CHAPTER-IX

CONCLUSION

Now in contemporary India we find a strange situation and a new constellation with regard to marriage solemnization. We observe not merely the familiar pattern of diversity of Hindu traditions and their genesis (as happens among the Meiteis also), and obvious contradictions between what people do and what the modern laws of India have to say on this particular topic of marriage solemnization. This, ultimately, is an unsatisfactory state of affairs, and the difficulties should be explained and adequate solutions should also be found out.

Custom is the oldest form of law making. Custom played the role of law in the early stages of society also. Law in this sense was nothing else but the general customs of the community. Custom is frequently the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility. With the emergence of the state the sovereign authority changes the complex customs by putting its imprimatur upon them and transforming them into law. Though custom as a source of law has lost its former position and importance the legislatures have been trying to save the customs.

When one speaks of the custom in the light of the Hindu Marriage Act, 1955 it should be within the definition of “custom” under section 3(a) of the Act. This clause provides that the expression “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family.
Provisos to this section further lay down that the rule must be certain and not unreasonable or opposed to public policy and in case of a rule applicable only to a family it must have not been discontinued by the family. It seems that the legislature while defining "custom" and "usage" under Section 3(a) of the Hindu Marriage Act, 1955 has incorporated all the essential ingredients, known to the Western jurisprudence.

It is abundantly clear from the provisions of Section 7 of the Hindu Marriage Act, 1955, that the essential rites and ceremonies, pertaining to a Hindu marriage must be performed in order to make it valid and binding. This section does not dispense with the performance of essential ceremonies of marriage. In the absence of evidence of valid marriage, no presumption regarding its validity can be raised. Such presumption can be raised only where it is established that the marriage was duly solemnized. But such presumption cannot be raised where there is direct evidence that essential ceremonies were not performed at the time of marriage. Under Section 7 of the Act the entire question for determining the validity of a marriage will depend on observance of the customary rites and ceremonies of either party thereto. The word "solemnized" in section 7 of this Act means to celebrate the marriage with proper ceremonies with the intention that the parties should be considered to be married. Merely going through certain ceremonies with the intention that the parties to be married would not make the ceremonies prescribed by law or approved by an established custom. In fact, the solemnization of a Hindu marriage depends solely on observance of the customary rites and ceremonies with no hard and fast connection with the religious ceremonies as enjoined in the Hindu shastras. The Act does not lay down any special or particular form of ceremonies to be compulsorily followed in all Hindu marriages. It may well be that the legislators
were afraid of the consequences. The courts, having to bear the brunt of the present unsatisfactory situation and having to ascertain in each case whether marriage rituals have been performed in a manner creating legal validity, have, at times, anticipated legislative innovations.

Excepting in Madras in respect of special communities, observance of customary rites and ceremonies is essential to a marriage under the Hindu Marriage Act, 1955 throughout India save the State of Jammu and Kashmir. A marriage not duly solemnized by performance of the essential customary ceremonies under the Act, is no marriage at all. It is, however, an essential requisite for legal recognition of such a custom that it must be sufficiently ancient and definite and the members of the caste or sub-caste or family must recognize it as obligatory. It should not be left to the whim of the caste or sub-caste to alter them at their will and pleasure; for the essence of custom or usage is that it is an ancient one recognized and adopted by the caste and has certainty about it. The custom cannot 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 has been settled law even before the coming into force of the Hindu Marriage Act, 1955 that if a community does not recognize any of the Shastric ceremonies and rites of the marriage, their omission will not render a marriage invalid provided the ceremonies and rites prescribed by the community are performed. Numerous customary rites and ceremonies have been recognized by the courts. Some of the customary rites and ceremonies may be noted here. Among the Santhalas the only ceremony necessary for solemnization of a marriage is the smearing of vermilion by santhal man on the forehead of the santhal bride; among the Nayahans in the South India, the only ceremony necessary for the solemnization of the marriage is tying of a *nadu veeta thali* in the neck of the bride; among the
Jati Vaishavavas the only necessary ceremony is the exchange of garlands between the bride and the bridegroom, called *Kanti-badal*. Now, the time is ripe for the Meiteis also to find out the necessary customary ceremonies of marriage and divorce which may be legally recognizable for the validity of marriage and divorce among them.

