CHAPTER VIII

CONCLUSION

The present study on the customary laws among the Tiwas of Assam have come out with interesting findings and observations about the actual working of customary laws among the Tiwas of Assam in the modern day, as administered through their traditional institutions, in a legally pluralistic set up, characterised by overlaps in jurisdiction and function of traditional and modern institutions. The findings from this research hold great relevance both from an academic and policy perspective, as the world realizes the value of local institutions and laws in maintaining social order and cohesion in indigenous societies increasingly characterised by the existence of multiple systems of law. The concept of legal pluralism has been propounded by modern thinkers in anthropology of law as an important scientific tool in understanding the operation of legal phenomena in such societies, with its implicit understanding that ‘every society is legally plural...’ (Merry, 1988: 869). This holds especially true for societies like the Tiwas, which, as the research indicates, has basically three kinds of jurisdictions in operation, with overlaps and conflicts: (a) the traditional or customary jurisdiction, (b) the state-imposed jurisdiction (police, administrative, and developmental), (c) the jurisdiction of the Tiwa Autonomous Council. One of the key objectives of the research, as indicated in chapter I, has been to study customary laws and institutions as part of a complex legal system which is also inclusive of formal state made laws and those made by the Tiwa Autonomous Council. According to Griffiths (1986: 39), one of the main anthropological thinkers responsible for developing the theory of legal pluralism, ‘legal pluralism is a situation in which law and legal institutions are not subsumable within ‘one’ system but have their sources in the self-regulatory activities which may
support, complement, ignore or frustrate one another, so that the 'law' which is actually effective on the 'ground floor' of society is the result of enormously complex and usually in practice unpredictable patterns of competition, interaction, negotiation, isolationism and the like'. The benefit from a policy perspective in adopting legal pluralism for the study of such societies is that 'the theory of legal pluralism permits us to move from focusing all enquiries on the state system, to exploring other legal orders that exist in a given jurisdiction. Such inquiry may reveal that these systems, are, in reality, performing the same work as the state system in a different, and sometimes, better way' (Forsyth, 2007: 3). Hence, the entry point for this empirical research on the working of law in modern day Tiwa society has been through the lens of legal pluralism.

The research has been principally based on five main hypotheses; the first being that customary laws and practices of the tribe, handed down from generation to generation, continue to play an important role in the life of the community, with the people identifying more closely with these laws than the centrally administered laws and laws made by the state government. The research reveals that this holds true to a large extent, with the main strength of customary law lying in the fact that it emanates from within the community, and closely intertwined with its culture, beliefs and value systems. As seen in both Manipur I and Pumakuchi villages, customary laws and practices are viewed as rules ordained by the forefathers, which have divine sanction and in most cases, continue to be obeyed for fear of incurring the wrath of the divine powers and the dead ancestors. Also, customary modes of law-making and dispute resolution continue to have relevance among the Tiwas of both the hills and the plains owing to certain advantages which they have over mainstream legal systems. As seen in many of the cases in both Manipur I and Pumakuchi, justice in the customary set-up is immediately and efficiently delivered, with very little time elapsing between the commission of the offence and delivery of verdict, unlike the malaise afflicting modern law courts where justice delayed very often becomes justice denied. As many of the cases indicate, the gaonburhas (village headman) of the individual villages summon the mel (village council) immediately on coming to know of an offence, the news of which is circulated by the barika immediately, who is a customary functionary invested with the exclusive
responsibility for circulating messages and calling the villagers to a meeting or gathering. In some cases, especially those involving family matters, the need to even go to the mel for justice is averted through the intervention of the bar zela (clan head), who resolves the issue immediately with the objective of reconciling the parties. Thus, in the field, the researcher has found property disputes between brothers settled to the benefit of both brothers, sisters-in-law reconciled as to the sharing of domestic duties, co-wives prepared to live together to maintain the family and prevent its breakdown etc.; all through the arbitration of the bar zela and clan elders.

