

S No 7 (2)

राजस्थान सरकार
कार्मिक एवं प्रशासनिक सुधार विभाग
कार्मिक-क(अनुभाग-५)

क्रमांक. सं० ५० १५ (२१) कार्मिकी क-५। ७७ जयपुर, दिनांक ६ मार्च, १९७६

प्रेषक :- विभिन्न शासन सचिव,
कार्मिक विभाग।

रेषिती :- समस्त जिला दम्हनयक।

विषय :- अनुसूचित जाति तथा अनुसूचित जन जाति को
प्रमाण-पत्र जारी करने के बारे में स्पष्टीकरण।

सन्दर्भ :- पत्र संख्या ५० १५ (२१) कार्मिकी क-५। ७६
दिनांक १२-८-१९७६।

महोदय,

राज्य सरकार के ध्यान में अनेक ऐसे मामले आये हैं जिनमें अनुसूचित जाति।

सुनिश्चित जा-जाति के व्यक्तियों को जाति प्रमाण-पत्र तत्सम्बन्धी उच्चश्रेणी सिद्धान्तों
के अनुसार जारी नहीं किये गये हैं। इसका मुख्य कारण तत्सम्बन्धी प्राधिकृत अधिकारियों
का 'निवाह' शब्द के वैधानिक अर्थ के अभाव का अभाव है। अतः भविष्य में रूपरेखा
संलग्न स्पष्टीकरण (परिशिष्ट 'क') को ध्यान में रख कर ही जाति प्रमाण-पत्र जा-
कराने का सुचित प्रबन्ध करने का श्रम करें।

इसके अतिरिक्त अन्तर्जातीय विवाहित जोड़ों की सन्तति के मामले भी
उभने आ सकते हैं। अन्तर्जातीय विवाहित जोड़ों में केवल एक अनुसूचित जाति या अनुसूचित
जन जाति का अथवा दोनों अनुसूचित जाति या अनुसूचित जन जाति परन्तु पिता - पिता
उपजातियों के अथवा एक अनुसूचित जाति और दूसरा अनुसूचित जन जाति का हो सकता
है। ऐसे जोड़ों की सन्तति जिस जाति। जन जाति का होने का दावा जाती है उस
जाति जन जाति वालों ने उसे अपनाया है अथवा नहीं, उस तथ्य की जांच करके उसे संलग्न
में परिशिष्ट 'ख' में 'द' पर उद्धृत कानूनी परामर्श के अनुसार ही जाति प्रमाण-पत्र
जारी करना आवश्यक है।

३) सन्दर्भ की सुविधा के लिए केन्द्रीय गृह मंत्रालय की अधिसूचना दिनांक
२०-७-७७ द्वारा प्रभाव में लाये गये अनुसूचित जाति और अनुसूचित जन जाति आदेश
(संशोधन) विधेयक, १९७६ द्वारा संशोधित राजस्थाना-तर्गित अनुसूचित जाति जन जाति
की सूचिक-परिशिष्ट 'क' व 'ख' पर दे दी गई है।

४) प्राधिकृत अधिकारियों की सूची व प्रमाण-पत्र के फार्म में भी तदनुसार
संशोधन की आवश्यकता हो गई है। अतः पूर्ववर्ती आदेशों के अधिसूचना में, भारत

1) जात हुआ है कि अस्तित्व प्रमाण-पत्र जारी करने में, राजपत्रित अधिकारियों, संसद सदस्यों तथा विधान मण्डल सदस्यों आदि द्वारा जारी किये गए प्रमाण-पत्रों के अभाव पर प्रमाण-पत्र देते हैं। यदि ऐसा प्रयत्न जारी रहा तो गलत प्रमाण-पत्र दिए जाने का स्पष्ट खतरा है क्योंकि जांच के सही तरीकों के अभाव में ऐसे प्राधिकारी जो प्रसार के प्रमाण पत्रों में लिये गये तथ्यों की वास्तविक सत्यता सुनिश्चित नहीं कर सकते हैं, गलत प्रमाण-पत्र जारी करना रोकने की दृष्टि से अत्याप्त करने का प्रयत्न ही गहत्वपूर्ण हो जाता है।

