

Rajasthan and Haryana was held in Kurukshetra on 13th April in view of the Courts decision. In this meeting they decided to take up the issue of amending Hindu Marriage Act, 1955 so as to ban the marriages within the same Gothras. The Judiciary cannot play a crucial role and has lots of limitations.

Justice K.S. *Abluwalia* of Punjab and Haryana High Court, while simultaneously hearing the 10 cases pertaining to marriage between young couple, made a revealing observation. He observed “the High Court is flooded with petitions where Judges of this Court have to answer for the right of life and liberty to married couples. The State is a mute spectator. When shall the State awake from its slumber for how long can Court provide solace and balm by disposing of such cases² ?

The Union Law Minister has recently said that the Government may consider if a demand for such thing comes. In view of the increase in the number of honour killings, Shakti Vahini, an NGO has filed a petition in the Supreme Court. In response to it, the Supreme Court has issued notices on 21st

June, 2010, to the Centre and eight States of Haryana, Punjab, Uttar Pradesh, Bihar, Himachal Pradesh, Rajasthan, Jharkand and Madhya Pradesh for direction to explain the steps taken to prevent honour killing at National and respective State levels³.

In fact it would go a long way since, in the absence of law, the Judiciary has laid down guidelines to combat sexual harassment cases at work places which has resulted in almost stopping it at work places. Such an interference and guidelines from the Judiciary would certainly help in preventing the honour killing of the innocent lives that fall for each other without knowing the other background of each other. This would also help law enforcing bodies to their job successfully in preventing the loss of lives and protecting the Human Rights thereby, providing the young couple the right to live happily. While judicial interference would be helpful in preventing the Khap Panchayaths from taking law into their own hands, the customs and practices of the majority Hindus should also be considered without vitiating the strong sentiments and the culture of the society.

DISQUALIFICATION FROM INHERITANCE – A CASE FOR MAKING 'ABETMENT TO COMMIT SUICIDE' A GROUND THEREOF

By

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Section 25 of the Hindu Succession Act 1956 in precise states that a person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

It is manifest from the above section that a person who commits murder or a person who abets the commission of murder are the two specific categories of persons who are excluded or debarred from inheriting the property of the person murdered or any other property in furtherance of succession. Why is a person guilty of murder or abetting

2. Smt. Jagmati Sangwan, The Hindu 8th May, 2010.

3. The Hindu, 22nd June, 2010

the commission of murder alone excluded from the process of inheritance is a question which is within the comprehension of an ordinary reasonable man the answer to which is not beyond one's comprehension. Public morality demands that a person who is guilty of murder or abetment to commit murder should be discouraged or debarred from the process of inheritance. Had the person guilty of murder or abetting the commission of murder been permitted to inherit the property, it would be an encouragement to unscrupulous elements who are awaiting succession to have an eye over the assets or properties of elders or relatives as the case may be. They may have recourse to methods which are abhorred and unapproved by the society. The Parliament of India, with a view to debar such elements has framed Section 25 prohibiting them from the process of inheritance.

Section 25 of the Hindu Succession Act, 1956 was enacted more than six decades ago when crime rate was at minimum level possible and the society was almost free of crime on account of values based on ethics prevailing then and at the time when killing of a human being alone was considered a serious crime. Therefore, except murder or abetment to murder, the other deviant behaviour or insinuation were considered not serious enough to attract exclusion of a person from the process of inheritance. For this reason alone a person guilty of murder and abetting the commission of murder were the specific categories of persons excluded from the process of inheritance.

However, with the growth of science and technology and on account of rapid development of communications and access to information, the life style of the people has undergone a sea change; ethical values lost significance and materialism assumed prominence. With changing life-styles and increasing materialism acquisition and accumulation of material wealth has become the order of the day; with the change in life styles, the rate of crime grew leaps and bounds; the methods of commission of crime multiplied.

In the above backdrop, this write-up aims at advocating the exclusion of person guilty of other crimes especially the 'abetment to commit suicide' which is as serious and heinous as murder or abetment to murder from the process of inheritance.

It is undeniable fact that women, in twenty first century, are competing with men in all fields and started entering into the fields like engineering, banking, insurance, railways as motormen *etc.*, and in some instances taking up independent jobs like cab drivers, doctors, lawyers, accountants *etc.* These fields are traditionally considered as strongholds for men. With these fields wide open to women in twenty first century, the venues of income and earning capacity of women grew manifold in recent years. For example, a woman may receive gifts, movable and immovable, at the time of betrothal and marriage or acquire property on the death of her parents in case there are no male issues or on par with male issues on certain occasions or by taking up employment or both by receiving or acquiring properties and taking up employment *etc.*; States such as Andhra Pradesh, West Bengal and Maharashtra *etc.* have passed legislation recognizing them as coparceners on par with male coparceners. By Hindu Succession (Amendment) Act, 2005 daughters are made coparceners in Hindu joint family properties (*w.e.f.* 9.9.2005). Hence holding of properties by women almost has become certain.

