INTRODUCTION

Significance of the Study

Ever since India attained independence, a persistent problem that has been relentlessly rocking the nation and stubbornly challenging its policy makers is the demand for autonomy from various tribal communities of Northeast India. These demands range from claims for autonomy in various degrees within the constitution of India to outright secession and establishment of sovereign states (Singh 1998: 8-12; Misra 2000: 10). Lurking behind these demands for autonomy is the apparent tribal fear of mainstream culture and identity subsuming theirs (Singh 1998: 7; Haksar 1998: 168; Nag 2002: 96; Oomen 2009: 8-10).

A plethora of efforts have been made by the government of India to address these demands so as to integrate these tribal communities into the project of nation building. Through various constitutional provisions and political packages these communities were given the hope that their socio-cultural practices and self-governing institutions would be safeguarded and that their regions would be allowed to develop along the lines of their own genius (Elwin 1988: IX). All these constitutional provisions, political arrangements and administrative packages, whether it be the Fifth and Sixth Schedule of the Constitution or the special articles carved out in the Constitution for the creation of states like Nagaland or Mizoram (Art 371A, Art 371G), have in one way or other engaged the customary law of tribal communities in the project of state formation (Ganguli 1998: 66; Chaube 1973, 1999: 101). The process by which constitutional provisions have engaged the customary law of tribal communities in the formation of state will be the proper subject of this study. Two tribal communities of the Northeast, namely the Angami of
Nagaland and the Garo of Meghalaya, are compared and contrasted in the interface of customary law with constitutional provisions in order to study the process of state formation in Northeast India.

The basic premise of these constitutional provisions was that the customary law of indigenous communities would be taken seriously in the administration of justice and in the governance of the villages inhabited by these groups. To a large extent this was the policy followed by the British till 1947 (Thakur & Thakur 1997: 179-183; Verghese 1996, 1997: 29; Baruah 1999, 2006: 28). Since Independence the Indian government fine-tuned this policy of non-interference in the local self-government of the indigenous people of Northeast India and gave it constitutional sanction (Fernandes & Pereira 2005: 22). In doing this, the framers of the constitution were guided by a philosophy, which insisted on preserving the tribal ethos and culture while at the same time making efforts to integrate the people belonging to this region into the Indian mainstream (Datta 1990: 38). The intent was to preserve the diverse lifestyles, customs and systems of governance in such a way that it did not threaten national interest and security (Sinha 1970: 15).

The response of various tribal communities to these constitutional provisions depended on their unique historical trajectories and the distinctive political processes that they had undergone. For instance, there was mixed response from the Garo, Khasi and Jaintia communities to the Sixth Schedule (Sinha 1970). The Khasi under the leadership of U Tirot Singh and the Garo under the leadership of Sonaram Sangma had revolted against the British that had resulted in a movement which had brought about political consciousness among them (Sinha 1970; Sangma 1981). They embraced this provision
with caution, resulting in the creation of autonomous district council that assured them adequate decision-making powers particularly regarding local administration according to tribal customary laws and control of natural resources. The response was positive among the tribal communities of Arunachal Pradesh. These groups, mostly from Arunachal Pradesh and Meghalaya, were asking for autonomy within the constitutional framework. While some groups, particularly the Garo and the Khasi, were exposed to the influence of external forces, some communities especially from Arunachal Pradesh were had limited interaction with outsiders. This perhaps explains why tribal communities from Arunachal Pradesh accepted the constitutional package and decided to be governed under the Indian constitution without much resistance. This willingness to join the Indian Federation was mainly due to the limited degree of political awareness among some groups. They ran short of an all-embracing identity that would have triggered off demands for cessation and self-determination.

The Mizos too, at the initial stage, were happy with the Sixth Schedule status given to them. They were provided with an autonomous district council, which met their demands for partial autonomy. But a decade later, during the bamboo famine of late 1950s, they revolted against the callous attitude of the erstwhile Assam State towards the crisis that they were facing (Bhaumik1996:143). This led to the formation of the Mizo National Front under the leadership of Lal Denga that demanded sovereignty for Mizoram (Bhattacharya 1990: 300-304; Sen 1992: 44-50). They fought this battle for sovereignty till mid 1980s when they reached an accord with the government of India. Giving due respect to customary law was one of the main agreements of the accord (Baruah 1999:108-09).
On the other hand, there was discontent and dissatisfaction towards these measures among some other groups. Prominent among them were the Nagas who revolted against these arrangements judging them intrusive and inadequate. Nagas were politically conscious tribes that had fought against the British conquerors at first and the Japanese invaders in the 1940s and had in the process developed a strong sense of identity and pride in their tradition (Sanyu 1996: 133-136). They claimed that historically they were never a part of India and that their distinct culture and lifestyle demanded that they be allowed to carve out a sovereign nation of their own. Despite this, there was difference of opinion among them regarding the nature of sovereignty. Some demanded maximum autonomy within the constitutional framework while others demanded absolute sovereignty to the extent of cessation from India (Zhimomi 2004: 28).

In the course of the last few decades, many more indigenous groups have put forward demands for sovereignty and statehood. The United Liberation Front of Assam (ULFA) grew out of the anti-foreigner Assam Movement of the late 1970s and early 1980s (Misra 2000: 123). Then came the National Democratic Front of Bodoland (NDFB) born in the 1980s because of the Bodo dissatisfaction with the Assam Accord of 1986 (Roy 1995: 52-54). The Achik Nationalist Volunteers Council (ANVC) among Garos in Meghalaya, the Dimasa Halam Daogba among the Dimasa in the N C Hills district of Assam and the Kharbi Nationalist Army among the Kharbi in the Kharbi Anglong district in Assam are demanding statehood within the Indian constitution for their communities.

There are such movements in Manipur, Tripura and elsewhere in the Northeast. Common to them is the demand of sovereignty or autonomy born out of a fear of
national political processes submerging regional or local identities. Most have referred to customary law as integral to their identity (Nag 2002: 140-154). The response of the Indian government to these demands seemed inadequate. The government of India went ahead with an approach which focused more on levelling down of differences rather than stressing on multi-cultural and multi-communitarian order. According to Roy Burman “India tried to forge an artificial homogenized nation in the western sense of the term and create a nation state for this artificial entity” (2000: IX). Nagaland National Council (NNC), later on NSCN, ULFA and others contested this homogenising and assimilating tendency of the Indian State.

As mentioned above, most of these tribal communities fell back on their customary laws to carve out unique identities for themselves and to establish a state with firm grounding in customary laws. These customary laws had their origin in habits that grew into customs (Vitso 2003: 2). When a whole community adopted a particular habit it became a custom and its usage over the years eventually established it into customary law. These laws were area-specific in usage and practice. They existed for centuries amongst these ethnic groups of the Northeast. They were structures of social control guided by a community-based philosophy. These sets of laws were founded on systems of values that were egalitarian in nature and were grounded on the Community Property Resources (CPRs). As Horam points out, the egalitarian value system and the community ethos reflected in these customary laws defined the identity of each ethnic group (1988: 34).

These laws, based on the changing situation of a tribe, as such were not static. However, modernity introduced by external influences changed them in a totally new
way. The first such influence came from the British colonial rulers in the mid-19th century when some Hill tribes opposed them and attacked their establishments in the Assam plains. In order to protect their interests in the plains from such attacks, the British troops organised several punitive expeditions. Gradually the British tightened their stranglehold over the hill tribes but did not annex their area and establish their administration. They left them "unadministered", allowing them to manage their civil affairs according to customary law (Verghese 1997: 29).

Christianity, which ushered in modern education in most of the hill states in the northeast, also adversely affected customary laws in significant ways (Kulirani 2009: 114). While introducing the tenets of the new religion in the hill districts of erstwhile Assam, the missionaries to some extent refuted the belief system of the tribal religions on which the customary laws were grounded (Oomen 2009: 11). In Nagaland, for example, morung¹, the dormitory of young men, which played a major role in their socialization process, disappeared gradually. Another basic institution that got wiped out was the Feast of Merit² sponsored by individuals for their village during which lots of singing, dancing and merrymaking used to take place (Babu 2004: 90-91). Commenting on the loss of these social and cultural institutions and its negative effect on Naga society Alemchiba says:

Such ceremonies as the great Feasts of Merit, at which the religious aspect was far less important than the social, had not been remodelled on Christian lines, but had been utterly abolished among converts. The tendency was to abolish abruptly the old thing and substitute individualism for the strong community feeling which had enabled the tribes to survive for so long. Not only was this individualism

¹ Bachelor's dormitory where young men were imparted knowledge on customary laws and were trained in war and wrestling.
² One of the ways of sharing wealth by the rich men of the village was to host a meal for the entire village. The more feasts a rich man hosts the more would he gain in social stature.
wrapped up with strong emphasis on personal salvation, it induced a direct and natural reaction against all the old things that mattered in the village life and social genius of the tribe. The result was a conflict not necessarily a conflict of arms but of culture, a conflict between the interest of community and individual which caused cultural tension in the society.³

Horam (1990) too agrees with this perception of Alemchiba on the loss of rich cultural and religious practices due to the introduction of Christianity. While forbidding these culturally meaningful practices, the missionaries failed to replace them with some other alternative practices. Christianity while propagating a new faith and introducing a modern education system also had a detrimental effect on their customary laws.

