

DISPUTE RESOLUTION AMONGST THE GAROS OF GARO HILLS (MEGHALAYA)

**THESIS SUBMITTED IN FULFILMENT OF THE
REQUIREMENT OF THE DEGREE OF
DOCTOR OF PHILOSOPHY**



KUMIE R. MARAK
DEPARTMENT OF ANTHROPOLOGY

North-Eastern Hill University
SHILLONG, MEGHALAYA
NOVEMBER, 1991

The Anthropological literature on village ethnographies are many in India, but the studies on legal anthropology has not been undertaken by many. Legal Anthropology is one of the branches of Anthropology which is studied with many other disciplines. Ethnographies and other village monographs contain references to dispute processing institutions and particular cases or institutions described in them. Many intellectuals, philosophers and officials have incorporated their own experiences and knowledge. The different names by which social control is referred to are customary law, customary practices, law and order, legal sanction, moral code, etiquette, social conflict and dispute resolution are dealt within different areas by different people. However, man as a social animal has to acquire means to combat in respect to power, authority, land, succession, marriage and religious belief.

Some of the mentionable works in this regard is that of Westermack (1906) and Hobhouses (1906). These were the first books written by social scientists on morals and their development in human societies. However, the idea of relativity of morals in different societies was first promulgated by David Hume and further probed, analysed and elaborated upon by Herbert Spencer and Westermack. Their work found supporters among British and American anthropologists. Raymond Firth, one of the leading British anthropologists, defined morality as

" ... that system of rules and standards which gives significance to the activity of individuals in relation to one another in society, and which gives meaning and value to conduct" (1951: 213-214). In the United States the trend to synthesize anthropology and philosophy had met with a larger acclaim. May Edel and Abraham Edel, the former an anthropologist and the latter a philosopher in their book entitled "Anthropology and Ethics" (1959) demonstrated the reciprocity and cooperation which can exist between these two disciplines. The main crux of their study on several groups was that ethical and moral concepts do not fall within the domain of supracultural sphere but they have their cultural roots and social functions. Another significant contribution towards understanding law anthropologically with the help of philosophy was by Northrop (1953). He begins with the statement "Law like personal ethics, is concerned with norms. Since norms express the ethos of a culture, different theories of legal norms take one to the heart of the problem of cultural values" (p.668). He distinguished between 'positive law' and the 'living law', the former including the given constitution, codes and institutions while the latter encompassing the underlying inner order of the behaviour of people in society. He further emphasizes that, "since the inner order of society has content and varies often from one society to another, this theory of cultural values has the merit of giving to the judge who is operating his positive legal institutions a norm possessing content" (ibid:p.673). Moreover, he reinstates the fact that ethical character of a

society does not survive necessarily in a hothouse in isolation from rest of the society and culture. Thus both the 'positive' and 'living law' are in close correspondence to each other.

Clyde Kluckhohn (1949) in his study of Navaho Indian also reached to similar conclusion by deriving the inner order of the society from the philosophy used by the people. John Ladd, the American philosopher in his study of Navaho Indians (1957) utilized the general theory of descriptive ethics to detailed analysis of moral ideas arriving at a conclusion that, "morality is not the whole life, that violations are normal, and that the chief function of moral principles is to advise us how to act rather than to punish us afterwards" (ibid:333).

Working on the same line Haimendroff (1967) in his book "Morals and Merits" has conducted a cross cultural study amongst the South Asian countries, and has demonstrated that "diversity of moral ideas as well as of the controls different societies employ in ensuring the maintenance of the traditional moral order" (ibid:13). He tried to construe law through the moral value and ethical code of the primitive societies. Though this approach has had very limited usage amongst the anthropologists yet, this was the method which did not have the bias suffered by the Colonial researchers. The chief dilemma with them was the differentiation and similarity between law and custom. These social scientists were mostly influenced by the Analytical School of Austin who felt that law considered as the "..... command of the political state prescribing a certain line of conduct in all cases of a similar character enforceable by

specific sanctions in the event of disobedience has tended to slight customary law and scarcely to admit its existence" (Lobingier:1959:662). These were mainly propounded by jurists who tried to understand and generalise the nature of law. The conclusion apparently was that law was the prerogative of 'higher' cultures and civilizations since law can be enforced through courts and officials for settling disputes and punishing the culprit. Hence the entire system of social control amongst the preliterate society was kept at the lowest rung of the evolutionary ladder of law as conceived by the jurists.

Sir Henry Maine, during the late eighteenth century, in his monumental work on ancient law postulates that with the introduction of writing, the unwritten law recognized as customary law ceased to be so, instead getting elevated to the status of law. Another debatable contention of his was the interrelation between primitive law and religion. Further, time and again he has been misquoted and misinterpreted by later writers on law. In this regard Hoebel (1954) and Redfield (1950) think alike. Maine never intended to make religion as the source of law but mainly tried to demonstrate 'intertwining of law and religion in primitive societies." On the other hand, Diamond (1971) and Seagle (1941) attempt not to begin with 'the stages of development of law' where moral and religious progress forms the central theme. Diamond (1971) in his book entitled "Primitive law past and present" which is chiefly an account of historical jurisprudence revolves the entire description around four grades of economic system, his main

stress being that a new economic system brings changes in law.

He recognized four economic grades:

- (i) Food gatherers grade
- (ii) First agricultural grade
- (iii) Second agricultural grade
- (iv) Third agricultural grade

These grades have been correlated with early codes, central codes, late codes and parallel codes.

During the period of late eighteenth century the scholars of jurisprudence were more interested in systematising the available facts in the evolutionary scheme. In doing so they were mostly collecting the ideological rules of the societies through the accounts of missionaries and Colonials. It is said that the Germans went to the extent of distributing questionnaire to the missionaries and Colonials to fill in the gaps. However, the lack of field insight miserably failed to bring out the actual normative interplay between individuals, clash of individual interests, conflict and intervention of forces which had the power to control the given situation. Thus the accounts recorded lacked the vivacity. An improvement over the Post Kohler German School were the Dutch monographs on ethnological jurisprudence initiated by Van Vollenhoven. Though they mostly recorded the ideological pattern, yet, they were more life-like since the ethnologists and the law experts based their writings on field studies. The account of Indonesian 'adat' law (Haar: 1948) is a classic example of this school.

