CHAPTER II

NATURE AND SOURCES OF LAW
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Modern jurisprudence has clearly dealt with the concept and application of the term 'law' and found out the distinction between 'law', 'a law' and 'the law' in the abstract and concrete senses. Thus we commonly speak both of law and laws - the Indian law, or the laws of India, and these terms bear two different aspects of the legal system. In the abstract sense we speak of 'law' or of 'the law'; in the concrete sense we speak of 'a law' or of 'laws'. Here the distinction draws our attention for this reason that the concrete sense of the term is not co-extensive and coincident with the abstract sense in its application. For, the law of a country in its abstract sense is a whole legal system that orders the conducts of the people. Whereas, the laws of a country in its concrete sense are thought of as separate, distinct, individual rules. Each rule which we call a law is a part of the whole which we call the law. Likewise, law or the law of Manipur does not consist of the total number of laws of Manipur in force. Because the constituent elements of which the law is made up are not laws, but rules of law or legal principles.¹ For instance,

the saying of Manipuri tradition - "Ingkhol Vondringaigi Mamangda Yumthangnabagi Nawa Tagadabani" (meaning before selling an Ingkhol (homestead land) it must first be offered to the neighbour or dweller of the next door) is not rightly spoken of as a law of Manipur; but it is a rule of Manipuri law. In modern sense, a law means a statute, enactment, ordinance or decree or other exercise of legislative authority. It is one of the sources of law in the abstract sense. In every ancient society, there was much unwritten law, that is, usages, customs and conventions.

Nevertheless, the plural term 'laws' is sometimes used in a collective sense to mean the entire corpus juris the law in its entirety as we find in the Encyclopaedia, Halsbury's laws of England. It may also be used to mean the whole legal principles of a country-laws in ancient India or laws in ancient England etc. However, we do not speak of the laws of contracts or of torts.²

In view of the circumstances stated above, we may come to the conclusion that the term law may be used in various senses. As regards its concept, there are scores

of definitions given by different eminent jurists, scholars and lawyers of different countries of the world. Here, we need not go at length about the definitions of law. No doubt we shall deal with the nature and sources of law in the context of ancient Manipuri society.

NATURE OF LAW

Laws in ancient Manipur, as of all ancient peoples of the world were those of customs and usages. Though the details have been lost in antiquity, it is evident that the two fundamental principles - of the supremacy of custom and usage and of royal absolutism, were firmly established in those days. The Meidingu³ was the ruler of rulers, the Piba⁴ of Pibas. He governed accordingly with the Pibas of all Salais⁵ who represented at the court holding its office by following the law of primogeniture and sometimes by breaking it from generation to generation. The rule of custom and usage was followed by the peoples of all Salais. They rendered unquestioning obedience not only to the Meidingu but to their Pibas also.

³ Meidingu was the title given to the Meitei king of Ningthouja (Nangang) Salai.

⁴ A Piba was the head of a Salai. He must be a person born in a social wedlock. Any person born of marriage of a widow or a wodower cannot be a Piba. Similarly any one whose father or mother was a foreigner or unknown cannot be a Piba.

⁵ Salai means a clan.
The courts of justice in ancient Manipur whether official or un-official administered custom and usage, the law of the land. The Manipuri words, 'Chatlam Lutin' used for law, have very wide connotation. It includes religious, cultural and ritualistic rules as well as the rules of morality and prudence. These rules were usually enforced by the courts, viz., Kuchu, Cheirap, Pacha, Garod and other ecclesiastical and village courts.

The justification for considering the origin and nature of Chatlam Lutin as one of the legal principles will be apparent when we refer to the notion of the origin of the state. Says Roman maxim: Ubi civitas ibi lex (where there is a state, there is law). Both the terms are, therefore, equally important. But no one could trace exactly about the origin of the state, so also the origin of Chatlam Lutin in the state could not be easily traced. Hence, the historical investigation as to the origin and nature of Chatlam Lutin is necessary. For, history is a

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6 Grij Mani Tripathi; An Introduction to jurisprudence and Legal Theory, P.94(1973). "The term 'law' means and includes different things in different societies. In Hindu system it is 'Dharma', in Islamic system it is 'Hukum', in Roman it is 'jus', in French it is 'Droit' and in German it is 'Recht'. These words convey different meanings and ideas. Any definition of law which fails to include all these meanings would not be a good definition." Likewise, a good definition of law should mean the implications of Chatlam Lutin.
record of events. It explains the how and why of every
historical event. Viewed from this standpoint, the
present author considers that the origin and nature of
Chatlam Lutin was immemorial and developed over the time.

