Chapter -V
The Custom of Inheritance and Succession

5.1 Inheritance

Inheritance is a kinship institution and a dominant pattern in family organisation in any society.\(^1\) Natural as this may seem it nevertheless creates a troublesome social environment as a source of conflicts. Each individual in a family can procreate several offsprings, and thereby a problem of inheritance created. This necessity constantly arises because of ‘dividing the property’ of the family among the members History tells us that no scheme of division has ever done full justice to all parties concerned. Morgan\(^2\) defined inheritance as the distribution of property among the cognate kindred. With descent in the male time, the children of a deceased person would stand at the head of the cognate and very naturally receive the portion of the heritance. To Lowie,\(^3\) rule of inheritance is like the whole of property law reflects the total ideology of a society. Laws of inheritance indeed give an unpleasant insight into the socio-economic and political formulations of any society.

Real or personal property, which is inherited by heirs according to law the process of succession to a property: the devolution of the property to the heir on the death of an owner are precisely opined by Hari Mohan Sinha and

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\(^3\) Robert H. Lowie, Social organisation, 1950, p. 146.
Dheeraj Narula⁴ as the right to succeed to the state of an intestate. Sometimes it is loosely applied to the right of devises or legates in a ‘will’ made in their favour if the persons who might have taken on intestacy. The state goes itself to which the right attaches.

Inheritance is not only intended where a man has land or tenements by descent or heritage but also every fee simple or fee tall which a person has by purchase may be said to be inheritance, because his heirs may inherit it after him. One may inherit by creation, as in the case of the king’s grant of peerage, by letter patent, etc. Corporeal or handled; incorporeal inheritances are rights issuing out of annexed to, or exercised with, corporeal inheritances, as advowsons, tithes, annuities, offices, commons, franchises, privileges, services, etc. There are also several inheritances, which is where two or more hold lands severally; if two men have lands given to them and the heirs of their bodies, these have a joint estate during their lives, but their heirs have several inheritances. Goods and chattels cannot be turned into an inheritance.

Cannons of inheritance are the rules directing the desert of real property throughout the lineal and collateral consanguinity of the owner dying intestate, who is technically called the purchaser.

Lowie⁵ observes that since 1715, the English law has recognised the power of the property owner to disinherit his wife and children. The French civil code aiming at protection of the family units, limits the testation power to

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⁵ Robert H. Lowie, op.cit., p. 146.
will his property according to the number of offspring; he may dispose freely of half his property if there is a single child, one third if there are two children and so forth, the denomination of the fractions he may assign at will exceedingly by one unit the number of his progeny. In the United States of America, Louisiana stands out from all the other states in recognising the legitimate (right of the widow and children) irrespective of testamentary dispositions. The growth of American Inheritance laws out of English Law of Inheritance is an example of evolution –descent with modification; colonial conditions were unfavourable to a rule of primogeniture, which had been abolished everywhere by 1798. The general adoption of inheritance taxes in western civilisation is another sign of the influence of ethical conceptions on property rights. In short, nature of complex and simple societies alike has inheritance rules that mirror the social ideology of the people.⁶

And according to Rivers, the distinction between transmission of property (inheritance) and transmission of office (succession) is hardly justified. As the scholar admits, it is contrary to legal usage but what is more significant if ‘property’ denotes not wealth but the title to it, then office is simply one of the privileges, which potentially involve inheritance. In Australia, artefacts are few and are bound to remain such as long as the natives move about means of transportation. On the other hand, a Murngin inherits from his father the right to perform certain dances and also his magical power in some localities.⁷ The different ways of inheritance varies in the

⁶ Ibid, op. cit., p. 147.
⁷ Ibid, op. cit., p. 147.
manifestation in prevailing societies like Russia is also pertinent that in 1927 the Government made a limitation on the subject matter which is ten thousand gold roubles and the remainder is taken as the state’s property.

Regarding the position of a testator is peculiar says Davis.

He would like to control the property even after his death. It signifies the power of the testator. Such control indeed, gives threatening to the youngsters with disinherition if they contravene his wishes, while processing the testator’s wish the community has also to think of not injuring the interest of the others. It looks with suspicion upon whims barn of petty quarrels upon peak will and upon efforts to bovine the perceptivity. He further claims that for the protection of state, Church and family, the standardisation of inheritance custom should be maintained so that embracing situations to close relatives and competitions may not be created. And these ties on the community, for standardisation inheritance customs will avoid unseemly conflicts.