6) अतः अस्तित्व अधिकारियों के अनुरोध है कि वे ऐसे प्रमाण-पत्र जारी करने से पूर्व ठीक प्राणीकरण राजस्व रेकार्ड के अभाव पर ही तथा आवश्यक हो तो विश्वकर्मा जांच कराई। प्रमाण-पत्रों का अत्याप्त करने से अत्यन्त ही स्वयम् का खसत होने से बचाव ही है।

7) कृपया हमें जामीन अर्पित प्राधिकृत अधिकारियों को तदनुसार निर्देश प्रेषित करें जो निर्माण को सुनिश्चित करने का काम करें।

मन्वीय,
 (केकेके प्रतमगर)
 विशिष्ट शासन निवि।

प्रतिलिपि निम्नलिखित को देना एवं आवश्यक कार्यावाही के लिए प्रेषित है -

- 1) सचिव, राज्यपाल। मुख्य मंत्री,
- 2) निजी सचिव, मंत्रालय। राज्य मंत्री मण्डल,
- 3) निजी सचिव, मुख्य निवि,
- 4) अमरसत शासन सचिव। विशिष्ट शासन सचिव,
- 5) अस्त विभाग/अस्त विभाग। अनुभाग। फोर्सेट,
- 6) अतिरिक्त सचिव, अस्त विभाग। अनुभाग। फोर्सेट,
- 7) जमीनदाता, राजकीय अस्त विभाग, जयपुर को राजस्थान राज-पत्र (अज्ञात मकान) से प्रमाणित,
- 8) अतिरिक्त सचिव, प्राथमिक विभाग (गुप-4) को प्रतिलिपि, प्रतियोगिता सचिव।
- 9) निर्देशक, राजस्व लेखापरीक्षण विभाग, राजस्थान, जयपुर, अमरसत निर्देशक को राजपत्र के अभाव पर अस्त विभाग द्वारा सुनिश्चित प्रमाणित आवश्यक कार्यावाही कराई।

(अनुभाग अधिकारी -)

प्रतिलिपि सचिव, गृह विभाग, भारत सरकार को उनके पत्र सं. सीडी/ १२०-२५/२७६ सं. ७६/सीडी/१० दिनांक २२-३-७७ और ३६/३७/७३ सं. ७६/सीडी/१० दिनांक २२-५-७७ के तदर्थ प्रेषित।

(अनुभाग अधिकारी -)

- प्रतिलिपि निम्नलिखित को भी देना प्रेषित है -
- 1) अतिरिक्त सचिव, राजस्थान उच्च न्यायालय, जयपुर,
 - 2) सचिव, राजस्थान विधान सभा सचिवालय, जयपुर,
 - 3) सचिव, राजस्थान लोक सेवा आयोग, जयपुर।

(अनुभाग अधिकारी -)