The response of the Government of India to the assertion of ethnic identity has been twofold. The first is counter-insurgency measures and the second is an effort to mainstream the ethnic groups through democratic means. The former seems to be based on the view of the conflicts only as a law and order issue. So the response to it has taken the form of the Armed Forces Special Powers Act (AFSPA) imposed on various states at different times when the central government declares an area disturbed that gives extraordinary powers to the security personnel. Allegations have been made of abuses and violations of human rights by the security forces.⁴

The latter approach took several forms. The first was the innovative idea of the Sixth schedule of the Constitution. This provision to some extent recognised the specificity of the ethnic communities of the Northeast, parallel to the Government of India

⁴ The death of Thangjam Manorama Devi in Imphal on 12th July 2004 is one example. Because of it agitation continues in Manipur for repeal of AFSPA (Misra 2005).
Act 1935. It allowed some hill districts of the erstwhile Assam to be ruled “based on customary laws” (Barooah 2002: 100) without, however, specifically recognising them as the basis of governance. It accepts the community ownership of land, forests and watercourses and the role of the tribal chiefs in their control. It allows district and regional autonomous councils and authorises them to make laws on these resources.

Despite this, the Sixth Schedule did not satisfy the communities demanding sovereignty or even autonomy. Therefore, the next step of the Government of India was to turn some tribal majority districts of Assam into Union Territories at first and States later. Nagaland came into existence in 1963, the Khasi, Garo and Jaintia Hills of Assam were turned into the Meghalaya State in 1971. The Lushai Hills became a Union Territory in 1972 and the State of Mizoram in 1986 as a result of the Mizo accord. North East Frontier Area (NEFA) was turned into a Union Territory in 1972 and the state of Arunachal Pradesh in 1987 (Ray & Agrawal 1996:6). Article 371A and Article 371G were introduced in Nagaland and Mizoram in 1963 and 1986 respectively to allow the Naga and Mizo communities to run their civil affairs according to their customary laws (Aosenba 2001: 63-70; Barooah 2002: 103-104).

This effort of the Indian government at state formation was countered by similar attempts by the indigenous groups of various states (NSCN in Nagaland, MNF in Mizoram, NDFB among the Boro in Assam). This scenario has raised a set of issues with regard to the significance of customary law in state formation. First, while one might find fault with the Indian Government for not sufficiently dialoguing with the customary law in the process of state formation, the same accusation can be levelled against the tribal groups at state formation too. In their efforts at forming the state they have organized
structures of authority, which largely resemble the structures of governance of the 'alien system' from which they want to distinguish themselves. As Veena Das points out, the indigenous groups demanding self-determination in responding to the challenge of the state invariably reproduced the hegemonic character, which silenced any alternative viewpoints. According to her “the militant discourse denies any possibility of alternative definitions of community”\(^5\). Further, the indigenous groups have indulged in strong-arm tactics while collecting taxes and imposing their code of conduct, which is not according to the spirit of the customary laws. On this count both the Government of India as well as the parallel “Indigenous Governments” of the insurgents, are equally subject to the criticism of bypassing the customary laws in pursuing their agendas.

Second, the effort since 1950s has been at cross-fertilization of politico-administration and legal systems of mainland India with indigenous self-governing institutions of the tribal communities, which have their foundation in customary laws. At work in this process was the dynamics of negotiation and crossbreeding between two equally valid systems of governance and not one of replicating the mainland systems in the place of indigenous institutions. The creative fusion of two distinct systems of governance has given rise to a unique process of state formation. This has resulted in the emergence of a state, which is the amalgamation of different aspects of these two varied paradigms of governance. The emergence of this nascent state has been appreciated by some and condemned by others, the former lauding the synthesis that has taken place between the two systems and the latter decrying strong tendencies of hegemony of the alien system that has wiped out the local self-governing institutions.

A cursory glance at the political, economic and social situation of Northeast India today shows what some consider the insufficiency or failure of these approaches by the Government of India (Sanyu 1996). All of the North Eastern States have democratically elected governments in place and voter turnout during the elections is commendable. The legislative assembly and the executive branch of the government routinely do their work. The modern judiciary too has taken deep roots in the region. At the same time, one witnesses frequently bomb explosions, ambushes, kidnappings and the killing of innocent people that destroy peace. Ethnic militias have mushroomed in practically all the States. Thus opposing trends co-exist—a democratically elected government and parallel governments run by the insurgent outfits demanding autonomous district councils, statehood or sovereignty. Such co-existence of contradictions has led a scholar of this region to term it a state of 'durable disorder' (Baruah 2005b: 13).

The measures that were aimed at durable peace and normalcy in day-to-day life in the region have not achieved their objective. This disturbing situation in the northeast gives rise to some questions. The first question to be asked is whether the measures suggested by the Government of India in the formation of state have dealt with the issue of political autonomy and preservation of cultural heritage of tribal communities. Whether they have succeeded or not, one has to understand the political processes that have led to these efforts. By this is meant the process of formulating the protective measures ever since the time of British till now. Some believe that they have failed (Singh 1998: 35). In that case, what went wrong with the democratic experiment in the Northeast and to national development and national integration? What is the result of the Sixth Schedule of the Constitution of India in safeguarding and strengthening customary laws?
Review of Literature

An issue that begs for considerable attention and thorough scrutiny in this study is the role played by customary law in the past and at present in shaping and guiding the political structures and self-governing institutions of the tribal communities. It is expected that a review of literature on Garo and Angami communities would throw sufficient light on the way the customary law has been an instrument in state formation over the centuries till now. While surveying the literature, attention will be paid to the nature of customary laws, the form of village polity, the encounter with external forces and the interface of native power structures with liberal democratic institutions.

A cursory glance at the literature on Northeast India shows that few tribes in the Northeast have received as much academic attention as the Garo and the Angami. They have been studied and well documented rather comprehensively by researchers, especially by anthropologists and ethnographers, during colonial times and later by social scientists and others both from outside and inside the tribe. Thus both the etic and emic perspective will enrich the survey of literature.

This rapid glimpse at the literature comprises three parts. The first part deals with literature related to the Angami. The second deals with the Garo. The third part deals with the interface of customary law with modern political institutions.

Angami Customary Law and Political Institutions

The Nagas can be singled out for attracting the greatest amount of academic attention during the last two centuries among the group of tribal communities in Northeast India. Among the Nagas, probably the Angami have enjoyed the most focus. They have captured the minds of scholars much more than others, probably due to their
stubborn resistance to colonial advances into their territory in the 19th century and their fierce fight against the Japanese during the Second World War (Sanyu 1996:133-36). However, much of the literature, both colonial and post-colonial, which flows from the pen of administrators and social scientists, is not strictly relevant for the study, and much is repetitive in nature.

Most of the important material on Nagas written in 19th century is found in Verrier Elwin’s *The Nagas in the Nineteenth Century* (1969) and Alexander Mackenzie’s *The North East Frontier of India* (1884, 2005). Elwin’s book, which is a collection of articles, notes and jottings from the diaries of colonial administrators and surveyors written on the Nagas, has a fund of information on the nature of village administration in Naga villages in the past. According to Elwin, a note of Captain Pemberton, who undertook the first expedition with Captain Francis Jenkins through the Angami Naga territory from Manipur to Assam in 1832, is probably the first piece of information ever written in English on the Nagas (Pemberton 1969). Most certainly the impressions expressed in this note were drawn from his experience during the first English expedition through the land of Angami Nagas. Making a reference to Naga polity he mentions that a council formed of the oldest and the most respectable men administered justice in the village. They summoned the culprit and gave the verdict and the villagers respected it (43).

The rough notes of Capt Francis Jenkins, which became part of the report written by A J Moffatt Mills, which appears in Elwin’s anthology, does not make allusion to the existence of customary laws. But he sketches the governing system in the Angami villages in two or three paragraphs (Mills 1969: 283-91). Describing that their
government is decidedly democratic in nature, he stresses the role played by the aged and warriors in all village undertakings and in conflict resolution mechanisms. He emphasizes that ultimately the warriors and men of valour had the last word on crucial issues of the village. It would be inappropriate to call this political arrangement as “democratic”. It sounds more like meritocracy or gerontocracy.

Of all the colonial anthropologists and administrators, Verrier Elwin singles out Capt John Butler, Jr. as the most perceptive and a major source among the early writings on the Angami. Of his many notes in this anthology, two have direct bearing on customs relating to marriage and on Angami democracy (Butler 1969a, 1969b). The note on Angami marriage deals with topics like choice of partner, marriage ceremony, divorce and inheritance (1969a). Property is the monopoly of men folk and it is divided equally among the sons. The widow and daughters have no claim on landed property. In the second note he attempts to capture the spirit of Angami democracy. He portrays Angami democracy as every man voicing his opinion and following the dictates of his will.

