal communities hold that protective measures, rather than help safeguard customary laws, have resulted in their erosion. The dissatisfaction of tribal communities with the political packages presented by even liberal states has been manifest in the demands for greater autonomy to outright secession from the nation-state.

Such a trend presents itself in the Indian context as well. One of the positions that has been increasingly articulated and endorsed by the Indian political elite before and
after the nation gained independence was that tribal communities be mainstreamed into the greater Indian social and political setup. Such a position was strongly articulated in 1930s, in the writings of the sociologist, G. S. Ghurye, of the University of Bombay. His book, some would say his magnum opus, *The Aborigines — so called — and Their Future*, persuasively argued for the policy of the assimilation of tribal communities into the Indian mainstream. The arguments spelt out in his book were counter-posed to the generally consistent colonial tribal discourse, which through various political arrangements had tried to segregate the tribal communities from the Indian mainstream. The arguments of Ghurye invoked in typical liberal fashion asserted the primacy of the individual in the nation-state and argued for equal rights of citizens irrespective of their race, class, creed and sex.

Colonial tribal discourse had argued for the distinct identity of tribal communities and passed many Acts for the exclusion or semi-exclusion of tribal communities from regular administration. Ghurye's arguments, which were a strong rebuttal of colonial tribal discourse, soon found articulation in the Constituent Assembly of India, which constantly tried to undercut the colonial project by arguing against special status for any community. The argument was essentially liberal, asserting a common set of political institutions for all the citizens of India. The proponents of such an approach to tribal communities argued in the Constituent Assembly on the need to mainstream tribal communities so that every Indian citizen might be subject to a common set of laws. They argued that this would result in the creation and propagation of a robust Indian identity. At the same time, they also contended that while the cultural distinctiveness of tribal communities should be respected, every possible political measure should be
implemented to mainstream the previously segregated tribal communities. Ghurye’s argument was that different cultures should be allowed to interact with each other to create the conditions of the possibility of the emergence of a richer and robust all-encompassing Indian identity.

Such a position of mainstreaming was contested by Verrier Elwin and his supporters, who argued that a policy of integration, rather than assimilation, would better serve the tribal communities. He held the policy of assimilation to critical scrutiny and pointed out that such a package would ultimately result in homogenizing the distinct ways of life and meaning systems of tribal communities. It would also wipe out the diverse social and political institutions of these communities, thus doing them grave harm. He suggested the policy of integration through which Indian tribes would be integrated into the Indian mainstream as communities. Elwin had the ears of Jawaharlal Nehru, India’s first Prime Minister: his policies were implemented especially in India’s northeast and found expression in the Sixth Schedule of the Indian Constitution. Not to be undone, Ghurye’s arguments, too, found place in the Fifth Schedule of Indian Constitution which came to be applied to the tribes of Central states.

The Indian state in post-colonial times has continued its engagement with tribes through other protective measures in attempts to assuage the fears of these communities that their distinct tribal identity will be subsumed in the identity of the larger Indian mainstream. Thus Article 371A was inserted in the Constitution of India in early 1960s to carve out the State of Nagaland. 371A provides that customary laws be taken seriously in the administration of justice in Nagaland. Later, many other tribal majority states were created: Meghalaya, Mizoram and Arunachal Pradesh in Northeast India, and those with
strong embeddedness of tribal identity such as Jharkhand and Chhattisgarh. The Boro of Assam and the district of Darjeeling in the State of West Bengal were given the status of a Sixth Scheduled district.

Whether assimilationist policy, which sought immediate mainstreaming of tribal communities, or integration policy, which sought their gradual mainstreaming, the ultimate goal of both policies was to bring the tribal populations closer to the Indian mainstream. The means proposed were different, but the end was same – that is, mainstreaming tribal communities. This ultimate agenda of homogenization has not escaped the attention of tribal communities, many of which have responded with ever-increasing dissatisfaction, manifested in movements demanding autonomy, statehood and even secession from the Indian state.

