

eventually are paid for it. Either is food for work or cash for work programme. The State is campaigning against child labour using traditional media and modern media to reach children, parents, employers and community at large including teachers, spiritual leaders *etc.* Some more efforts to be taken by the State.

As the author said earlier the second home is school. The State has to pay greater attention to the educational system and hence many expatriates are employed for that endeavour. Even the State has taken up the matter in place like Senafe are where school building, hospital and other structures are razed to the ground by Ethiopian Solders. At present the schools and hospitals functioning under temporary shelter.

Based on the above observations and discussion one favouring the existence (permission) of child labour in certain sectors and the other opposing such permission seems unsolvable issues. Child labour is not only the issue in Eritrea; there are countries with more barbarous practices even amputating the limbs for their own gain. The upkeep of children likes primarily upon parents, the society and the last but not the least to the State. Children of tender age should be given all the possible opportunities to be the next generatio to lead this country into a propserous economy. The national surveys that is going to be undertaken by

ministry concerned should be done with earnest and at the earliest. The exclusion provision put while ratifying the minimum age convention to the mandatory provisions of the convention to some sectors such as construction, plantation and other agricultural activities are to be reconsidered. A mechanism should be provided to protect children who work in the informal sector where exploitative form of child labour is practised. The State should give due attention (of course conducted the First National Workshop on the Right of the Child, Asmara, Eritrea, December, 7 and 8, 1994 by Ministry of Labour Human Welfare) to the issues of child labour which is not yet advance stage when we compare with other under developing countries. The State has to take up the awareness to the masses and show the evil effects of child labour and build efficient school system, mobilize the society to cultivate sensitivty towards the plight of child workers, exert strenuous efforts to alleviate the poverty of people by launching job opportunity schemes. Let the author reminds once again that it is not only the responsibility of the State ( by legislation and enforcement) but also parents/persons in charge, individuals and society. These children may become the backbone of the country. Today's children will be toworrows Nation Pride. Hence, let their blossoming future should not be nipped in bud.

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### THE RIDDLE OF PASUPU-KUNKUMA

*By*

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*“Law-less Science of Law,  
The code-less myriad of precedent,  
The wilderness of single instances”.*

By Tennyson

A recent Full Bench decision of A.P. High Court reported in 2001 (3) Law Summary Page 115 held that ‘Pasupu-Kunkuma’ is a gift and nothing but a gift

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within the meaning of Sections 122 and 123 of T.P Act and the same would attract the provisions of Section 17(1)(b) of the Registration Act. The Honourable High Court over-ruled the Division Bench decision reported in AIR 1980 A.P. 139 = 1979 (2) APLJ Page 421 and single Judge decision reported in AIR 1999 A.P. 188 = 1999 (2) ALT Page 192 = 1999 (1) LS Page 460. The Honourable High Court relied on *P. Ramandha Iyer's 'Law Lexicon'* for the meaning of Pasupu-Kunkuma as a gift, a settlement and assignment of land to a daughter. The learned Full Bench opined that the learned Division Bench did not cite any authority in support of their opinion that 'Pasupu-Kunkuma' could very well be done orally. Accordingly, the learned Full Bench came to the conclusion that such a gift of immovable property, the consideration whereof would be love and affection could come with the meaning of Section 123 of TP Act. This short judgment rendered by the Full Bench caused quite a lot of disquiet among the laymen and the Lawyers alike since for over two decades the Lawyers particularly in a moffussil have been giving advice to the people basing on the Division Bench Decision of A.P. High Court that giving property by way of 'Pasupu-Kunkuma' does not require a document and even if there is a document evidencing the same it does not require registration. The Full Bench decision raises few questions for consideration since 'Pasupu-Kunkuma' is a common phenomena in Andhra Pradesh having considerable importance. Firstly what is the incidence and nature of 'Pasupu-Kunkuma'? Secondly what is the nature of obligation of a Hindu father or his representative to convey property to a daughter at the time of marriage? Thirdly whether 'Pasupu-Kunkuma' is a gift covered by Sections 122 and 123 of TP Act and compulsorily registerable under Section 17(1)(b) of the Registration Act? The learned Full Bench took into consideration the meaning of 'Pasupu-Kunkuma' given in *Ramanadha Iyer's 'Law Lexicon'* that 'Pasupu-Kunkuma' a means gift, a