परिच्छिन्न

अनुचित जाति । जन जाति के निवारण शब्द के लोचन से ही यह अर्थ निकलता है ।

राष्ट्रपति ने प्रत्येक राज्य तथा संघ शासित क्षेत्र के बारे में ही राज्य के सम्बन्ध में सम्बन्धित राज्य के राज्यपाल से परामर्श करने के बाद संविधान के अनुच्छेद 342 व. 343 के अन्तर्गत तथा उस राज्य या संघ शासित क्षेत्र के सम्बन्ध में विभिन्न जातियाँ और जन जातियाँ को अनुचित जातियाँ तथा अनुचित जन जातियाँ के रूप में दखिना करते हुए समय-समय पर आदेश जारी किये हैं । अन्तर्राज्य । क्षेत्रीय प्रतिबन्ध ज्ञान बुद्धि का लाने का है ताकि किसी विशिष्ट क्षेत्र में रहने वाले विशिष्ट समुदाय के लोग जिनकी अनुचित जातियाँ तथा अनुचित जन जातियाँ की हैसियत का वांछित नहीं है उनके लिए निर्धारित की गई सुविधाएँ उन्हें ही मिलें । विभिन्न राज्यों । संघ शासित क्षेत्रों में रहने वाले एक ही जाति के लोग अनिवार्य रूप से एक ही जाति के ही पीछे नहीं हो सकते हैं । यह भी सम्भव है कि एक ही जाति के दो लोग जो भिन्न भिन्न राज्यों । संघ शासित क्षेत्रों में रहते हैं दोनों को अनुचित अनुचित जन जाति अथवा विच्छिन्न (बार्ड-बर्ता) न समझा जाये । इस प्रकार किसी क्षेत्र स्थान पर रहने वाले लोग व्यक्तित्व का एक ही व्यक्ति है । इसके विपरीत इस शब्द का अर्थ किसी स्थान विशेष के सम्बन्ध में किसी व्यक्ति की जाति । जन जाति को अनुचित करने वाले राष्ट्रपति के आदेश की दखिना की तारीख को उस व्यक्ति के स्थान निर्धारित है । इस प्रकार एक व्यक्ति, उस पर लागू होने वाले राष्ट्रपति के आदेश को दखिना करते समय अपने स्थान निर्धारण स्थान से अलग रूप से नहीं अन्यत्र रहता है, उदाहरण के लिए नौकरी करता हो या शिक्षा आदि प्राप्त कर रहा हो, अनुचित जाति । अनुचित जन जाति जो भी हो, से सम्बन्धित समझा जायेगा, यदि उसने राज्य । संघ शासित क्षेत्र के सम्बन्ध में उम्मीद जाति । जन जाति से आदेश में निर्दिष्ट की गई हो । परन्तु उसे अलग ही निवारण के स्थान के सम्बन्ध में इस प्रकार नहीं समझा जायेगा उसे ही अलग ही निवारण के क्षेत्र में राष्ट्रपति के द्वारा भी आदेश में वास्तव में उम्मीद जाति । जन जाति को अनुचित किया गया हो ।

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Legal views on the status of the offerings of a couple where one of the spouses is a member of a Scheduled Caste.

The general position of law as to that effect of marriage between parties who are Hindus and one of whom belongs to the Scheduled Castes is that under the ancient Hindu law, generally, inter-caste marriage was looked down upon by the propounders and commentators. Some of the authorities, however, reluctantly permitted marriage between a male caste Hindu with a Shudra female and included it in the list of Anuloma marriages although it was stated that in the wedding with a Shudra wife, the ceremony should be performed without mantras. The children born out of a marriage by a caste Hindu with a woman of an inferior caste had neither the caste of the father nor the status of his own varnas-meaning the son born of a caste Hindu wife. They were termed as Anulomaja and belonged to an intermediate caste higher than that of their mother and lower than that of their father. Jajnavalkya calls the son of a Brahmin by a Shudra wife from the list of sons mentioned by Manu. Pratiloma marriages, i.e. marriages between women of a superior caste with a man of an inferior caste, were altogether forbidden and no rites were prescribed for them in Grihya Sutra and persons entering into such marriages were degraded from the caste.

2. After the passing of the various statutory enactments relating to the Hindu law, such as, the Hindu Marriages Act, 1955, the Hindu Succession Act, 1956 and the Hindu Minority & Guardianship Act, 1956, customary ban on inter-caste marriages in either way, has been lifted by the statutory enactment. Under the Hindu Marriage Act, any two Hindus of different sex, irrespective of their caste may enter into a valid marriage unless such marriage is prohibited by the statute itself. According to the above three Statutes, all children either legitimate, or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or a Sikh by religion and who are brought up as members of the tribe, community, group or family to which their parents belong or belonged, are to be treated as Hindus. In view of the above, the off-springs of marriage between the caste Hindu and a member of the Scheduled Caste community, are Hindu and like the off-springs of marriage in the same caste, are entitled to succeed to the properties of their parents. But the status of his or her parent belonging to the higher caste or so question arises as to whether such a child will acquire the that of the parent belonging to the Scheduled Caste. On this point, we have not come across any direct case law. But we feel that the ratio of the decision in Wilson v. G.S. Booth reported in AIR 1958 Assam, 128 would apply to such cases. It is stated at page 102.

"The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe, the way in which he was treated by the community and the practice amongst the tribal people in the matter of dealing with the tribal people in the matter of dealing with persons whose father was a European."

Similarly
Mudaliar.