It is with this background that the study was undertaken to examine and assess the success or otherwise, especially of the integration policies of the Indian liberal democratic state, in dealing with the often contrary claims of cultural and political rights of tribal communities of Northeast India.

**Representative Nature of the Study**

There is a deep variation among the tribal communities in their value systems, customary laws, political organizations and cultural institutions. Moreover, the response of the state has varied according to the unique natures of the social and political organization of tribal communities. While it is true that there have been studies on various customary laws of tribal communities in India and about their significance, they have rarely been studied in the context that has been defined in this study.
This study is comparative in nature. It examines from a comparative angle two much touted initiatives of the state to address the autonomy needs of tribal communities, namely, the Sixth Schedule in the state of Meghalaya and Article 371A in the state of Nagaland. The other aspect of comparison in this complex interaction is their system of social organization. The Angami are patrilineal and the Garo are matrilineal. The impact of state formation on these two different systems of social organization is also studied from a comparative perspective. It is through the lens of these two comparative angles, namely, protective measures and the system of social organization, that the data in this study is analyzed.

The study might give a wrong impression that it has bearing only on two tribal communities of Northeast India and thus has too narrow a focus. This need not be true. Every tribal community in India interacts with the state through various political and economic packages implemented by the state. In this process, both the state and the tribal communities are bargaining and negotiating space for each other. Despite the different social and political organization systems, this process of the interface of tribal institutions with the institutions of the state is common to all tribal communities. It is from this perspective that this study claims greater representation for its findings.

**Internal Dynamics and Resilience of Customary Law**

Colonial construction of the concept of customary law comprised of rigid and fixed norms was an aberration. Such a static view of customary law did great damage to it by imposing rigidity on it and caricaturing it as laws caught up in the iron grip of tradition. Such a perception of customary law in an inflexible framework is contested in the thesis. It is argued that customary laws are the living laws of specific communities
that change over time according to the exigencies of time. This change in customary law takes place around certain core principles which are the very foundation of the customary law system.

These core principles have persisted over time, and they might take on various forms. The core of customary law has remained the normative benchmark within or in spite of the change and reconstruction in these laws. The agency or factors of change can be internal or external. Internally-generated change takes place within a bounded community in a slow and gradual fashion while externally-influenced changes might bring about sudden and radical changes. For example, the introduction of modern outputs in the form of the market economy, education, and religion have resulted in bringing about major changes in the customary laws, but these changes have taken place around the core principles.

While such reconstruction and reinvention of customary law has been an ongoing process in different tribal communities and is in the very dynamics of customary law, at certain times the agent of change can indeed turn out to be a threat to the core principles of customary law. The depth of this threat depends upon the nature of the external intervention, be it in economic sphere, religious realm or political arena. In the case of the Angami and the Garo, the state has been the major external influence. The response of the customary laws to state has depended much on the kind of intervention the state has made over the years. For example, the modern inputs introduced by the state have threatened the core principles of Garo customary law which were built around the concept of a king land and the office of Nokma.
The response of the Garo in recent years to this threat of annihilation of the core principles of their customary laws has been in the establishment of the Nokma Council. This initiative has attempted to revitalize the office of Nokma by training its members in the knowledge of customary laws as well as state laws. Similar response is noted among the Angami as they, too, have established the Angami Public Organization to counter the overpowering presence of state institutions. Therefore, while customary laws have certainly undergone change in the Angami and the Garo tribal communities, it is important to note that the specific nature of changes they have witnessed is in keeping with the type or content of intervention made by the external agencies.

Another example is in the arena of religion. A greater majority of both communities have embraced Christianity. While appreciating the efforts of Christian missionaries in the field of education, authors have critiqued the adverse impact of Christianity on the cultural heritage of the tribal communities of Northeast India. It is true that many meaningful cultural practices have been wiped out due to the influence of Christianity. But it is also true that not everything was lost in the interface with a new religious ethos. In Angami villages, the practice of genna is still in vogue. The traditional priest, the kemovo, still initiates the religious rituals, whether they be genna or the celebration of the harvest feast, Sikrenyi. The contemporary marriage ceremony has two components: the religious ceremony is largely within the church while a social ceremony that follows gives it the sanction of customary law.