settlement or assignment of land to a daughter. *Sir C.P. Brown* in his 'Telugu to English Dictionary' gives the meaning of 'Pasupu-Kunkuma' as a Phrase for pin money or dower because it is money given to a bride nominally to supply her with yellow and red paint for the fore-head-lit. "AAME PASUPU KUNKUMA YENNATIKI PODU" means "she will never become a widow". *Andhra Sabda Ratnakaramu*, another dictionary defines it as "STHREE DHANAM" given at the time of marriage. It is invain to search for the exact meaning of 'Pasupu-Kunkuma' from the dictionaries that too legal dictionaries as the incidence of 'Pasupu-Kunkuma' arose out of a custom. So, it is very difficult to reach the roots of the custom. Generally the importance of custom cannot be underestimated. Originally Law is nothing but codification of custom. Among all peoples custom is the major source of Law. In Greek the word "NOMOS" means usage, Custom and Law. Under the Hindu System of Law, clear proof of Usage will outweigh the written text of law as laid down by the Privy Council in *Collector of Madura v. Muttu Ramalinga*. But the custom can not derogate from any statute unless the statute saves any such custom. Sri *S.T. Desai*, the learned Author in his introduction to *Mulla's 'The Principles of Hindu Law'* observed "Unfortunately, however, the importance of custom was at times not fully appreciated and decisions given on some points had the effect of disturbing what had been accepted by the community as established Law."

Now let us trace the important case law throwing light on the custom of 'Pasupu-Kunkuma'. The Supreme Court of India in the case of *Smt. Kamala Devi v. Bachulal Gupta* reported in AIR 1957 SC Page 434 after referring to relevant case law on the point gave an authoritative pronouncement laying the following principles: (1) It is the imperative religious duty and a moral obligation of a father, mother or other guardian to give a girl in marriage to a suitable husband; it is a duty which must be

fulfilled to prevent degradation, and direct spiritual benefit is conferred upon the father by such a marriage. (2) A Hindu widow in possession of the estate of her deceased husband can make an alienation for religious acts which are not essential or obligatory but are still pious observances which conduce to the bills of the deceased husband's soul. (3) In the case of essential or obligatory acts, if the income of the property or the property itself is not sufficient to cover the expenses she is entitled to sell the whole of it; but for acts which are pious and which conduce to the bliss of the deceased husband's soul, she can alienate a reasonable portion of the property. (4) Gifts by a widow of landed property to her daughter or son-in-law on the occasion of the marriage or any ceremonies connected with the marriage are well recognised in Hindu Law. (5) If a promise is made of such a gift for or at the time of the marriage, that promise may be fulfilled afterwards and it is not essential to make a gift at the time of the marriage but it may be made afterwards in fulfilment of the promise. (6) Some decisions go to the length of holding that there is moral or religious obligation of giving a portion of the joint family property for the benefit of the daughter and the son-in-law and a gift made long after the marriage may be supported upon the ground that the gift when made fulfils that moral or religious obligation. The Apex Court considered the scope and effect of Section 123 of the T.P. Act by the way and held that Section 123 does not deal with nor does it effect the power of a Hindow Widow to make an alienation of a reasonable portion of her husband's estate in favour of the daughter as marriage dowry. That right is governed by Hindu Law and it is open to a widow to make an effective gift in favour of her daughter subsequent to the marriage, if the conditions laid down by Hindu Law are fulfilled. In another judgment rendered by the Supreme Court in the case of *Guramma v. Mallappa* reported in AIR 1964 SC Page 510 at Para 18 summarised the legal position "The Hindu Law texts conferred a right