(2) In the case of Subhaswari Mudaliar Vs. Asilman reported in ILR 33, Madras, 342, the Court held

"It is not uncommon process for a Class or tribe outside the pale of caste to another pale, and if other communities recognised their claim, they are treated as of that class or caste. The process of adoption into the Hindu hierarchy through caste is common both in the North and in the South India. As we have already pointed out, in the past there have been cases where people who judge from the purity of blood could not be Khasis, were taken into their fold or the orthodoxy did not stand in the way of their assimilation into the Khasi community".

3. The Supreme Court in V.V. Giri Vs. C.S. Dora reported in AIR 1959 S.C.1318 (1327) held,

"... The caste- status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry. There is no evidence on this point at all. Besides the evidence produced by the appellant merely shows some acts by respondent 1 which no doubt were intended to assert a higher status, but unilateral acts of this character cannot be edely taken to prove that the claim for the higher status which the said acts purport to make is established. That is the view which the High Court has taken and in our opinion the High Court is absolutely right."

In view of the above observations by superior Courts, it can safely be concluded that the crucial test to determine is whether a child born out of such a wedlock has been accepted by the Scheduled Caste community as a member of their community and has been brought up in that surrounding and in that community or not. The nexus between the child and the community or class or caste is a real test irrespective of the fact whether the accommodating class or caste or community is a Caste Community. Even if the mother of the child is a member of the Scheduled Caste Community, it is possible that the child is accepted by the community of his father and brought up in the surroundings of his father's relations. In that case, such a child cannot be treated as a member of the Scheduled Caste community and cannot get any benefit as such. Similarly, when the mother belongs to a higher caste and the father is a Scheduled Caste, the father may remain away from the Scheduled Caste Community and the child may be brought up in a different surrounding under the influence of his mother's relations and other community members. In such cases also, the child cannot be said to be a member of the Scheduled Caste community. In the alternative, where the child irrespective of the fact whether the father or the mother is a member of Scheduled Caste community, is brought up on the Scheduled Caste community as a member of that such community, then he has to be treated as a member of the Scheduled Caste community and would be entitled to receive benefits as such.

S.C.
Community.
or a Caste
Hindu
Community.

4. As regards the marriages not registered and marriages not legally valid, it may be pointed out that registration is not mandatory for marriages under the Hindu law. Even under the Hindu Marriage Act, 1955

if such ceremony includes the Saptapadi, the marriage becomes complete and binding when the seventh step is taken. In view thereof, all those marriages though not registered but which have been solemnized in accordance with the procedure mentioned in this Section, are to be treated as valid marriages and our opinion mentioned in para 3 above will apply to the children born out of such valid but undersigned marriages.

5. As regards marriages which are not legally valid, it is clear that such children are illegitimate unless invalidity of marriage is due to grant of a decree of nullity by a Court in which case, provisions of Section 14 of the Hindu Marriage Act, 1955, will apply. Under Section 6(b) of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a Hindu minor has been stated to be

"in case of an illegitimate boy or an illegitimate girl- the mother and after her the father"

6. It can be derived from this that the illegitimate children are generally brought up by the mother and in her own surroundings. Therefore, if the mother belongs to the Scheduled Caste and brings up the child within a Scheduled Caste community, the child can be taken as a member of the Scheduled Caste community. But in this case also the major factor for consideration is whether the child has been accepted by the Scheduled Caste community as a member of their community and he has been brought up as such.

7. The above are the general observations, however, each case has to be examined in the light of the circumstances prevailed in that case and final decision has to be taken thereof.

परिशिष्ट - 7

Legal views on the status of the offsprings of a couple where one of the spouses is a member of a Scheduled Tribe.

The question has arisen whether the off-spring born out of wedlock between a couple one of whom is a member of Scheduled Tribe and other is not should be treated as a Scheduled Tribe or not.

2. It may be stated at the outset that unlike members of Scheduled Castes the members of Scheduled Tribes continues as such even after their conversion to other religion. This is because while Constitution (Scheduled Castes) Order, 1950 provides in clause 3 that only a member of Hindu or Sikh religion shall be deemed to be a member of Scheduled Caste, the Constitution (Scheduled Tribes Order, 1950) does not provide any such condition. This view has been upheld by the Supreme Court in the case reported in AIR 1964 S.C. at p.201.

