CHAPTER - VIII

JURISPRUDENTIAL TEST OF RITES AND CEREMONIES OF MEITEI MARRIAGE

Jurisprudential Test of Validity of Rites and Ceremonies of Meitei Marriage

According to Keeton, customary law may be defined as those rules of human action, established by usage and regarded as legally binding of those to whom the rules are applicable, which are adopted by the courts and applied as sources of law because they are generally followed by the political society as a
test, its duty is to declare it. The function of the court is “declaratory rather than constitutive”.

According to some writers, legislation has no inherent superiority over custom. According to Savigny, if we consider customs and statutes with respect to their legal efficacy, we must put them on the same level. Customary law may complete, modify or repeal a statute; it may create new rule and substitute it for the statutory rules which it was abolished.

The Meiteis (Manipuri Hindus) are governed by the Dayabhaga School of Hindu law. As the Hindu law is applicable to the Meiteis the judicial analysis of the validity of the rites and ceremonies of Meitei marriage would be done on the basis of section 7 of the Hindu Marriage Act, 1955. Section 7(1) of the Act merely reiterates the old Hindu law on the subject and declares that a Hindu marriage may be solemnized in accordance with customary rites and ceremonies of either party thereto. Section 7(2) merely defines saptapadi and the completion of the marriage on the taking of the seventh step. Section 7 does not lay down anything more than what has just been stated.

In fact, section 7 is a mandatory provision but it does not prescribe any special ceremony to be gone through. If there are customary religious rites and ceremonies which are necessary for the solemnization of marriage, the observance of such ceremonies can not be overlooked by the application of the doctrine of factum valet.

3. Ibid. p. 272
Section 7 of the Hindu Marriage Act, 1955 may be said to be a skeleton provision of which blood and flesh are to be given by the judges and state legislature of the particular community. It is their obligation to declare and identify what customary rites and ceremonies of marriage of a particular community are legally recognizable. It can only be done so by examining the alleged custom with the tests laid down for custom. Moreover, they should have the unambiguous knowledge of the custom of the particular community. All customs may not be necessarily given legal recognition. It may also be noted that a custom found in the ancient books of a particular time does not necessarily imply that the law was actually in existence at that time. Laws and institutions of ancient times have often a habit of lingering in the books, long after they have ceased to have any particular value. For instance, in Hindu law books, one finds a mention of the eight forms of marriage and the thirteen kinds of sons. The texts do not give the slightest suggestion that they were obsolete. In case of Meitei law also one should not take into account only of the things mentioned in Meitei “Puyas” (ancient legal codes of Meiteis). It must be tried to have relation to reality in the present society of scientific era.

The test of validity of the Meitei customary ceremonies of marriage viz. Lei Chaiba or Lei koiba, Loukhatpa and Keinya Katpa may be shown as under:

1. Antiquity Test

The marriage ceremony amongst the Meiteis is very old tradition. It was innovated by the Meitei ancestors who were believed as spiritual Meitei Gods and Goddesses. It is historically proved that such Gods and Goddesses performed the marriage ceremony in a very simple way. The Meiteis have been following such traditional marriage ceremony from the time immemorial but with some foreign additions as a consequence of change of society.
In India custom need not be immemorial in the English law sense. The courts have time and again expressed an opinion that if a custom is established to be 100 years old or more, it is of sufficient antiquity to be called ancient. Derrett thinks if it is 40 years old it is enough. For antiquity test what is necessary to be proved is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent been accepted as the governing rule. A custom can receive recognition only on the satisfactory proof of usage for a long time and invariably acted upon in practice as to show that it has, by common consent, been accepted as the established governing rule of the particular family, clan, tribe or locality.

No doubt, all the three kinds of Meitei marriage ceremonies have been prevailing in Manipur since very long back not less than 100 years at the least. It is believed that Lei Hukpa (garlanding) was prevalent during Hayi Chak (a transitional period when God and men were living together). At Selloi Langmaiching, Nungthelleima garlanded two garlands to Lainingthou Khori Phaba. Then Lainingthou Khori Phaba removed one of these two garlands and garlanded to Nungthelleima. From this Meitei followed garlanding at the time of performance of marriage ceremony. At the time of the coronation of Pakhangba seven Goddesses walked around His throne anticlockwise and casted full of flowers on the head of Pakhangba. From this Meiteis followed Lei chaiba (casting flowers on the head of the bridegroom by the bride at the time of marriage).

6. Sivanananja V. Muttu Ramalinga (1866) 3 Mad HC 75.
In all three marriage ceremonies "Lai Tin Thaba" is the most important rite among the Meiteis. Lai Tin Thaba is nothing but the dedication of special articles like flowers and fruits to the Gods. It is evident in the Meitei puyas that this custom is very old custom. Here, we may quote one example of marriage of Soraren with Huimuleima. On the day of the marriage, a very big banana leaf was laid down on the cleaned Sumang (courtyard) of the bride and it was encircled with a white cloth for protecting from men, animals and birds. Fruits and flowers were also put on the banana leaf for dedicating to Soraren (king of Gods). Such Lai Tin Thaba rite is mandatory till today in all three kinds of marriage ceremonies. Social acknowledgment or social approval is also one of the essentials of Meitei marriage. This act is also performed in all three kinds of Meitei marriage ceremonies since very long back. Here, society does not mean the society as a whole but it implies the parents of both the bride and the bridegroom and a few elders of the locality as happened in case of Keinya Katpa ceremony. Such an act of social recognition or approval had been performed during the pro-historic period of the Meiteis as evident by the Meitei puyas and also the old Meitei literatures. The two parties of both bride and bridegroom sat together at the bride’s Sumang (courtyard) and the edible items like rice, fish, cow and others brought by the bridegroom’s parents were presented to the bride’s parents and then the introduction of the bride and the bridegroom to the elders and also among the elders of the two Sageis (clans) themselves were done.