As noted by many observers, a major advantage of customary law is its rehabilitative and corrective nature, as opposed to the modern legal system which is essential punitive in nature. Roy (2005:21-22) in his study on customary laws in different parts of Asia, observed that 'in the case of dispute resolution, since the parties from rural indigenous communities must face each other in their small community after the dispute is settled, efforts are almost always made to produce two winners instead of a winner and a loser. No efforts are spared to try to reconcile those in dispute. Further, the same concern of properly rehabilitating those in dispute also prompts the judges or arbitrators to reconcile the guilty party, if there is clearly a 'guilty' party, not only with a victim, if there is one, but with the community'. This particular research among the Tiwas also yields similar findings. Thus, a number of cases are found in both the villages where an offender is let off with a warning or a small fine. An eve-teaser accused for the first time in Manipur I was let off with his father asked to keep an eye on him, a habitual drunkard and nuisance maker was let off with a small fine by the gaonburha in Pumakuchi, while the gaonburha, Lambudar Bordoloi of Manipur I let off a petty thief caught and beaten up by an angry mob on the ground that he was of tender age and came from a good family. Reconciliation is sought not only with the community but also with God, with the efforts of the customary system of justice focused on the redemption of the offender from the sin. Thus, a person committing the pucca dai (a grave offence which is believed to incur divine wrath) of killing a cow has to seek pardon from the supreme religious authority of the Tiwas- the Gobha Raja, who alone can rid him of the sin. Also, contrary to popular assumptions, customary laws are not static or frozen in time; in fact, they show remarkable flexibility in adjusting to the needs of the times. For instance, in both
Manipur I and Pumakuchi, marrying within the same clan is a great offence, punishable with ex-communication of the couple involved. Imposing this extreme punishment is avoided in the modern day with the community adopting an interesting strategy to keep this errant couple with its fold, with the girl's adoption by another clan and her being married off as a daughter of the new clan.

However, the field findings partially challenge the second part of the hypothesis, namely that people identify more closely with customary laws than the modern laws. This particularly does not hold true for Manipur I; the people of which have been more open to change from outside as evident in their adoption of Assamese Vaishnavism and the presence of many outside elements in their culture, owing to living in close proximity with caste Assamese and other non-Tiwa villages. In Manipur I, a growing trend is seen of people taking recourse to the modern law courts, preferring them over the traditional mel. Cases indicate that the younger generation, especially, use the modern legal system to their own benefit; sometimes also as a ploy to evade the traditional system as seen in the case in Manipur I, where a man filed an F.I.R. in the police station against his estranged wife in order to evade the payment of maintenance ordered by the mel. This interesting phenomenon has been reported by Galanter, Srinivas and Cohn in villages in different parts of India, as early as the 1960s and 70s. According to Galanter (1972: 64), contrary to popular assumption, 'villagers are also at home in this legal system (referring to the modern legal system)'. In his view, 'at least, they are neither as radically isolated from the system nor as passive as they appear to some critics of the present system'. Villagers are, as observed by Srinivas (1964) 'bi-legal', 'they utilise both the indigenous and official law in accordance with their own calculations of propriety and advantage'. On the basis of ethnographic evidence, Cohn (195: 108-9) arrives at the following conclusion:

'Even though there are inadequacies and scope for chicanery and cheating, the lack of fit with indigenous jural postulates notwithstanding, the present court system is not an alien or imposed institution but part of the life of the village. Looked at from the perspective of the lawyer's law and that of the judges and the higher civil servants, the ability of some peasants to use the court for their own ends would appear a perversion of the system.
However, looked at from the ground up it would appear that many in the rural areas have learned to use the courts for their own ends often with astuteness and effectiveness.

The phenomenon of indigenous communities increasingly using the modern legal system to their advantage is observable not only in isolated, individual cases in villages, but also in the collective mobilisation of the Tiwa community as a whole, in trying to use the Indian constitutional and legal framework; seeking to wrest sanction and recognition of their right to self-rule and for their customary laws and courts, using the provisions of the Indian Constitution. The demand for an autonomous council under the Sixth Schedule of the Constitution and their significant success in getting the Tiwa Autonomous Council (albeit through a legislation of the Assam state and not through the Sixth Schedule) is best illustrative of their comfort with and acceptance of the modern legal system.

