

५८०७(२)

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राजस्थान सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग
कार्मिक-क(उन्माद-प)

अमांक संख्या १५(२१) कार्मिक-क-पा ७७ जयपुर, दिनांक ५ अक्टूबर १९७८।

प्रेषण:- विधिष्ठ जासन राजिव,
कार्मिक विभाग।

रोकिती:- समस्त जिला दम्पत्तियक।

विषय:- अनुसूचित जाति तथा अनुसूचित जन जाति को
प्रभाण-पत्र जारी करने के अहो में स्पष्टीकरण।

सन्दर्भ:- पत्र ऐत्या प० १५(२५) कार्मिक-क-पा ७६
दिनांक १२-८-१९७६।

अहोदय,

राज्य सरकार के ध्यान में इनके रखे जाये हैं इनमें अनुसूचित जाति
के नियम जो जाति के व्यक्तियों को जाति प्रभाण-पत्र तदाप्तन्त्री अनुशासी सिद्धान्तों
के अनुसार जारी जाहों किये गये हैं। इसका मुख्य कारण तदाप्तन्त्री प्राचिलत विधियों
को निवारण गृह्य के दैवतिक दर्शन के अन्तर्गत जा रहा था तथा उन जातियों में वृत्तिया
संलग्न उपर्युक्त (परिग्रिष्ठ 'क') को ध्यान में रख कर ही जाति प्रभाण-पत्र जारी
करने का स्पूचित प्रबन्ध कराने का त्रैम करे।

इसके अतिरिक्त अन्तजातीय विवाहित जोड़ों की सन्तानि के आपले भी
जाति वा सम्ते हैं। अन्तजातीय विवाहित जोड़ों में केवल एक अनुसूचित जाति या अनुसूचित
जन जाति का अथवा दोनों अनुसूचित जाति या अनुसूचित जन जाति परन्तु भिन्न-भिन्न
उपजातीयों के अथवा एक अनुसूचित जाति और दूसरा अनुसूचित जन जाति काम्ह हो सकता
है। ऐसे जोड़ों की अन्तानि जिस जाति जन जाति वा लोने का दोवा करती है उस
जाति जन जाति वालों ने उसे अपनाया है अथवा नहीं, उस तथ्य ती जान एक ऐसे संघर्ष
में परिग्रिष्ठ 'वै भी ड' पर उदरित कानूनी परामर्श के अनुसार ही जाति प्रभाण-पत्र
करनी करना चाहेकर है।

३) सन्दर्भ की एवं दिघा के लिए केन्द्रीय गृह पर्वालय की अधिकृतना दिनांक
२०-७-७९ द्वारा प्रभाव में लाये गये अनुसूचित जाति वा अनुसूचित जन जाति वादेश
(संशोधन) विधेयक, १९७६ द्वारा गोप्यित राजस्थान-जन जाति अनुसूचित जाति
की सुनियन-परिग्रिष्ठ 'वै भू' 'क' पर ले दी गई है।

४) प्राचिलत अधिकारियों द्वारा व प्रभाण-पत्र के कार्य में पी अनुसार
संशोधन की बाबत अस्ता हो गई है। उत्तर पूर्वती वादेशों के अनुसृपण में, पारम्

(१) ज्ञात हुआ है कि अधिकृत बोर्ड का नाम राजस्थान विधान एवं राजस्थान बोर्ड
मी, राजपत्रित बमिकारियों, लेद एवं तांत्रिक विधान एवं राजस्थान बोर्ड
द्वारा जारी किये गए प्रशासन-पत्रों वे बताता पर्युषण-पत्र देते हैं। यदि
ऐसा अवलम्बन जारी रहा तो उल्लंग प्रशासन-पत्र इसे जारी कर सकते हैं। यदि
क्योंकि बांच के यही तरीकों के बोधाव ऐसे ब्राह्मिक एवं प्रशासन-पत्र के प्रशासन
पत्रों में लिये गये तथ्यों की वास्तविक गतिका इनिशियल नहीं का दर्शन है। उल्लंग
प्रशासन-पत्र जारी रहना भी इसी रूपान्वयन से इन प्रशासन-पत्रों की
गहराईकौण्ठ हो जाता है।