In most civilised societies testation is neither completely free not completely automatic. The testator is permitted to exercise a choice with respect to a part of his wealth but the other part must be divided according to definite rules among prescribed relatives. There is usually, for example, a legitimate, a legally enforceable claims of widow (as mentioned earlier) and children to at least a part of the dead husband’s or father’s estate.

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8 Kingsley Davis, op.cit., p. 409.  
Among the laws of the Latin American States the Spanish code (old) is prevalent which is divided into three unequal parts:

i) The first and the largest (legitimate) is for legitimate children or other near relatives and cannot be willed to anyone else;

ii) The second (Mejora) is an extra portion to be given to certain children, often one or more sons, sometimes the elder; and

iii) The third is available for free testation—often for the benefit of church.\(^\text{10}\)

The extra portion usually represents the land and buildings from which the family derives its substance.

Cole\(^\text{11}\) has maintained that in all peasant countries there is still a strong tendency to think of real property at least as belonging to the family rather than the individual. It is the family’s means of life from which no member can be shut out except for positive misconduct. The family in the next generation will be several, they may find impossible all to live on the family holding and yet when the holding is divided it may lose its efficiency. The heirs may, however, keep the holding in common and seek to enlarge it. This custom approximates a joint family system, popular in our country and some Islamic countries. In the individualistic cultures, however, equal inheritance quickly leads to division of property. An alternative to this is the custom of ‘impossible inheritance’ whereby only one son is given the family holdings. This type of inheritance is

\(^{10}\) Kingsley Davis, Changing concepts of Marriage in Howard Berkar and Penben Hills (ed) Marriage and the Family, 1942, p. 103.

\(^{11}\) G.D.H. Cole, op. cit., p. 36.
precisely the prominent one prevalent among the tribals. This son may be oldest (primogeniture) or the youngest (ultimo geniture or Borough English) or he may be chosen by the father according to ability. Each custom found in various localities has had its advantages and disadvantages. Inheritance by the eldest son means that ‘he must take all the responsibilities for everything’.

Sometimes inheritance among the offspring reaches its most serious situation, when the physical nature of property is small in size, and cannot be divisible or shared among sons or inheritors. This system ultimately results to the shortage of economic security of a family. It is vividly reflected in many Indian family and ethnic societies. Moreover, Garratt\textsuperscript{12} confirms “In India the subdivision of agricultural land by heirs has reached an extreme degree, so that the average holding is too small not only for efficient cultivation but also for the adequate support of a family”.

It can be seen that in both industrial and landed economies when instruments of production are privately owned, inheritance becomes an important basis of class distinction especially if it is, of the impartible type. But as family holdings, in urbanised industrial societies of modern nations have grown more fluid, consisting of money, stocks, saleable capital. It has become easier to divide the inheritance. Chester\textsuperscript{13} opines that, “In the United States today, in case of intestacy, the children, both male and female, share equally in the inheritance.

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\item \textsuperscript{12} Priyadarshini M. Gangte, op. cit., p. 166.
\end{itemize}
The Ruangmei society combined to follow patrilineal system of inheritance. The youngest son inherited his father’s property. But among the other Naga tribes like Ao, Tangkhul, etc. the largest share went to the oldest son of the house after the death of the father. The father could distribute his properties to his other children also as he wished. The inheritor was responsible for repayment of the debt of the father if any. If a man died leaving no male child, his nearest kinsman would inherit the father’s property.\textsuperscript{14} The adopted son had his due right to inherit and succeed the family.

When a family is survived by a minor child, and the deceased parents did not have any will or settlement of the child, the parental uncle became the guardian of the child. With the attainment of minor’s maturity, the due share of the properties was given to him/her. In case the minor was a female child, the guardian made sure that she got her due share of property belonging to her parents at the time of her marriage.\textsuperscript{15}

In the context of inheritance and succession, members of Ruangmei family are divided into two groups as: (i) Pou means son or male child and (ii) Luh means daughters or female members. Under the traditional custom of Ruangmei adopted and followed by our forefathers from generation to generation, the general principles of inheritance and succession are as follows:

1) Inheritance and succession through male line only. The traditional custom of Ruangmei inheritance and succession is based on the

\textsuperscript{14} Dichamang Pamei, Liberty to captives, p. 43.
patrilineal i.e., the line was traced through the male line only and not through the female line.