Thus this study contests the notion of any passivity of tribal communities in undergoing change that is portrayed by a great deal of the research and literature surrounding these communities. The data from the ground makes a strong case for the
continuing agency of the tribal communities and argues that while the agents of change—whether they be colonial power, Indian state, Christianity, commercial forces or education—have ushered in major changes, many of these changes also have taken place at the behest of tribal communities. While the colonial state tried to keep them bound to a geographical state, it is not necessary that the tribal communities remained within the parameters defined for their action. The parameters had power backing them, but tribals often rebelled.

This does not mean that they remained passive spectators to some limiting policies of the state. While it is not denied that power plays a major role, it is to be noted that the tribal communities have responded, even trying to outwit the external agencies, by going beyond the parameters imposed upon them.

Recreation and reinvention of customary laws

In the interaction with the state, the customary law categories are constantly being reworked in order to meet the requirements of the times. There were many areas in the past which were subject to customary law but have now slipped out of its control. Among the Garo, the practice of oath taking to test the innocence of the accused has almost disappeared. Though it is still in practice among the Angami, its use as a tool of conflict resolution is still being passionately debated among them.

There has been much questioning regarding the adequacy of customary laws in reaching out to the entire spectrum of contemporary life. There are strong differences of opinion with some asserting the self-sufficiency of customary law system and others holding that customary laws are inadequate. Despite this ongoing, there remain a broad agreement that customary law may not be able to reach out to the entirety of
contemporary life, and therefore there needs to be some extent of borrowing from the state law system. In a word, there is some degree of respect shown towards the liberal democratic institutions. For example, Art 371A seems to have helped in retaining customary law system. So either procedurally, in the sense of providing structures, or substantially, in the sense of providing assistance, there seems to be a detectable reaching out to a non-customary value system. It was noted that the amount of support these responses give to customary law vary according to people, their professions and their extent of exposure to outside world.

Contours of the Emerging State: Asymmetric federalism?

While the Indian state has been a major presence in the states of Northeast India, there has been a certain type of logic of democracy at work in these states. The tribal communities have responded to various policies and initiative of the state with specific moves that have, in turn, made the state respond to them in a creative way. The Thirteenth Amendment to the Constitution of India, which resulted in the insertion of Art 371A and the creation of the State of Nagaland provides a clear example. The provision of special status articulated in this Article is a unique and innovative response by Government of India to the decade long resistance of the tribal communities of Nagaland.

Some authors have perceived such a political package given to Nagaland as asymmetric federalism (Arora 1995: 80). The special status accorded to Nagaland was instituted to protect the culture and identity of Nagas through specific provisions like the application of customary laws in the administration of justice and restrictions on immigration of non-Nagas into Nagaland. It had further protective measures such as the restriction on outsiders from owning land in Nagaland. Such a special political package
had positive impact on the Naga population, and has led to many more ventures of cooperation. Special mention must be made of the Village Development Boards and the Communitization project which are witnesses to State and Customary law collaboration. On the other hand, such initiatives of cooperation between the two systems were limited in the Garo Hills districts. Village Development Councils have a strong presence in the Garo Hills and the state has been funding these development councils through various schemes and programs.292

The dynamics of encounter, resistance or response and the collaboration between the customary law and state law institutions has resulted in the emergence of a state which is receptive to a great extent to the sensitivities and identity based requirements of tribal communities. In the context of Nagaland, the emerging state has strongly backed the agenda of customary law, while this might not be the case with the Garo of Meghalaya. Those who have assessed the role of ADCs in the Garo Hills have noted that they are more about rhetoric and grand dreams than any concrete action plans for bolstering the native institutions (Burman, cited in Arora 1995: 85).