2. Reasonability Test

*Meitei* marriage has the nature of a contract. Besides it is a religious sacrament. In Manipur, marriage is called *Luhongba*. *Lu* = bone or head; *Hongba* = to change, to remove. The ideas behind this is that *Luhongba* unites the bride and the bridegroom into one body and that the former is absorbed in the latter's *Salai* or *Yek* (clan). Such *Meitei* marriage was innovated by the divine *Meitei* God as well as the ancestors. It is believed that uniting a person to one *Salai* or *Yek* (clan) without informing to the *Pukok* (clan head) is a sin. Performing marriage ceremony is not only for the social recognition but also to inform or seek permission from the deceased ancestors as well as *Pukok* (clan head) that from the date of performance of marriage ceremony the female has left her original paternal *Yek* and has merged to the *yek* (clan) of the bridegroom. This formality is performed as *Laitin Thaba* or *Apok Asa Khurumba* (devotion of Gods) which is the most important rite in all the three types of marriage ceremonies. The mere fact of man and woman living has husband and wife does not at any rate normally give them the status of husband and wife even though they may hold themselves out before the society as husband and wife. Public acknowledgement implies performance of due ceremony of marriage.

It should be noted here that if any party challenges a custom, it must satisfy the court that the custom is unreasonable. To ascertain the reasonableness of a custom, it must be traced back the time of its origin. The unreasonableless of a custom must be so great that its enforcement result in greater harm than if there were no custom at all. According to Prof. Allen, the unreasonableness of
the custom must be proved and not its reasonableness.\textsuperscript{10} However, it cannot be said that custom is always founded on reason. No amount of reason can make a custom. What is reasonable or unreasonable is a matter of social values. It may differ from time to time, from place to place. Therefore, whether a custom is reasonable or not is determined by the contemporary values of every society, though there are certain rules or practices which are considered unreasonable in all times and in all societies.\textsuperscript{11} In the context of Meitei society, historically it is proved that Meiteis are descendants of Pakhangba (divine God). The taking of seven steps by the bride around the bridegroom in Leichaiba or Leikoiba (casting flowers on the head of the bridegroom by the bride on the completion of each round of seven rounds around the bridegroom) ceremony is the imitation of the fact that at a time of coronation of Pakhangba, he circumambulated (took seven rounds) his father’s throne seven times and after that bowed to him. Loukhatpa (Approval or Recognition) ceremony is usually performed in case of widow and divorcee women. It is the Meitei saying that female cannot marry twice. So, instead of performing the formal ceremony of Lei Chaiba or Lei Koiba, the marriage between a widow or divorcee woman and a male can be socially recognized as spouses by the performance of Loukhatpa ceremony. Though Keinya Katpa [giving the bride] ceremony is considered as the third degree of marriage ceremony, it has social values in case of poor persons who cannot afford the huge marriage expenditure. Loukhatpa and Keinya Katpa ceremonies may be considered as the ideal ceremonies of Meitei marriage in the context of present society. It is the common slogan [movement] of all the communities that


\textsuperscript{11} Supra note 5 at p. 42
marriage ceremonies in the present society must be a simple one, secular or civil, without much pomp and show and it should incline to the marriage by choice. Marriage is not merely for sexual enjoyment granted by the parents and society but also for a long and happy association of man and woman to constitute an orderly family which contribute to the progress of society. For binding them together for a happy and harmonious conjugal life the necessary things are love and affection and understanding between the spouses but not the expensive ceremonies with much pomp and show. Moreover, the Loukhatpa (Approval or Recognition) and Keinya Katpa (Giving the bride) ceremonies suit the modern condition in the sense that they allow a widow or a divorcee woman to be the spouse of another person. The only difference between these two ceremonies is that Loukhatpa ceremony is performed after cohabitation without social recognition i.e. after their living together as so-called husband and wife and Keinya Katpa ceremony is performed before their cohabitation. If a custom is useful and convenient to the society, one cannot say that such custom is unreasonable.

3. Continuity Test

It is quite true that the three kinds of Meitei marriage ceremonies have continuously following since time immemorial. Mere non-existence of custom for some time does not necessarily mean that custom has been abandoned. Non-existence of custom for a long time leads to the inference of its abandonment, but that fact alone is not sufficient and conclusive evidence of its abandonment. Once it is established that a custom exists, then the rule is that it would be presumed to have continued to exist. Among the Meitei community,
Leichaiba or Leikoiba ceremony is continuously performed as the most popular one and Loukhatpa and Keinya Katpa as the low-level ceremonies but as of great importance and necessity. Neither of these ceremonies is obsolete.

4. Certainty Test

As observed by Chatterji, J., customary law is in a “fluid state” and changes with the times, and therefore the custom set up need not be absolutely invariable, though no doubt the latter is the conception of what custom is. But such a change (of custom) would have to be gradual, and a new custom cannot be created by the mere assertion of the various tribes at a subsequent settlement. But such gradual changes should not affect to the underlying essence of the custom. In the context of the Meiteis though some foreign ingredients are mixed with Meitei ceremonies of marriage due to the influence of Hinduitization of Meiteis, the Meiteis still observe their inherent traditional things also. No doubt, Meiteis follow the new systems of Hinduism in some cases and at the same time they never neglect their own traditional customs. When we talk of whether these three forms of ceremonies have certainty or not we must take into consideration the traditional things which have certainly following irrespective of the foreign ingredients like kirtan, band party etc. Tin Lai Thaba [devotion to Gods] is the most important rite in all the marriage ceremonies. Tin Lai Thaba is the dedication of special articles to the Yumlai (family God) of the families of both the parties. Till today in all the three ceremonies of marriage this rite of Tin Lai Thaba is commonly performed. In case of Leichaiba or Leikoiba ceremony it

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is performed on the day of *Heijingpot Puba* [giving of presents] and in case of *Loukhatpa* and *Keinya Katpa* ceremonies it is performed on the same days of their performances.\textsuperscript{14} *Leihuknaba* [garlanding] has been performed since time immoral till now.\textsuperscript{15} This *Leihuknaba* [garlanding] is still performed in cases of *Leichaiba* or *Leikoiba* and *Keinya Katpa* ceremonies but not in *Loukhatpa* Ceremony. Because *Loukhatpa* ceremony is performed in case of two persons who have cohabited without preforming any sort of ceremonies in general. It is performed only as a means of approval by the parents and society at large.