As per the general rules of succession described in Sections 15 and 16 of the Hindu Succession Act, when a female, after acquiring the properties from one or more sources mentioned above, dies intestate the properties so acquired shall devolve (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) thirdly, upon the mother and father; (d) fourthly, upon the heirs of the father; and (e) lastly, upon the heirs of the mother.

The section further states that notwithstanding anything contained in sub-section (1), (a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father, and (b) Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband¹.

As per the rules mentioned above, the property of deceased female shall devolve firstly upon sons, daughters and husband, secondly, upon the heirs of the husband, thirdly, upon the mother and father. Those in entry 1 *i.e.*, sons, daughters and husband will take each one share. In the absence of the heirs in entry No.1 those in secondary entry *uz*,

heirs of husband will succeed to the properties.

In the light of the legal position and changed circumstances described in the foregoing paragraphs it is very likely that the husband and relatives of the husband may create circumstances which force her to commit suicide. The husband or the relatives of the husband as the case may be, on her suicide as per the general rules of inheritance mentioned above, become entitled to the assets of the female except the assets those inherited from her father or mother, even if the husband or the relatives of the husband are responsible for her death. In case the husband of the female pre-deceases her, the assets of the female as per the general rules of inheritance shall devolve the relatives of the husband. By these rules, husband or the relatives of the husband may position themselves in priority to others in the process of inheritance even if they are responsible for the suicide.

The Parliament of India, realizing the rise in crime rate of crimes where the involvement of the husband and relatives of the husband is present in abetting the women to commit suicide or kill her, has enacted Section 304(B) in the Indian Penal Code². Abetment to commit suicide for dowry is also a ground for conviction under Section 304-B I.P.C. But corresponding civil remedy with respect to inheritance of victim is not taken care.

1. (3) Order of succession and manner of distribution among heirs of a female Hindu.- The order of succession among the heirs referred to in Section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely :**Rule 1:** Among the heirs specified in sub-section (1) of Section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously. **Rule 2:** If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of the such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death. **Rule 3:** The devolution of the property of the instate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to Section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

2. Section 304(B) states that:

(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation: For the purposes of this sub-section, "dowry", shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life).

Cases of abetment of suicide are not only against married women. There are number of instances where children abetted parents, brothers abetted sisters and brothers and so on. Hence, if only abettor of suicide of married women is made a disqualified heir it is going to be class legislation and not a reasonable classification. Hence, whoever abets to commit suicide is to be disqualified from

inheriting the property of victim of abetted suicide.

So, if a person guilty of abetment to commit suicide is excluded from the process of inheritance, the public morality would be better served and kept up. Therefore it is high time for the Legislature to consider to pass legislation making abetment to commit suicide a ground for disqualification from inheritance.

CONTRACT LAW AND CONSTRUCTION INDUSTRY

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1. All construction works take birth in a contract. An agreement enforceable by law is a contract¹. Thus, a contract requires an agreement which is enforceable by law. An agreement consists of two essential requisites:—
 - (1) A proposal or offer from one party; and
 - (2) Its acceptance by the other.
2. Mere agreement is not contract unless it fulfils the following conditions :—
 - (1) The parties to the agreement must possess contractual capacity;
 - (2) The agreement must be supported by consideration;
 - (3) The parties must enter into the agreement of their free consent; and
 - (4) The object of the agreement must be lawful
3. All agreements will not become contract, unless they give rise to legal obligations.
4. Proposal has two essential requirements, namely willingness of the party to make a proposal and signifying it to the other. In order words, the proposal/offer must be communicated. Thus, in an agreement of the parties, a stipulation to settle their business matters mutually and not to have recourse to legal proceedings (or jurisdiction of Courts being barred was held not to be a contract, as the intention to create legal obligations was excluded².
5. An offer may be specific or general. In all contracts of Government or public work, it will be of general offer, while a specific offer is made to a specific individual³.

1. See for details Section 2(R) of the Indian Contract Act 1872.

2. *Rose Frank Co. v. R. Crompton*, (1923) 2 KB

3. See for details *Carlill v. Carbolic Smoke Ball Co.*, (1893) 1 QB 256.