2) Under this custom, only the sons, grandsons and great grandsons are entitled to inherit the house and the property of the father after his death. Here sons include the step-son and adopted son, but not illegitimate sons.

3) But under this custom, daughters/ women are excluded from the right of inheritance, i.e., they are not entitled to inherit the house or the immovable property of their deceased father except the right of residence and maintenance and gifts inter vivos of moveable property. Though females/daughters are not entitled to claim their right of share in the moveable property of their deceased father for maintenance and also the right of residence in the house of their deceased father or in the house of their surviving brothers.

4) If the father is sonless nor adopted a son, then the immovable property like Kai Khatni Kaiphun (the house and plot) and Laophun means the land fields of cultivation including the forest land are to be inherited by the surviving brothers of the deceased or in the absence of brothers, his paternal uncle, if survived, while the moveable properties are distributed among the daughters of the deceased.  

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5) In the absence of male sons, adopted sons, brother or brother’s sons or paternal uncle of the deceased, then daughters are allowed to inherit the immovable property of the deceased father only under exceptional circumstances of care undertaken by the daughter after her helpless father and mother for a long time, incurred a huge expenditure in treatments, performed funeral functions, discharging the debts of her deceased father etc.

6) The rightful heir, under the custom of Ruangmei inheritance and succession, the youngest son of a father is the rightful heir to inherit the immovable property of the father. But the idea behind of this proposition was that when the elder sons usually got their maturity of wisdom and knowledge earlier, and they left the house of their father after their marriage by setting up a separate house, one after another, only the youngest son was to remain with his parent in order to help and look after them till the death.¹⁷

7) But in case the youngest son gets married earlier and left his parent by setting up separate house or in case the youngest son is disobedient means he has failed to look after his parents, then the other son (any one of surviving sons) who properly looks after their parents till the death of his father and mother will inherit the immovable property of the deceased father.

¹⁷ Ibid, p.177.
8) At the time of devolution of property under the customary of Ruangmei Inheritance and succession, the youngest son as heir not only inherits the immovable property but also he used to get the lion share of the moveable property during the ancient society in consideration of his responsibility to look after not only his parents but also his brothers, sisters and other members of the family.18

9) Sometime it happened that there was none to look after which means, even the son, grandsons, daughters, brother, sisters, totally neglected in such case any one of Ruangmei irrespective of clan or blood relationship, who really cared and looked after the decease; and also performed all religious and ritual ceremonies or functions including funeral function on the death of the deceased is allowed to inherit the property of the deceased not as a rightful heir but for his/her high morality and human services.

10) According to the custom of Ruangmei the illegitimate sons are not entitled to claim for inheritance and succession.

11) Illegible person, any heir or sons who are suffering from the unsound mind or mad (Vaa Zoumei) or murderer (Meibaihlwaimei) etc. are illegible for inheritance and succession.

12) The widow of the deceased who returns after divorced, or unmarried daughters are entitled to live in the house of their deceased fathers or in the house of their surviving brothers and they also have the right to claim for maintenance of their life.19

13) The status of widow-mother: According to the tradition or Ruangmei, the wife becomes widow after the death of her husband. The widow who possesses the quality of an ideal woman will continue to remain in her house with her children and grand-children after the death of her husband and takes care of all her children and maintains her family as usual. Therefore, such widow will be called as “widow Mother” of her children, and she will live with her children and grand-children in her deceased husband’s house till death and she will die as house wife of her deceased husband.

14) In the absence of male child, the widow is also entitled to hold to the property left by her late husband for the maintenance of her children/daughters and her family subject to the restriction that widow would not alienate the immovable property on her own wishes, and after her death, the property will go to her surviving daughters or relatives of her deceased husband.20

15) In some exceptional cases in the absence of male child/son and the widow, the surviving daughters were allowed to share the immovable

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19 Ibid, p. 178.
property left by their deceased father with the sons of the deceased’s brothers or paternal uncle.21

5.2 Widow-mother becomes the family head

After their marriage both the husband and the wife had been earning and struggling hard together for a long period of not less than forty to fifty years, and both the husband and wife is the joint owner of their family property. Because the property of their family out of their joint efforts and labours belongs to him together. As such after the death of her husband, the widow-mother the natural guardian, becomes the head of the family and she virtually assumes the full responsibility of her family and brings all her children up under her care and control in the maintenance of her family.