Given the experience of the Angami of Nagaland, this study argues that measures in the direction of asymmetric federalism be implemented in the tribal majority states of Northeast India. In Nagaland, a state which is proactive in terms of customary law, a positive ethos has emerged because of the constructive and creative encounter of state and customary law practitioners. This study suggests that the ongoing state formation in the states of Northeast can be deeply anchored in a customary law agenda founded on

292 The researcher did not have opportunity to go to the field to examine the fruits of National Rural Employment Guarantee Act (NREGA) since this scheme was just being implemented during the field work. There was buoyant atmosphere among the Garo about this new scheme.
asymmetric federal structures and policies. State power can be perceived within a broader, de-centered framework of fragmented power and legal cultures.

Against Assimilation: Assertion of Authenticity

The Garo have found state organizations increasingly interfering and appropriating the space originally held by their native political and social institutions. This has resulted in the declining influence of Garo social and political institutions in the lives of their practitioners. Even the Garo Autonomous District Council, which is the protector and defender of customary laws, has been perceived as an encroacher, an alien influence adversely impacting the native institutions.

Despite this encroachment, the Garo have also noted the constructive role played by state institutions, especially in dealing with complex situations which have arisen from modern inputs in the form of education, a new religion and the monetization of economy for which Garo customary laws have no answer. Many have appreciated the way in which state agencies have stepped in to deal with the inadequacy of customary law regime.

This is a problematic situation in that one finds the same group of people endorsing as well as critiquing the role played by state institutions. For example, the police provide infrastructural facilities to deal with criminals but the same police, while performing this function, are criticized for appropriating the powers of the nokma. This could be because there is no clear-cut demarcation of powers and functions between state and customary law bodies.

In the case of the Garo respondents the data has conclusively revealed the hegemonic presence of the state through its various legal and administrative institutions.
This overarching state presence affects the meaningful way the community lives its value system in a unique cultural matrix. The data has clearly shown the negative impact of state institutions in the Garo area affecting, as Kymlicka (1995) would put it, the context of choice of individuals. Following Charles Taylor (1992), this study argues that a bounded culture is an absolute necessity for any confident robust self to develop. An authentic self can emerge, grow, sustain and nourish itself in a culture that is secure and not intimidated by the dominating presence of the state. For tribal communities, such a bounded culture cannot be mainstream or Indian culture. It can be their culture which is deeply enmeshed in customary laws.

How does such a culture develop? In the first place one should note that such a culture was in place before the entry of the external forces. The Garo and the Angami had their own cultural and social assets to guide them to live an authentic and fulfilling life. This study has noted that the entry of forces has ruffled these largely self-sufficient atmospheres, bringing in elements of atrophy, especially in Garo culture. The study proposes that the entry of the state can be constructive and reforming provided such an entry takes place on an equal footing. A creative fusion of liberal democratic institutions with native social and political bodies is a vital necessity for the nurture and growth of a robust self and for robust tribal communities.

What are the parameters for such a creative fusion when two systems based on opposing values – one based on an individualistic ethos and the other founded on communal values – encounter each other? In such an encounter, conflicts and confusion is bound to occur. The alternative of the dominant system engulfing the other destroys the richness and any robust contribution of the subordinate culture while also resulting in
deep bitterness and angst among them. History has been a witness to such annihilation of small cultures. On the other hand, a better alternative is not imposition but collaboration and cooperation between opposing systems and cultures.

An observation was made earlier that there is confusion in the powers and functions of the state and customary law institutions. This overlapping of roles between institutions leads to tension, but can also provide an opportunity for the creative encounter of parallel institutions. Who draws the boundaries of defining the limits of jurisdiction between two sets of institutions based on different values and philosophy? In the case of the Garo, it has been the state which has demarcated the limits, ignoring the democratic process of deliberation with the contending partners.