On the other hand, scholars like Hartland went to the extreme of defining primitive law as the totality of its customs. Thus the trend set wherein law and custom were treated as one. Clark, Wissler while writing the introduction to the work by R.S.Lynd and H.M.Lynd (1929) on the American community of Middletown proclaimed that this was the first study utilising social anthropological methods.

The trend setter in anthropology Sir Bronislaw Malinowski in 1922 published his book entitled "Argonauts of The Western Pacific" followed by the "Crimes and Customs in Savage Society". His approach to the study of primitive law was far removed from the earlier ideological trend. It was entirely descriptive, i.e., dealing with the actual practices the responses of the individual and thus the behaviour thereof to the various sanctions and responses prevalent in the society. Thus for the first time human beings were viewed as emotional and rational beings and their responses recorded and analysed. The same approach has been followed by Barton in his study of Ifugao law and Rattray's work on Ashanti law and constitution. During 1930 W.L.Warner writing on "Murngin Warfare" stated, "law is inherently purposive. It deserves more purposive attention; for on its immediate growth hangs the fate of civilization. The science of comparative legal dynamics is called upon to add its catalytic effect to the crystallizing metamorphosis from Primitive law to modern on the plane of world society" (p.333). A major achievement in the study of primitive law was made in 1941 by the publication of "Cheyenne Way" by Llewellyn and

Hoebel. It marks the beginning of 'study of Anthropology of law'.

E. Adamson Hoebel in 1954 published his work on comparative legal dynamics entitled "The Law of Primitive Man". Within this work he minutely delves into the realms of social control of six major tribes the Eskimo, the Ifugo, the Comanche, the Kiowa, the Cheyenne and the Ashanti. In his own words "an anthropological approach to law is flatly behaviouristic and empirical in that we understand all human law to reside in human behaviour and to be discernible through objective and accurate observation of what men do in relation to each other and the natural forces that impinge upon them" (1945:5). After having described the various incidents in an Eskimo life Hoebel commented that "in these ways, Eskimo society without government, courts, constables or written law maintains its social equilibrium, channelling human behaviour, buttressing the control dikes along the channels with primitive legal mechanisms or their equivalents. In these ways a social system is shaped in accordance with the social principles and values laid down in the basic postulates held held by the members of the Eskimo society" (Ibid:99). Thereof he puts forth the postulate that spirit beings or all animals by virtue of possessing souls have emotional intelligence similar to that of man the deduction from it being that man is subordinate to the wills of animal souls and spirit. While discussing the Ifugao he demonstrates that how family and kinship form the basic matrix to the system of social control. In Comanche he finds individualism to be very strong and postulates that individual is supreme in all beings. Thus he brings forth the

concept of magic, taboo and sorcery as found amongst the Eskimo and the Ifugao to be mainly aiding the society in its social control. Reviewing the Eskimo society he comments, "Religion controls function in place of law for the most part in the Eskimo system, but law comes to the support of religion as a last resort when religious sanctions have failed to work and tabus are persistently ignored" (ibid: p.261).

Citing the case of the Ifugao Hoebel states that "Religion and the use of magic loom large in the lives of the Ifugao..... Relations with the ancestors are of much concern to them. But tabu violations are entirely individual and family affairs to be expiated by extensive sacrifices and offerings to the spirits concerned" (1954:261). However, while analysing the Comanche he admits that though supernatural elements aid and support the law at weak points these do not entail any moral injunction or binding. He, however, admits that in the case of the Trobriand law the relation of law and supernatural is much more complex. While analysing and interpreting the Ashanti case he writes" The Ashanti theory of the relation of law to the supernatural world is explicitly a natural law theory, and hence every legal prescription and action must nominally, at least, be squared with the ethics and requirements of the religious belief" (ibid:264). It is here that Hoebel just fleetingly touches upon the relationship of law to ethics and moral of the people. However, in the succeeding pages he tries to emphasize the point that whereas religion basically concerns itself with the human and superhuman

relationship, law deals mainly with the man to man relationship. He further tries to draw a line between crime and sin. In this context it is imperative that the norms which religion lays out for man to deal with the super human does not necessarily remain restricted to the religious sphere but it pervades his entire behaviour system which includes his responses and reactions with other human beings. Hence the basic tenet of religious ethics and moral of a society directly influences the behaviour of the people and framing of social sanctions within the society. Thus while viewing a society the religious values become covert mainly due to the formalism with which the society tries to drape its social sanctions. Which makes the laws, rules and sanctions appear overtly secular.

With the rise in complexity of the social system the entire domain of social control takes up a clear cut shape in terms of set legal rules and personnel who are empowered to use them. In primitive societies this pigeonholing of law and religion is less evident. The sorcery, magic or a rite which an individual or group resorts to for a means of settling a conflict through propitiation of spirit by animal sacrifice or other material offerings takes the form of 'wasta' as mentioned by Laura Nader (1965:395). In her study of Shia Moslem village of Libaya in Lebanon. The 'wasta' are 'remedy arrangements' in a litigation, mostly done by Lebanese politicians who try to motivate and influence the legal authorities to settle the case in the favour of their client, who is from his constituency. Nevertheless, Hoebel's (1954) attempt at describing the range

of variation in legal procedure and relating its complexity at different levels of subsistence gives a researcher ample coverage in understanding a community's legal aspect even if it has been picked from any part of the world.

