

Agenda Item 1

Brief note on the proposal of Government of Kerala for amendment of Kerala (SCs and STs) Regulation of Issue of Community Certificates Act, 1996.

As per instructions issued by the Government of Kerala, the children of inter-caste married couple either of which being Scheduled Caste/Scheduled Tribe were being treated as belonging to SC/ST till the pronouncement of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 659 of 2003 (Punit Rai Vs Dinesh Chowdhary) which, inter-alia, laid down that "The caste system in India is engrained in Indian mind. A person, in the absence of any statutory law **would inherit his caste from his father and not his mother even in a case of inter-caste marriage**".

2. In compliance with the above ruling of the Hon'ble Supreme Court, the State Government issued orders clarifying, inter alia, that Scheduled Caste/Scheduled Tribe Community certificates shall be issued to the children of inter-caste married couples only as per the caste/community of his/her father subject to the conditions of acceptance, customary traits and tenets stipulated in the Supreme Court Judgment.

3. Taking into account the subsequent pronouncements of the Hon'ble Supreme Court and the Kerala High Court, the Govt. of Kerala proposed to amend the Kerala (SCs and STs) Regulation of Issue of Community Certificates Act, 1996 through an Ordinance. The State Govt. proposed to insert a new Clause (Clause 5A) in the Act with a view to enabling the son or daughter of an inter-caste married couple to apply for SC/ST certificate by virtue of his/her father or mother being a member of SC or ST community. The above ordinance has been referred to the Ministry of Home Affairs for obtaining the assent of the President of India. The Ministry of Home Affairs have invited comments of all concerned Ministries/Departments, including the Ministry of Tribal Affairs, in the matter. **On being asked by the Department of Legal Affairs the Ministry of Tribal Affairs have requested for the comments of this Commission also on proposed amendment.**

Pro
• Gender equality

Cons

- will be prone to use by general categories
- Child's caste flawed from father → Law Ministry
- will strike the beneficiaries for quota →
- Intra-caste objective → social change; not non STs grabbing safeguards;
- one must suffer disabilities in socially, economically, etc. columns → want from this system

• Stakeholder's

• Why MTA forgetting consultation with MSST

4. The text of the proposed new clause is as under:-

"5A. Issuance of community certificate to the children born of inter-caste marriages.- Notwithstanding anything contained in any other provisions of this Act, or in any other law for the time being in force or in any judgment, decree or order of any court, the Competent Authority may issue a community certificate, on an application made to it under section 4, to a person, who is the son or daughter of an inter-caste married couple and claiming the status as Scheduled Caste or Scheduled Tribe, as the case may be, **by virtue of his father or mother being a member** of a Scheduled Caste or a Scheduled Tribe Community, as the case may be, in accordance with the procedure and manner of issue of community certificate prescribed under sub-section (1) of section 5 and also after satisfying about the genuineness or otherwise of the claim made thereunder:

Provided that no such certificate shall be issued if,:-

- (a) either of the parents does not belong to the Scheduled Caste or the Scheduled Tribe Community, as the case may be; or
- (b) on enquiry, it is satisfied that the son or daughter, as the case may be, is living in such circumstances and enjoying such facilities and that it cannot be inferred that he has been subjected to the same handicaps, sufferings or disadvantages attached to the Scheduled Caste or Scheduled Tribe Community, as the case may be, to which one of the parents belongs.

Explanation:- For the purpose of this section the expression **'inter-caste married couple'** shall mean a married couple of whom one of the partners belongs to a Scheduled Caste or Scheduled Tribe Community".

5. On the basis of the conclusion drawn by the Supreme Court in para 15 of its judgment, dated 14.02.2006 in civil, Appeal No. 6445 of 2000 (Annexure-I), the Ministry of Tribal Affairs have supported the above amendment with slight modification in proviso(b) of the above clause which, according to MTA, should read as under:-

- (b) on enquiry, it is **satisfactorily established** that the son or daughter, as the case may be, is living in such circumstances and enjoying such facilities and that it cannot be inferred that he has been subjected **socially, economically and educationally cumulatively** to the same handicaps, sufferings or disadvantages attached to the Scheduled Caste or Scheduled Tribe Community, as the case may be, to which one of the parents belongs.

6. With a view to furnishing a considered view of the Commission to the Ministry of Tribal Affairs on the above amendment, relevant papers were circulated in the Commission for obtaining the comments of all concerned. Comments have been received from Member (TS), Director (VA), Director (RCD), Deputy Secretary and Consultant which have been compiled in the enclosed statement (**Annexure-II**).
7. The general view expressed by the officers in the Commission is that the proposed amendment is aimed at bringing a healthy social change in the society but at the same time it is apprehended that the amendment would be **detrimental to the interests of original Scheduled Tribes**. It would also be pertinent to refer to the news-items in the Times of India, dated 31.03.2008 (**Annexure III & IV**) in the context of a proposal of **Ministry of SJ&E for the grant of SC status for a child born to a non-SC father and SC mother**. The news-items indicate that the Ministry of Tribal Affairs and NCSC have opposed the proposal of Ministry of SJ&E and some Tribal Rights Groups have expressed the concern that if the same principle is extended to STs then non-STs would marry tribal women to usurp their property.
8. The position indicated in para 7 above shows that wider consultation is necessary before a final view on the proposed amendment of the Kerala (SCs & STs) Regulation of Issue of Community Certificates Act, 1996 is taken.