5. Compulsion Test

From social and legal points of views for considering the cohabitation of a male and a female as *Leipakna Yaba* [socially approved] any one of the above mentioned three ceremonies must be performed

Since the primitive society in Manipur, the marriage ceremony, whatever the kind might be had been performing for the social and legal validity of cohabitation. Some sort of marriage ceremony is essential in all sorts of marriages. When a widow or divorced woman lives permanently with a man as his wife, her status is not that of a spouse, but that of concubine or *Byabhicharini*. The children of the woman who is not validly married (a) cannot perform the death ceremony of their father, (b) cannot cook the *sagei* feast (clan feast), (c) in the chronicle of the *sagei* i.e. in the geneology of the *sagei* (clan) the names of such children are not written under the name of their father but are noted in the margin of their father's

\textsuperscript{15} Thoibi Leima, op. cit p.18.
name. Whoever cohabited with someone without performing the customary marriage ceremony is boycotted by the Meitei society and he or she is debarred from taking part in the social and religious functions.

6. Morality Test

Whether the custom is immoral or not is to be judged by the sense of the whole community. Like the standard of reasonability, the standard of morality may vary from time to time and from society to society. The words public policy in relation to customs are rather vague and often mean no more than immoral.16 The three kinds of customs of ceremonies normally concern with virgin marriages with the exceptional cases of widow and divorced woman. But in case of divorced woman also only the Waloithoknaba Nupi (Divorced woman under the Meitei custom of divorce, Khainaba) will be considered for her second marriage.

Moreover, for performing any one of these ceremonies, usually Pakna-Wainaba Yengba (astrological examination) which is the examination of the two parties whether they are within prohibited degrees of Meitei marriage based on blood relationship is done. Meitei prohibited degrees of marriage is a prohibition based on the concept of morality that is nothing but blood relationship. Even in the case of two persons who have already cohabited as husband and wife without performing any valid custom of marriage ceremony, the Loukhatpa (Approval or Recognition) ceremony will not be performed if they are within this prohibition e.g. Yek Tinnaba (being of the same Yek, clan).

7. Test of Compliance With General Principles of Law

As stated above, Meiteis are governed by the Dayabhaga school of Hindu law. In cases where Meitei customs are permitted, they will be performed according to Meitei customs otherwise Hindu law. A custom opposed to sacred law prevails, but no custom opposed to statutory law can be given effect. A valid custom must not conflict with the statutory law of the country. According to Coke, "No custom or prescription can take away the force of an Act of parliament". The three forms of ceremonies of Meitei marriage are not in contravention of Hindu law in any way or other.

Leichaiba or Leikoiba may be said to be the modified form of Hindu saptapadi. Only the difference is that in Meitei Leichaiba or Leikoiba ceremony only the bride not the bridegroom will take seven rounds around the bridegroom who is in front of Ishaiphu (an earthen pot). This earthen pot is in substitution of sacred fire of Hindu saptapadi. Leichaiba or Leikoiba ceremony is performed in case of Hainaba (engagement) and Chenba (elopement or love) marriages which are similar to Brahma and Gandharva forms of Hindu law. Loukhatpa (Approval or Recognition) ceremony is performed in case of Chenba (Elopement or Love) marriage also which is similar to that of Gandharva form. Keinya Katpa (Giving the bride) ceremony is performed to that peculiar form of Meitei marriage which is similar to that of Prajapati form of Hindu law. Moreover, Loukhatpa and Keinya katpa ceremonies are the only means of widow marriages among the Meitei community. As there is the Hindu Widow Remarriage Act, 1856 for removing all legal obstacles to the marriage of Hindu widows, the

17. Supra note 2 at pp.271-272
Meiteis have their own customary Loukhatpa (Approval or Recognition) and Keinya Katpa (Giving the bride) ceremonies as the means of legalizing the marriage of Meitei widows.

Judicial Trend in Safeguarding the Validity of Meitei Customary Rites and Ceremonies of Marriage.

Custom in order that it may constitute a rule in a particular family or in a particular community, has to become a long usage and has to obtain the force of law. It must be ancient, certain and reasonable and being in derogation to the general rules of law, must be construed strictly. It must not be opposed to morality or public policy. Custom should be established to be so by clear and unambiguous evidence, for it is only by means of such evidence that the courts can be assured of its existence and of the fact that it possesses the condition of antiquity and certainty on which alone its legal title to recognition depends.\(^\text{18}\)

In *Puyam Liklai Singh v. Moirangthem Maipak Singh*,\(^\text{19}\) it was held that marriage by Capture (Gandharva) and widow marriage are valid marriages under the Meitei customary law. There is no provision for marriage ceremony except Loukhatpa (Recognition or Approval) in divorced woman marriage. Loukhatpa is very important because it is the recognition of the wife by the society. Unless Loukhatpa is performed the married wife is not permitted to join in any social ceremony held by her parents and relatives. The general principles of law is that by Loukhatpa the marriage becomes legal and valid. A mere union of a man with a divorced woman is a form of marriage recognized by the Meitei personal law. It is