Under the Indian law custom is a question of fact and the burden of proof is on the party who relies on the custom. When a custom is repeatedly brought to the notice of the court, the court may treat the custom proved without any evidence. When a custom is recognized by the courts for a long time, it is not necessary to prove it; the court can take judicial notice of the same. Usually custom is proved by instances. It is now a well established proposition of law that a person who relies on a custom has to establish the precise nature of the custom and that he is governed by that custom. Moreover, he has to prove all the essentials of a custom, such as its antiquity, continuity, and reasonableness etc. A custom is a fact and it cannot be established or extended by logical deduction or analogy. While enforcing custom or while considering the question whether a custom has been proved, the court should not draw any analogy nor guess what the custom is or should be; it should go by evidence and see what the custom really is and whether it has been proved. Custom must be proved by evidence and courts are not permitted to deduce the existence of one custom from another. It is not the function of the Judge to surmise what custom ought to be; his duty is to see whether, as alleged, custom has been established by evidence. The courts should take cognizance of actual facts instead of being swayed by theories. If a custom is proved in a court by satisfying evidences to exist and to be observed, the function of the court is merely to declare the custom as an operative law.
The Meiteis are one of the few Indo-Mongoloids. From time immemorial the central valley of Manipur had been the home of the Meiteis while the surrounding hilly regions of the State are inhabitants by tribal communities. The Meiteis have their original religion called “Sanamahism”. The most important of the household deities is Sanamahi. Sanamahi is worshiped as Yumlai (family God) in south western corner of every house of the Meiteis. However, with the accession of Charai Rongba (1697 A.D. - 1709 A.D.), Hinduism, in one or other of its forms, became a religion of Manipur, largely through the support and patronage of the reigning monarchs. This was not, however, a smooth process. Hinduism became the dominant religion of Manipur during the reign of Pamheiba (1709 A.D. - 1748 A.D.). It was during the reign of Chingthang Khomba (known as Bhagyachandra, 1763 A.D. - 1798 A.D.) that Hinduism was consolidated. He confirmed Vaishnavism of the school of Chaitanya as the State religion neglecting indigenous Gods. Through his efforts Hindu festivals, rites and ceremonies were generally accepted.

Marriage ceremonies among Meiteis, as in several other parts of India, consists in a fusion of Hindu rites with certain traditional features. A Meitei marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. Since ancient times marriage ceremonies in some forms have always been considered compulsory among the Meiteis. Meitei customary marriage ceremonies and practices are based on Meitei culture and tradition inspired by Sanamahi philosophy. Though the Meiteis have been forcibly converted to Hinduism, they never neglect their own religious customs based on Sanamahism. The Meiteis’ traditional rites and ceremonies of marriage, though mixed with Hindu culture at some stages of their performances, have been performed as obligatory till today. It
is quite true that in every religious ceremony Meiteis follow the rites of both Hinduism and Sanamahism in the recent years. However, when a question arises whether the Meiteis follow the Hindu Shastric marriage rites and ceremonies by abandoning their inherent traditional customary rites and ceremonies; the answer will be an imperative “No”, but as regards the question” What ceremony”, the answer will be “Mixed ceremony dominated by the traditional ceremony”.

Among the primitive institutions of the Meiteis, marriage is the most ancient and most developed one. Marriage is the mandate of Sanamahi religion which became a part and parcel of the Meitei family law. A male or a female if born on this earth is bound to marry and he or she must leave his or her image before departing this world. The lives of issueless or important couple are considered as imageless persons or bad omens before the eyes of others.

The customary marriage ceremonies of Meiteis may be listed as Leichaiba or Leikoiba (Casting flowers on the head of the bridegroom), Loukhatpa (Approval or Recognition) and Keinya katpa (Giving the bride). Leichaiba or Leikoiba ceremony is the most popular ceremony of Meitei marriage. This kind of ceremony is performed in case of Hainaba (Engagement) and Chenba (Elopement or Love) forms of marriage which are similar to Brahma and Gandharva forms of marriage 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 legalizing widow marriage and marriage of divorcee women among the Meitei community. The Meiteis
have been performing such traditional marriage ceremonies from time immemorial but with some foreign additions as a consequence of change of society in Manipur. Once it is established that a custom exists, then the rule is that it would be presumed to have continued to exist. Mere non-existence of custom for sometime and having some mere modifications do not necessarily mean that the custom has been abandoned. In Meitei society *Leichaiba* or *Leikoiba* ceremony is continuously performed as the most popular one and *Loukhatpa* and *Keinya katpa* ceremonies as the low-level ceremonies but as of great importance and necessity. Till today in all the three kinds of ceremonies of marriage the rite of *Lai-Tin-Thaba* (Devotion to Gods), the most important rite of marriage is certainly and uniformly performed.