The coming of 1960s heralded a new era for the study of anthropology of law. The trend and use of the comparative studies were being questioned. According to Fred Eggan (1965) "the comparative method is still a useful procedure in cultural anthropology despite the considerable variation in the conceptions held by the different anthropologists as to its nature..... the comparative method is not a 'method' in the broad sense, but a technique for establishing similarities and differences" (p.366). Taking Hoebel (1954) and Gluckmann's work (1955 and 1967b) on Barotse as land mark the question was where to move next in anthropology of law? The queries of Sally Falk Moore (1969) adequately expresses the thoughts of a social scientist (page 339) in investigating legal phenomenon: on what basis is the anthropologist to decide what he is looking for and what to look at? Is he comparing legal concepts or behaviour? Are these different from each other or are they facets of the same entity? Is he comparing whole legal systems? Cases: Rules? System of rules "dealing" with particular substantive matters, land, inheritance, family, property transfer and the like? Procedure? Is he interested in dispute settlement exclusively or in systems of social control in general? Added to this dilemma was the 'perils of Anglo ethnocentrism'. The dispute between Paul Bohannan and Gluckmann regarding suitable

language for legal description was given much ado during the entire seminar held under the Wenner Gren Foundation during 1966 with the main theme to find "the position of jurisprudence in social science and the study of dispute settlement in terms of processes relating to society and individual". The central theme of discussion remained around the Bohannan-Gluckman controversy between various social scientists, jurists and anthropologists. Bohannan's chief argument was that the English legal terms are bound to the English law with such firm rigidity that they cannot be used to adequately describe another legal system. Hohannan further emphasized upon the issue of including the folk analytical system in the general rubric of comparative analytical system. Another important feature which emerged from this seminar was the new trend of studying anthropology of law through conflict resolution or dispute settlement, which was a certain advancement from the simplistic listing of law. In this approach the unit of study is the concerned case. The three main spheres in it is the pre-history of the dispute, the dispute itself and its social consequences. P.H.Gulliver was a pioneer in this kind of studies.

One rarely comes across works in India totally devoted to anthropology of law. However, there is no dearth of short papers or articles in Indian context. This aspect becomes more conspicuous since in contrast we have excellent monographic studies devoted exclusively to the legal aspect of a tribe or community, a few of which are American Indians (Hoebel, 1954 and Barton, 1919), African tribes (Gluckmann:1955, 1966, Evans

Pritchard:1940), Mexican tribes (Collier:1973) and communities of New Guinea (Koch, 1974: Popisil, 1958 and Berndt, 1962). Whereas in the Indian context we find that the account of customs and laws of Hindu caste of the Deccan Provinces enumerated as early as 1868 by Arthur Steele. This was followed by Julius Jolly's account (1928) on Hindu law and custom. These early works along with the translation and analysis of Manav Dharam Shashtra (Buhler:1964) formed the beginning of the study of law in India. The later trend of the research was far removed from the earlier trend. These studies can be categorised under legal systems operating within the caste system. Such studies include the works of Srinivas (1954), Bose (1960), Biswas (1962), Derrett (1963) Gnanambal (1973), and Misra (1977). Further the various village studies carried out in India explicitly and expertly handled the aspect of conflict resolution. Mention may be made of the studies of Srinivas (1952 and 1962), Bailey (1963 and 1965), Carter (1974), Davis (1980) and Ishwaran (1964). The acceptance of Village Panchayat system by the Government of India was a definite step towards recognition of indigenous customary practices. A few of the studies which emphasize upon the functioning of Panchayat are Upendra Baxi and March Galanter (1979) Girtler (1976) and Kushawa (1977). The nomads had held the interest of researchers working on law and society in this regards the work of Vestschera et al.(1978) and Misra (1978a) is worth mentioning. Lastly the general trend of Indian jurisprudence and the changes noted in the Indian social system by anthropologists has been well brought out in the studies of Cohn (1959, 1961 and 1965), Baxi (1975) and Kidder(1978).

Further, recently published work of Archer (1984) on Santal courts is an useful contribution in the studies of tribal customary law. Singh (1984) in his introduction to Archer's work observed that though the end product of Archer's efforts were compiled in three volumed reports on state of the Santal law, yet, the study did not cover the tribal perception of law. Besides it lacked the anthropological insight and suffered from major lacunae in understanding of tribal customs and tribal law in Santal milieu. The classic account of Elwin (1950) of Maria Murder and Suicide deals basically with the homicidal aspect of the tribe. To evaluate the aboriginal crime he utilizes his anthropological knowledge and illustrates with cases as how the individual was dealt with under the Indian penal code. The foreward of his book was written by Sir W.V. Grigson a British Colonial administrator from the area of Bastar. In the appendix Elwin has given 100 homicidal cases recorded by him. Another study is that of Bhil tribe (Varma, 1978) of Rajasthan. During the long years of author's administrative career when he was posted in Rajasthan and in due course of his stay he had recorded the details of various legal cases brought to the court. The detailed enumeration of these individual cases brings out the tribal tendencies, motivation behind a case and the contrasting standards of tribal custom and modern jurisprudence. The most recent being the work of Roy and Rizvi (1990) dealing with customary tribes of North East India.

Burling, R. (1963) in his book on a village Rengsangre described ethnography of the Garo in lucid details. His main aim of the study was kinship operation and its net work in the special form of cross-cousin marriage within the matrilineal society. But he confessed that instead of proving any hypothesis he dealt the descriptive study of Garos of one village. In one of his chapter he attempted to describe the procedure of settlement of disputes adopted by the villagers. Most of the case studies were confined to disputes over land rights. Further, he gave vivid description of the ordeals the accused had to undergo in proving his innocence. Further more, no indepth analysis of conflict resolution was attempted. The author without having any particular observation took the help of prevailing traditional norms in describing the mechanism of social control.

Milton Sangma (1979) in his book on "History and Culture of the Garos" not only gave a comprehensive account directed to delienate the oral, proto and contemporary history of the Garo but also presented glimpses of social change within the society. He gave an interesting account of the political systems along with administration of justice. His description of mechanism of social control provides insight into the study of conflict and confrontation. His account of customary laws is not only based upon the published papers but also on the rigorous field work he had conducted during data collection.