upon a daughter or a sister as the case may be to have a share in the family property at the time of partition. That right was lost by efflux of time. But it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a moral obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the life time of the father or thereafter. It is not possible to lay down the hard and fast rule prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by Courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to be provided for and other paramount charges and other similar circumstances." In another judgment rendered by the Supreme Court in *Perumalakkal v. Balakrishnan* reported in AIR 1967 SC Page 569 = 1967 (1) An. WR (SC) Page 164 referred to both the decisions and held "A Hindu father or any other marrying member has power to make a gift of ancestral immovable property within reasonable limits for 'pious purposes'. Now what is generally understood by 'Pious purposes' is a gift for charitable and or religious purposes. But this Court has extended the meaning of 'pious purposes' to cases where a Hindu father makes a gift within reasonable limits of immovable property to the daughter in fulfilment of an ante-nupial promise made on the occasion of the settlement of terms of her marriage and the same can be done by the mother in case the father is dead". We are bound by the three judgments of the Apex Court. At this juncture I would refer to a Full Bench judgment of Madras High Court reported in

1929 MLJ Page 826 in which Justice Ramesam in his pains taking leading judgment observed” that there is no doubt that the father is bound to marry his daughter and that not because of a religious injunction about pre-puberty marriage but because of a better reason viz., the daughter’s right to be married is really the historical remnant of a larger right. It is therefore futile to confuse the two obligations, viz., the obligation of the father as a mere parent apart from the property and the obligation of the father by reason of the possession of the joint family property. It is therefore not correct to say that the latter obligation is derived from the former. I think the two are independent and it is not that one is based upon the other”. This judgment was not referred to in the three judgments of the Supreme Court referred to above. So, ‘Pasupu-Kunkuma’ is a species of an endowment made by the Hindu father or his representative at the time of marriage of a daughter by a long a established custom in Andhra Pradesh.

Now let us deal with the case law of AP High Court on the subject. In a decision reported in AIR 1958 A.P. 662 (D.B) relying on a Bench decision of Madras High Court in 15 MLJ 492 wherein a gift was made saying “On account of pin money to you, who is my daughter I have assigned and given to you Ac.1-00 of land” and hence considered the phrase ‘Pasupu-Kunkuma’ as conferring absolute rights in favour of the daughter. It is a case where one *Syamalamba* was given property by way of ‘Pasupu Kunkuma’ by oral arrangement by her father and she was held to have absolute rights. Another Division Bench decision of A.P. High Court reported in 1960 (1)An. W.R. Page 318 construed ‘Pasupu-Kunkuma’ as creating absolute rights in favour of a daughter. The case reported in AIR 1952 Nagapur Page 55 was referred to wherein the gift of property for “Choli-Bangdi” of “Hal-di-Kunkum” made were interpreted as set towards conveying the idea that the daughter should have independent means of her own to satisfy her personal needs.

Then the question arises as to whether ‘Pasupu Kunkuma’ is a gift within the meaning of Section 122 of TP Act. Section 122 of TP Act defines gift “Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one called the Donor to another called the Donee and accepted by or on behalf of the Donee”. Gift tax Act Section 2 (XII) defines gift as meaning a transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration and would include the transfers of property deemed to be gifts under Section 4. Section 4 deals with gifts which included certain transfers. Of course, the gift defined under the gift Tax Act is wider than the definition of gift under T.P. Act. A Division Bench of A.P. High Court rendered a decision under the Gift Tax Act which is reported in 1977 (1) An. WR Page 82 held that a Hindu father transferring property to a daughter on the occasion of marriage can be said to be a transfer for consideration. This decision relied upon AIR 1957 SC Page 434. In another Division Bench decision of A.P. High Court in a case arising under Gift Tax Act reported in 1979 (1) An. WR Page 390 the Court held that the provision made for the unmarried daughters towards their maintenance and marriage is not a gift within the meaning of Section 2 of the Gift Tax Act. There are three single Judge judgments reported in (1) AIR 1968 A.P. 291, (2) 1977 (1) APLJ Page 132, (3) CRP 2177/1977 held that gift of lands by father to a daughter towards ‘Pasupu-Kunkuma’ at the time of marriage not affected by registered instruments were not valid under law and Section 123 of T.P Act was held to be applicable. In this situation on a reference made by Justice *M. Ramachandra Raju* for an authoritative pronouncement the Division Bench of A.P. High Court in the case reported in 1979 (2) APLJ Page 421 = AIR 1980 AP, Page 139 gave a considered judgments on this aspect. The learned Division Bench consisting of Justice *Challa Kondaiah* and Justice *Seetharami Reddy*