The second hypothesis that the modern legal regime has imposed some restrictions on the powers and functions of the traditional institutions and its functionaries, some of which may be in a defunct state has largely been proved through this research, though the findings are considerably nuanced and varied. Overall, it is vindicated by both primary and secondary sources that with the imposition of the modern legal system, there have been considerable undermining of the powers and functions of traditional institutions responsible for administration of justice. The most obvious of this is the reduction of the authority of the traditional court to the mere trial of petty crimes; clearly articulated in case of Pumakuchi through the Rules for Administration of Justice for Karbi Anglong and through state practice in case of Manipur I. The research also indicates that the modern legal regime has chosen to adopt varied policies towards different traditional authorities, in terms of recognizing or rejecting particular institutions. For instance, the Tiwa king’s authority has not been formally recognized by the modern legal system, with the result that his jurisdiction, which earlier extended to all affairs of the Tiwa society, now remains largely confined to religious functions and collection of token tax from his subjects. On the other hand, the role of the gaonburha in maintaining social order in his village has been recognized, with the result that the local police also takes his permission before entering the village for conducting investigations. The district authorities, with the objective of avoiding conflict with the traditional system has made it
their standard norm to appoint the *gaonburha* selected by the villagers as the *charkari gaonburha*. The authority of the *mel* or the village courts has been recognized explicitly in the state of Karbi Anglong, with the provisions of the Sixth Schedule of the Constitution giving legal validity to it. In case of Morigaon district (in which comes the village of Manipur I), there is a parallel system of administration in operation owing to the implementation of the Panchayat Raj system. However, conflict is avoided between the traditional and the Panchayat authorities, owing to the fact that the latter is vested only with the developmental administration and not the administration of justice. These findings in the field conform to a large extent to the theoretical models propounded by Forsyth (2007:5-7) with respect to the different types of relationship between the non-state justice system and the state legal system in a legally pluralist society. In her view, this relationship can take the following forms:

(i) **Repression of a non-state justice system by the state system**: In this particular research, an example would be the taking away of the authority of the *Gobha Raja* to impose the death penalty, which was a power he commanded in the traditional system.

(ii) **Formal independence between the systems but tacit acceptance by the state of a non-state judicial system**: For instance, the recognition of the *mel* as an authority for administering justice in case of petty offences in Manipur I, despite no formally written rules recognizing this institution.

(iii) **No formal recognition but active encouragement of a non-state justice system by the state**: Despite no written rules and legislation, the recognition given to the traditional *gaonburha* and his appointment as the *charkari gaonburha* in Manipur I is an example.

(iv) **Limited formal recognition by the state of the exercise of jurisdiction by a non-state justice system**: Example being the recognition of the authority of the traditional village council and *gaonburha* in dispensing justice in petty
crimes in Pumakuchi, through the Rules for Administration of Justice for Karbi Anglong.

(v) **Formal recognition of exclusive jurisdiction in a defined area:** In the particular context, the traditional authorities have not been given exclusive jurisdiction, with an aggrieved party having the right to use either system-traditional or modern law courts. However, religious disputes and offences continue to remain within the exclusive jurisdiction of the traditional authorities, with the state not recognizing most religious offences as offences, unless they break other laws. For instance, desecrating a *thaan* is a serious religious offence among the Tiwas but such an offender commits no crime against God under the modern legal system unless a case is made out that he has destroyed public property or committed a public nuisance etc., which are civil offences in the modern system.

(vi) **Complete incorporation of the non-state justice system by the state:**
Found not applicable in the present context.

The third hypothesis on which the research has been based is that the Tiwa Autonomous Council (TAC) exercises an important role in the socio-political life of the Tiwas and it gives weightage to the customary laws of the community. This hypothesis holds true only in an anticipatory sense, and no so much as in the present. This is because of the fact that while the Tiwa Autonomous Council was created almost about fourteen years earlier in 1995, it has not been fully functional in many aspects. In fact, till date, it has not been able to establish ‘self-rule’, as envisaged by the Lalung Durbar and the relentless political movement launched by it from the 1960s onwards. This is due to the fact that the area and jurisdiction of the Council is yet to be demarcated clearly, the village councils which were to be the soul of Tiwa autonomy are yet to be constituted, and the members of the executive council continue to be nominated by the state.
government instead of being the elected representatives of the community. Further, the
existence of the Panchayati Raj administration side-by-side with parallel powers and
functions dilutes its authority and goes very much against the spirit of autonomy, as
envisioned by the fathers of the Indian Constitution, while giving shape to the Sixth
Schedule provisions. Research in the field and interviews with the Chief Executive
Member indicated that many of the flaws in the functioning of the Council lie in the fact
that it was created through legislation enacted by the state government and hence, does
not enjoy the unchallenged constitutional sanction enjoyed by similar Autonomous
Councils of the hill tribes created under the Sixth Schedule such as the Karbi Anglong
Autonomous Council. With Sixth Schedule status extended to the plains Bodo tribe
through a constitutional amendment, leading to the creation of the Bodoland Territorial
Areas District (BTAD), the collective aspiration of the Tiwa community today is to get
similar status as the BTAD. The present research indicates that while ‘self-autonomy’ is
yet to take wings, the TAC could be expected in future to consolidate the position of
customary laws and institutions, with the provisions of the Lalung (Tiwa) Autonomous
Council Act, 1995 giving these due legal sanction. Also, the present efforts of the TAC in
influencing the state government to ensure royal allowances to the Tiwa kings, providing
better allowance for the gaonburhas, building samadis and helping in their upkeep etc.
are indirectly contributing towards strengthening the position of customary laws and
institutions.