Julius L.R.Marak (1985) published a book on "Customary Laws and Practices". According to the author the main source of the customary laws is Garo religion. With the change in



religion the author prophesized that the change in customary laws is inevitable. His comprehensive and critical analysis of customary laws is based upon first hand information and data collected from secondary sources. His description of social offences, crimes, and laws pertaining to marriage and inheritance brings out the intricacies involved in dispensation of justice. But the lacunae in understanding the Garo mind in resolving disputes remained unattended.

Chie Nakane the Japanese scholar in 1967 made a comparative study of the two matrilineal societies Garo and Khasi. In her study she dealt in depth the Garo social organisation and interpreted and analysed the principles behind Garo cousin marriages. Further, she brought forth the authority and power vested with nokmaship and its importance in the village community. Finally highlighting the reasons and factors responsible for the stability and sustenance of the domestic family amongst the Garo. During 1982 the India Law Institute published a book on Customary law and Justice in the tribal areas of Meghalaya prepared by Kusum and Bakshi gives the detailed history of Meghalaya, the constitution of tribal areas and judicial system in the three districts of Meghalaya Khasi Jaintia and Garo Hills. And it makes a comparative study of the customary laws of those three tribes, also citing various cases which had been brought to the court for judgement. Finally it analysis the effect of modernisation on tribal customary laws and the changing custom and legislative reform. These specific books have been immensely helpful during the formulating of this research proposal.

Every society irrespective of its culture or technological development is marked by frequent occurrence of dispute, conflict and aggression amongst its members. Though the members of a community are expected to behave in a particular set pattern that is..... "the behaviour of the individual members of any society (or of subgroups within a society) reveal considerable similarity in response to specific stimuli. These frequently recurring patterns we call norms or ways" (Hoebel, 1954, p.14). Conflict arises amongst human beings over land, women, wealth and status and is to some extent a vestigial left over from his animal ancestry. However, human society to meet with this challenge of social control had institutionalised various means and norms. "..... Law consists of a specially demarked set of social norms that are maintained through the application of 'legal' sanctions. The entire system of sanctioning norms is what constitutes a system of social control. Law as a process is an aspect of the total system of social control maintained by a society" (Salmond, J.W. 1924, p.132).

Dispute resolution in a society takes place within the framework of its culture. Every culture has its deeprooted ideas which play a crucial role in integrating different aspects of culture. By dispute, we understand that which arises out of disagreement between persons where in the alleged rights of one party are claimed to be infringed, interfered with or derived by the other party (Gulliver, P.H. 1969, p.14). In all societies men quarrel over the actual or assumed breach of norms, it is useful to distinguish between different types of quarrels; the

societies must settle the quarrels in some form or postpone their resolution for sometime, to maintain some kind of order within their framework. Usually, the quarrels are taken to the public arena for discussion, negotiation or arbitration but may not necessarily go through specific structural arrangements such as headmen, village courts, courts of law, etc. Every dispute involves: (a) the alleged breach of certain rules of norms; (b) the process of negotiation and adjudication; and (c) the mode of redress.

Once a disagreement or a quarrel is activated, some sort of positive result is reached as the action proceeds and eventually ends in the settlement. The consequences of a dispute settlement is considered important by negotiation between the disputants each assisted by socially relevant supporters, representatives and spokesmen.

Another mode of settlement is by adjudication where a binding decision is given by a third party with a decree of authority. Formal institutions settle the disputes which are headed by headmen and other eldersmen who process the cases. These institutions have the right to adjudicate which are based on the principle of sacred traditional laws and are still relevant in the social control.

Though the adjudicating institutions may be formal yet, in the societies that are guided by oral traditions, there is much more than formal law that guide the adjudication. The past history of the individuals in the fray, clan and kinship alliances, and the host of other consideration may influence the process

of adjudication. In other words, a conflict may not arise on account of the different interpretation of a norm but on account of conflicting norm and emerging contradiction in a society. No society operates in vacuum, the interaction with other societies itself is good enough to raise issues which do not have straight matter of fact resolutions. The societies consist of individuals who have conflicting loyalties, obligations and responsibilities which may give rise to disputes. The individuals also like to manipulate things to promote their interests. Perusal of these issues give a dynamic picture of the society.

In the present study, the prime concern in the general field is the study of processes and in particular the processes of dispute resolution among the Garos. The fundamental unit of study is the case, empirical dispute and its mode of treatment. The position of jurisprudence in social service and the study of dispute settlement in terms of processes are related to society and the individual.

The study attempts to bring forth the prevailing situation as regards social control among the Garo. The popularity of a particular mode of jurisprudence would be assessed through the number of case materials it has dealt with. In this regard various other social factors like political authority, and power, economic factor and education play an important role to determine the mode of jurisprudence accepted by the people. The objective of the study is spelt out as follows-

1. To find out the pattern of the disputes and how they originate?
2. What are the conflicting norms in the society ?
3. What are the loyalties, obligations and responsibilities on the part of the members of the society ?
4. To study the mechanism how the disputes were used to be resolved in the past as well as how they are done in the present at the level of family, clan and village ?
5. To examine the irregularities (if any) in case of delivering judgements or penalties on more or less similar cases.
6. To determine the differences between the traditional laws and the modern jurisprudence.
7. To study how the Garo Customary laws survive from outside influence and to find out how the changes, if any, have influenced the traditional system.

(a) The Scope of Study:

Garos are the tribes residing in the Garo Hills district in the state of Meghalaya. The district used to be administered as a 'partially excluded area' by the Deputy Commissioner under the executive orders of the British Government during the British rule. The tribal ways of life, community ownership and use of land and the administration of the society according to the traditional laws and customs were least interfered with overtly under the British Administration.

Before the advent of the British Administration, Garo villages were an autonomous political unit. The Nokma and the elders of the village would meet, discuss and gave their decisions

according to the customary laws and practices. The judgements passed by the nokma and other village elders were 'respected' and accepted by the people. Their decisions were final and binding and there was no question of appeal to the higher courts as there was none. Hence, custom was the law of the land which was not enforced by any outside authority but by the society itself. However, the Garos followed the same social custom and tradition through out the district. Oaths and ordeals had played an important role in finding out the culprits in those days. If the culprit was found, he had to pay compensation or 'dai' as demanded by the council of the elders and the nokma.