On the day fixed for the Leichaiba or Leikoiba (casting flowers on the head of the bridegroom) ceremony, at the residence of the bridegroom certain rituals are observed. After all these rituals are over the bridegroom starts for the bride’s residence where the wedding ceremony is usually performed. After facing smokes of cultic herbs called *Khoichu-Leikham* in order to be protected from evil spirits the bridegroom will be received by the mother of the bride and other women. He then takes his seat at the south-western side of the *Mandop* (paddle or ceremonial place). After the completion of rites performed inside the house of the bride, she will be allowed to come out at the *Mandop*. She, then takes her seat at the north-western side of the *Mandop*. Then the five fingers, each from both the bridegroom and the bride, are tied together and on it *Kujapot* is placed while various mantras are cited. After the completion of rite of *Kujaba* the ceremony of *Leichaiba* or *Leikoiba* will follow. The bride then rises up after untying the thread of *Kujaba* and walks around the bridegroom anticlockwise but before the *Ishaiphu* (sacred water
pot) for seven times. On the completion of each round she casts flowers on the head of the bridegroom. It will be done for six times. It is called *Leichaiba*. On the completion of the seventh round she garlands two garlands of *kundo* (a kind of white flower) flowers around the neck of the bridegroom. Then she resumes her place and the bridegroom with the help of a priest removes one of the *kundo* garlands from his neck and it is garlanded around the neck of the bride. The immediate families then prostrate themselves before each other and again before their *Apokpa* (clan God). The couple are then joined to each other by tying together of their *Inaphis* (nuptial garments) and go together inside the house of the bride. Finally, the couple exchange *kwa* (betel leaf with nut) and *kangsubi* (sweetmeats). When the garland offering is completed the Meitei marriage is taken to be completed. After that the bridegroom returns back home with the bride.

*Loukhatpa* (approval or recognition) ceremony is the ceremony of Meitei marriage showing the fact that the parents and relatives of both the bridegroom and the bride have approved or recognized the union of them as husband and wife. Such *Loukhatpa* ceremony may be performed in many cases. First, when after elopement the marriage is performed at the bridegroom’s residence without the actual participation of the bride’s parents. Secondly, when a man and a woman (may be divorcee also) live as husband and wife without performing any customary ceremony of marriage. Lastly, when there is a union of a man and a widow as husband and wife. Unless the *Loukhatpa* ceremony be performed such so called wife is not permitted to join any social ceremony held by her parents and relatives.

For *Loukhatpa* ceremony, an information of *Loukhatpa* will be sent by the parents of the bride. It is known as *Loukhatpagi Pao Thaba* (sending information of
Loukhatpa). On the day of this ceremony Apok Asa Thaba (devotion to Gods) will also be performed. All the items required for this rite will be brought by the bridegroom’s parents when they come for this ceremony along with the bridegroom, bride, relatives and some elderly local persons. The bridegroom and the bride will worship the Yumlai (family God) at the residence of the bride. They will also bow to the parents, elders and relatives of the bride. The parents of both the bridegroom and the bride embrace each other and prostrate to one another and thus this ceremony of Loukhatpa is finished.

Keinya Katpa (giving the bride) ceremony may also be performed in case of some women who are divorcees and widows. It is considered as the lowest level as well as the simplest form of marriage ceremony because it does not follow the long pre-requisites of the formal marriage i.e. Leichaiba or Leikoiba (casting flowers on the head of the bridegroom). In case of Keinya Katpa ceremony a Phambal or Phak (a mat) will be laid on the Manggol (varandah) of the bride’s house. The bridegroom and the bride will sit together on the Phambal or Phak (a mat) and the five fingers, each from both the bridegroom and the bride will be tied together while the chanting of mantras is going on by a priest. After that the bride will garland two garlands of Kundo (a kind of white flower) flowers around the neck of the bridegroom. The bridegroom then takes out one of these garlands and will be garlanded around the neck of the bride. After garlanding each other they will enter the bride’s house and prostrate to the Lainingthou Sanamahi (family God). Thus, the Keinya Katpa ceremony is deemed to be completed.

There are a few marriage practices in certain sub-communities of the Meiteis. They are generally confined to the territorial limitations of their inhabited village.
The titles also carry the name of a particular village viz. Kwatha practice, Andro practice, Awang Sekmai practice, Pheiyeng practice and Leimaram practice. These practices are more or less similar to the common form of Meitei marriage system.

Since the primitive society of Meiteis, the marriage ceremonies, whatever the kind might be had been performing for the social and legal validity of cohabitation. Such cohabitation with performing some sort of valid marriage has been known as *Leipakna Yaba* (Socially approved) one. In addition to this, there is Meitei prohibited degrees of marriage. It is a prohibition based on the concept of morality that is nothing but blood relationship. Usually *Pakna Wainaba Yengba* (Astrological examination) which is an examination of the two parties to the marriage whether they are within the prohibited degrees of Meitei marriage is done. If they are found to be within such degrees of prohibition, marriage ceremony is seldom performed. Even in case of the 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.