In a paper written in 1873, when Capt Butler was the Deputy Commissioner of Naga Hills, he had something more to add to this concept of Naga Democracy:

The government of every Naga tribe with whom I have had intercourse is a purely democratical one, and whenever anything of public importance has to undertaken, all the Chiefs (both old and young) meet together in solemn conclave, and then discuss and decide upon the action to be taken, and even then it often happens that the minority will not be bound by either the wish or act of the majority; and as to any one single Chief exercising absolute control over his people, the thing is unheard of.6

Mills, Johnstone, Woodthorpe and Godwin-Austen are other prominent writers on Nagas who are included in Elwin’s anthology who need special mention. Mills (1969) speaks of the number of Angami tribals in the year of writing, their housing system, dress and other cultural traits. He then goes on to their customary law by describing their hereditary leadership and religious practices. Johnstone (1969) refers to conflicts, blood feuds and different methods of settling these disputes. The writings of Woodthorpe and Godwin-Austen on Nagas, though copious, are not directly related to customary laws or on governance in the villages.

Referring to the laws for the prevention of crime, Godden categorizes the types of offences into two divisions - those offences, which can be instantly dealt by the aggrieved ones and those that need the consent of the village council (1897: 173). In the first category fall crimes like murder and adultery. In case of murder, the relations of the murdered can kill the murderer instantly without reference to the village council. In the case of adultery, too, the husband can kill the person committing the adulterous act on the spot. The offences in the latter division are land disputes, theft etc. that have to be referred to the council of elders and the council would impose the penalty on the culprits.

A systematic ethnographic account of the Angami was not published until the early decades of the 20th century (Hutton: 1921, 1969). J H Hutton, the renowned British administrator-anthropologist, wrote this account making use of the written material available till then and his own notes that he had jotted down during his travels in these hills. His style is descriptive. The monograph is an extremely rich source of information on topics such as domestic life, culture, customs, religion, folklore and language. Of the six parts of the book, the third, titled 'Laws and Culture,' explicitly deals with the social
and political organization of this tribe. It has a section on customary laws in an exogamous social system. While he succeeds brilliantly in reporting and recording the laws and customs pertaining to birth, adoption, marriage, divorce, inheritance and death, he has limited information about the political aspirations of the tribe.

Horam's *Naga Polity* (1975) is an in-depth study of political institutions of three Naga tribes – Ao, Angami and Tangkhul. This book makes heavy use of oral sources to unearth many details about the self-governing bodies of these communities. An entire chapter, dedicated to village administration, goes into minute details about the selection of village head, the composition of the village council, its functions, customary laws and conflict resolution process. According to him traditionally the Angami neither have a village council nor a village chief. "Any matter under dispute is taken before a meeting resembling the ancient Greek democratic meetings. An eloquent elder of the village usually opens the proceedings and he is usually the kemovo7 or head of the village. The discussion is joined by other elders but every villager has a right to speak."8 This book is descriptive in nature and emphasises the past in collecting details. Thus it has little to offer in the area of state formation in the 20th century.

Horam's later books *Nagas: Old Way, New Trends* (1988a) and *Naga Insurgency* (1988b), have rich insights on the impact of external political forces on Naga Polity. In a key passage he makes a relevant observation about the changes that are affecting the Naga polity due to the intervention of external political forces.

Today, however, though the basic framework of a village is unchanged, villagers are increasingly beginning to look upon their chiefs with mixed feelings and

7 Traditionally kemovo is the village priest who announces agricultural seasons especially planting and harvesting. He conducts the rituals of animist religion and imposes genna or days of rest from work.
regard the office to be inconsequential and of little importance. At times, therefore, they look upon their particular chief as the illegal occupant of the position. Also daily, say during the past 30 years, there is an erosion of the power of the chiefs as departmental heads of the government in Nagaland often take decisions affecting a certain village whether or not the chief or the council agrees. The habits of going over the head of the village is becoming contagious; in other ways also the chief’s power seems to be dwindling. 9

In another place he mentions that certain Naga tribes have become so litigation oriented that even for trivial disputes they rush to the courts (1988a: 75). He bemoans the erosion of self-governing structures in Naga polity. Naga Insurgency (1988b) is a historical account of the birth and progress of Naga Nationalism. As a native scholar he poignantly expresses the sea changes that Naga polity is undergoing. His writing, though extremely rich in information reflecting an insider’s perspective, does not explain in what way the modern institutions have silenced or overpowered the self-governing institutions, nor make suggestions at preserving and strengthening these tribal structures.

Another native scholar who has dealt with this issue at length is Visier Sanyu. An Angami himself, he digs deep into the social and political institutions of the Angami in his book ‘History of the Nagas and Nagaland’. He focuses on the Angami more than any other tribe, specifically on political and historical developments but with reference to their tradition. Basing his study on two major villages of Angami tribe - Kohima and Khonoma - he taps oral tradition to recapture the richness of Angami customs and political history. A chapter titled ‘Modernization and its Impact’ delineates the impact of British administration on Angami political structures. Defending the resilience of Angami traditional political institutions, he points out that “though the British administrators were

gradually detribalising the Angamis, so far as the administrative system was concerned, it
did not affect seriously the traditional ways of administration and supervision at the
village level. The village elders continued to be powerful in taking major decisions on
important matters even down to the present day.”\(^{10}\) While defending the enduring nature
of these institutions he also deplores the ‘drastic changes that have taken place in terms of
administrative organization’ which has eroded the position of village councils and elders
(1996:139). People seem to find refuge in modern judiciary, thus relegating the native
institutions to a secondary position. Sanyu has carried forward the analysis on the erosion
of native political institutions which Horam had begun, and has updated the input without
much attention to uncover other factors that have led to such a situation.

Though Channa (1992) has a wide-ranging title “Nagaland: A Contemporary
Ethnography” most authors in this edited book deal with the Angami. Most of the papers
are situated in a single village – Jotsoma village in western Angami region – trying to
capture the spirit of social and political institutions, which the authors assert were
undergoing tremendous changes. In the introduction as well as in her paper titled ‘The
Classical Ethnographies’, the editor takes pain to distance herself and the papers in this
book from the classical ethnographic model, which had a top to bottom civilizing
approach. Stressing that the ethnographer of today approaches the study with humility
and caution, she emphasizes that no ethnography can escape the subjective interpretation

the social and political organization of the village. Referring to the administration in the

village he says "Villages are run strictly on democratic lines with no one commanding his neighbours." Marwah and Srivastava (1992) deal with the Khel Gate and Social Structure and Mathur (1992) with their religious ethos. Nilika Mehrotra (1992) has a chapter on Angami women, whose relatively high status is intrinsic to tribal identity. Hector D'Souza (1992) views the Nagaland conflict led by the Angami as central to the emergence of their identity.

Since the early 1980s, the Law Research Institute of Guwahati has been systematically documenting the customary laws of the various tribes of Northeast India. They have organised many workshops and seminars on customary laws in various parts of the Northeast till date to keep abreast of the changes and to update their earlier works. This commendable effort is useful as a systematic body of knowledge of the customary laws. Among the customary laws documented in the 1980s are those of the Garo and the Angami (Goswami 1982; Goswami 1985). It is a major contribution to an understanding of the nature of customary laws.

J B Bhattacharjee has a paper on Angami polity in an edited book on the social and political institutions of the hill people of Northeast India (1990). He maintains that clan was the most basic political unit in a village and the oldest member within the clan was chosen as clan elder by virtue of his seniority and knowledge of customary laws. The elder used to preside over the meetings and the proceedings were democratic in nature (103). At the village level, there was no chief and the village was run by a loose form of democracy. The author makes an interesting observation on the fine balance of individual freedom with community obligation (105).
Kinship Politics and Law in Naga Society (1993), an ethnographic work authored by N K Das, applies modern structural method to understand the political system of the Zounuo-Keyhonuo people. The Zounuo-Keyhonuo people who inhabit the Southern Angami region are one of the six groups of Angami tribes referred to by Hutton (1969: 14). According to the author their polity is based upon a segmentary system of interlocking descent groups. Using the empirical data he collected from Viswema village, the author applies the structural principles of kinship to provide a jural and political view of social structure of this community. Describing the significant features of the political system like the presence of village council, the informal court, the presence of peer group system with certain political powers, he underscores the observation of Horam that there is no central authority in the village with governmental organs (1993: 93). Further, for Zounuo-Keyhonuo people, the clan rather than the village is the most important unit of territorial reference. What keeps wrongdoers at bay is the fear of mystical disaster on the family, clan and community. Though he mentions that oath-taking plays a vital role in settling disputes he does not go into the intricacies involved in the decision to administer oaths and the difficulties involved in this process in the context of modern judicial system.

Two recent PhD theses, one in Delhi University and the other in North Eastern Hill University Shillong, have dealt with Angami customary laws at some length. Customary Laws of the Angami Nagas (2003), the doctoral thesis of Bernice Dzüvichū, an Angami herself, situates customary law in the Legal Anthropology discipline. She names the Angami political system as geronto-democratic and makes use of 14 case

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11 The inhabitant of Southern Angami Region are known as Zounuo-Keyhonuo people. Like the Zounuo-Keyhonuo people, the Northern and Western Angami groups too have their tribal names.
studies to portray the dispute settlement process amid the legal pluralism in Nagaland where customary laws are juxtaposed with statutory laws. One of the crucial findings of her study is the conflict between customary law and statutory law. Though she hints at the tension between these two legal systems, an analysis of this conflict and its ramifications on Angami society is lacking in the study.