The hypothesis remains untrue for the Hill Tiwas which reside under the
jurisdiction of the Karbi Anglong Autonomous Council, where Karbis constitute the
majority and hence, Tiwas are not being able to reap as much advantage as the Karbis.
However, it could be expected that an empowered and motivated TAC could exert some
influence on its counterpart-the KAAC to take steps for given more opportunities for
Tiwas residing in the latter’s jurisdiction.

The fourth hypothesis has been that the customary laws of the Tiwas, like most
other customary laws, have gender-bias, with laws sanctioning discriminatory treatment
against women. The testing and validation of this hypothesis in the field has been
problematic owing to the fact that the findings have been considerably nuanced. On one
hand, among both the Hills Tiwas and the Plains Tiwas, women have no say in the
administration of justice. In fact in Pumakuchi, their very entry to the *samadi*, the customary place where the *gaon sabha* sits to pronounce judgement, is forbidden by religious taboos. On the other hand, it is a society where women are respected and where offences against women are considered serious offences. Fernandes and Barbora’s (2002) observations, with respect to the gender impact of customary laws in North-East India that ‘most tribal traditions were community-based and assigned a relatively high status to women without making them equal to men’, holds true in this particular context also. The researcher found in the Hill Tiwa village of Pumakuchi, a matrilineal system of inheritance with inheritance of property taking place through the female line, equal status of husband and wife in family decisions, the practice of *gobhia* and the customary absence of polygamous families. However, despite this apparent high position of women in the society, women have been customarily forbidden from taking part along with the men of the village in proceedings of the *gaon sabha*. They are also not permitted by custom to be one of the functionaries constituting the *gaon sabha*. Also, under the impact of modernisation and more contact with the outside world, the young generation of males in Pumakuchi is no longer willing to abide by the rules of *gobhia* and matrilineal inheritance. On the other hand in Manipur I, there is a patrilineal system of inheritance, with daughters not given a share of the family lands, the absence of the system of *gobhia*, the customary *dictat* to a women to obey her husband and accept his authority in all matters. As the research indicates, the adoption of patriarchy by the Plains Tiwas took place on their coming to the plains from the hills and influence of caste Assamese mores. Despite these obvious examples of gender bias of the customary laws, the society in Manipur I is open to change and its elders are sensitive to the rights and welfare of their fellow women. Thus, a customary system of administration which earlier had no place for women now consults the *mahila samiti*, in disputes and offences (of a secular nature) involving women, with the *mahila samiti*’s word carrying weight in a verdict. Then again, despite the existence of patriarchal customary rules, recent decisions of the *mel* have strived to give women their right to justice and enhance their status both in the immediate family and the larger society.

The fifth hypothesis that tribal communities like the Tiwas have a deep-feeling of oneness with the natural world; and that regulation of natural resources receives a central
focus in customary laws is vindicated by the existence of a vast repertoire of customary laws, practices, religious taboos and beliefs, particularly in the Hill Tiwa village of Pumakuchi. The Tiwas believe in the same soul pervading all life on earth. They strongly believe that their deities do not reside in a far away heaven as is the belief in most religions, but they reside on earth in different manifestations such as streams, forests, stones, hill tops, trees, lakes, etc. which is why they have strict rules and social sanctions and taboos to protect these manifestations. All life forms are sacred, even insects as evident from the Maiha Choma Rowa ritual observed by every clan in Pumakuchi to atone for the sin of killing insects while setting fire to the jhum fields prior to cultivation. However, despite the entrenchment of remarkable conservation ethos in the customary laws and practices, there are many changes taking place under the impact of the forces of modernisation, market economy and giving up of the traditional religion. In Manipur I, the research reveals that such religious taboos and prescriptions are no longer followed by the converts to Assamese Vaishnavism, though it could be hoped that the current climate of revivalism of traditional faith and way of life going on in Manipur I would restore these practices in future. Even in Pumakuchi, there is a decline in the traditional conservation ethos. While the sacred patch of forest surrounding a than is still being zealously protected, the same ethos is no longer seen in the case of the bamboo groves (which they believe to be the residence of their dead ancestors) or the other forests, which are being indiscriminately felled to yield quick cash from the neighbouring paper mill or timber trader. Sahai and Barpujari’s (2006: 29) observations particularly fit the context here that ‘there is no such thing as an ideal ‘indigenous ecological ethos’ and that as indigenous peoples respond to a changing economy, market forces or conversion to a new religion, the character of their green consciousness undergoes a change’.

