

157

ANNEXURE—A

*Legal views on the status of the offspring 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 in 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 such marriage by a caste Hindu with a woman of an inferior caste had neither the caste of the father nor the status of his Savarn Aurasas—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. Yajnavalkya omits the son of Brahmin by a Shudra wife from the list of sons mentioned by Manu. Pratiloma marriages, i.e. marriages between woman 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 enactments. 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, a Buddhist, a 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 Schedu-

led Caste community, are Hindus and like the offspring 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 a question arises as to whether such a child will acquire the property 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 Read Vs. C. S. Booth* reported in AIR 1958 Assam 128 would apply to such cases. It is stated at page 182.

“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 mother was a Khasi and father was a European”.

Similarly, in the case of *Muthuswamy Mudaliar Vs. Masilman 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 castes. 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. D. 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.