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\(^{19}\) A.I.R. 1956 Manipur 18.
voidable marriage in the sense that Loukhatpa ceremony always follows after it to give recognition. The court found another form of marriage performed between a divorced wife and a remote relative of her former husband. Under the Meitei customary law, it is a valid marriage provided due regard had been paid to the rules restricting marriage to members of the Meitei yek - salais (clans) and forbidding the intermarriage of person belonging to the prohibited degrees of marriage. The Meitei custom recognized cohabitation and public acknowledgement as primary conditions of valid marriage.\(^{20}\)

In Sumitra Devi V. Bhikhan Choudhury,\(^{21}\) it was held that a Hindu marriage is both of sacrament and a contract. The sacrament consist of (1) innovation of sacred fire, and (2) the Saptapadi wherein the bridegroom and the bride jointly take seven steps before the sacred fire. But there can be a marriage acceptable in law according to the customs of a community which do not insist on performance of such rites. Calcutta and Karnataka High Courts also held that if a customary ceremony is prevalent on the side of either party, its performance will be enough for the validity of the marriage. Customary rites and ceremonies to be accepted must be shown that such custom had been followed definitely from ancient times and that the members of the caste, community or sub-caste, had recognised such ceremony as obligatory. Customary ceremony may not include any one of the shastric ceremonies. It may be totally non-religious ceremony or very simple ceremony.\(^{22}\)

\(^{20}\) ibid.
\(^{21}\) (1985)1 S.C.C. 637
In Manipur it is very unfortunate that in each case of marriage (even after the enforcement of the Hindu Marriage Act, 1955) it would have to be ascertained whether the marriage was performed according to the customary rites and ceremonies but in the absence of any authoritative written memorials, public or private, having the force of law. Till today Meitei marriage custom has not been published in the Official Gazette of the Manipur Government. When a party alleges Meitei customary ceremony of marriage he has to prove it from the evidences which are lying in a haphazard manner. The only way for him is to take the recourse of the booklet “Manipuri customs”. This booklet has been repeatedly used as guiding lamp in the cases relating to Meitei customs. But this booklet has no force of law in toto. In case of W. Priyokumar Singh v. Wahengbam ongbi Rani Devi,\(^{23}\) it was opined that the booklet “Manipuri Customs” does not ex facie show in which year the customs were codified and under what authority. In a few decisions of the court the Judicial Commissioner of Manipur (A.I.R. 1956 Manipur 18 and A.I.R. 1964 Manipur 14) noticed some provisions of this booklet, though no judicial pronouncement had been made as to its legal values probably might be of lack of authority to codify it. Moreover, the date on which this booklet was codified is also not mentioned in it.

When such cases relating to customs of marriage are brought before the courts our courts would take into considerations the decisions given by several Indian High courts and Apex court on the matter in issue. A custom must be ancient, certain and reasonable and being in derogation of the general rules of law, must be construed strictly.\(^{24}\) However, the English rule that memory of man

\(^{24}\) A.I.R. 1964 Man 14.
runneth not to the contrary should not strictly applied to Indian condition.\textsuperscript{25} Customs are not to be enlarged beyond the usage by parity of reason, since it is the usage that makes the law and not the reason of the thing. It cannot be said that a custom is founded upon reason, though an unreasonable custom is void, for no reason (even the highest whatsoever) would make a custom or law.\textsuperscript{26} A custom may be proved either by actual instances or by general evidences of the members of the tribe or family who would naturally be cognizant of its existence; specific instances need not always be proved. When a custom or usage is repeatedly brought to the notice of the court that custom may be held to be introduced into the law without the necessity of proof in each particular case.\textsuperscript{27}

Customs which are immoral or opposed to public policy or opposed to enactments of the legislature will neither be recognized nor enforced. Continuity is also an essential to the validity of a custom as antiquity. The custom must have been enjoyed continuously. This refers, not to the active exercise of the custom, but rather to its assertion. The breach of a custom in a particular instance need not destroy the custom which may continue to be applicable. The onus of proving discontinuance will be upon the person setting it up.\textsuperscript{28}

Now, let us see how the judiciary safeguards the customary rites and ceremonies of marriage among the Hindu communities and also the judicial trend on the validity of Meitei customary rites and ceremonies of marriage. Necessary ceremonies, Shastric or customary, whichever are prevalent on the side of the

\textsuperscript{25} Gokulchand v. Pravin Kumar, A.I.R. 1952 S.C.231.
\textsuperscript{26} Bibbe v Ram Kali A.I.R. 1982 All. 248.
\textsuperscript{27} Janardhanan v. Pillai Kaliamma, A.I.R 1968 Mad. 105
\textsuperscript{28} Chudri v. Bibi, A.I.R 1931 All. 547.
bride or bridegroom, must be performed, otherwise marriage will not be valid. 29

The performance of mock ceremonies of marriage does not constitute valid solemnization of marriage. 30 In Bhaurao Shankar Lokhande v. The state of Maharashtra, 31 the appellant No. 1. Bhaurao Lokhande was married to the complainant Indubai in about 1956. He married Kamlabai in February, 1962 during the lifetime of Indubai. Deorao Shankar Lokhande, appellant No. 2. was the brother of the first appellant. Those two appellants, together with Kamlabai and her father and accused No. 5. a barber, were tried for an offence under section 494 of Indian Penal Code. The latter three were acquitted by the Magistrate. Appellant No. 1 was convicted under section 494 of the Indian Penal Code. Their appeal to the Session Judge was dismissed. Their revision to the High Court also failed. They have preferred this appeal by special leave. The Supreme court allowed their appeal, set aside their convictions and acquitted them. It was held that the word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form'. It follows, therefore, that unless the marriage is celebrated or performed with proper ceremonies and in due form it cannot be said to be 'solemnized'. It is, therefore, essential, for the purpose of section 17 of the Hindu Marriage Act, 1955, that the marriage to which section 494 of the Indian Penal Code applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make the ceremonies prescribed by any custom. The ceremonies performed were not there prescribed by law or approved by custom.