The thesis of Nokhwenu Kharútso is a comparative study on the status of women among the Angami and Garo tribes of Northeast India (2005). Collecting data from four villages each per tribe, she analyses the status of women in the domestic sphere, in the political arena, and in the field of education and employment and comes to the conclusion that the status of women in both societies is low. One of the crucial factors for such a situation is the traditional institutions and value systems, which are a major roadblock in the path of development. Analysing the customary laws relating to marriage, divorce, inheritance, adultery etc she unravels the male-biased orientation of these laws, which discriminate against women. She stops at this and falls short of explaining the reasons behind the male-biased nature of customary law.

There are a host of other books on the history of Nagas and the Naga resistance movement (Ao: 1958; Anand: 1967; Alemchiba: 1970; Aram: 1974; Yonuo: 1974; Anand: 1980; Sema: 1986; Shimmi: 1988; Ramunny: 1988,1993; Chasie: 1999; Vashum: 2000; Aosenba: 2001; Iralu: 2000; Zhimomi: 2004). Some of these books are from the pen of journalists and administrators and others from social scientists who try to trace the genesis and growth of Naga freedom movement from various angles. Some of them take side with the Naga cause or with Indian response and others try to project an objective picture of the situation.
Garo Customary Law and Political Institutions

Alexander Meckanzie's *The North East Frontier of India* (1884, 2005) is one of the important early sources of information on British administration in Garo Hills. The book, which deals with British administration in various regions of Northeast India, has a chapter dedicated to the Garos (245-68). The proposals of Mr Scott (248) and Lt Williamson (261) are dealt with at length and they are given primacy of place amongst the galaxy of British administrators who worked in Garo Hills.

There is no mention of Garo customary laws and mode of government except a few details on the head of village is made towards the end of the chapter for imposing *dai*[^12] or compensation which was exorbitant. The final comment of the Chief Commissioner is crucial to the study: he cautions subordinate officials not to give authoritative recognition to customs which are 'mischievous and have a tendency to die out' (268).

The monograph of Major A. Playfair, *The Garos* (1909), is the earliest systematic treatise on the Garos. This work contains rich material from the dairies, rough notes and reports of British officials, which were hitherto found in scattered sources. This monograph deals with the origin of Garos, their domestic life, their laws and customs, religion, language, folklore etc. The third section, dealing with laws and customs, briefly mentions the role played by *nokma*[^13] as the proprietor of the village land (59-79). Customary laws regarding inheritance, marriage, adoption, and tenure of land are mentioned in detail. Information on the dispute resolution process through ordeals and oaths is available but nothing is written about the officials who conduct the trial except

[^12]: A Garo term for the fine imposed on the accused.
[^13]: Husband of the heiress of a group of villages called *A king*. He is the village head and custodian of the village land.
for a Garo priest or *Kamal*\(^4\) who administers the oaths and ordeals (75). Though the book studies at length the matrilineal kinship based social organization, it does not give adequate insights into pre-British political and self-governing institutions or on the sources of authority and power in Garo society.

If Playfair’s work falls in the tradition of monographic studies, the work of Robbins Burling *Rensanggri* (1963, 1997) falls in the category of village studies. This important contribution to the literature on Garos is the fruit of author’s fieldwork between 1954 to 1956 in Rensanggri, a village of 60 households, close to Tura in the West Garo Hills district. It is a sophisticated analysis of family and kinship by a trained anthropologist delineating the all-pervading impact of institutions arising out of matrilineal kinship groups on the social, political and economic life of Garos. The second edition of the book (1997), which was published after the second visit of the author to the same village with an interval of 40 years, has an extra chapter 1997 in which he describes the changes and continuities that have taken place during the intervening period. The resilience of a matrilineal kinship based social organization is singled out for its deep anchorage in Garo society despite the mammoth changes that have taken place during the ensuing years (339-48).

The 10th chapter of *Rensanggri* is on the settlement of disputes, which has a bearing on the present study (249-71). The chapter begins with a statement of the near impossibility of retrieving the methods used to settle conflicts before the coming of British (244). Having said this, the author then goes on to situate the legal system in the

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\(^4\) A Garo priest who performs traditional rituals of *Songsarek* religion.
1950s, specifically mentioning the role played by the *laskars*\(^{15}\) who acted as magistrates of *elekas*\(^{16}\) in settling disputes. He then takes pains to vividly describe the part played by *mahari*, or the close relatives of disputants, especially the eldest maternal uncle of the disputants, in finding an amicable solution to the problem (248). Giving a number of examples culled out from his fieldwork and collected from various parts of Garo Hills, he describes the conflict resolution system among Garos. He is silent on the extent of impact the modern political set up has had on customary laws.

Chie Nakane’s *Garo and Khasi: A Comparative Study in Matrilineal Systems* (1967), though published in 1967, is based on fieldwork that was done towards the end of 1956 and so precedes that of Burling. The first two parts of the book is based on the data collected from Garo and Khasi respectively and third part is an attempt at typology of matrilineal systems. What interests the present study is the 5th section of Part I that deals with *nokmaship* and power relationships in the village community (60-65). While underscoring the pivotal role played by the office of *nokma* as village head in the social organization of the village through which the entire network of Garo society is woven, she highlights the limited nature of his powers which are checked by the two dominant lineages of the village, namely, his own lineage and that of his wife (61). According to Nakane, the *nokma* is simply a distinguished representative of the village without having superior advantage or authority since lineage groups curb it. This account tries to capture the Garo traditional society without paying much attention to the changes that had taken

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\(^{15}\) Laskar or laskar is an office introduced by the British which is in vogue to this day. A Laskar was a revenue officer, a magistrate and chief of a group of villages. Even to this day he performs these functions.

\(^{16}\) An administrative subdivision of a district. A *laskar* was the head of an *elekha*. 

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place then. For example the introduction of the office of laskar and sardar\textsuperscript{17} by the British receives scant attention in the book and perhaps rightly so because it does not serve the purpose of the book which is an attempt at typology of matrilineal systems in the world.

Besides the monograph of Playfair and the ethnographic work of Burlings and Nakane, there are a couple of booklets on Garo Customary Laws written by various authors at different times (Marak: 1952; Costa 1954,1975; Marak: 1964; Sangma: 1973; Goswami: 1982). The booklets of Marak (1952), Costa (1954,1975) and Marak (1964) contain a collection of various customs and usages relating to different stages of life from birth to death. They enumerate various customary laws having their grounding in the matrilineal kinship based Garo society. These booklets are brief and repetitive in nature, and do not include all aspects of life. The book of Costa (1975) puts these customary laws into three sections, namely, asimalja, dakmalja and nima. Asimalja roughly refers to moral laws, dakmalja to civil and criminal laws, and nima to some ancient usages (1-42). The work of Law Institute, Guwahati, too is not very different (Goswami: 1982) from the booklets of the aforesaid authors except that it updates their work and has an introductory chapter that discusses the definition and characteristics of customary law and practices (7-20).

Sangma (1973) goes a step beyond and situates the customs and practices of Garos in the context of Colonial Acts, of laws enacted by the Government of India, and the States of Assam and Meghalaya. This praiseworthy book, a fundamental reference for people in the legal profession in Meghalaya, juxtaposes customary laws with the

\textsuperscript{17} A village police introduced by the British to help out laskor in the discharge of his functions. Each village had a sardar. A sardar is laskar's man in the village.
administrative Laws and Acts passed by the British and Indian Governments. To a great extent the author succeeds in the difficult task of drawing the thin line between these two sets of laws. Since colonial times there existed a hazy, blurred zone regarding the jurisdiction of these two sets of laws. This painstaking work does a great service to the practitioners of law by clearly defining the scope and limits of customary law vis-à-vis statutory law by judiciously making use of the Acts and Laws enacted by the legislature.

Another well-known work on Garo Customary Laws and Practices is that of Julius Marak (2000). It offers a glimpse of customary laws of the tribals from a modern point of view. The book, which is an updated work of his doctoral dissertation, has benefited much from a vast amount of fieldwork conducted all across the Garo Hills and from many case citations of Village, District and High Courts. Comprehensive in nature, this critical study on the age-old laws of the Garo points out the subtle infiltration of modern forces into the Garo political fabric resulting in the erosion of their traditional systems of land holding patterns (Marak 2000: 186). It brings in fresh insights into the interface of their political and social institutions with modern political institutions.

Social Institutions of the Garo of Meghalaya, authored by Goswami and Majumdar (1972), pays particular attention to the role played by the institutions of family and clan (mahari) in shaping and guiding Garo society. They situate the study in the context of the rapid changes that were taking place in the 1970s due to a large number of Garos embracing Christianity and the spread of education. A chapter titled Legal Concepts deals with the Garo understanding of law and the role played by the mahari in the conflict resolution process (85-97). They drive home the point that although the nokma is the territorial head, his role in settling disputes was minimal. It is the maharis
who are party to the conflict who played a predominant role in finding a solution to the dispute.

The book of Kar, *The Garos in Transition* (1982), is relevant to the present study because he grounds the Garo transition to modernity in the discipline of Economic Anthropology. He analyses the transition by looking at their socio-economic life. The data gathered from Darengri village in the West Garo Hills district was supported by interviews and group discussions in a few other villages around Tura. He begins with an analysis of their traditional economy and the inputs introduced by external forces. While explaining changes in the Garo village economy, he also shows how these forces have affected their customs such as the institutions of *a'kim*[^18], land ownership and the structures of authority. The impact on the institution of *nokma* due to the impact of British authorities in introducing *laskar* and the Indian Government in establishing Garo Hills Autonomous districts are critically analysed (71-74).

