

the effect of reducing such benefits was violative of Section 25 of the Wages Act.

Section 17 of the Workmen's Compensation Act, 1923 provides as follow:

"Section 17 *Contracting Out*: Any contract or agreement whether made before or after the commencement of this Act whereby a workman relinquishes any rate of compensation from the employer for personal injury arising out of or in the course of the employment shall be void insofar as it purports to remove or reduce the liability of any person to pay compensation under this Act.

Interpreting the above provision it was held by the High Court of Allahabad in *Mohinder Singh v. Dayal Singh*, (1972) 74 FLOR 984, that any agreement or compromise between an employer and employee which result in the employee accepting a lesser compensation than the one to which he is entitled under the Act is null and void and inoperative.

The Court observed, "Section 17 aims at protecting a workman from the employer

whereby he induces a workman to agree to accept less compensation than his entitlement or abandoned something to which he is entitled. An employer paying something of his own to a workman does so with the risk that he will not be entitled to get set off or deduction under Section 8. Even the receipt procured by the employer from the widow of Assistant Workman for payment of a lesser amount of compensation than the actual entitlement is of no use as according to the provisions of Section 17 the workman or his dependants cannot contract themselves out. No agreement between the worker and the employer is valid if it reduces the compensation payable to the workman.

In *Mrs. Kathleen Dias v. H.M. Coria*, AIR 1951 Cal. 513, a Division Bench of Calcutta High Court held, "Where a payment of lump sum is made to the widow and other relations of the workman whose injury has resulted in death, the payment cannot by virtue of Section 8 be deducted from the actual amount of compensation payable because that section says that such payment shall not be deemed to be a payment of compensation. This applies with greater force if the payment is *ex gratia*.

DETERMINATION OF THE CASTE OF THE CHILD BASED ON THE CASTE OF THE MOTHER - A CRITICAL STUDY

By

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Husband and wife are the two wheels of a cart. Mutual understanding and adjustments between them makes the home a Paradise on earth.

According to an old Sanskrit verse, the woman was considered "In action like a minister, in kindness like a mother, in service like a maid, in enjoyment like a Ramba". A

wife has to perform a number of Roles, of all these the mother's role is very important. She treats even her husband equalent to her children. None of us would never be able to live happily without mother. The love of mother is of the highest and the purest type. No one can surpass a mother in sacrifices. She shows immense tolerance in bringing up her children. Inspite of her great sacrifice

and tolerance, a father is more recognised than a mother. A child is recognised by his father, the name and the caste of the father is automatically drawn by the child. This should be the Law in cases where the father shares the responsibility equally with the mother. But in case of an illegitimate child where the mother and the child are abandoned by the irresponsible father, the mother's responsibility doubles up and in such a case it is a great injustice if the father's name and caste is given to the child.

Whether it is a illegitimate or a legitimate child, it is the mother who shows to her children as to who their father is? Mother is the reality, Mother is the truth, father is just a belief. A baby comes to be known to the world at large only after a Mother accepts a certain person as her husband.

In the recent *Shoba Hymavati's* case, published in D.C. on Jan. 28th, 2005, Smt. *Shoba* is an illegitimate child. Her father belonged to the forward caste and the mother belonged to schedule caste. She was disclaimed by her father. Where the mother had to bring her up. Hymavati is married to a man who belonged to schedule caste. She contested and got elected as MLA to the Assembly from Srirangavarapukota, reserved for scheduled castes in 1999. The opponents of *Shoba Hymavati* have filled a case against her challenging that she belonged to forward community and not to schedule caste. The A.P. High Court set aside the election on the ground that she belonged to forward community. The Supreme Court bench ruled that a child born out of illegitimate relationship between a high caste man and an SC or ST woman would be categorised to be a person under the higher caste.

This is a landmark judgment. To a far extent, this judgment has to be accepted and agreed because according to Hindu Law, an illegitimate child is entitled for maintenance

from his father. He will also have a right over the property of his disowned father¹.

According to S. 125 of Cr.P.C. Marriage between the mother and the father is not absolutely necessary as the child is entitled to maintenance whether legitimate or illegitimate. If the father denies the legitimacy of the child and his responsibility for the birth of the child. The mother and the child may undergo DNA test and if it is confined and proved after the DNA test that the person is responsible for the birth of the child. The court fixes a certain sum to be paid as maintenance to the child².

When in these circumstances if the father is made liable and responsible to pay maintenance and part with his property to his illegitimate child, the judgment delivered in the above case (*Hymavati's* case) has to be accepted in toto.

The otherside of the version is, there are certain judgments which have to be duly considered and observed. According to same section-125 of Cr.P.C. the Apex court held that if a husband is unable to maintain himself and if a woman is capable enough and sufficiently earning and living in separation, she has to pay maintenance to her husband.

Taking the case of the helpless, aged and infirm parents, who are unable to maintain themselves. Under the old Hindu law, only

1. Sec. 18 to 20, 27 & 28 of Hindu Adoption and Maintenance Act, 1956 and T.P. Act Sec. 39 - Illegitimate child can claim maintenance and ask for a charge on property. *A. Balasatya Krishnakumari v. A. Varalakshmi*, AIR 1976 AP 365 : 1975 ALT 176 (NPC) : 1876 (1) An.W.R.S. (NRC).