and that the marriage did not come within the purview of section 7 of the Hindu Marriage Act, 1955. In this case the marriage took place at 10 p.m. Pat-wooden sheets were brought. A carpet was spread. The bridegroom then sat on the wooden sheet. On the other sheet the bride was sitting nearby the bridegroom. Then a puja was performed by bringing a Tamya-pitcher. Two garlands were brought. The bridegroom and the bride then garlanded each other. Then they each struck each other’s forehead. The same principle was followed in *Jogita Shah v. Rajesh Kumar Pandey,* 32 *U. Lebi Singh Basan v. The Executive Committee of the Khasi Hills District Council, Shillong,* 33 *Jamkhohen v. Joshep,* 34 and *State of Tripura V. Sushendra Kumar Nath.* 35

Where a man and woman were living together for a long time, the man acknowledged the woman’s children and treated the woman as his wife, they are recognized by all persons concerned as husband and wife and so described in documents like ration card, voters’ list and school register, there is a strong presumption that the woman was the wife of the woman (section 114 of the Indian Evidence Act, 1872) the children are legitimate children. Where the factum of celebration of some form of marriage is established the court is justified in the circumstances of the case in raising the legal presumption of lawful marriage raising out of long cohabitation and repute. The presumption is a rebuttable presumption. 36

34. (1994) 2 Gau.L.R. 84.
Section 7 the Hindu Marriage Act, 1955 is an implied condition of the essentials of a valid marriage under Hindu law. It is well established proposition of law incorporated in section 7 of the Act, that requisite ceremonies or rites prevalent on the side of the bride or the bridegroom must be performed otherwise the marriage will not be valid. This position has been reiterated by the Delhi High Court also in Mrs. Sudershan Karir v. State. 37

Section 7 of the Hindu Marriage Act, 1955 merely enables the parties to celebrate the marriage with the customary rites and ceremonies of either party thereto. These rites and ceremonies may be orthodox rite of 'saptapadi' or may be modification of it by means of a valid exercise of some other customary practice. It is certainly not open to the parties to Hindu marriage to celebrate their marriage without any ceremony or with rites or ceremonies that may please their whims and fancy. Custom cannot be extended by logical process or by analogy. It is a matter not of the theory but of fact, and cannot be established by theoretical generalization, or by a priori method.

In a bigamy case, the second marriage as a fact, that is to say, the essential ceremonies of marriage constituting it, must be proved. Admission of marriage by the accused is not evidence of it for the purpose of providing marriage in an adultery or bigamy case. It was held in Kanwal Ram and others v. The Himachal Pradesh Administration. 38 It was also held in Surjit Kaur v. Garja Singh 39 that prima facie, the expression ‘whoever ...... marries’ must mean ‘whoever ......marries validity’ or ‘whoever ......marries and whose marriage is a valid one’.

38 A.I.R. 1966 S.C. 614
39 (1994)1 S.C.C. 407
If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the life time of the husband or wife of the person arises. If the marriage is not a valid marriage, it is no marriage in the eye of law, the mere fact of a man and a woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they hold themselves out before society as husband and wife and society treats them as husband and wife. The mere statement that gur was distributed after marriage and they lived as husband and wife was not sufficient to establish marriage and therefore, could not lay any claim to share in the property of the deceased on the ground that she was wife of the deceased. This principle was also followed in Dipiyoti Bhuyan v. Oil and Natural Gas Commission.40

In Kanesh Malakar v. Mustt. Protiva Rani Malakar,41 the respondent has filed an application under section 125 of the Cr.P.C. on the ground that on assurance by the petitioner that he would marry her, she had started living with him and came to be in family way and then were married. A child was born but died soon afterwards. The petitioner ill-treated her, drove her out of the house and had neglected to maintain her. The respondent accordingly claimed maintenance from the petitioner. The petitioner had resisted the claim and had denied that the respondent was never married to him or that he was not liable for her maintenance. The learned Magistrate by the impugned order dated 14.12.81 directed the petitioner to pay Rs. 100/- per month as maintenance. Aggrieved, the petitioner

has come in revision and the impunged order dated 14.12. 81 is set aside and the respondent’s petition under section 125 on the Cr.P.C is dismissed. It was held that while no specified form of marriage has been prescribed and ‘Saptapadi’ was not a \textit{sine qua non} for marriage, if the same was in any other form, in the instant case the respondent asserted that marriage according to Hindu Shastras with ‘saptapadi’ was performed, hence it cannot be said that the provision of sub-section (2) of section 7 of the Hindu Marriage Act, 1955 is not attracted and accordingly the marriage could not be considered complete unless ‘saptapadi’ was performed.

The legislative intend behind section 7 of the Hindu Marriage Act is clear from the use of the expression ‘Solemnized’. ‘Solemnized’ means to perform with proper ceremonies and due form. Unless the marriage is ‘celebrated or performed with due ceremonies and due form’ it cannot be said to be ‘Solemnized’. Such marriage is no marriage at all. This is so because marriage in the Hindus is recognized as one of the Sanskaras and, as such, it is performed with the necessary religious rites. The religious rites and ceremonies vary in different parts of the country as well as in different communities, caste etc. It is in the recognition of such existing state of affairs that the legislature while making the law on the subject did not prescribe the ceremonies requisite for solemnization of the marriage. It has been left to the parties to choose a form of ceremonial marriage which is in accordance with the custom or usage of either party.

It is for the party who claims to have been married to a person to show that the customary rites and ceremonies were performed. The mere conduct of a person indicating that he had accepted the other party as his wife is not to grant the
relationship of the status of a legal marriage. It is not a substitute for a solemnization of marriage according to customary rites and ceremonies. Besides, observances of customs and ceremonies applicable to the community must be specially pleaded and proved. In the absence of pleading it might not be open to the party concerned to even lead evidence in that regard.