Kar has another earlier book, *British Annexation of Garo Hills* (1972), to his credit that presents historical account of British Administration in Garo Hills. Of the three chapters in this book, the third chapter, dealing with the period of consolidation of British rule, provides important details on the colonial administration making use of *laskars* and *sardars* to collect revenues and maintain law and order (42-77). *The Garos and the English* (1977) by Bhattacharjee picks up the threads from Kar's work and supplements some more historical details regarding British administration in the Garo Hills from 1765 to 1874. The initial indifference of the British, the stubborn defiance of Garo chiefs and subsequent gradual introduction of colonial administration are well captured in the book.

[^18]: A permanent bond between the lineages of husband and wife.
In the edited book *Garo Hills Land and the People* of L. S. Gassah, B. B. Dutta (1984) speaks of the impact of modernisation of Garo tradition with special reference to Jhum Cultivation and the Land Tenure System. He looks at the changes resulting from the developmental measures initiated by the Soil Conservation Department. He concludes that this state intervention has led to the introduction of settled cultivation, which has set in motion the emergence of individual landholding in place of community ownership. It has thus transformed the tribal economy and has resulted in the erosion of traditional village institutions.

His hypothesis that gradually the State and its subsidiary wings will replace the traditional systems has been substantiated by Fernandes and Pereira (2005: 37-38 and 200-201) in their comparative study of changing land relations among six ethnic groups in the Northeast including the Garo. Their study shows how the introduction of rubber and other cash crops and the subsidies and loans given to individuals and to men considered heads of families in this matrilineal community based tribe has resulted in class formation among them and in the strengthening of patriarchy.

Mann and Mann (1989) have a chapter titled “Is Garo Matriliny a Symbol of Higher Status?” in their book *Tribal Cultures and Change* that deals with the changes among tribal communities in India in a few micro-settings. They surmise that the Garo woman is socially and economically secure due to the matrilineal and matrilocality system. Further, in Garo society there is balanced authority between wife and husband since the ownership of the property is with the wife and managerial rights are with the husband and this in turn checks highhandedness of one partner over the other (Mann & Mann 1989: 259). Towards the end of the chapter they make an observation that the traditional
arrangement of property inheritance by the female is losing ground and that there are
definite indications of patriliney and a patrilocal trend.

The unpublished MPhil thesis of Charlotte Momin (1979), *Garo Polity: A Study in the Process of Integration*, deals with the integration of Garo political and social institutions with modern political set-up. *Political Ecology*, a section in the first chapter, discusses the village administrative system of pre-British times and notes that all adult members of the village irrespective of their lineage affiliation formed the village body politic (10). In case of disputes, the lineages of disputants would settle the case and their decision was final and binding. In the concluding chapter she debates the pros and cons of assimilation and integration of Garo political practices with the Indian political system and opts for integration which does not result in the elimination and erosion of Garo self-governing institutions (100).

Milton Sangma’s book, *History and Culture of Garos* (1981), deals comprehensively with the social and political institutions of the Garos with special emphasis on administration of justice. The current study is deeply indebted to this book since it deals with practically all aspects of village administration and customary laws. While the first chapter briefly gives the political history of Garos, the second chapter deals with village councils. The third chapter discusses the political system during British period, giving specific attention to the offices of *nokma, laskar, sardar* and a host of other officials (61-79). The Administration of Justice is explained in the fourth chapter, which brings the traditional self-governing institutions face to face with modern political system and judiciary (92-117). There is a chapter devoted to customary laws which uses Costa’s grouping of these laws into *Asimalja, dakmalja* and *nima* and in some depth
discusses most of the pertinent laws (181-219). This book particularly has a wealth of material for the present study despite its lack of attention to the emergence of tensions and areas of conflict in the interface of native institutions with the modern political reality.

In *Power to People in Meghalaya* (1997), an edited book, which was the fruit of a sub-regional workshop on Panchayati Raj system in the context of 73rd Amendment to the Constitution of India, Milton Sangma and Kshirode Marak have a paper each on the role of the Garo Hills Autonomous District Council (GHADC). After giving a historical background to the GHADC, Sangma enumerates its achievements and pitfalls. His observation, that the cases settled by the GHADC which could be later appealed to the High Court deprive poor people from getting justice, is relevant to the current study (136). Kshirode's paper assesses the working of GHADC by carefully examining the various Acts passed by it since 1953. The power allotted to Village Court according to ‘The Garo Hills Autonomous District (Administration of Justice) Rules, 1953’ is limited to settling cases only between tribal disputants. He appeals for broadening the scope of this Act to allow village courts to settle cases involving non-tribals (150). He concludes his paper pointing out that the GHADC is found wanting in passing laws for the betterment of Garo society and that it has kept itself occupied with hiking revenues and taxes so as to increase its income (153).

Volume 13 of *Criminal Justice India Series* (2005), devoted to the State of Meghalaya, is a status report on Criminal Justice in India. The 3rd chapter of this volume has updated material on the status of village courts, the subordinate district council courts and district council courts in the Garo Hills (62-113). In a clear and lucid style, the first
half of this chapter speaks of the constitution of three-tier court system in the Garo Hills and then goes on to enumerate their functions, jurisdiction and responsibilities.

*Garo (Achik) Tribe of Meghalaya* by S H M Rizvi and Shibani Roy (2006) makes easy reading for those who would like to avoid the technical niceties of an ethnographic work. The authors seem to be intentionally not quoting the sources and references to keep the book simple and to cater to the taste of tourists. It has a chapter on customary laws and practices of Garos which categorises these laws in the same tri-part typology as Costa and Sangma (53-64). The role of *mahari, nokma* and *laskar* in the dispute settlement process is briefly explained in this chapter.

**Interface of Customary Law with Protective Measures**

The review of literature to this point dealt with material directly relating to customary law and state formation in Angami and Garo societies. The rest of the survey will discuss literature that deals with the interface of customary law structures with modern political institutions in Northeast India. This will give us some insights as to how this interface has taken place in Northeast in general.

In a book edited by Bhupinder Singh (1998), J. B. Ganguli speaks of the development of the Sixth Schedule as it is applied to the communities in the Northeast and Gassa (1998) discusses the influence of the modern political system on traditional institutions. Ganguli assesses the working of the Autonomous District Council in Assam, Meghalaya, Mizoram and Tripura and observes that none of these District Councils is happy with the powers and functions that have been allotted to it by the concerned state government (81). Gassa finds fault with the British for paying scant respect to the traditional self-management structures (101). In concluding his paper he suggests
codification of customary laws in order to make them precise, which in turn will protect the tribal lands (117).

In the same book, A. K. Agarwal (1998) deals with the birth and development of the District Autonomous Councils, as does Doley (1998) who gives the history of the laws on this issue. Nandita Haksar (1998) begins with Nehru’s Panchsheel to show the gap between the “romantic idealism” that led to the Sixth Schedule provisions and the social reality. She argues that the tribal self-management system lays emphasis on cooperation, social harmony and economic self-sufficiency and hence is a living alternative model to the dominant capitalist society (172).

While some enjoy the benefits of this interface, others have resisted its negative impacts through insurgency and nationalist struggle. That is the major theme of B. Pakem’s (1997) edited book *Insurgency in North-East India*. It presents a series of articles on the origin and growth of insurgency movements and the politics of secessionism in the Northeast. Of importance is the feeling that though social scientists have studied the conflicts as such, by and large they have neglected its causes (Mahajan 1997). Within this perspective Lipi Ghosh (1997) gives the historical background of the Naga insurgency with special reference to the Angami. Prafulla Misra (1997) is of the view that while it is true that the insurgent rises against existing authority, the failure of the two parties to deal with each other as equals is its basic cause. However, not much is written on the Garo.

*Contesting Marginality* (2002) authored by Sajal Nag undertakes a rich historical grounding to analyse the crisis in the Northeast. He analyses the various periods from pre-British times to the present and sees the growth of this region and its various ethnic
movements. Focusing on the Nagas, Mizos and Meitei communities, he succeeds brilliantly in portraying the struggle of these marginal voices in confronting the hegemony of state and contesting its claims to supremacy. The author convincingly drives home the point that what is an assertion of native identity for a tribal community can be misconstrued as secessionism and insurgency by the Indian State and pleads for a better understanding of the complex situation that exists in the Northeast.

Fernandes and Barbora (2002) study the impact of modernisation on tribal women in the Northeast. They conclude that it is not modernisation as such that is to be blamed for the deterioration of women's status, but rather the manner in which it is imposed on their tradition, specifically without protective measures meant to help them to make a healthy transition to modernity. Similar are the findings of Fernandes and Pereira (2005) on ethnic conflicts as the result of changing land relations. They show how the very development of the Sixth Schedule and other protective measures is a result of the modern-traditional interface.

**Literature on Meaning and Nature of Customary Law**

Chapter two of the thesis contains literature dealing with the big debates and contestations that have taken place on the creation, meaning, nature and status of customary law, especially in the disciplines of Legal Studies and Anthropology. Therefore this literature survey will not contain material that is dealt in chapter two in order to avoid repetition. The paragraph that follows will briefly summarize the literature dealing with the concept and definition of customary law in chapter two.