The British Administration was established in Tura as the office of the Deputy Commissioner which was till the Independence of India officiated by the Britishers only. Regulation X of 1822 was passed by the British Government which established a special judicial system for the Garos. According to this Regulation, the administration of justice was vested in the Civil Commissioner appointed by the Governor-General-in-Council. The Administration appointed laskars and sardars to help the officials in civil and criminal cases.

The British Government passed the Act XXII of 1869 as the extension of the British judicial system in the Garo Hills. The laskars and sardars were the local officials and their proceedings were conducted orally in the village councils. The Assistant Commissioner tried all criminal cases beyond the competence of the village authorities and those cases which were punishable by death or a heavier punishment than seven years imprisonment. The

proceedings of these trials were recorded by officials in English.

The rules for the administration of civil and criminal justice in the Garo Hills were revised again by the passing of the Scheduled Districts Act XIV of 1874.

According to this Act, the administration of civil and criminal justice were conducted by the Deputy Commissioner and the Assistant Commissioner, the laskars and the Nokmas till India attained independence.

Even after the Independence, the old pattern of district administration, as was prevalent during the British Period, is still being maintained under the overall control of the Deputy Commissioner. Under the "Rules for the Administration of Justice and Police in the Garo Hills district 1937", the administration of the district is vested in him and his assistants called Extra-Assistant Commissioner who acts as judicial Officers of the district.

In addition to this, the Garo Hills Autonomous District Council passed "The Garo Hills Autonomous District Administration of Justice Rules" in 1953. According to these rules, the three courts are constituted by the District Council for the trial of suits and cases between the parties all of whom belong to the Scheduled Tribes. The courts are:- (1) The Village Court, (2) The Subordinate District Council Court and (3) The District Council Court. Under these rules more emphasis is given in administering justice by the Garos themselves in accordance

with their customary laws and usages. The Assam High Court by the Presidential Order of 1954, has got the jurisdiction over the District Council courts in the tribal area. It may be mentioned that the Garo Hills District Council has enacted the Garo Hills (Social Customs and Usages) Validating Act, 1958. The Act does not deal with the structure of courts, but still it is of some interest in connection with the law to be recognised or applied by the courts, since in effect, it confers the status of law on social customs and practices that are universally prevalent amongst the Garo Hills people.

In whatever way a dispute may arise, it has its source, an actual or assumed breach of norm. In a simple homogeneous society, there is a set of legal norms, or customary laws to which the individual is subject to.

The introduction of modern legal system impinges on these legal values with a considerable decline in the powers of the nokmas and mahari. Practise like head hunting have been banned and blood feuds are less as all the Indians are subject to the same Penal Code. The criminal offences like murder cannot be dealt with according to the tribal customs. These changes can be studied only by using case materials and judgements of the various courts.

The economic factor in the society is based upon the land tenure system called a'king which is based on the communal ownership of the land. The entire a'king land belongs to the clan. Nokma who is the village headman and also the husband of the nokma

(the heiress), allots specific area of the land to respective families for cultivation. Garos are basically agriculturists who practise shifting cultivation or jhum in the hills and wet cultivation in the plains. In the hills, two-year agricultural cycle begins when the portion of land that has been lying fallow for the longest period is apportioned to a household. After each cycle of cultivation the land reverts back as a'king land under the control of nokma. On the other hand the plots under wet cultivation are permanently owned and cultivated every year mostly paddy in each crop. Garos mostly cultivate rice, millet, maize, yams of all kinds, vegetables and cotton, ginger, chillies, etc.

The social control of the villages rests in the hands of the clan nokma and the laskar of the respective villages. Their services are sought during the disputes related with social and criminal offences within their a'king land. With the establishment of village court, the aggrieved party may take up their family or clan disputes to village courts and can appeal to the District Council Court.

(b) Main aspects under study:

"Dissatisfaction with the administration of justice is old as the law" (Pound Roscoe, '29, p.395)- states "the machinery whereby rights are secured practically defeats rights by making it impractical to assert them when they are infringed. While in theory we have a perfect equality, in result, unless one can afford expensive and time consuming litigation, he must constantly forego undoubted rights, the actual conduct of litigation affords no practical remedy".

According to J.P.Frank (1949) personal search for justice through the court system is delayed by a maze of papers, procedures and professionals. The adversary system, which was designed to uncover truth through the process of a hearing may tend to escalate and accentuate the conflict matter than encourage its resolution. Disputants become polarised and relinquish their power and control to the lawyers and judges who will not have to live with the results. In the end, the emotional and monetary costs of the dispute processing can become its own source of conflict.

Village courts emphasize informal settlement in familiar surroundings, while the mechanism vary from place to place, the theory of village settlement can be characterized by these concepts; maintenance of power, preservation of relationships and prevention of conflict. This court seeks a strong-self reliant community that assumes responsibility for taking care of its own members. While providing a convenient, inexpensive and responsive dispute settlement forum, it allows for the expression of the individual community's values. The procedures of the court focuses a resolution of the dispute rather than fault.

The social institutions of chra, mahari and nokma settle many disputes in the clan. However, it is not found that the records are available in the clan or in the village. Therefore the disputes in the clan is always settled orally by the clan elders. When a dispute is brought to the notice of the laskar and sardar, the case is settled in a meeting in presence of nokma and the villagers amicably settle the dispute or else

demand compensation or dai if the guilty is found. The Garo elders control their disputing relatives by beating and scolding them in the meeting. These methods are adopted to arrive at an amicable solution and restore peace in the community. The verdicts are oral in such instances, hence, study of verdicts is out of question. Recently, the Secretary of Village Councils has stated recording the proceedings of their meetings and settlement of disputes in the Village Courts.

Garo society like any other is undergoing changes, as a result of which the nature of disputes are also changing. There are many factors that are responsible for the changes such as modern education, access to the outside world, economic development, social contact with outsiders and social control becoming less effective, with increase or dependency on modern legal jurisprudence.