Sec. 8 & 15 of Hindu Succession Act & Hindu Marriage Act 1955 Sec. 16(1) and 16(3) - Illegitimate child - Rights in property. *A. Parasarma Reddiar v. Arunachala Reddiar*, AIR 1999 Mad. 143 - 1999 (3) ALT 12.2 (DN OHC)

Sec. 125 Cr.P.C. Illegitimate minor child entitled for maintenance, role of magistrate and advocate in proceeding stated 1985 SCC (CR) 145.]

2. AIR 1963 ALL. 143 : AIR 1958 Kerala 216; AIR 1962, Kerala L.J. 28; 1958 M.L.J. (Cri.) 252.]

the sons were under a legal obligation to maintain his aged parents. Now this liability has been imposed upon the daughters also. That is both the daughter or the son has an equal responsibility to take care of their parents and pay maintenance to them. Even according to Sec. 125 Cr.P.C., the daughter is under a legal obligation to pay maintenance to her parents unable to maintain themselves¹.

When woman has to share the responsibility equally at par with Men, then why not she enjoy right at par with men. When a child is born both mother and father are equally responsible for his birth. Both are equally important, then why should the baby be given the identity of its father? This can be accepted to a large extent as India is known for its patriarchal families where the father is the head of the family, father earns for the family and the mother takes care of the domestic affairs for the family. But if it is an illegitimate child, where a father deceives his mother, the mother and the child are left to destiny. In such circumstances it is very difficult for a woman to survive in the society. Mother and the child have to live in humiliation. Even the child for no fault of his, is deprived of the love and affection of his people. In spite of all these, a mother puts in all her efforts to bring up the child with all the care, love and affection. If the mother takes all the responsibility in bringing up the child, why should the child be identified by the father? why not the mother?

The mother's blood and labour pain is not recognised both while giving birth or bringing up the child. This is a great injustice to the entire womanhood.

Keeping this aside for a moment. Let's take up another issue. Take the case of Rape, where a woman is raped much against her consent. It may be caused by a single person or it may be a gangrape. In such a

situation if a woman conceives and gives birth to a baby, ofcourse in such a situation the rape victim goes for abortion or some other preventive measures to our pregnancy. But under certain forced circumstances, if she had to give birth to a baby, which father's name and identity is given to the baby?

In some cases a woman may wish to become a mother without going for a marriage or in some cases a childless widow or a divorcee may be willing to have children without going for a remarriage. Such a wish can be made possible by opting for a test tube baby. In such a case who is to be given the father's status?

Today we see a number of children on streets who are disowned by their parents, some are taken care of by the homes for destitutes run by the government or some by voluntary organizations. Is there anyone to adopt these children? Only few are fortunate enough to get adopted then, what is the fate of others?

Science has made great progress in recent times. Through science man is able to conquer nature. Today we are talking of cloning of babies which is much against the nature. The baby is clinically or scientifically developed. However no baby is yet born or developed. Research have been conducted, a sheep (Dolly) was developed and even a lion was scientifically developed. If at all a baby is born. How is the baby recognised and which caste is given to these babies?

Conclusion & Suggestions :

Indian society is one of the oldest societies. It has got its own customs and traditions. Some of them are very old. They do not suit the present times. We must keep pace with the times. Some of our customs are not only useless but are obstacles in the way of social progress. It is therefore essential that they must be changed.

1. *Vadainath v. Heman Giri*, 13 Cal 336 *Subbavenu v. Subbakka*, 8 Mad. 236.

A father is undoubtedly the head of the family. He occupies a major role in a family if he owns his children, but where he disowns his wife and children, the child should be made entitled for maintenance but the identity, the name or the caste of the child has to be left to the option of mother. It would be much justifiable if the mother's name and caste is given.

If a child's caste is decided basing on the biological father it is difficult to trace out the biological father in case of Rape victim's children and it is even more difficult in case of orphan children. It is therefore suggested that in case of Rape victim's, there is no other option except to take the name and caste of the mother. In case of orphans, there should

be a caste fixed to them giving them some special privileges for their upliftment. The law has to amended with reference to this.

It is also suggested that in all the application forms relating to education, employment or for any other purposes, the child should not only be recognised by his father but due recognition should be given to the mother.

Lastly it is suggested that there should be a casteless society. No doubt person should be given the identity of the father and the mother equally. But at the same time he should establish an identity of his own and be recognised basing on his skills, efficiency and talent irrespective of the caste, creed, colour, sex and religion.

THE TRADEMARKS LAW IN INDIA WITH SPECIAL REFERENCE TO DOMAIN NAME AND THEIR LEGAL IMPLICATIONS

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Introduction to Trademarks :

Trademarks, are property; just like computers cars & patents, they can be bought, sold & handled in various other legal transactions. Like any other property, they can be damaged or destroyed if misused by an owner & abuse of someone else's trademark can lead to threats, lawsuits, reprimand (blame) of an employee & other problems.

There's also a huge set of potentials, lurking inside them, people who know how to use them in creative ways, can sometimes figure out how to make money from them (including, sometimes, lots & lots of money).

Nearly any supplier of any product or service has competition. Most people shop around until they find a brand they are satisfied

with, then they stay with that brand. This is with a view to identifying the manufacture, brand & quality of the goods or services produced by a particular maker or company. For eg., although "generic groceries (with plain black & white labels) are cheaper than brand named groceries, the vast majority of purchasers buy more expensive branded items.

Consider another example : The recipe for Coco-Cola is a trade secret. If a computer makes a soft drink so similar that most people can't tell them apart, that's fair competition, in its advertising, the competitor can even talk about how similar the two taste. But the competing company cannot call the imitative soft drink "Coca-Cola" or "Coke", since those are registered trademarks owned by the Coca-cola company. Regardless