The literature on customary law covered in chapter two captures the raging debate among scholars of legal studies, especially the one between the Rational School led by
Austin and the Historical School led by Savigny on the legal content of a custom, whether it is law or mere norm in a society. It also will include the Gluckman and Bohannan debate on the application of western or Anglo-American legal concepts and categories to non-western societies, especially in the context of their study among African tribal communities in 1950s. Literature on the passionate contestations between Anthropologists who hold that customary laws have deep roots in the culture and meaning system of tribal communities and Anthropologists who hold that customary laws are inventions of colonial rulers and dominant political and economic interests within a society also will be dealt in chapter two.

Common Themes and Unanswered Questions

The literature on Angami and Garo groups has been rich especially on customary law and the form of self-governing structures. Many authors have dealt with these subjects and there is a near unanimity regarding the role played by customary law and political institutions as unifying forces in guiding the community into harmonious living. The review highlights the concept of village state grounded on kinship relations as an important factor. In matters of politics they were very much restricted to village boundaries in the past.

Though authors have highlighted the democratic nature of polity among the Garo and the Angami, this is deeply contested since there was no representation for women in political institutions of these communities. Further, as Bernice Dzūvichū points out, the geronto-democratic nature of the Angami polity effectively slammed the door on other younger age-groups. Similar trend was noticed among the Garo where the Nokma and his council comprised members mostly from an older age-group which had no space for the
voices of younger members of the community. Thus the so called ‘democratic governance’ was mostly confined to an older group on the basis of gender.

The obvious difference between the two tribal communities is the type of social organization: Angamis are patrilineal; Garos are matrilineal. This in turn has many implications for the composition of village polity, inheritance rights, the status of women and marriage-related matters. For instance in Angami society the sons inherit the ancestral property while in Garo society the daughters inherit it. This is a crucial factor in tilting the balance of power toward either of the sexes.

However, few of the studies on the Angami and Garo analyse the customary laws specifically from the perspective of their interface with the modern political institutions or the type of state formation such an interface gives rise to. Both of these communities have been exposed to the processes of modernity to a great extent and have reaped many of its benefits. An analysis of the encounter of customary law and native political institutions with the statutory law and modern political institutions and the contours of the emergent state born out of such an encounter is largely missing in the works mentioned in this section.

One of the common concerns in the works mentioned in this section is the need to better understand the tradition-modernity interface and the sort of state formation that takes place in this interface. Some of its aspects have been understood, especially the link between land and the tribal tradition and religious change and tribal culture. However, the impact of the interface on their customary law and social systems that resulted in attacks on their identity has not been studied adequately. They led to the sub-nationalist movement that many term secessionist. The effort in this study is to find the link between

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their tradition, the interface and the search for a new identity and nationalism by uncovering the political processes leading to the change.

Some of the above works, especially Datta, Kar, and Fernandes and Pereira refer to the Garo transition to modernity and also show the need to go more deeply into this issue. In other words, the gap in the knowledge on this issue continues even in the case of the Garo. This study is an attempt to fill this gap by looking at the interface of modern with traditional systems. A comparison between these two tribal groups at various development stages will benefit the study.

Research Problem

It is more than five decades since India gained independence, but its northeast region is still a cauldron of conflicts and has become a hotbed for nationalist movements. Most of these conflicts revolve around tribal communities demanding sovereignty, claiming statehood within the Indian Constitution or yearning for Sixth Schedule Status. Behind these demands is the assertion of unique tribal ethnic identities, which articulates itself in terms of their unique histories and their claim for preservation of customary laws that form the basis of state that it envisages. This study intends to examine and evaluate the effort of the Government of India (GOI) in responding to these demands. The response of GOI involves engaging customary laws of these communities in the formation of state. The study attempts to find out the contours of the state that has emerged in the dialogue between constitutional provisions and customary laws and to assess whether this encounter has preserved and strengthened customary laws, especially among the Garo of Meghalaya and the Angami of Nagaland in the project of state formation.
Hypotheses

With this background in mind the following hypotheses are proposed for scrutiny in the study.

1. State Formation in Northeast India has resulted in the weakening of customary laws among tribal communities begetting deep unease among them.

2. The emerging public sphere among tribal communities seeks a creative fusion of the liberal democratic regime and customary laws.

Scope of the Study

Broadly the study will examine three areas. First, it aims to investigate the effectiveness and efficacy of customary laws within tribal communities at this point of history. It will deal with the issues of the relevance of customary laws, its justice content to cross-sections of people with special emphasis on the treatment meted out to women and its place in the formation of state.

Secondly, it will examine and assess the success of various constitutional provisions and structural arrangements, which have been put in place by the Government of India since independence in Angami and Garo areas of Northeast India. This institutional support system was implemented to give recognition to their customary laws in order to bestow on them the maximum amount of autonomy within the framework of the Indian Constitution. For the Garo in Meghalaya it took the form of the Sixth Schedule and for the Angami in Nagaland it took the shape of Article 371A of the Indian Constitution. An Attempt will be made to find areas of success and failure in this interface of protective measures with customary law. It will point out the zones of tension and the reasons behind such tensions.
The third area of concern will be to delineate the contours and characteristics of the state that has emerged in the encounter of customary law with constitutional provisions. It will investigate whether the emerging state has taken into account tribal structures or has silenced them.

Within this broad framework of investigation, the study seeks to unravel the emic (informant generated) perspective of Nagas and Garos who have experienced their traditional systems of governance interacting with the state apparatus put in place by the Government of India.

Objectives of the Study

This above-mentioned broad framework of the study determines the significance of the enquiry. The study

- aims at discovering the role played by customary laws and the traditional tribal institutions in the governance of the tribal communities.
- attempts to sketch the contours of the state that has emerged in the dialogue between constitutional provisions and customary law.
- brings a fresh dynamic to the effort to give voice to the self-managing institutions of the indigenous communities in Northeast India.
- stimulates introspection into the prevalent policies in the northeast towards state formation.
- offers considerations that may be relevant in other situations where prevailing circumstances are similar to those that are faced by Naga and Garo communities.
- suggests concrete measures in building bridges across opposing perspectives.
Methodology

The basic question that this research attempts to answer is how the interface of the tribal self-management system with modern polity has benefited the tribal communities in the Northeast in the backdrop of the dialogue between customary law and constitutional provisions. The hypotheses states that customary laws of indigenous communities have been relegated to a secondary position in the process of implementing protective measures to safeguard the tribal political institutions. The hypotheses will be tested by using the quantitative research method and be corroborated by insights gained from qualitative research.

The use of both quantitative and qualitative method is justified by the nature of the study. The quality of data required for the study falls into two groups. In the first groups falls the data, which needs to test the hypothesis that largely depends on the quantitative tools. The second group of data, which is qualitative in nature, tries to go beyond the number game and tries to dig deep into the motives of a particular stance. It authenticates the trends articulated in the quantitative methods by anchoring them on cogent and convincing arguments. The researcher hopes that these two methods would reinforce each other in the study.

Two methods were chosen for the collection of the data. The first method was interview schedule and in-depth interview was the second. The first method primarily stressed on the collection of quantitative data though it too has certain aspects of qualitative data. The interview schedule has both open-ended and close-ended questions. The in-depth interview method was selected mainly to collect qualitative data. Both the methods include the component of participant observation.
Choice of Tribes

Northeast India is blessed with very many tribal communities. For the purpose of the study two tribes were selected that experienced two different models of protective measures to safeguard indigenous political institutions. The choice fell on the Garo, who come under Sixth Scheduled status, and on Angami, who come under Article 371A of the Indian Constitution. The possibility of comparing two different political packages implemented to safeguard the cultural and customary practices was the decisive factor in the selection of these two tribes.

Another very obvious factor for such a choice was the two different social organization systems that are prevalent in these two groups. The Angami follow the patrilineal system of social organization while the Garo is a matrilineal kinship society. It would be quite interesting to note how these two communities have with varied social organization systems responded to the constitutional provisions and to what extent have they been able to preserve their cultural heritage in such an encounter.

Choice of Villages for the sample

Ten villages for each tribe were chosen for the sample. In the choice of villages the rural-urban component was kept in mind. Of the ten villages, six were from rural environment, and two each from urban and semi-urban environment. Preference was given to rural set-up because in villages customary laws are rigorously practised and tribal political institutions have a hold over people.
The category of semi-urban villages needs some explanation. These villages have their roots deep in traditions but of late they have been undergoing swift social changes due to the presence of various factors. For example among the Angami villages, Phesama and Khuzama in the Southern Angami Region are located along National Highway No 39 and have been subjects of modernization in many ways. Quite a number of schools and colleges have mushroomed along this stretch of the highway, and the villages are not far away from state capital. Among the Garo villages, Karkutta and Jengjal too are situated beside the National Highway and have circumstances similar to the semi-urban Angami villages. Table 0.1 shows the sample of villages for the study.

Another factor taken into consideration during the selection of villages was geographical representation. Methodologically it would be wrong to choose all the ten villages from one region of Angami area. Care was taken so that each region was well
represented in the sample. Most of the Angami people inhabit in the district of Kohima in Nagaland. In the Kohima district they are distributed in three regions: the Southern Angami Region, the Northern Angami Region and the Western Angami Region. Three villages each were chosen from Western and Northern Angami Region and four villages were chosen from Southern Angami region.