**Strengthen Customary Law Apparatus**

This study has argued that there is an in-built native system of administration that is in existence among the Garo and the Angami and which is closely tied up with culture and identity of tribal communities. This system has been in operation for centuries in their villages. The data has revealed that these structures of native administration still have a place in the changed circumstances of the present times, provided that some infrastructural backing is given to them by the state. The practitioners of customary law in both communities have asserted that a systematic and efficient customary legal regime can be allowed to evolve with appropriate supportive measures.

With the kind of data collected from the ground, the study argues that the liberal democratic state can put in place policies and measures that result in strengthening and enhancing the efficacy of these institutions. The practitioners are not averse to the presence of state law institutions so long as the state tones down its hegemonic
tendencies. It is the domineering tendencies reflected in state institutions appropriating the powers and functions of customary law institutions that has created a great deal of mistrust in the Garo towards those very state institutions that are, in theory, imposed to somehow help the Garo people.

The Rules for Administration of Justice and Police in Nagaland (Third Amendment) Act, 1984, passed by the Nagaland Legislative Assembly provided that a hierarchy of customary law courts should be established in Nagaland. At the lowest level there would be Village Courts. Above them would be Subordinate District Customary Law Courts and, at the highest level, District level Customary Law Courts. This study sought to collect data on the implementation and progress of this Act. Data could not be gathered on the implementation of this Act for the reason that it was news to many interviewees, even to professionals from the legal arena. The researcher visited the Dobashi Courts at district level and also two subordinate Dobashi Courts at the sub-district level. Village Courts are already in place. This suggests that this Act has seen partial implementation. The Angami respondents have endorsed such a customary law courts organization and the strengthening of such structures.

Among the Angami the tribal public organizations (SAPO, WAPO, NAPO & CAPO) at the zonal level and at the highest level (APO) have come in for great appreciation. This is an initiative of the customary law system and these institutions deal effectively with inter-village conflicts. Among the Garo, The Nokma Council, started with the initiative of a few individuals committed to the preservation of the customary law institution, has also grown to be a well-organized native organization. In the Garo Hills, they are set up at three district headquarters. These Nokma councils have become
forums for conflict resolution, especially at the inter a.king level. They are also adjudicating several Nokma succession issues.

Both tribes pointed to the inadequate efforts made by the state to train customary law personnel. The Garo ADC, which has the function of safeguarding the Garo customary law, was found wanting in its initiatives in bringing about measures that would reform and benefit the customary law system. Among the Garo, the tendency of Nokmas to lack adequate educational background was a constant refrain. Among the Angami it was found that gaonburas and dobashis are often appointed without ascertaining their knowledge in Angami customary laws. Some are too young and so have little of the experience needed in interpreting these age-old laws.

In the past, the function of training personnel was done in bachelor dormitories which have disappeared in both communities. In its place no alternative system of preparing knowledgeable persons in customary laws has evolved. While there are a swarm of native lawyers and advocates specialized in the modern legal system decorating the portals of state courts, steps have not been taken to train personnel to shoulder the customary law system of tribal communities. This area needs urgent reform. The state can play a role here in creating forums which help impart the knowledge of customary laws. Some training program for customary law personnel could be developed and implemented.

Sixth Schedule: a legitimizing weapon in the hands of the state?

The data from the Garo community suggests that Sixth Schedule provisions have acted as a weapon in the hands of state to deprive the Garo of their collective memories and historical claims. One of the main functions of the ADC was to bring about an
integration of tribal communities into the Indian political system without doing harm to the indigenous self-governing political and social bodies. There was the need of evolving a delicate balance of mainstreaming tribal communities while not adversely affecting the native system of administration.

Despite this effort, the data points to the adverse role played by the ADC in clipping the wings of Garo political and social institutions. In the area of land, the ADC has begun issuing land-holding documents or *patta* for *a.king* land. The legitimate authority of this land is the *Nokma*, whose rights the ADC has usurped.