Thus, the overall picture which has emerged as a result of this research among the Hill and the Plains Tiwas of Assam is that customary laws and practices and traditional institutions administering these continue to hold relevance even in the modern day, among a people subject to much change owing to the forces of modernisation. However, for these customs and customary laws to be of continuing relevance, it is essential that they receive a strong focus in government policy. Unfortunately, in India, a trend towards centralised legal and policy systems ignoring and displacing or dominating customary
laws, has been prevalent from the colonial times and even after independence. Despite constitutional recognition of customs and existence of provisions like the Sixth Schedule which recognizes the right to autonomy of indigenous populations, the existing policy environment is unfavourable towards customary laws and traditional institutions. Most sectoral statutory laws, policies and government schemes and programmes do not provide space to customary laws and practices (Sahai and Barpujari, *op.cit.*). Non-recognition of customary laws and customary rights by the higher judicial bodies leads to the undermining of the importance of these practices and norms at the village and local levels as well. The judicial recognition of customs and customary rights is difficult in India, if ever challenged in a modern court. The rules of evidence imported from the colonial legal system and imposed by statute and convention in court procedures are a major cause for the disappearance of customs, with strict criteria being imposed by courts to prove the legal validity of custom. Unfortunately, the demand for high standards of evidence is reflected even in recent Supreme Court judgements. A case in point is a 2001 case (Surajmani Stella Kunjur v. DurgaCharan Hansdah AIR 2001 SC 938), where the Supreme Court has said that ‘a party relying on a custom is obliged to establish it by clear and unambiguous evidence...’. There are several other factors also which have undermined the role of customary laws and indigenous practices in recent times. The modern education system looks upon all taboos and traditional values as superstitions; this gives the local educated people in the younger generation a feeling of inferiority regarding their culture and social practices. Conversion to a different religion further aggravates this. Thus, the researcher found a few youths in Pumakuchi village ashamed of the practice of *gobhia*; while in Manipur I, people who have given up the traditional religion feel ashamed of the practice of sacrificing pigs in religious rituals. In a similar vein, Rustomji (1988) citing Elwin had remarked in the context of erstwhile North East Frontier Province (N.E.F.A.) or present Arunachal Pradesh that ‘...the attitude of some missionaries has been completely destructive of the tribal culture. To them everything which is not Christian is ‘heathen’ and some of the finest aspects of tribal life have been abandoned... The tribals have been taught to despise their past and as a result a strong inferiority complex has been created’. In addition, the compulsions of a monetized economy have led to changes in perspectives among local communities. For example,
their needs increase and their change, making them less respectful towards nature and incapable of maintaining a sustainable lifestyle. This in turn leads to a loss of reverence towards customary norms, which demand restraint in the exploitation of resources. Another problem facing customary law is that it is community specific and cannot address a situation where there is a dispute between a member and non-member, as is bound to happen in villages like Manipur I and even Pumakuchi surrounded by non-Tiwa neighbours. In such a case, there is no option but recourse to modern legal procedure.

Despite many constraints and factors contributing to its decline in recent times, advocates of customary law point out that it is best suited to the local context. However, for customary practices and laws to continue contributing to upholding the 'rule of law' in modern times, certain changes are required in the existing policy environment in India. Most importantly, customs need to be accepted as law *per se* and to be recorded as state sanctioned formal rights. They need to be treated at par with statutory laws. Oral evidence in forms like community knowledge should be considered adequate in itself to provide evidence. There is need for judicial bodies to recognize and internalise components of customary law. It is also imperative to ensure more effective participation of local people and for assimilating people's knowledge, customary laws and strengths of traditional institutions into formal structures. There is also greater need for the community to revitalize their customary laws and institutions and take measures to remove some of the inherent defects, making it more equitable and gender sensitive and adaptive to modern day challenges, while retaining the soul of these traditions which constitute the distilled practical knowledge handed down from generation to generation. Efforts at revivalism of Tiwa religion and culture, sustained collective mobilisation and will of the community to make the Tiwa Autonomous Council effective despite hiccups in operationalisation, future prospects about attainment of Sixth Schedule status and efforts of the Council in promoting Tiwa institutions, laws and culture hold out hope for the future of the Tiwa tribe.