The Garo Hills Autonomous Council District has been subdivided into three districts: the West Garo Hills District, the South Garo Hills District and the East Garo Hills District. Three villages each were selected from East and South Garo Hills and four villages were chosen from West Garo Hills. Table 0.2 shows the geographical representation of the villages.

### 0.2: Geographical Representation of Sample Villages

<table>
<thead>
<tr>
<th>Angami Regions</th>
<th>Southern Angami</th>
<th>Northern Angami</th>
<th>Western Angami</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phesama</td>
<td>Kohima</td>
<td>Mezoma</td>
<td></td>
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<tr>
<td>Khuzama</td>
<td>Nerhema</td>
<td>Khonoma</td>
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<tr>
<td>Kidima</td>
<td>Chiephobozou</td>
<td>Jotsoma</td>
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<td>Kezoma</td>
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<thead>
<tr>
<th>Garo Districts</th>
<th>West Garo Hills</th>
<th>East Garo Hills</th>
<th>South Garo Hills</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tura</td>
<td>Karkutta</td>
<td>Baghmara</td>
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<tr>
<td>Jengjal</td>
<td>Songsak</td>
<td>Siju</td>
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<tr>
<td>Dalu</td>
<td>Dawagre</td>
<td>Chokpot</td>
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<td>Purakasia</td>
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</tbody>
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**Sample Selection for Interview Schedule**

The study had to gather representative data on the issues mentioned above through the use of the interview schedule and the in-depth interview. The researcher had to target people from cross-sections of society in order to get accurate data to test the hypotheses. Specifically, these are persons from different walks of life who are
knowledgeable about customary laws and political processes in the village. Keeping the
nature of the study in mind it was important that proportional representation was given to
categories of people in the sample.

For the current study those people in administration of justice in the villages, who
apply customary laws in village administration and in conflict resolution process, was a
crucial group. They had to be given weightage in the sample. A simple random sample
(SRS) would not serve this purpose. McTavish & Loether emphasize that due to the
‘nature of the study being conducted it is necessary not only that the full range of groups
in the population be included, but also they be included in the sample in the same
proportions as they are represented in the population’ (1999, 2000: 116). Thus greater
weightage was given to certain categories of people vis-à-vis other categories. As pointed
out in this study people involved in the arena of politics deserve greater weightage. Thus
in order to get the closest possible representative data from the population, a
proportionate stratified random sample (PSRS) was drawn.

The population for the present study consists of Garos from Garo Hills District of
Meghalaya and Angamis from Kohima District of Nagaland who are above fifteen years
of age. Keeping the PSRS requirements in mind, ten villages per tribe were chosen and
from each village fifteen people were selected to form the sample for the study. These
fifteen people were divided into six strata or categories. These six strata are: village
council members, village elders, women, teachers, church leaders and youth.

The village council members in Angami area are gaonburas, past and present
members of village council and village development board. In the Garo area they are
laskars, nokmas, sardars, past and present village council members and members of village development council.

The choice of village council members does not need justification given the nature of the study, but the choice of other strata does need some explanation. Village elders are well versed in customary law and are still consulted when a dispute has to be settled according to traditional laws. These are mostly clan elders in Angami society and prominent members of the mahari in Garo society. This study will be wanting in solid grounding without their voices being heard.

It is a fact that women in the Northeast India, as elsewhere in the world, were not given opportunities to participate in village administration in the past. This systemic silencing of the female voice in the political arena has no rational grounding. Because Women are one-half of any society, it is of importance that their views be heard. This study would be less rich devoid of their opinions.

Teachers and religious leaders play a vital role in the formation of convictions and opinions in society. Both Angami and Garo societies are predominantly Christian. Though Christianity is barely a century old it has come to stay and has a major say in their lives. Since religious leaders along with teachers play a considerable part as opinion makers in the church and school their views too need to be heard.

A sizeable section of the population is youth. For the present study, those between the age of fifteen to thirty fall into this category. In Naga and Garo society youth have increasingly played an active part in determining choice of younger lot of the population in areas like elections and state policies. Of late, the Naga Students Union as well as Garo Students Union has been vocal in underscoring the importance of preserving the cultural
heritage of their respective groups. Their voice, too, means a lot to the study. Table 0.3 shows the sample selected for the interview schedule according to villages and categories.

0.3: Villages and Corresponding Sample for the Interview Schedule

<table>
<thead>
<tr>
<th>Village Name</th>
<th>Village Council</th>
<th>Women Association</th>
<th>Village Elders</th>
<th>Church Leaders</th>
<th>Teachers</th>
<th>Youth Association</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angami</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kidima</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Kezoma</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Phesama</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Khuzama</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Mezoma</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Khohoma</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Iotsoma</td>
<td>5</td>
<td>2</td>
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<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Kohima</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Nerhema</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Chiephofozo</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
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<tr>
<td>Garo</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tura</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Jengjal</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Purakhasia</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Dalu</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Bhagmara</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
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<tr>
<td>Siju</td>
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<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Chokpat</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Kharkutta</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Dawagre</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Songsak</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Grand Total</td>
<td>100</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>300</td>
</tr>
</tbody>
</table>

As already pointed out the nature of the study requires that these six strata be given proportional representation. What are the deciding factors in determining the number to be allotted for each stratum? It has already been discussed that the village council members, being the crucial stratum for the study, had to be given greater weightage. If the stratum of village council members is given greater weightage, what has to be the proportion of rest of the strata?
According to the observation of the researcher, in matters pertaining to village administration in the tribal communities of Northeast India, apart from the members of the village council, the rest of the strata have an equal voice except perhaps the village elders who have a greater say on issues relating to customary laws. In such a scenario it is advisable that the rest of the strata be given equal proportion while greater weightage be given to the village council members. Accordingly five of fifteen members for the interview schedule were allotted for village council members and the remaining ten were equally distributed among the rest of the five strata. This means the strata of village elders, women, church leaders, teachers and youth were allotted two members each of the total fifteen.

Sample Selection for In-depth Interviews

The main intention of selecting an in-depth interview method was to go beyond an interviewee’s conviction on a specific issue and to flesh out the arguments behind such a stand by probing deeper into the issue. In the case of the present study it was to go beyond someone’s choice for or against the customary laws and their relevance and then slowly to uncover the arguments hidden beneath such a stance. While the interview schedule largely focused on ‘what’ and ‘how’ questions that were descriptive in nature, the in-depth interview focused on the ‘why’ of a specific conviction.

Fifty people from each tribe were chosen for the in-depth interview. As in the interview schedule, here too cross-sectional representation was the guiding force behind the choice of interviewees. Since the focal point of the research dealt with traditional and modern political and legal institutions, greater weightage had to be given to people who were active participants in these fields. With this as the backdrop, seven categories or
strata of people were chosen. They are politicians, legal experts, elders, people of indigenous faith, women, teachers and youth.

Of the fifty, ten each were from the first three categories, namely politicians, legal experts and elders. Five persons each were chosen to represent people practising indigenous religion, women, teachers and youth. The stratum of politicians included gaonburas in the Angami area, nokmas in the Garo area, village council chairmen, ministers of state government, members of legislative assembly and village elders. The second stratum consisting of legal experts refers to dobashis of the Angami community, laskars of the Garo community, lawyers, and bureaucrats like DCs and ADCs and State Law Commission members. The categories of village elders, teachers, women and youth do not need explanation since they have already been defined in the interview schedule. Table 0.4 shows the sample for in-depth interview according to categories and tribes.

0.4: Sample for In-Depth Interviewees According to Tribes and Categories

<table>
<thead>
<tr>
<th>Category</th>
<th>Angami</th>
<th>Garo</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nokmas, Gaonburas, Politicians &amp; Village leaders</td>
<td>10</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Laskars, Dobashis, Lawyers and Bureaucrats</td>
<td>10</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Village Elders</td>
<td>10</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>People of Indigenous Faith</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Women Representatives</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Teachers and Professors</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Student and Youth Leaders</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Grand Total</td>
<td>50</td>
<td>50</td>
<td>100</td>
</tr>
</tbody>
</table>

The category of people practising indigenous faith warrants some explanation. Among the Angami and Garo people, there is a tiny minority who still adhere to their ancestral religion. Among the Garo they are known as songsareks and among the Angami they are known as animists. Strictly speaking they are the only faithful adherents of customary law in its pristine form and it was important that the study be enriched by their
points of view. Because they are completely absent in some villages, they could not be included in the initial interview schedule. Yet their presence is strong in some villages. For instance they are very numerous in Kidima, Viswema and Jakhama villages of the Southern Angami region. Among the Garo, there are some villages exclusively of Songsareks. Almost the entire population of Zeldopara and Dingnapara villages in the West Garo Hills District are comprised of Songsareks.

Having decided on the numbers and the category of interviewees for the in-depth interview, their urban-rural ratio, gender ratio and age group had to be determined. These parameters could not be strictly applied to all the strata selected for the in-depth interview due to reasons already mentioned in the section on selection of the sample for the interview schedule. A little explanation is required on the loose application of rural-urban ratio to the strata in the sample. Some strata like village elders and people of indigenous faith could be found only in villages in rural environments. On the other hand, legal experts are mostly found in the cities. This made the equal representation in the rural-urban ratio difficult.