The essential attributes of a custom are that it must be ancient, certain and reasonable. It must have been observed without interruption. It must be uniform and obligatory. It must not be immoral or opposed to public policy. Besides it must be established by clear and unambiguous evidence. It cannot be enlarged beyond the usage by parity of reasoning since it is the usage and usage alone that makes it a valid custom. However, ceremonies and customs may be obligatory or non-obligatory. While determining the validity of a Hindu marriage, if it is found as a matter of fact that certain ceremonies and customs connected with marriage were not obligatory but directory, then non-performance of any such non-obligatory or directory ceremony or custom would not effect the validity of a marriage if the other mandatory ceremonies and customs had been observed. It was held in *Khiteswar Phukan v. Sowala Gogoi*. In this case the opposite party Sowala Gogoi filed a petition before the District Judge, Dibrugarh under section 10 of the Hindu Marriage Act, 1955 read with section 24 of the same Act for a decree for judicial separation contending, *inter alia*, that she was the wife of the petitioner having been married to him on 14th, March, 1980 according to 'Hindu rites'. The petitioner resisted the said petition by contending that the opposite party was not his wife and that she was never married to him. During

42. (1990)1 Gau.L.R. 364.
the pendency of the said petition the opposite party filed another application under section 24 of the Act claiming payment of alimony at the rate of Rs. 500/- per month. The said application was also opposed by the petitioner on the ground, *inter alia*, that the opposite party was not his wife and, as such, not entitled to any maintenance. The learned District Judge allowed the petition under section 24 and ordered payment of alimony *pendente lite* at the rate of Rs. 200/- per month. A revision petition was filed against the said order before the High Court. The High Court by judgement and order dated 16.5.84. set aside the order passed by the District Judge on the ground that while passing the impugned order the learned District Judge did not follow the legal principles in that regard and did not consider the relevant factor necessary for the purpose.

Normally by the words "*Meitei customary marriage ceremony*" *Meiteis* meant the *Leichaiba* or *Leikoiba* ceremony. This kind of marriage ceremony is the most accepted, socially and legally, *Meitei* marriage ceremony. Therefore, it may also be called as formal marriage ceremony. In cases where this kind of marriage ceremony is asserted or pleaded by one of the parties to the matrimonial cases, the court will not take up an issue on the validity of the marriage in performing such marriage ceremony. Instead, the court will take up other issue while framing the issues of the case. However, among the *Meiteis* other two kinds of marriage ceremonies *viz.* *Loukhatpa* and *Keinya Katpa* ceremonies are also hardly performed. It was highly debatable and controversial issue that whether *Loukhatpa* and *Keinya Katpa* ceremonies of *Meitei* marriage will be valid customary ceremonies or not. This controversy seems to be dissolved by the Family Court, Manipur giving the legal recognition
to these ceremonies as Meitei’s customary marriage ceremonies. The *Loukhatpa* and *Keinya Katpa* ceremonies of Meitei marriage are also having the same legal effects in matrimonial cases as that of *Leichaiba* or *Leikoiba* ceremony, the most popular and formal form of Meitei marriage ceremony. It may be observed from some of the cases brought before the Family Court, Manipur.

1. In Original Suit (Divorce) No. 23 of 1993, the petitioner and the respondent were married on 5.6.92 by performing “*Keinya Katpa*” ceremony at the parental home of the petitioner after their elopement. They were living as legally married husband and wife. The Family Court, Manipur passed a decree of divorce under section 13(1) (i-a) of the Hindu Marriage Act, 1955 on the ground that the husband respondent treated the petitioner wife with cruelty.

2. In Original Suit No. 18 of 1994, as a result of the elopement between the plaintiff and the deceased husband a marriage ceremony in the form of “*Keinya Katpa*” was performed at the residence of the plaintiff’s father on 2.6.1982. It was ordered and decreed on compromise that the defendant No. 1 should pay the plaintiff Rs. 10,000/- only within two days of the receipt of the first instalment of the family pension by the defendant No.1 on account of the death of the husband of the plaintiff.

*Note:* The Family Court Manipur in its order No. 2/1/97-BE/ FC (M) dated the 19th August, 2003 directed the scholar not to disclose the particulars of the parties in the case. Therefore, the scholar refrains from writing the names of the parties in the cases disposed by the Family court, Manipur.
53. In O.S. (Maintainance) No.222/99/35/90/13/92, the court ordered and decreed under section 18(1) and 20(3) of the Hindu Adoption and Maintenance Act, 1956 that the defendant do pay the plaintiff No.1 and the plaintiff No.3 a monthly allowance of Rs.300/- and Rs.200/- respectively for their maintenance. The court held that the admission of the defendant of the factum of marriage with the plaintiff No.1 by elopement followed by "Loukhatpa" ceremony, continuation of their conjugal relationship for a long period of time giving birth to seven children and recognition by the society of their status of legally married couple attract the legal presumption that they were legally married with solemnization of approved form of marriage ceremony to their religion and customary rites. The plaintiff No.1 was the legally married wife of the defendant.

4. In Cril. (M) case No. 22 of 1994, the petitioner and the respondent were married by performing "Keinya Katpa" ceremony in the month of December, 1982. The respondent was directed under section 125 of the Cr. P.C to pay monthly allowance of Rs.300/- and Rs. 200/- respectively to the petitioner and her minor son for their maintenance.

5. In Cril. (M) case No. 38 of 1997, on 16.10.1981 the respondent eloped with the petitioner No.1 and "Keinya Katpa" ceremony was performed on 18.10.81 according to Meitei customary rites of marriage in the presence of the local villagers and elders. The petitioner filed an application under section 125 of the Cr.P.C., thereby praying for the grant of monthly maintenance allowance. The parties negotiated before the Family Court Counselling Centre. In the result, the Family Court directed the respondent to pay a sum of Rs. 1, 500/-
per month to the petitioners as their maintenance allowances (Rs. 500/-for the petitioner No. 1 and Rs. 200/- each for the petitioner Nos.2 to 6).