The rule of Chatlam Lutin will be dealt with in
another context while dealing with custom and customary
law. Nevertheless, in early period, it is certain, these
rules were regarded as one of the main characteristics of
the administration of justice. Even the king could not
lawfully set aside the rights which Chatlam Lutin
guaranteed to his subjects or which his predecessors had
declared to be the law of the land. Hence, Chatlam Lutin
appeared to be supreme and every person, may he be the
king, priest, noble or servant was bound to the rule of
Chatlam Lutin. Chatlam Lutin was, therefore, deemed to
be the king of kings in Manipur.

Though the origin of Chatlam Lutin, as stated
above, has been lost in antiquity, its supremacy over

7 Our sources reveal that Vaishnavism of some sort
appeared in Manipur when an image of Vishnu was installed
in a temple during the reign of Meidingu Kiyamba (1467 A.D.-
1508 A.D.). But the people's faith in their traditional
religion and worship of ancestor deities and its spirits
was not disturbed. Even when Meidingu Charairongba
(1697 A.D. – 1709 A.D.) introduced Vaishnavism he did not
affect the right and interest of his subjects.
administration of justice flourished from the reign of Nongda Lairen Pakhangba (33 A.D. – 154 A.D.) and remained till the reign of Meidingu Charairongba (1697 A.D. – 1709 A.D.). Till then, a certain dread of social custom acted upon the mind of the people of Manipur. During this period even the king and his nobles were bound by the rules of Chatlam Lutin. For instance, Meidingu Paikhomba could not appoint Ingallei Leimarel (Chief Queen) as the sixty-four phamdous and the people of Manipur refused to accept her as their Leimarel.⁸ Even a very powerful king, Meidingu Khagemba administered justice according to the sweet will of the people. For instance, Meidingu Khagemba was compelled to consult his ministers when, according to tradition, Mongosa, a Chinese cannibal demanded human flesh. He told Mongosa, "Your demand I cannot fulfil by myself. Let me consult with my nobles."⁹ No doubt, there might be many instances but the details have been kept for further investigation. However, the period from 33 A.D. to 1709 A.D. may be regarded as a time uninfluenced by

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⁸ Manijao, N. : Chingda Shatpa Ingallei, pp.90-140 (1969). Ingallei was the daughter of Maram Khullakpa, a Naga tribe situated in the northern portion of Manipur. Meidingu Paikhomba promised to her that he would appoint her Leimarel. But his promise was against the rule of Chatlam Lutin. The sixty-four Phamdous (Ministers) and the people of Manipur refused her as their Leimarel. Finally, in the absence of the king she was driven off.

⁹ Kanglei Shangle Puba(Mo) : Manipuri Puja.
foreign ideas in the administration of justice. There was limited monarchy or kingship according to Chatlam Lutin.

Despite the supremacy of Chatlam Lutin, the royal absolutism, that is, the supremacy of the king became a dominant rule when Garib Niwaz (1709 A.D. - 1748 A.D.) came to power. During his reign the king became the sole law giver. He could make or even change the Chatlam Lutin according to his wishes. No one could make or even change the Chatlam Lutin according to his wishes. No one could violate the order or command of the king. Any act contrary to the command or order of the king was considered as dereliction of duty and, therefore, punishable. Thus the arbitrary power of the king tarnished the rule of Chatlam Lutin.

In the light of the foregoing discussion we may deal with the positivist or imperative theory of law which seeks to distinguish law by its formal criteria and not by its contents. Says John Austin, the chief exponent of this theory: "Every positive law or every law simply and strictly so called, is a direct or circuitous command of a monarch or sovereign in the character of political superior ...... to a person or persons in a state of subjection to its
author.\textsuperscript{10} According to Austin, therefore, law is the command of the sovereign. Nothing commanded by anyone but the supreme authority is law.

To sum up, our proposition may be stated thus: First, right from Nongda to Charairongba (33 A.D. - 1709 A.D.) the nature of law was predominantly customary. All conducts were regulated by popular practices and administered according to customary law; secondly, law became imperative during the reign of Garib Nivaz. The dictates of the arbitrary king became law and the king was, therefore, one other than the person who made the laws of the country. In this context, we may say that law and the king are interdependent; and one cannot exist without the other. This is known as theory of interdependence of law and sovereignty.\textsuperscript{11} To obey the command or order of the king was to do justice.