3. It may be stated that unlike Members of Scheduled Castes members of Scheduled Tribes remain in homogenous groups and quite distinct from any other group of Scheduled Tribes. Each Tribe live in a compact group under the care and supervision of the elders of the Society whose words is obeyed in all social matters. A member committing breach of any prescribed conduct is liable to be excommunicated. The social custom has a greater binding force in their day lay life.

In the case of marriage between a tribal with a -tribal the main factor or consideration is whether the

couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as the case may be, is accepted by the Society then their children shall be deemed to be Scheduled Tribes. But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, a circumstances may be there when a Scheduled Tribe woman may have children from marriage with a non-Scheduled Tribe man. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their own community. This view has been held by the Assam High Court in Wilson Road V. C.S. Bugh reported in AIR 1968 Assam at p.128, where it has been held -

" The test which will determine the membership of the individual will not be the purity of blood, but his own conduct in following the customs and the way of life of the tribe; the way in which he has been treated by the Community and the practice amongst the tribal people in the matter of dealing with persons whose mother was a Khasi and father was a European".

Similarly in the case of Mithusamy Mudaliar V. Masilamam Mudaliar, reported in ILR 33, Madras, 342, the court held-

"It is not uncommon process for a class or tribe outside the pale of caste, to another pale and if other communities recognised their claim, they are treated as of that class or caste".

Similarly, in V. V. Giri V. D. S. Dora, reported in AIR 1959 C. 1318 (1327) the Court held-

"The caste-status of a person in the context would necessarily have to be determined in the light of the recognition received by him from the members of the caste into which he seeks an entry".

5. As mentioned above, it is the recognition and acceptance by the society of the children born out of a marriage between a member of Scheduled Tribe with an outsider, which is the main determining factor irrespective of whether the Tribe is matriarchal or patriarchal. The final result will always depend on whether the child was accepted as a member of the Scheduled Tribe or not.

6. The general position of law has been stated above. However, each individual case will have to be examined in the light of existing facts and circumstances in such cases.

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परिशिष्ट - ५

Legal views on the status of the offsprings
of a couple where both the spouses are members
of Scheduled Caste/Scheduled Tribes but each
belongs to a different sub-caste/sub-tribe.

1. Under the Constitution (Scheduled Castes) order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, what is material is residence of the member of the caste, race or tribe in the localities specified in the respective schedule. In the case of a minor child the question arises whether his residence will go along with that of his father. Under the principles of private International Law, the domicile of a minor child follows that of his father, and in certain cases of his mother and the minor child is incapable of changing his domicile by any voluntary act. This rule by no means is absolute. Suppose, for instance, a father deserts his son or he is divorced and the custody of his son given to his wife, in such a case the court may consider ~~the~~ the minor's domicile will be that of the mother.
2. Under Section 3 of the Hindu Minority and Guardianship Act, 1956 the natural guardian in the case of a minor boy or an unmarried girl is father and after him his mother in the case of an illegitimate boy or an illegitimate unmarried girl, the natural guardian will be the mother and after her, the father.
3. In the above background it has to be seen as to which sub-caste or sub-tribe the offspring would belong. In case the parents belong to two distinct communities within the same Scheduled Castes or Scheduled Tribes as the case may be. Prima facie it would appear that in such cases the children born of such parents could be treated as members of the Scheduled Castes or Scheduled Tribes, as the case may be. The prima facie presumption is also in favour of the child possessing the sub-caste or sub-tribe of the father in the large majority of cases, having regard to the concept of domicile mentioned above. Apart from this, it has to be seen whether the child has also been accepted and assimilated in the sub-caste or sub-tribe in that community. Each case has to be examined in the light of the circumstances pertaining to it.

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परिच्छेद - ६०

Legal views on the status of the offsprings of a couple where one of the spouses is a member of a Scheduled Caste and the other that of a Scheduled Tribe.

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As regards the status of the offspring whose father is a member of Scheduled Caste and mother of a Scheduled Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father in the large majority of cases, having regard to the concept of domicile explained in para 1 of परिच्छेद ५८. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in Scheduled Caste community to which the father belongs.

The principle mentioned above would also apply the case of an offspring whose mother is a member of Scheduled Caste and father of a Scheduled Tribe.

This is the general position of law. Each case, however, has to be examined in the light of the attendant facts and circumstances.

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