6. In Cril.(M) case No.44 of 1997, the petitioner No. 1 and the respondent were married by performing "Keinya Katpa" ceremony in 1980 i.e. seventeen years back from the date of filing the case i.e. 19.7.1997. The petitioners filed an application under section 125 of the Cr.P.C. thereby praying for the grant of monthly maintenance allowance. In the result, the Family Court, Manipur directed to pay a sum of Rs. 600/- per month to the petitioners (Rs. 300/- for the petitioner No. 1 and 100/- each to the petitioners Nos. 2 to 4).

7. In Cril.(M) Case No. 23 of 1997, by an application filed under section 125 of the Cr.P.C, the petitioners claim monthly maintenance allowance from the respondent alleging that the petitioner No.1 married with the respondent on 14.11.1994 by performing "Keinya Katpa" ceremony of Meitei marriage and the petitioner No.2 is their minor son. Since after the birth of the petitioner No.2 the opposite party started ill-treatment and on several occasions the petitioner was physically assaulted by the opposite party even the opposite party threatened the life of the petitioner. Having no alternative the petitioner No.1 along with her minor child left the house of the opposite party and they were taking shelter at the parental house. It was held that the petitioner No.1 was a legally married wife of the respondent (on page 4 of the judgement record ). In the finding it is ordered that the respondent to pay Rs.900/- per month to the petitioner (Rs.500/- for the petitioner No.1 and Rs.400/- for the petitioner No.2).
8. In Cril.(M) Case No.59/97, the respondent eloped the petitioner No.1 in the month of October 1995 and "Loukhatpa" form of marriage ceremony was performed in the month of March 1996 according to the Meitei customary rites of marriage in presence of the local villagers and elders. Of the said wedlock the petitioner No.2 aged about 1 year and 3 months was born to them on 19.9.1996. The opposite party started to ill-treat and assault the petitioner No.1 and then in April, 1997 she returned and resided at her parental home with her minor child. The petitioner filed an application under section 125 of the Cr.P.C. for the monthly maintenance allowance. After considering the report from the family Court Counselling Centre, the Family Court passed an order directing the opposite party to pay Rs.500/- (Rs. 400/- for petitioner No.1 and Rs. 100/- for the petitioner No.2 ) per month as maintenance allowance.

9. In original (M) Case No.6 of 1997, the petitioner No.1 was eloped by the respondent on 21.1.1994. Soon after the elopement, the petitioner No.1 was married to the respondent on 23.1.1994 by performing "Keinya Katpa" ceremony in presence of friends, local elders, relatives and parents of both the parties. Since the day of the marriage both the parties had been residing as husband and wife at the residence of the respondent. The respondent ill-treated the petitioner No.1 and subsequently she was driven out of her martial home in August, 1995. Having no alternative the petitioner No.1 who was then pregnant of about seven months of pregnancy, took shelter at her parental home. Thereafter, the petitioner No2 aged about one year was born to the petitioner No.1 on 21.11.1995. Then the petitioners filed an application
praying for awarding maintenance allowance under section 125 of the Cr.P.C. Upon hearing the submissions of both the parties and on perusal of the joint compromise application, the Family Court, Manipur ordered that the opposite party do pay Rs.450/- per month (Rs.250/- for the petitioner No.1 and Rs.200/- for the petitioner No.2).

10. In Cril.(M) case No.68 of 1997, The marriage of the petitioner and the respondent was celebrated in accordance with the Meitei customary practice of “Keinya Katpa” followed by Lai Tin Thaba in 1969 at the residence of the respondent. Out of their wedlock three sons were born who were all majors by this time. In the year 1971, just after the birth of the third son, the respondent started keeping a mistress and neglected her. Thus she filed an application under section 125 of the Cr.P.C praying for granting monthly maintenance allowance of Rs.500/-. On perusal of the report submitted by the Ld.Counsellor and upon hearing the submissions of both the parties the opposite party was directed to pay Rs.400/- to the petitioner as her monthly maintenance allowance.

11. In Mat. (Declaration ) Suit No.54 of 1999, the plaintiff got married to the deceased husband on 14.01.1994 through customary marriage by way of “Keinya Katpa” ceremony and out of their wedlock a child was born. The deceased husband was a pensioner being an Ex-serviceman. The deceased had three another wives including the respondent No.1. The plaintiff filed a declaratory suit before the Family Court, Manipur to declare the petitioner as a genuine legal wife of the deceased. The Court held that the plaintiff was the
only legal wife of the deceased and as such she is entitled to the family pension in respect of the death of her husband.

12. In Mat. (M) suit No. 36 of 1999, the petitioner was married to the respondent in the month of September 1969 at the residence of the petitioner by performing "Loukhatpa" ceremony according to the Meitei customary rites. Out of their wedlock a daughter now of major and married was born to them. Due to the cruel acts of the respondent the petitioner left her husband's home. The petitioner filed a suit claiming maintenance allowance from the respondent under section 18 of the Hindu Adoption and Maintenance Act, 1956. On perusal of the report submitted by the Ld.Counsellor, the Family Court ordered and decreed in the terms and conditions that the respondent was to pay a sum of Rs. 50,000/- to the petitioner.