(२) इति अधिकृत बमिकारियों द्वारा देखे गए ऐसे प्रशासन-पत्र जारी
करने हैं पूर्वी ही अधिकृत राजस्थान बोर्ड ने इन्हाँ पर्युषण-पत्र का दर्शन दिया है।
हो तो विश्वविद्यालय वर्तमान भारती दृष्टिकोण से इन्हाँ पर्युषण-पत्र
स्थान द्वारा देखा होने हैं बाद तो ही है।

(३) कृपया इसी जारी रखते प्राचीन बमिकारियों को लकड़ार
मिदें और इसे एवं निमात दो नवित आने वाला करो।

मन्त्रीय,

(केंद्रीय स्वतंत्रता प्रतिष्ठित जारी दिवा।)

प्रतिलिपि निम्नलिखित दो रूपों एवं दो विभिन्न भाषाओं में
प्रेषित है:-

- १) द्विव, राज्यपाल। पर्युषण-पत्री, राज्यपाल।
- २) निम्न द्विव, विभिन्न। राज्यपाल।
- ३) निम्न द्विव, पर्युषण-पत्री।
- ४) लकड़ार जारी द्विव। विभिन्न जारी द्विव।
- ५) द्विव विभिन्न द्विव। द्विव। प्रबोधक, इनीटियल, राजस्थान।
- ६) इनीटियल, राजस्थान। इनीटियल विभिन्न, विभिन्न द्विव।
- ७) राज-पत्र (जोड़ा भवत) ने प्रशासन-पत्र की अविभिन्नता दर्शिया
है। इसके द्वारा विभिन्न विभिन्न विभिन्न द्विव।
- ८) मिदें, निम्न द्विव, विभिन्न, राजस्थान, विभिन्न विभिन्न द्विव।
राज्यपाल द्विव-रव द्विव। इसमें इनिशियल प्रशासन-पत्रों की विभिन्नता
दर्शव।

(बनुपांगाभिकारी)

प्रतिलिपि द्विव, पर्युषण-पत्री, भाषण द्वारा दो उचित घर द्विवी
रूपों से छोटी एवं बड़ी। दिनांक २२-२-५७ द्वारा द्विव २७। दिनांक २२-२-५७ द्वारा
दिनांक २२-२-५७ के द्वारा प्रस्तुत।

बनुपांगाभिकारी।

प्रतिलिपि द्विव द्विवी की दो विभिन्न प्रकार द्विव हैं:-

- १) प्रथम, राजस्थान उड़ा निम्नलिखित जारी द्विव। जयपुर,
- २) द्वितीय, राजस्थान द्विव। द्विव भिन्न भिन्न, जयपुर,
- ३) तृतीय, राजस्थान लोक देवर जायपुर भिन्न।