After the British Government established itself in the Garo country, all the murders and crimes were brought to court by the officials of the administration of the district. The attitude and conduct of the Garos had become subdued since the people became more amenable to the Colonial Rule and the officials felt that time would not be far distant when Garo raids would become a history. The settlement of blood feuds and old cases were been steadily processed and many long standing quarrels were been amicably settled, and the prized skulls attained after head hunting were publicly burnt. There were cases of life imprisonment and the convicts were sent out to the 'Kalapani' or Andamans Islands.

With the introduction of formal education along with the teachings of Christianity, indirectly exposed the people to new ideas. With the result that traditional pattern of religion and faith and reliability of the ordeals were questioned. This gave rise to difficulty in dispute settlements. Nowadays, when evidence is insufficient the cases are dismissed.

Traditionally social offences and crimes are viewed by the Garos seriously and strong action was taken against such offenders, which meant killing of the guilty. However, the British rule in Garo Hills had totally stopped rampant killings. The Christian doctrines spread its message of forgiveness to the offender. This was against the traditional practice based on the principle that if the offender is killed it would put an end to the offences. On the contrary the British introduced an entirely new concept of compensation 'dai' in which the victim got some material benefit by way of compensation.

Today, evidence is presented formally than before, and the intimate knowledge villagers have of one another is less likely to be taken into account in reaching to a decision. Since ordeals are no longer possible, denial of guilt has become the trend. Adultery cases usually end without a decision. The result is hard feeling which are never mollified; some villagers said in disgust that in the modern times the accused persons would continue with their adulterous behaviour at slightest opportunity.

After the introduction of the legal systems in the district, the decisions are made by the professionals without taking into consideration the customary laws and practices. They take a very objective view and their decisions are merely technical and the humane feeling with which the mahari settled the dispute was totally lacking. In this respect Roy and Rizvi (1990, p.24-25) write that, "on trying to assess the judiciary of India it becomes evident that the customary sanctions in India had always been undermined and not even given the secondary importance by the judiciary. The formal system of judiciary served and was sought only by handful of elites who had the resources and the understanding of its intricacies. Majority of the Indian populace resorted to their traditional means of seeking justice, which too was at a constant threat of falling apart. Since the people were loosing their credibility in their traditional councils anticipating a better and forceful alternative in the formal system of judiciary. In the mean time the Indian judiciary which developed in accordance with the blue print of the British had acquired all the nuances of an intricate institution, where moral, purity and ethics were unheard of. The entire operation depended upon presentation of the case professionally, mainly by highlighting the points which would

build up the case and underplaying the weak points of the case.

The entire thing was technical and mostly the contesting parties understood very little of the technical jargon. The individuals becoming totally dependent upon the manouvering of the lawyer who took up their cases. The entire process required constant pumping up resources, resulting in total financial bankruptcy of an average man, without attending justice. In contrast the expenses incurred for assembling the traditional council demanded at the most providing meals for the council heads

too late in the day the general public realised the importance of their traditional councils; but it was too late to retrieve the institution which had fallen apart due to disuse.

Further, Roy and Rizvi elaborate that these sanctions being not coded are passed from one generation to the other orally. Though the judiciary realised the plight of common man specifically the ones from the remote areas but it was helpless since, cases after cases kept on piling in the courts. The 'lok adalat' was of little help since the number of cases were alarmingly high and the formal legal system remained the only source for seeking justice.

The few areas where the traditional councils still operate and are

functional in the Garo hills and the aim of the study would be mainly to highlight upon the cases which are brought to the traditional council and then placed in the district courts.

This dual approach accepted by the Garos pertaining to dispute resolution would focus upon the changing trends and patterns of the traditional legal system and the transition of the tribal community.

Besides, the study of patterns of dispute, how they originated and how they are resolved in this Garo society would bring out the mechanism by which disputes are resolved in the Garo society.

Thus it is a study of law in culture of the Garo society.

Methodology and Collection of Data:

Field methodology and data collection are vital and important part of anthropological research and the researcher has to be adequately aware and equipped to venture in the field. For the present study mainly five anthropological tools were taken into consideration which are observation, questionnaire, case study, genealogy and village study.

Observation being the simplest scientific tool employed in the field is one of the most original on archaic methods employed by any human individual. In this respect I had an edge over others since I was born and brought up in a Garo household and stayed in the districts headquarters of Garo Hills i.e. Tura. Thus being a member of the community under study [was spared the initial 'cultural shock', which becomes an acute psychological stress for an anthropologist isolated in a new culture during the tenure of field work. The prime factor of communication and its inadequacy is a major hurdle for most field workers which I never had to

overcome. Further, the behavioural cases I had acquired from the childhood and did not have to pick them up prior to the field work. My personal attire never shocked my informants and all these factors put together blended me superbly with the environment and the people and I was not considered an 'outsider' by them. Yet, I was always conscious and very cautious about my overlooking certain events and behaviour as unimportant and natural, by the process missing out the relevant portion of data. However, this constraint of being from the community under study was overcome by objectively reviewing each mundane aspect of Garo life. Hence, for the present study observation was made within three distinct phases, participant observation, unstructured interviews and use of key informants. The participation of the researcher in the day to day life of the community or his participation in specific selected activities during the annual festivals and rituals, immensely help in collection of data with minimal error involved. The interviews with the individuals were mainly unstructured and only when enquiring about a specific case or conflict the questionnaire was used. This questionnaire was not simply a translation of the specific objectives in Garo but it is a carefully structured proforma with specific question meant to probe the informant. The sequence of the question are also streamlined so as to bring out the maximum information from the respondent and to maintain a free flow of his thought. The draft of the questionnaire was pre-tested in the field prior to being finally applied to the field. Use of key informants was made during the field work since, elderly members of the chatchi, the Nokmas and persons involved in specific cases

were used as key informants through whom cross checking and maximum yield of data was obtained. Further, during collection of household census frequently genealogical method was adopted to facilitate recording kins and affines upto four generations conveniently. Genealogical method is the systematic documentation of history of the descent of family and in depth analysis of bio-cultural events related with a filial generation. With the preliminary survey being over I had to get to the specific i.e. dispute resolution and the rapport established with the villagers were sufficiently congenial. The villagers who had undergone a conflict with a family member or kin unashamedly confided to me and there are 61 such cases both civil and criminal. Cases from the unreported High Court cases and thirty eight similar cases from subordinate. District Council and District Council Courts have been compiled and analysed. glat-11
?