13. In Mat. (Divorce) Suit No. 83 of 1999, on 3.1.1981 the plaintiff was forcibly kidnapped by the defendant for compelling her to be his wife and since then they lived together as husband and wife. One day in the month of June, 1986 a formal "Loukhatpa" ceremony was performed at the residence of the plaintiff. The plaintiff filed a divorce suit against the defendant husband on the grounds of cruelty and desertion. The family Court, Manipur passed a decree of divorce on the ground of cruelty under section 13(1)(i-a) of the Hindu Marriage Act, 1955 holding that the plaintiff was the legally married wife of the defendant and the acts of the defendant amounted to cruelty under the same Act.
14. In Mat. (Divorce) Suit No. 74 of 2000, the petitioner eloped with the respondent No.1 in the year 1960-70. After about six months of elopement the “Loukhatpa” ceremony was performed at the residence of the paternal uncle of the petitioner. Out of their wedlock four sons were born to them. The respondent No.1 eloped with the respondent No.2 about 15-16 years ago and they started to live together as husband and wife. The Family Court, Manipur ordered that the marriage between the petitioner and the respondent No.1 be dissolved by a decree of divorce on the ground that the petitioner was deserted by the husband respondent No.1.

15. In Mat. (Divorce) Case No. 97 of 2000, the petitioner was married to the respondent on 20.3.1991 by performing “Loukhatpa” ceremony according to the Meitei custom. The said Loukhatpa ceremony was performed at the residence of the petitioner in presence of village elders, friends and relatives. The respondent argued that the marriage was according to Manipuri custom (and not according to Hindu custom) of “Keinya Katpa” which is prevalent even among the non-Hindu Manipuris at least in Manipur. However, both the parties have amicably settled the matter. On perusal of the report submitted by the Ld. Counsellor, the Family court, Manipur passed a decree of dissolution of the marriage between the parties on the ground of divorce under mutual consent of the parties.

16. In Mat. (M) Case No. 89 of 2000, the petitioner No.1 was married to the opposite party by performing “Keinya katpa” form of marriage ceremony. Out of their wedlock the petitioner No.2 was born about 11 years ago. After four years of their marriage, the parties were living in a rented house. In June, 2000, the opposite party eloped another woman and had been living at his
house; since then the apposite party never came back to the rented house. The petitioner filed an application under sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956. On perusal of the report submitted by the Ld. Counsellor, the Family Court, Manipur ordered on compromise that the opposite party was to pay Rs. 600/- each to the two petitioners as their monthly maintenance allowance.

17. In Mat (Declaration) Case No. 147 of 2001, in or about 22 years ago, the petitioner eloped with the opposite party to be his wife. Thereafter, with the consent and free will of both the parties as well as the consent of the guardian of the petitioner No. 1 and that of the respondent, she married with the respondent by performing "Keinya Katpa" ceremony at the quarter of her brother. Out of their wedlock three children were born to them. Out of the three children the first two were married and the third one who was petitioner No. 2 was still living with her natural mother, the petitioner No. 1. After when the petitioners were living separately from the respondent, they demanded maintenance allowance through the court. The family court, Manipur awarded maintenance allowance at the rate of Rs. 125/- per head per month vide Cril (M) case No. 18 of 1993 decided on 3.6.1996. The respondent was then about to retire in 1.12.2001. Therefore, the petitioners claimed for the retirement benefits. The court passed an order that payment of all the retirement benefits should be made to the respondent and out of the said retirement including G.P.F, final payment, a sum of Rs. 45,000/- should be withhold and the same should be paid to the petitioners.
18. In Mat.(M) Case No. 119 of 2001, the petitioner No. 1 and the opposite party were married about 30 years ago by performing "Keinya Katpa" ceremony. Out of their wedlock three daughters were born to them. The opposite party eloped with another women 12 years ago and left his home and shifted at another place with his second wife deserting the petitioners. The petitioners filed an application under sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 for granting maintenance allowances to the petitioners. On perusal of the report submitted by the Ld. Councellors, Family Court ordered that the opposite party should pay to the petitioners Rs. 1500/- per month (Rs. 500/- for the petitioner No. 1, Rs. 400/- for the petitioner No. 2 and Rs. 300/ each for each of the petitioner Nos. 3 and 4).

19. In Mat.(M) Case No. 152 of 2001 after elopement the petitioner and the opposite party were married on 25.4.2001 by performing "Loukhatpa" marriage ceremony. The petitioner was turned out of the house of the opposite party by force and thus she came to her parental house. The petitioner filed an application under section 18 of the Hindu Adoption and Maintenance Act, 1956 for granting maintenance allowance against the opposite party. On perusal of the Councellor's report the Family Court, Manipur the court passed an order that the opposite party should pay to the petitioner Rs. 18,000/- as alimony and the petitioner should not claim any future maintenance allowance.

20. In Mat.(Declaration) suit No. 2 of 2001, the plaintiff filed a declaratory suit praying for a decree for declaration that she was the legal wife/widow of the deceased husband and any other reliefs. The plaintiff married with the deceased husband by performing "Keinya Katpa" customary marriage
ceremony and they had got two children. This ceremony was performed about nine years ago. The plaintiff's father offered *Keinya dan* in presence of 40 to 50 persons participated in the said ceremony. The family Court, Manipur declared that the plaintiff was the legal wife of the deceased husband.

21. In Mat.(M) Case No. 16 of 2002, the petitioner No. 1 eloped with the opposite party on 14.01.1990. After one week of their elopement "*Keinya Katpa*" ceremony was performed between them. Therefore, they lived together as husband and wife. The petitioner No. 1 gave birth to his first son the petitioner No. 2 in October, 1990. In March, 1994 when the petitioner No. 1 was three months pregnant the opposite party eloped another woman and they got married. At present the petitioner No. 1 along with her two children have shifted to a kutchha hut situated at the North Eastern corner of the *Ingkhol* (homestead land) of the opposite party in November, 2001. An application under sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 was filed claiming maintenance of the three petitioners. It was ordered that the opposite party should pay to the three petitioners Rs. 500/- to each of them as their monthly maintenance allowance.

Therefore, from the above mentioned decisions of the Family Court, Manipur, it is submitted that these three forms of Meitei marriage ceremony are judicially recognized.

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