relying on AIR 1957 SC Page 434 and 1977 (1) An. WR Page 82 held that giving property to a daughter by way of 'Pasupu-Kunkuma' at the time of marriage is both involuntary as well as for consideration. It cannot be termed as a gift within the meaning of Section 122 of T.P Act. Once it is taken out of the ambit of Section 122, Section 123 of T.P Act doesn't apply. The Division Bench also relied on 1959 (2) MLJ Page 502 which dealt with the scope and ambit of Section 9 of the T.P Act. It is apposite to extract the relevant passage from the said judgment. "The scope of Section 9 of T.P Act has been well explained in the AIR commentaries (3rd edition at Page 361). It is a general principle of law that every thing is to be taken as permissible unless there is a prohibition against it. Where, therefore a transaction is not required by law to be in writing, it may be brought about without writting. Section 9 is an enactment of this principle insofar as transfers of property are concerned, and seems to have been inserted *ex abundanti cautela* in view of a different principle as to transfers of property adopted in England. Under the statute of frauds in England, the general rule adopted was that all transfers of property should be in writing, while the general rule and policy adopted by the Legislature in this country, as shown by Section 9, is that all transfers of property may be without writing unless they are expressly required by law to be in writing. The test therefore in this country, to determine whether a transaction ( be it a transfer or not) can be made without writing is to see if it is expressly required by law to be in writing. If the transaction is a 'transfer of property' and there is no express provision of law requiring it to be in writing, Section 9 will enable it to be made without writing". In the said judgment it is also held that the general trend of opinion is that the Act is not exhaustive of all modes of transfer. Later there are three judgments of single Judges of A.P. High Court rendered following the Division Bench decision and they are reported in (1) 1980 (1) APLJ

(NRC) Page 10 (2) 1992 (3) ALT Page 733, (3) AIR 1999 A.P. 188. Thus for over two decades the Division Bench decision ruled the roost. For all these years several transactions as to immovable properties belonging to Hindu families must have taken place on the basis of the Division Bench decision. Now by virtue of Full Bench decision the position is entirely changed. The Principle of Stare Decisions was not urged and considered by the Learned Full Bench. Unfortunately the three judgments of the Supreme Court were not placed before the Honourable Full Bench for consideration. The learned Full Bench felt that no authority was cited by the learned Division Bench in support of their opinion that 'Pasupu-Kunkuma' could be very well be done orally.

The major point of divergence between the learned Division Bench and the Full Bench is on the aspect of consideration. The three Division Bench judgments of A.P. High Court reported in 1977 (1) An. WR Page 82, 1979 (1) An. WR Page 390 and AIR 1980 A.P. Page 139 held that the transfer of property to a daughter on the occasion of marriage is a transfer for consideration. Whereas the Full Bench took it as gift of immovable property out of love and affection and it would come within the meaning of Section 123 of T.P. Act. Nobody expects that 'Pasupu-Kunkuma' can be used as a Shibboleth or as a subterfuge to escape from the clutches of T.P. Act and Registration Act. Of course, we need not take care of Section 17 of the Registration. It will take care of itself. Let not the custom of 'Pasupu Kunkuma' recognised by Hindu Law which is most prevalent in Andhra Pradesh meet with an unnatural death. In view of the complexity of the problem we the Lawyers practising in moffussil are bound into saucy doubts. So, I humbly submit and pray the Honourable High Court to reconsider the Full Bench decision by referring the matter to a Fuller Bench. Otherwise we have to lament like the poet and mourn for the 'Dying Adonis'.