In a society which was deeply anchored in communal ownership of resources (CPRs) for meeting their livelihood needs, the ADC has introduced the institution of private property. Private property is not wrong in itself. But what is wrong is the manner in which such an alien practice to the Garo was introduced in Garo society. This has negatively affected the concept of *a.king* land. This, in turn, has affected the *Nokmas' powers*, which were deeply enmeshed in their control of *a.king* land.

A reassessment of the role played by the ADC among the Garo tribal community has been the repeated suggestion of the Garo interviewees. While authors have acknowledged the role of integration played by ADCs in Northeast India, the data from Garo area does not corroborate such a positive assessment (Stuligross 1999).

**Legal Pluralism as a Paradigm**

While making space for and strengthening the customary law regime is feasible in societies which are homogenous, this has increasingly become a more challenging proposition in nations that are caught up in deep diversity or multiculturalism. No doubt an entire system of a customary law regime can be evolved from the bottom, but where
does one stop when, like in the context of Northeast India, the number of groups seeking such a bargain from the state is numerous? Moreover, such an arrangement of making space for multiple customary law systems to work within the boundaries of a state cannot be defended from a judicial system that is organized on the principle of legal centralism.

Since 1980s a great deal of literature has been published in academia contesting the model of legal centralism. Authors like Griffiths, Woodman, Beckman, Merry, Moore, Sheleff, De Sousa Santos, Galanter, Svensson and others have held that legal centralism reflects the moral and political claims of nation-states at the cost of voices of marginal communities who have their own system of conflict resolution. These authors critique the hegemony of the state legal regime which subsume the non-state normative orders that exist in a society.

The paradigm of legal centralism is caught up in the philosophical problem of a lack of sensitivity to other normative orders and legal systems. If a nation-state is going to recognize customary law as part of its legal regime, it is accepting the other and, accordingly, is giving customary law regime the status which it is itself enjoying. Legal pluralism presumes that there is more than one normative order at work in society. It is generally understood as a situation in which two or more legal systems coexist in the same social field. This implies that there is no sole regulative agency of human behaviour. This also means that certain sovereign powers of the state have to be shared with local communities, especially in the realm of law, morality and politics. Needless to say, such a proposition is bound to open up the possibility of conflict between different sources of power and authority. In the context of a dominant state legal regime, such an arrangement might result in ongoing disagreement and tension between the national legal
regime and non-state legal regimes. Again, experience shows that these conflicts are inherent in multi-ethnic nation states: legal and cultural imperialism seem to only aggravate this already challenging dynamic.

To sum up, this study on customary law and state formation in Northeast India has endorsed the role played by customary law but from varying standpoints. There is a strong backing for the relevance and continuation of customary law regime among both ant Garo and Angami communities. Customary laws are to be preserved but not always for the same reasons and not in the same form. A number of different arguments are made for the same position.

The various suggestions also highlight that there are in Northeast India two very vibrant tribal communities. They construct their reality through the lens of customary law. The customary law domain is not something fixed and stagnated, as was noted in the huge debates on customary laws in chapter one. Customary laws try to reach out to other domains according to their own terms, on their own ground rather than being co-opted into something which is the other.

Many in the communities have complaints and critiques. If they have complaints, they are both self-complaints such as inadequacy in equipping themselves to face new cultural developments and of the elders for not being resourceful enough to take the community into the next generation. The complaints also emerge in the context of the overpowering presence of the state. The tone of these complaints is finding fault with the interference of state law institutions, especially from the point of view of their appropriation of powers of the native institutions.
There is a biting critique of the ADCs in Garo Hills districts because it has not been seen to play an active or even appropriate role in safeguarding the customary law system. Why has the Sixth Schedule become a failure? It is because of the presence of an overpowering state and its institutions which have appropriated the space occupied by the customary law system in the political arena. On the other hand, the provisions of Article 371 have come in for positive appraisal. They have defended the element of the difference of customary law system vis-à-vis liberal democratic institutions. The state that has emerged from Article 371A has been proactive in terms of customary law.