While conceding the above proposition we find two basic issues which characterised the evolution of law in Manipur. First, the sovereign (Meidingu) is subordinate to the Chatlam Lutin. The sovereign, therefore, cannot go


\textsuperscript{11} Monica David : Legal Theory (Jursiprudence), p.17 (1980).
beyond the rule of Chatlam Lutin. Secondly, Chatlam Lutin is subordinate to the sovereign which is a personification of the State. Chatlam Lutin as such should be in accordance with the wishes of the sovereign and so Chatlam Lutin cannot control the sovereign. For instance, Garib Niwaz introduced Ramandi Dharma despite opposition from nobles and Maichous (Scholars) who advocated Chatlam Lutin.

In later period, the nature of law was a mixed and mediatory one in which the supremacy of the rule of Chatlam Lutin and the royal absolutism were blended. The king in consultation with the nobility framed the law of the land. Of course he could enforce his will provided he was not going against the rule of Chatlam Lutin.

It has been dealt with the nature of law in three stages viz., supremacy of Chatlam Lutin, supremacy of the king and the mixed and mediatory of the two principles. Here we need to deal with the territorial nature of law also. We may ask whether the laws of ancient Manipur could be enforced within the State as a whole, and whether the laws of a principality could be applied to the person, things, acts and events of another principality or not.

In ancient Manipur before the subjugation by the Meitei king, that is, Nongda Lairen Pakhangba, the laws of
a principality could be enforced within the principality only. Says the tradition: Luirak Ama, Sheishak Ama. 12

For instance, the laws of Moirang principality do not extend to Khuman principality and vice versa. If a person commits a crime or a tort in one principality, and then goes himself away to another principality, he is beyond the risk of punishment of the principality where he committed the wrong. In those days asylum or refuge was commonly permitted by the ancient system of customary or personal law of Manipur.

The nature of law in ancient Manipur was dynamic and underwent changes even during and after the British period. Here a question may arise as to how law comes to be or, in other words, what are the sources of law?

SOURCES OF LAW

In early stages of our society the Chatlam Lutin was the most important and sole source of law. 13 No expressed

12 Ibid., P.2 Fn.

13 In modern jurisprudence, the expression source of law has been used in different senses: formal source, material source and literary source etc. A formal source of law is defined by Salmond as that from which a rule of law derives its force and validity; the material source is that from which is derived the matter, not the validity, of the law. The formal source of the law is the will of the state as manifested in statute or decisions of the courts. Literary source refers to the source of our knowledge of law. From standard legal treatises, statutes and law reports we derive our knowledge of law.
system of law making or law dispensing power was there. All conducts were regulated by popular practices that came into vogue spontaneously. But with the progress of society or with the growth of social consciousness among the individuals their general agreement also became a source of law.\textsuperscript{14}

Religion is also another source of law. In early societies law was predominantly customary which was closely connected with religion. When justice could not be dispensed by the application of customary law, that is, the rule of Chatlam Lutin or by human endeavour they resorted to trial by ordeal as a valid method of proof. It was very common to swear in the name of their forefather or to call upon God's\textsuperscript{15} to witness the truth of their statement. Sometimes, somebody used to swear in the name of the earth and sky and believed that their God-likeforefather would endow them with justice. During the reign of Midingu Khagembha (1597 A.D. - 1652 A.D.) swearing in the name of Khangjeng

\textsuperscript{14} Sarker, A.K., op.cit., p.52. "Agreement might be the source of conventional law. It is in the nature of special law inter parties, that is, parties to the agreement, and may be in addition to or derogation of the general law of the land".

\textsuperscript{15} Khalichandra Singh, N.(ed.): Chainarol, Introductory, P.iii (1968).
Lairembi\textsuperscript{16} was also introduced and considered as a valid method of proof. In the later period drinking Laimachum\textsuperscript{17} was also a form of ordeal resorted to.

Another peculiar feature in the administration of justice was trial by ordeal of strength which was commonly practised in ancient Manipur. When two persons bore enmity between themselves they entered into a bout as an ordeal of God. They used bow and arrow or spear in the bouts with a code of strict rules,\textsuperscript{18} the violation of which was considered as a sin for which the breaker had to atone by God's decree. For instance, the king of Khenda,\textsuperscript{19} Haotak Laiba had made an allegation against his friend Yuphurstakpa,

\textsuperscript{16} Manipuri Goddess of law and justice.