**Interview Schedule**

The interview schedule was the offshoot of wide reading on customary laws and political institutions in Northeast Indian tribal communities. It also was enriched by the researcher's knowledge of the field because of a previous study that was conducted in Northeast India. The schedule had seven sections. The first section dealt with general information regarding age, sex, marital status, education and religion of the respondent. The second section focused on customary law and village administration. Information on the composition of the village council, its functions, and whether customary laws are
used in the administration of the village was solicited. The third section dealt with communal property resources. Questions regarding the changes that are taking place in land ownership patterns and the subjects’ reactions to such change were raised.

The fourth and fifth section dealt with customary law and its interface with modern polity. Queries on the ability of tribal self-management institutions to respond to the changing times were the focus of this section. Information was sought also on whether the statutory laws and courts have weakened the customary laws and customary law courts. The sixth section emphasized on the gender dimension in customary laws and raised questions on women entering politics and the current status of their inheritance rights. The final section stressed areas of conflict between customary law and modern polity and suggestions to reconcile these conflict areas.

Fieldwork: Interview Schedule

The fieldwork lasted eight months from June 2006 to January 2007. It had two phases. The first phase was pilot study and the second phase was fieldwork proper. The main intention of the pilot study was to test the interview schedule in the field for its relevance to the context. The pilot study gave an opportunity for the researcher to get a feel for the field and to contact persons for interviews and to make arrangement for accommodation.

The pilot study lasted for one month. Three villages each were chosen per tribe and ten persons each were interviewed from these villages. To a large extent, the

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19 The researcher is not a native of Northeast India and does not know the language of the tribal communities selected for the study. Before doctoral study, he had worked in North Eastern Social Research Centre, Guwahati, as a research assistant and this had given him some opportunities to visit both Nagaland and Meghalaya. This experience was quite useful for the present study in that pre-existing contacts came in handy for the selection as well as entry into villages chosen for the study.

20 Since the researcher did not know Angami and Garo dialects he had to depend on interpreters to conduct interviews. Most of the interpreters were proficient in English and their tribal dialect. Since education has
interview schedule prepared for the pilot study matched the field. It needed modification in certain sections.21

The formal fieldwork began in August 2006. Once the researcher arrived at the villages selected for study, the first step was to make a list of fifteen persons who would be interviewed relying on the help of village elders or village council members. The second step was to cross check this preliminary list with one or more persons who were knowledgeable about the village to make it truly representative of the village. This involved striking off some names and replacing them with others. Once the list was finalized the interviews in the village began.

The convenient times for interviews for people were mornings and evenings. During the day most of them would go to work in the field and gardens. The researcher made the best use of mornings and evenings for the interview and when the respondents did not object interviews were even conducted at the site of work. The interviews lasted for about 45 minutes to 60 minutes. Care was taken to jot down field notes which came as extra information and enriched the study.

**Fieldwork: In-Depth Interview**

The in-depth interviews were conducted for the purpose of getting information on the ‘why’ of an issue or a conviction. In the current study, it was not enough to know that the respondent supported customary law system and to know the reasons behind such a stand. While this definitely gave substantial information on the issue at hand this might spread far and wide in both the states, quite a few interviews were held in English. Still interpreters were crucially important in interviewing quite a large number of village elders, people of indigenous faith, *Nokmas, Laskars, Dobashis and Gaonburas.*

21 After discussion with the supervisor, some questions were reformulated, certain questions omitted and some new questions were developed and added. Equipped with feedback and insights gained from the pilot study, the researcher began the formal fieldwork phase.
not deal with the crux of the issue. It was difficult to trace the real motives and belief system guiding such a stand. The researcher had this in mind while selecting an in-depth interview as a technique of gathering data.

The focus of the interview depended on the designations of the interviewees. The nokmas, laskars, gaonburas, politicians, lawyers and bureaucrats were primarily probed on the administration and legal system while village elders and people of indigenous faith were asked questions on the origin of customary laws, how it was practised in the past and about its transition. Youth were questioned on the applicability of customary laws to changing times. The main focus of the interview with women was their participation in politics and inheritance rights. Although each category of people had a main thrust for the interview almost all were asked few common questions relating to the study like the relevance of customary laws, its nature, domain and the need for its reform.

The interviews were loosely structured to help the smooth flow of the conversation. It was more a guided informal chat than a formal discussion on a topic of concern. There were some common issues in mind that were to be probed during the interview. At the outset of the interview certain general questions related to the topic were asked to build rapport with the interviewee. For instance most interviews were started with the question ‘tell me, Mr X, something about the relevance of customary law to our times.’ Such a question, apart from slowly building up momentum for the interview, also helped the researcher know which side of the fence the interviewee was on. This in turn guided the course of interview. Since the researcher was ready with a set of issues which needed probing, the interview effortlessly slid into deeper terrains.
The interview was arranged keeping the convenience of the interviewee in mind and venue too was fixed as per his/her wish. The only requirement was privacy so that the interviewee was at liberty to express his/her views without inhibition. Some of the interviewees requested that one more person be allowed to take part in the interview to answer difficult questions. Though two persons jointly taking part in an interview was discouraged when the interviewee was insistent this was allowed. If the interview was in English, then it would last from thirty minutes to an hour. If there was interpretation, then it could go on from sixty minutes to two hours. The interviews were recorded and later transcribed by the researcher verbatim with a little attention to grammatical correctness.

Having completed the transcription work, the researcher read the transcribed sheets of the interviews more than once. It was mentioned above that the interview was loosely structured so as to provide ample freedom for the interviewees to go beyond the loosely planned format of the interview. But in keeping with the dynamics of semi-structured interview, 10 questions were posed to all interviewees. These ten questions were crucial to the study and the responses to these questions were required to cross examine the data that was collected from interview schedule.

While reading the transcripts of the interviews, the researcher took note of the varied responses and patterns of answers that emerged. Once the responses were noted they were coded and using SPSS software the data was tabulated. The idea of coding and tabulating the responses was to cross examine the quantified data of the interviews with the interview schedule in order to note whether they reinforce or diverge from each other.

We have come to the end of methodology section. The researcher hopes that this triangulation of data achieved through the interview schedule, the in-depth interview,
participant observation and examination of documents should help the study improve the chances of achieving greater authenticity and comprehensiveness in pursuing the research agenda.

**Brief Summary of Chapters**

The first Chapter is titled *Customary Law: A Conceptual Framework*. The first section of this chapter will contain various debates in anthropological and legal literature surrounding the origin, meaning, nature, legal status and applicability of customary law. The second section of the chapter will have a definitional analysis of customary law in order to tease out the characteristic features and traits of customary law. An enumeration of the attributes of customary law culled out from the review of anthropological and legal literature, and from the definitional analysis surrounding customary law will be done in the third section of the chapter.

The second chapter titled *Customary Law Discourse in India* contains three main sections, namely, colonial, nationalist and tribal discourse on customary law. It tries to capture the various strands and conflicting voices within these discourses in dealing with the status of customary law in tribal communities within Indian nation-state. It will discuss the historical trajectory of the evolution of constitutional mechanisms vis-à-vis customary law from colonial times until the present. The emphasis here will largely be on patterns of negotiations and confrontations that took place between the colonial rulers, nationalist leaders and tribal communities in arriving at various policies, dispensations and protective measures in dealing with tribal communities and their customary laws.

*Customary Law in Context: Its Origin and Nature* will be third chapter of the thesis. This chapter focuses on contesting the claims of the traditional lobby among the
Angami and the Garo tribal communities that would assert that customary laws are beyond change and that they should be practised in their pristine form. On the other hand, it also would confront the modernists among them who tend to dismiss the rich cultural heritage that is stored in these laws to the extent of abolishing them. The first part of this chapter will give a brief introduction to Northeast India. The second part will contain a brief introduction to the Angami and the Garo. The third part of the chapter will deal with the origin and growth of customary law in the Angami and the Garo tribal communities of Northeast India from the point of view of the respondents. The nature of customary law from the point of view of change and stability will be the focus of the third section of this chapter.

The fourth chapter Contestation and Affirmation of Customary Law as the title suggests would examine the significance of customary law to the Angami and the Garo communities. Has customary law place in these communities that are caught up in the fast changing world will be the question that will be dealt in this chapter. The various strands of reasoning to justify the continuation of customary law regime in these communities will be examined in this chapter.

Interface of Customary Law with State Law will be the fifth chapter of the thesis. The first part of this chapter will briefly sketch the legal regime that is prevalent in the state of Nagaland and Meghalaya. The second part of the chapter will analyse and assess the encounter of customary law of the Angami and the Garo communities with Article 371A and the Sixth Schedule of the Constitution of India in the state of Nagaland and Meghalaya respectively. The emphasis will be on the encounter of customary laws with
state laws. Has the interface of these two diverse systems of conflict resolution resulted in strengthening or weakening of customary law will be the primary focus of this chapter.

*Prospects of Customary Law: Politics of Inclusion and State Formation in Northeast India* will be the sixth chapter. The first part will discuss the various modes of accommodation of customary law implemented by different nation-states in the world. The second part will summarize the various views and opinions that have emerged from the field on how to accommodate customary law in the state of Nagaland and Meghalaya. The pros and cons of codification of customary law will form the kernel of third section of the chapter. The fourth section will summarize the views of respondents in the interview regarding the codification.

The concluding chapter, that is chapter six, will summarise the study from the point of view of findings, reflections on the findings and themes arising for further study.