Now, section 29(2) of the Hindu Marriage Act, 1955 saves any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act. As the customary dissolution of marriage is saved by section 29(2); it is not necessary for the parties to such a divorce to have again to go before the court under section 13 of the Act seeking divorce in order that the divorce or dissolution be rendered valid. Saving clause(2) of section 29 of the Act is quite significant. This clause protects the sources of divorce. The present Act, therefore, did not oust the earlier sources and allowed them to remain in tact. It is, therefore, obvious
that if there is a custom, allowing divorce and also a special enactment allowing it, the parties will have an option between three, viz.(i) custom (ii) special enactment and (iii) Hindu Marriage Act. And if there is a custom allowing divorce, the parties will have an option between that custom and divorce provisions of the Hindu Marriage Act. Lastly, in case there is a special enactment allowing divorce, the parties will have an option between the enactment and the divorce provisions of the Hindu Marriage Act. This section protects customary divorce but the party relying on custom must prove the existence of such custom.

Among the Meiteis divorce in broad sense of the term is Khainaba. No formality is necessary for Khainaba. It may be initiated either by husband or by wife or it may also be effected by mutual consent of both the spouses. Wa-Loithoknaba is the “Confirmation of divorce”. Khainaba acquires a binding only after this “Wa-Loithoknaba” is performed. In the performance of Wa-Loithoknaba both the parents of bridegroom and bride, the Sagei Pibas (male elders of the clan) and elderly local men together orally enquire from the spouses the reasons for the divorce (Khainaba).

They decide whether divorce is proper or not. It is a simple practice for social recognition of the divorce. If any divorce(Khainaba) has been confirmed by Wa-Loithoknaba then there is restriction as to recohabitation of married life. A divorced woman whose divorce has not been confirmed by Wa-Loithoknaba shall still be treated as only an absence to their cohabitation. Khainaba has the nature of judicial separation of the Hindu Marriage Act. That is to say, the marriage is kept suspended by Khainaba and stands dissolved by Wa-Loithoknaba.
In modern law, before a custom can be enforced by a court it is necessary to prove the existence of custom. For a custom to receive legal recognition it is necessary that it should possess all the essentials of a valid custom. The primary function of modern judicial analysis of custom is to examine the nature and reality of existing custom, not to invent new customs or arbitrarily abolish those which are proved to exist. A custom does not derive its inherent validity from the authority of the court and the 'sanction' of the court is declaratory rather than constitutive. But in order to merit recognition, a custom has to satisfy certain tests like antiquity test, reasonability test, certainty test, morality test and contradictory test. Even in modern societies where courts are the supreme interpreter of law, it is an essential characteristic of custom that it is not arbitrarily created by the jurisdiction of court or any other determinate legal authority, but is scrutinized by them in order to test the actual observance and validity of the alleged custom as an existing rule of conduct. If satisfied by its scrutiny, the court recognizes the custom as being valid existing law obligatory for those who come within its ambit.

The researcher has examined the validity of Meitei customary ceremonies of marriage by the application of jurisprudential test laid down for it. He has found that the customs relating to Meitei marriage ceremonies are ancient, certain and reasonable and being in derogation to the general rules of law, and construed strictly. These customs are also not opposed to morality or public policy. The researcher has also examined a few selected cases decided by the Family Court, Manipur to observe the judicial trend in safeguarding the validity of Meitei customary rites and ceremonies of marriage. The examination of the cases taken up by the Family Court, Manipur has proved that this court is asserting to give the stamp of legal recognition to such ceremonies.
It is very unfortunate and surprising that in each case of Meitei 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, and that also in the absence of any legally examined or justified authoritative document. Till today Meitei marriage custom has not been published in the official Gazette of the Manipur Government. When a party alleges Meitei customary rites and ceremonies of marriage he has to prove it from the evidences which are lying in unsystematic and haphazard manner, and also not judicially testified. Most of the time the courts (in Manipur also) apply the rebuttable presumption given under section 114 of the Indian Evidence Act. However, in modern law, before a custom can be enforced by a court it is necessary to prove the existence of the custom. As discussed in the forgoing chapters, for a custom to receive legal recognition it is necessary that it should possess all the important requirements of a valid custom. A custom is a rather mixed question of law and fact, and, in order that a custom or customary practice may have a force of law, it is necessary that it should be ancient, invariable, certain, and reasonable. But, a custom which is opposed to public policy and law will not be a valid custom. It is the guiding principle that if a custom is proved in a court by satisfying evidences to exist and to be observed, the function of the court is merely to declare the custom as an operative law. Lastly, the researcher may conclude that to provide uniformity and certainty; and to avoid the dangers of arbitrary, biased and dishonest decisions in the administration of justice in respect of marriage practices among the Meiteis, there should be a legally testified and unambiguous evidences to that effect.