As an field worker, I had to see the actual workings of law in society, and in doing that it turned the focus to the examination of disputing. In the anthropological study of law, the word "case" has usually referred to the gathering of materials about disputes. Anthropologist have used the case method in the search for systematic aspects of procedural and substantive law, for uncovering important jurial postulates for abstracting values important to a society (Nader, L. & Todd, Harry. 1978, p.6).

I have taken (a) observed cases and (b) cases taken from recorded materials in this study. The opportunity is very rare ?

to record the genesis of a grievance or a conflict before it becomes a dispute and to observe ongoing grievances, conflicts or disputes depends on a combination of circumstances and luck; which means that it has to be in the right place at the right time (Nader, L. & Todd, Harry. 1978, p.7).

The case materials have been collected from the Subordinate District Council Court and the District Council Court also. In the Deputy Commissioner's Court there were old records of British Administration but they are kept in haphazard way and difficult to locate any related files. During my field work I have gone through all these available case materials wherever I got the opportunity. The family friends and visitors were very helpful while discussing some customs and rules practised by the Garo. Most of the cases were under the heading inheritance and succession of land and property since every Garo wants to inherit their family property. These cases made me realize that the Garo society is going through a phase which is bound to bring radical transformation and therefore, I thought it would be most appropriate to study dispute resolution. Hence, the present study is an attempt to analyse the legal system of the Garo tribal society in Meghalaya. The traditional tribal council is the proper institution which is solely empowered to dissolve all disputes, quarrels and confrontations in the society. This traditional council consists of ^{the} three units: family, clan and village. This institution is as old as this society itself which deals with the customary practices and usages to settle the

breach of norms by the individual as well as the groups of people. This indigenous disputes settlement machinery is an important for processing disputes as this society did not use government courts in the past and that is, it is to be seen how it is being preserved even today or it is undergoing changes and if so, to what extent.

Society undergoing change is restricted by the written law. However, the customary law is flexible according to the situation and time and also depends on the gravity of the dispute. Customary law is a moral order and not precise, whereas written law is precise and very technical.

While written law is enforceable, customary law is traditional and all members of the society are bound by it. Tribe is a group of families who have a feeling of community through occupying a territory and having similar customs. Tribe and tribal are convenient terms for indicating that the people still follow custom rather than law. Llewellyn and Hoebel advocated the analysis of "trouble-cases" as the "main road" to gathering data on law (1941, p.29), legal anthropologists have made use of instances of dispute and any subsequent handling of the matter as primary sources of data.

It is evident that custom is the source of law in this society. It is the law of the society which comes down from one generation to next. It is a continuous process, which governs this tribe.

The state of Meghalaya comprises of the Garo, Khasi and

Jaintia hills. It is a table-land which is an extension of the massive block of Indian peninsular shield separated due to denudational and tectonic forces. Goalpara and Kamrup districts of Assam on the west borders the state on the north which Bangladesh international border lies in the south and the Karbi Anglong borders in the East. There is no integrated historical account of the state as the inhabitants live in different tribal and groups and have varied cultural and linguistic patterns. They till recently lived in physical isolation. There is some reference about them in Burunji that is ancient chronicles of the Ahom. From the historical records of the last century some picture can be constructed by the supplementing with inscriptions, coins, copper-plates and structures that indicate the occupation of the state's northern fringe even before Christian era. The pre-historic archeological excavation conducted recently suggest that the Rongram valley of the Garo Hills was inhabited in the paleolithic times. The historical accounts suggests that in the wake of migration in North East India through the North Eastern routes one of the important sub-families the Mon Khmer and the Jaintia speaking people inhabited the area. The denomination of these linguistic speakers were subsequently driven away by the Tibeto-Burmah^Nhordes into Khasi Hills and the Jaintia Hills. Since this is the only part of the North East India in which this sub-family exists now. The three groups of the Tibeto Burma family like Kuki-Chin and Naga were driven to the North-Eastern Hills. The Bodo dominated in the plains of Garo hills and the North Cachar Hills. They were later subdivided into Garo, Kachari, Mech, Dimasa, Tippra, Lalung, Chutiya and Rabha groups (Borkakati 1969).

Playfair (c.f. Barkakati, 1969) writes that the Garo and the Kachari originally belonged to one group before their splitting into two groups—one group over the Southern bank of Brahmaputra and the other Kachar, spreading over the North Garo Hills was occupied by the British in the year 1872, prior to this the area was administered as a part of Bengal. The area became a part of Assam in 1874, when it was carved out as separate province. The Garo Hills became a part of Meghalaya state after the formation of Meghalaya as state of Union of India in early 1970s. The history of Khasi, and Jaintia hills and its people can be found from the early part of the sixteenth century, as prior to this neither the records nor traditions reveal any substantial information. Moderately large changes were brought forth through development of the settlements and the formation of the Khasi and the Jaintia Hill district in the year 1835 and the Garo district in the year 1866. The capital of these provinces was Cherrapunji in 1827 which later on was shifted to Shillong in 1864. The prevailing groups in the state are the Khasi, Jaintia and Garo. In an amendment made recently provision of Scheduled Tribe in the constitution of India, the Rabha, the Bodo Kachari and the Koch have been given the Status of Scheduled Tribe in the state.

