

ANNEXURE—B

*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 conversation 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 are 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 to day life.

4. 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 women 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 Reast v. C. S. Booth* 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”

Similarly, in the case of *Muthusamy 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 S. 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.