\textsuperscript{17} Laimachum was water that gushed down from the image of Gods and Goddesses at the time of bath. Drinking Laimachum was generally practised by the Manipuri Hindus as a form of ordeal.

\textsuperscript{18} Khelchandra Singh, N. (ed.), op. cit., p. i.ii. "The rules of bout were simple in form but austere in nature and observance. When an unarmed man is challenged, he could fetch his arms and fix a day for the bout. Sometimes, in spear bout, the two rivals measured out a distance acceptable to both of them with the length of their spear handle, fixed their stand-point, and thus had their ordeal. Both the parties were dauntless heroes and had not slightest fear of death. Surrendering the choice to begin hurling the weapon first against the other was an open honour which was greatly valued as the sign of true hero."

\textsuperscript{19} A village situated in the southern part of Imphal near Chairen.
the king of Chairen to the effect that he had illicit connection with the former's wife Shedu - Toungam-Hoi-Hoibi and asked the latter to pay bride price. The king of Chairen denied the charge by taking oath on God. When the king of Khenda did not believe in it, the king of Chairen proposed to take resort to the ordeal of God by having a bout with bow and arrow. Thus the two friends had their bout. The king of Khenda shot first, then the king of Chairen shot an arrow and could hit the former. Thus they amicably settled their differences and established their friendly relation. There were many other instances of trial by ordeal of strength as laid down in Chinarol (Code of Fightings).

Apart from it, another means of trial which were commonly used even in the later period was touching of Sel-kati (Scissors). Sel-kati, as tradition says, hurt only the wrong man in dispute.

Considering the facts mentioned above we come to the conclusion that the ancient Manipuri society was dominated by religion and faith in God. They obeyed Divine

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20 A village that specialised in making pottery. It is situated in the southern part of Imphal.

Law of Decision and left everything to the ordeal of God however wicked and knavish one might be. Therefore, the judicial decision in those days had the force of divine inspiration. And as such religion also became the source of law.

Another important source of law is the dictates of the Maraus (Pandits). Almost all the kings of Manipur took advice of the Pandits in the day to day administration of the State. They often gave much weight to the opinion of the learned and experienced Pandits. Even the powerful king, Garib Niwaz sought the advice from Louremba Khongnangthaba, a great Pandit and many reforms were also introduced with the advice of Shantidas Gosai in his time. But his reign was a landmark in the history of administration of justice in Manipur. During his reign law emanated from the king or sovereign. The king or sovereign is that authority which could make or unmake any or every law. Thus the king or the sovereign may be regarded as one of the sources of law in Manipur.

We have so far discussed about the formal sources of law, since our ancient legal system is just non scriptum we hardly find the material sources as the general body of

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law. Neither we have ipso jure, a statute enacted by a competent legislature nor do we have the opinions of eminent jurists like Manu, Vajnavaalkya and Narda, the noteworthy writers of Dharmasastra who showed an analytical insight and the most acumen in elaborating and explaining the juristic principles and philosophy of ancient India. We have no Commentaries and Digests on law like Mitaksara and Viramitrodaya which owe their binding force not to their promulgation by any sovereign authority, but to the respect of their authors, and still more to the fact of being in accordance with prevailing popular sentiment and practice, which may be proved as the most significant source of law.

Another important source of law is the archaic literature of Manipur. In Rome, the compilations of Emperor Justinian are regarded as the source of Roman law. The writings of Bracton, Coke, and Littleton are regarded as authoritative as being the manifestation of the early law in England in their days. Likewise, the royal edicts of Meidingu Loiyumba, later known as Loiyumba Shinyen and Meidingu Naophangba, Chainarol, Nashin or Loina Shinlon and Laisna Phamballon etc. may be regarded as the literary sources of law. Here, some writers regard Loiyumba Shinyen as the basic constitution of Manipur from
1074 A.D. to 1891 A.D. Thus it becomes the formal source of law. But so far as the criminal law in ancient Manipur is concerned we may mention Cheitharol Kumbaba, the royal chronicle which gives various short accounts about crimes and punishments. Further, the royal edict of Meidingu Naophangba (426 A.D. - 518 A.D.) gives a brief account of early criminal law of Manipur. The accounts attributed by these archaic literature shows the principle of retributive justice. "A tooth for a tooth and an eye for an eye" is the principle on which ancient criminal law of Manipur was based.

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23 Lairenmayum Ibungohal Singh, an eminent jurist and expert in customary law of Manipur, held the view that Loiymba Shinyen was the constitution of pre-British Manipur.