As a matter of fact, the mother is the real “Tampipei” means family holder and not a mere widow. Truly speaking, the widow mother is the defecto, inheritor to the family of her deceased husband. Therefore, the widow-mother will train and guide her children, particularly, the youngest son for his good discipline, dutiful and faithful in all his activities for his good life and prosperity. The widow-mother may continue to be head of the family as long as she can discharge or till such time her youngest son can take charge the full responsibility of the family.

Considering the unique roles played by her in maintaining and building up her family with her husband and her long struggling and sufferings in

21 Ibid.
shoudering the full burden of responsibilities taken after the death of her husband, the widow-mother has really deserved for succession to the property of her deceased husband, not for her own interest but for the benefit and welfare or interest of her children and grandchildren. No doubt, she cannot claim the right of absolute ownership of the properties.22

5.3 Widow-mother had the right to claim for inheritance

There was some misunderstanding between the widow mother and his youngest son in some case in the matter of succession to the property of the deceased husband, the widow-mother has the right to claim half of the properties for her life maintenance. If she is forced to leave by her son or sons, she is entitled to get equal share with the son. If the widow mother re-married, she loses all her rights to claim for inheritance.

5.4 Rights of Alienation

The widow used to inherit the property of her deceased husband for her life only subject to the stricture that the widow cannot alienate the immovable property without the consent of deceased’s brothers or brother sons and the relative elders of her deceased husband. However, the widow-mother may alienate the immovable property of her deceased husband only under the helpless circumstances for the benefit of their children or the survival of her family in the time of distress with the consent of her surviving son or sons or agnate relatives in the absence of her son of her deceased husband.23

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23 Ibid, p. 194.
5.5 Daughter’s right for inheritance

Though the daughters of a deceased father are excluded from the inheritance to the immovable properties, they are however entitled to inherit the moveable property and get share with the sons in the distribution of moveable properties. The daughters also have the right to claim for their right of residence and maintenance of life ever and above the gifts of moveable immovable properties excluding the family dwelling house site as solace. Even the married daughters who return after their divorce have the right to claim for their residence in their father’s house or in the house for their survival. In some cases the surviving daughter was allowed to inherit to the property including the immovable of the deceased father in the case of sonless father.

5.6 Widow’s Right for maintenance

The widow is entitled to claim for her maintenance out of the property left by her deceased husband, and has the right to hold the property along with her son or sons. After her death the properties of the widow will be reverted to her son/sons or daughters. Except for the movable properties, she is bound to revert the immovable prosperity to the bonafide heirs of her deceased husband.

5.7 Property of a widow

There was no traditional practice allowing a woman to have a separate property in the society of Ruangmeis. The idea was that the wife after her marriage became the part and parcel of her husband and she was under complete control of her husband and all properties owned in the name of their husband belonged to their family as a whole including the wife.
However, in the changing society of Ruangmeis, sometimes when certain problem arises over the claim of inheritance and succession, people used to face some controversy at the time of divorces or on the death of a family head.

Therefore, in modern society some section of Ruangmei now felt deemed necessary to retrospect and ascertain what the properties of a woman or widow are.\(^{24}\)

After a through consultation and discussion it was ascertained that the properties mentioned below may be treated as the properties of a woman or widow:

i) Gifts received at the time of her marriage.

ii) Gifts of movable and immovable received from her parent, brothers, sisters or closed relations before and after her marriage.

iii) Property acquired by her own/efforts.

iv) Property inherited from her husband by will in her favour.

v) All her personnel belongings including valuable ornaments like gold rings, necklaces, earrings, garments etc.

On her death or re-marriage, the properties of the widow shall be reverted to her son or sons, grandsons or daughters or granddaughters subject to her wishes or will left by her.\(^{25}\)


\(^{25}\) Ibid.
5.8 The status of legitimate and illegitimate sons

The different status of the legitimate and illegitimate son/child of Ruangmeis relating to the custom of inheritance and succession. The followings are the classification of sonship of Ruangmei Society with the status:

i) Legitimate sons- Children born by the wife of lawful marriage according to the customs, and they are rightful heirs to claim for inheritance and succession.

ii) Step sons- Are those sons born by other wife or wives of the same father. In the absence of legitimate son of the first wife, the step sons are entitled to claim for inheritance and succession.

iii) Adopted sons – Means the son of other natural father adopted by the adoptive father as his own son in the case of sonless father only, and he has full rights to claim for inheritance and succession.

iv) Illegitimate sons- Illegitimate sons born by a woman outside the lawful customary marriage i.e. lived together without formal marriage which includes: (a) the son of pre-marital pregnancy, (b) son of unknown father (Khaana naa), and (c) the son born by concubine relationship.
Illegitimate sons are not entitled to the inheritance and succession except maintenance.26

5.9 Succession to the property of the deceased father

Inheritance is the mode of acquiring property by succession whereas the succession is to determine the order of succession in preference regarding the devolution of property in respect of a deceased father.

