

ANNEXURE—C

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 prevailing 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 is given to his wife. In such a case, the court may consider that 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 illegi-

timate 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 belonging 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.