बनुपांगाभिकारी।

परिचय १८

बनुदूचित जाति । जन जाति के निवासी जन्म के समान उसी जन्म लाभ

राष्ट्रपति ने प्रत्येक राज्य तथा रंग जातियों के बारे में शौर राज्य के सम्बन्धों में सम्बन्धित राज्य के राज्यपाल से परामर्श लिये तो शौर अधिधारा के अनुच्छेद ३४१ व. ३४२ के अधीन तथा इस राज्य या उस जातियों के राज्य के विभिन्न जातियों द्वारा जन जातियों को बनुदूचित जातियों तथा बनुदूचित जन जातियों के बारे में एक विविध विवरण दिया गया है । इसी विवरण के अनुसार राज्य पर जादेश जाति की जाति है । अन्तर्ज्ञाय । दोनों प्रतिवन्दी जातियों के लाभों गते हैं ताकि किसी विविध जाति में रहने वाले विविध राज्यों के लोक जिन्होंने बनुदूचित जातियों तथा बनुदूचित जन जातियों की हितों का पालन गता है उनके लिए निर्माणित वीर्य मुख्यकारी उन्होंने जो निर्माणित राज्यों । एवं जादेश दोनों में रहने वाले एक ही जाति के लोग अनिवार्य रूप से एक वीर्य के लाभान्तरों से पीड़ित नहीं हो सकते हैं । यह मी. राज्य है कि एक ही जाति के दो वीर्यों जो मिन्न मिन्न राज्यों, एवं जादेश दोनों में रहे हैं दोनों को बनुदूचित बनुदूचित जन जाति द्वारा कियो जाता है (याइस-दरहा) । इस प्रकार जाति की जाति का स्थान पर रहने वाले हाल अधिकत जन जाति जन्म लाभ अन्वयन करते हैं । इसी विवरणीत हर जन्म जन्म जाति की स्थान किसेण देखा जाता है ताकि जाति की जाति । जन जाति को बनुदूचित जन्म वाले राष्ट्रपति के बादेश की विविधता की जाती है उस व्यक्ति के स्थान किसार है वे । इस प्रकार एक व्यक्ति उस एक लागू होने वाले राष्ट्रपति के बादेश की विविधत जन्म लाभ अन्वयन करते हाल अन्वयन करते हाल हो जाति का बदला हो, बनुदूचित जाति । बनुदूचित जन जाति जो ही हो, उसे सम्बन्धित राज्यका जावेश, यदि उसे राज्य । एवं जादेश दोनों ही सम्बन्धों उपर्योगी जाति । जन जाति उस बदला के निर्दिष्ट की गई हो । परन्तु उसे बदलाई नियार है जाति के सम्बन्धों का प्राप्त नहीं जाका जाना पहले ही बस्ताई नियार के दोनों राष्ट्रपति के विरोधी बदला होने जास्तरी उपर्योगी जाति । जन जाति को बनुदूचित जन्म जाति हो ।

9755/1958

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

1. The general position of law as to the 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 Savarni surasas-meaning the son born of a caste Hindu wife, they were termed as Akulmaja and belonged to an intermediate caste higher than that of their mother and lower than that of their father. Yajnavalkya omits the son of Brahmin by a Shudra wife from the list of sons mentioned by Manu. Matiloma 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 Marriage 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, whose 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 in 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 in the properties of their parents. But the status of his or her parent belonging to the higher caste or in 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.C. Booth reported in 1919 A.C.A. 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 way of dealing with persons whose grandfather and father was a 'burgher'."

(13)

Similarly in the case of Pathuvarundhilar Vs. S. Pillai reported in AIR 1953, Madras, 342, the Court held

"It is not uncommon process for a class or tribe outside the fold 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 Indian 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. In AIR 1959 S.C. 1218 (1227) 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 easily 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 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 such community, then he has to be treated as a member of the Scheduled Caste community and would be entitled to receive benefits therefrom.

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

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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 solemnised 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 undesignated 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 a grant or a decree of nullity by a Court in which case, provisions of Section 11 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 prevalent in that case and final decision has to be taken thereon.

परिषद - T

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 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.

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.

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. Social custom has a greater binding force in their day life.

In the case of marriage between a tribal with a non-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 Read v. C.S. Borth reported in AIR 1958 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".

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Similarly in the case of Muthusamy Mudaliar v. Masileam 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. Giridhar 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 matrarchal 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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प्रतिवेदन

(17)

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Legal views on the status of the offsprings
of a couple where both the spouses are members
of Scheduled Castes/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 is dead and the custody of his son given to his wife. In such a case, the court may consider 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 married 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.

(18)

प्रश्नाः - 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.

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 *Prashna - 6*. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs.

The principle mentioned above would also apply in 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.