According to the census of 1981, the total population figure of both the districts of Garo Hills (East Garo Hills and West Garo Hills) is 2,72,097. The total number of educated is 18,545 while the number of illiterates is 8,246. Number of households practising jhuming is 71,697. Wet cultivation is also

practised in all areas of the plains. Besides, Garo, Hajong, Rabha and Koch practice wet cultivation. In fact the Garo's had learnt wet cultivation from their immediate neighbours and the yield of wet cultivation is more than jhuming. In jhum cultivation a variety of produce is harvested such as rice, maize, cotton, yam, ginger and vegetables.

Hence, village as a unit of study was imperative. The two villages selected were situated in the west Garo Hills district. Te'bronggre and Wa'ramgre respectively. The twin villages adjacent to each other. Wa'ramgre is older and Te'bronggre is recent. In the **sense**, that Te'bronggre village is the offshoot of Wa'ramgre main village. However, they have their own respective boundaries a'king and nokma. The map of the a'king and the geneology of the nokma had been prepared by the then Deputy Commissioner Mr.G.D.Walker in 1926. Both the villages have their respective maps along with the names of nokma in the hands of present nokma. Te'bronggre village is slightly looking modern than Wa'ramgre which has only the traditional houses in the village.

These villages fall under the Mouza No.III and their numbers are 31(7) and 31(7A) respectively. The nokma of Wa'ramgre is still alive whom the Deputy Commissioner Mr.G.D.Walker had met for the preparation of the village map and the names of previous nokmas, also the a'king. In Te'bronggre village many changes had taken place in the nokmanship due to the non-availability of the nephew of the nokma according to the Garo

inheritance and succession law. A new nokma has been instituted in 1987 just recently for the welfare of the a'king and the villagers as well.

These villages are not far from Tura, the headquarters of West Garo Hills district and connected by roads and transport which is 19 kilometers away. The oldest road runs through this village which leads to Dadenggre, a headquarter of Dadenggre Development Block on the west. This road further proceeds to a small township named Fulbari which is a commercial place at the most western border of the district facing Bangladesh and Assam. According to the Census of 1971, the population in these two villages is 355 and 303 respectively. However, I have taken 100 households from both the villages for the study of village setting and their day to day life. Except one Governmental office run by the Range Officer, Soil Conservation Division of Garo Hills, there is no other governmental or non-governmental offices are to be seen there. Here the villagers are learning how to cultivate rubber, coffee, black pepper, cashew nut and tea. Two primary schools and one Aided Middle School are giving the basic education to the village children in the village. One High School which 5 kilometers away from the village provides the high school going children who really wish to pursue their studies. Village children are very reluctant to go to schools, they prefer to work in the fields along with their parents. It is hard to find any matriculate except three in number so far who are prosecuting studies in college in Tura.

These villages are dominated by A'gitok clan whose nokmas are from Bolwari and Rangsha clans from Marak chatchi, while A'gitok is from Sangma chatchi.

Their main occupation is agriculture. Shifting cultivation is practised by every household in both the villages. Some households have wet cultivation which is also becoming popular among them. The main produce is rice in both the cultivation. In the hills they cultivate maize, millet, and cash crops like cotton, yam, chillies, ginger and plenty of hill vegetables, etc. The Garo society is matrilineal. It is divided into several exogamous clans called Chatchi like Sangma, Marak, Momin, Shira and Areng. These are the five major chatchi in the whole district. These chatchis are sub-divided into many exogamous sub-clans called ma'chong e.g. A'gitok Koksep Sangma. The structure of Garo society follow certain norms of behaviour in their intra-familial and inter-familial relations based on the matrilineal kin groups and follow with regularity. This principle of reciprocity is still held in high esteem in all their economic and social activities and also in the maintenance of the household of every family.

The social institutions of chra, mahari and nokma are important aspects of Garo society. Many disputes arise out of disagreements with respect to inheritance, succession, marriage, divorce, forfeiture, adoption and guardianship in the society. In this respect, the chra and mahari institutions settle such disputes among the clans without the services of

nokma. From clan elders it comes to the notice of nokma if it fails to settle by themselves. Thus it becomes a village affair. Garos are very strictly controlled by moral code of conduct.

The Garo call the traditional council as Melaa saldonga which literally means gathering to discuss, decide, negotiate, and adjudicate in case of breach of norms. Every traditional council has its institutional court which is based on the principle of sacred traditional laws and is still relevant in the social context.

The Garo make their traditional council as the most suitable institution for processing all dispute as it has limited opportunity to absorb traits and conditions of the legal system, created by the Sixth Schedule of the Indian Constitution.

Since the establishment of the institution of court by the British administration, the villages have tended to become bilegal and the **villegars** make use of both traditional laws and formal laws. Traditional law is usually referred as 'Custom' while the formal law is implemented by the formal courts. Most of the traditional dispute processing institutions have been heavily influenced by formal laws. It is seen that the formal legal system has to some extent influenced the traditional village council.

Normally the head of the family is the father, then mother and children come next. At the time of family dispute or trouble, the chra or male members of that family along with

the senior most uncle or mama decide on such disputes and the mama presides over such meetings. This eldest chra has the highest status in his sister's family, though he is the head of his own family.

Most of the family and clan disputes are not taken to the village headman to decide, if it is possible to resolve by themselves.

The administration of justice in the society can be divided at three levels: Family, Clan and Nokma in a village.

A Laskar had his jurisdiction over many villages and was the agent of the British Administration. This system still continues at the district level. The laskar used to bring the cases to the subordinate District Council Court from the village Court. From the District Council Court the appeals could be preferred to the High Court at Gauhati.

The judicial system of the Garo gives the most interesting feature of the tribal legal system in Meghalaya. In this study the ethnic identity of the Garo tribe has been taken. The Garo highly regarded their tribal institutions and so they try to preserve them, although they had been living with many non-tribals around them. The autonomy of these institutions itself gives a legal and constitutional status in the area.

The present work is a study of a single dispute processing institution. As such, it differs from the most of the work on Legal Anthropology, which have mostly dealt with behaviour

surrounding disputes among the people rather than on any particular institution used to settle disputes. In this study, it is shown how a particular institution, i.e. the traditional council, is being utilised, when cases come before it.

CHAPTER