Property- In the matter of inheritance of property for succession, the property means those property/ properties belonged to the deceased father at the time of his death, and the property includes both the ancestral and self-acquired properties during his life time.

(i) Ancestral property – Ancestral property means the immovable properties inherited from the previous ancestor i.e., his deceased father (the father of the deceased) through succession by the present deceased father.

(ii) Self-acquired properties – Self acquired properties means those moveable and immovable properties acquire by the father (present deceased father) during his life time.

Absolute power lies with the father since the father of a family is the absolute owner of both moveable and immovable properties, he can dispose off

any part or the whole his properties in his life time under his helpless circumstances.  

5.10 Process for devolution of property

For the purpose of devolution, the property of the deceased father is broadly divided into two categories, namely:

1. Testate property and Intestate property

Testate property means the property left by a deceased person under a will either in oral or written for disposal of his properties, whereas intestate property means the property left by a deceased person without his will or the will not executed before his death for the disposal of his property or properties.

2. Will

Will means the intention declared by a testor to give his property in favour of a particular person or persons made in verbal or in written before his death in the presence of some responsible relative men and women.

3. Ancient mode of will

During the ancient society the illiterate dying father of Ruangmeis used to declare his intention in verbal only on the disposal of his properties after his death usually made in the presence of his dear and near relatives. In his oral will the dying father declared his intention to give or to distribute his properties

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27 Ibid, op.cit., p.188.
to persons by name indicating such as wife, son or sons, and so on with the name of property for each person.\textsuperscript{28}

4. Disposal of Testate property

The disposal of testate property will be carried out in accordance with conditions and directions given in the will left by deceased. Hence, the question of determining the heir for succession to his property or properties does not arise in respect of testate property.

5. Disposal of intestate property

The rightful heir or heirs of succession arises in the matter of succession to the intestate property left by the deceased without his will according to following classes of persons and the order of succession under the custom of Ruangmei.

5.1 Order of succession

Regarding the disposal of intestate property the preferential order of succession of the rightful heirs may be divided into three categories i.e., (i) first category of heirs (ii) second category of heirs, and (iii) third category of heirs for succession to the intestate property of the deceased heirs under 1- category. These heirs are those closed blood relationship of the intestator comprising of the following closely related persons who are entitled to get share in the devolution of the intestate property:

\textsuperscript{28} Ibid, op.cit., p.189.
1. Widow –mother
2. Sons including step and adopted sons
3. Unmarried daughters
4. Grand sons
5. Great grand-sons, and so on

5.12 Mode of disposal

The number of shares, to make parts or portion of the property and how to distribute after consideration for the maintenance of widow mother and her children etc. will be decided by the relative elders of the intestor after ascertaining the nature and particulars of the property.

5.12.1 Heirs under 2nd category

When there is no heir of I- category, the intestate property will be devolved to the following agnate relatives:

1. Surviving father of the deceased,
2. Full blood brothers
3. Half blood brothers,
4. Paternal uncles,
5. Full blood brothers sons
6. Half blood brothers sons
7. Half-blood brother’s sons son,
8. Half-blood brother’s sons son and so on

29 Ibid, op.cit., p.190.
5.12.2 Heirs under III category

In default of heirs under category I and II, the intestate property will pass on to the cognate relatives. In counting the relationship for the purpose of determining the order of succession for cognate relatives the intestor should be counted as first degree of ascending three degrees from the intestor to the common ancestor, and three degrees descending from the intestor to the heir. Here a degree means a generation. The cognate relatives consist of the following:

1. Mother of the deceased’s, if survived,
2. Sisters of intestor,
3. Sons daughter,
4. Daughter sons,
5. Daughter’s daughters,
6. Intestor’s daughter,
7. Intestor’s sister,
8. Mother’s sister,
9. Brother’s widow,
10. Sons’ widow,

5.12.3 Mode of distribution

The mode of distribution of intestor property to the heirs under category II and III shall be decided by the joint relatives elders of both men and women whether to all existing heirs or to a few selected heirs with equal share or on what basis etc.30

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