
PROHIBITED RELATIONSHIP IN MARRIAGE

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ABSTRACT

This paper is a study in reference to certain relations which are prohibited for the parties, performing marriage, in both Hindu and Muslim law. Marriage is the social institution that binds a family together in India. Marriages in India were normally regulated by social rituals, and practices that had existed in that particular group or tribe since time immemorial before any act or code was enacted. In the case of Hindus, the marriage is governed by the Hindu Marriage Act of 1955, in which the essential conditions for a valid Hindu marriage are given. Based on the principle of Exogamy and endogamy, certain relations have been prohibited based on the same gotras, caste, or blood relations in both Hindu and Muslim marriages. Sapinda relationships and degrees of prohibited relations are the two important conditions included under Section 5 of the Hindu Marriage Act, 1955 which mandates the parties must not Sapindas to each other and must not come under the garb of prohibited relationships unless the custom or usage governing the parties permits to do such marriage. In terms of marriage, the Muslim Law imposes certain limitations and prohibitions. Even the Muslim law also prohibits some kinds of relations in case of marriage. A comparative study with the help of provisions will be done on the relations prohibited for the performance of marriage in both Hindu and Muslim Laws.

Keywords: Sapinda relationship, endogamy, Shia law

I. INTRODUCTION

Marriage has been defined as a social institution for admitting men and women into family life, legitimating offsprings and establishing other rights and obligations of husband, wife and

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children. Marriage is the legally or formally recognized union of two people as partners in a personal relationship (historically and in some jurisdictions specifically a union between a man and woman) . The marriage between the two persons is governed by various laws in India. The certain conditions of marriage do not allow the marriage of the prohibited relations. In India, it is quite common in cases of marriage between prohibited relations such as taboo incest, cross-cousin marriage, parallel cousin marriage, and endogamy.

For example, there is a term called as Incest taboo in which incest is prohibited in all human societies. Incest implies sexual or marital relations between two persons, who are related to each other by blood ties or who belong to the same nuclear family. In every society, marital relations are prohibited between father and daughter, mother and son, and brother and sister, this prohibition is known as incest taboo. generally, cross-cousin marriage has been found in some groups or families, cross-cousin marriage is a marriage of a person with his/her father's sister's child or mother's brother's child. Parallel cousin marriage is seen in some places, parallel marriage means marriage of a person with his or her father's brother's child or mother's sister's child. Endogamy is a type of marriage in which a person can marry within their family, clan, caste, religion and group.

II. SAPINDA RELATIONSHIP IN THE HINDU MARRIAGE ACT, 1955

The Hindu Marriage Act 1955 has laid down some conditions in marriage between two Hindus. Section 5 clause 4 of the Hindu Marriage Act 1955 say that the party can marry another party when they are not sapindas with each other. sapinda relationship in marriage is not permitted between two Hindus under Hindu law unless the custom or usage permits. What is the meaning of sapinda relationship? Sapinda relationship means to any person extends as far as the third generation (inclusive) in the line of ascent through the mother and fifth (inclusive) in the line of ascent through father, the line being traced upwards in each case from the person concerned, who is counted to be first generation. When the two persons with each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them known as sapindas. Sapinda relationship includes the two persons are related by full blood as well as uterine or half blood, are related as illegitimate blood relationship as well as a legitimate, relationship by adoption as well as by blood

Example of sapinda relationship : if the bride is the offspring of any person within five generations (inclusive) on the groom's father's side and three generations (inclusive) on the groom's mother's side or vice versa , they will referred to as "sapindas" of each other.

According to Vigneswaran theory , sapinda means connected by particle of the same body whereas pinda refers to body. Here two persons would be sapindas when they have common ancestor. Vijaneswara comments: "this may prove too wide a statement since in this beginningless samsara such a relationship might exist in some way or other between all persons ". Therefore, the sage yajnavalkya states that after the fifth on the mother's side and after the seventh on the father's side sapinda relationship ceases.

According to jimutavahana theory, pinda means the ball of rice offered at shraddha ceremony to deceased ancestors. This theory says that sapinda relationship arises out with one another by oblations of food. For instance , x and y would be a sapindas if one offers pindas to the other or both offer pindas to common ancestor or both receive pindas from the same person . this theory prevailed in Bengal.

Section 11 of The Hindu Marriage Act, 1955 says that any marriage between two sapindas would be null and void on the petition presented by either party against the other party. Void marriage is one which is a contravention of a mandatory requirement relating to the conditions laid down by the law for a valid marriage. It is to be noted that the marriage between the two sapindas are void ab initio or void from the beginning.

Punishment for contravention of certain other conditions for a Hindu marriage is in under section 18. Sapinda marriage would be with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both.

The exception to the sapindas marriage in certain custom or usage. Here the custom or usage has been practised for a long period of time among Hindu family or groups, local areas, tribe or communities.

III. DEGREES OF PROHIBITED RELATIONSHIP IN THE HINDU MARRIAGE ACT, 1955

Section 5 Clause 4 of the Hindu Marriage Act 1955 says that if the parties are not within the degrees of prohibited relationship then they can marry but if the parties are within the degrees of prohibited relationship their custom or usage of each other should allow them to marry. The marriage between two persons who come under the prohibited relationship they cannot marry unless the custom or usage permits them to marry.

The degrees of prohibited relationships are explained in the section 3 of the Hindu Marriage Act 1955. Two persons are considered to be within the degrees of prohibited relationship: if one is a lineal ascendant of the other. for example, a daughter cannot marry her father or grandfather and a mother cannot marry her son or grandson. If one was the wife or husband of a lineal ascendant or descendant of the other. For example, a son cannot marry his stepmother and similarly, a person cannot marry his daughter-in-law or son-in-law. If one was the wife of the brother or the father's or mother's brother or the grandfather's or grandmother's brother of the other. If the two are brother and sister, uncle and niece, aunt and nephew or children of brother and sister, children of two brothers or two sisters. The degree of prohibited relationship includes the two persons being related by full blood as well as uterine or half blood, are related as illegitimate blood relationship as well as legitimate, relationship by adoption as well as by blood.

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families or groups, local areas, tribes or communities. Customary practices should be traced throughout the family practices or regional practices.

IV. PROHIBITED RELATIONSHIP IN MUSLIM LAW

A valid marriage is legitimate while a void marriage has no value in the eyes of the law, hence it is to be assumed two people are not married if the status is void. An irregular marriage is not valid and has some temporary legal issues, once that obstruction is removed that irregular marriage becomes valid. There are generally two types of prohibitions that render a Mohammedan marriage invalid or void-1. Absolute Prohibition 2.Relative Prohibition. These prohibitions are not the same and some factors of them can vary for the two major denominations of Islam, namely Shia and Sunni. Under Shia law, there is no concept of irregular marriage, the Shia law only has either valid or void marriages; there is no difference between irregular and void marriages. Hence, under Shia law, all irregular marriages are void. According to Sunni law; there are two statuses of marriage: valid, invalid and void.

Absolute Prohibition: It is generally considered that a marriage is void if the prohibition regarding it is absolute. There is no possible method to change the status of marriage from void to valid if the prohibition is absolute and if someone marries against such prohibitions then that marriage is to be considered unlawful. Thus marriages prohibited on the ground of consanguinity, affinity, or fosterage are under absolute prohibition and are void.1.Consanguinity- It means a person is barred from marrying his close blood relatives like his niece, sister, aunt, etc.2.Affinity- It means a person is prohibited to marry someone in close relations, for example, his wife's daughter, son's wife, etc.3.Fosterage- When a lady other than the mother, breastfed a child under the age of two years, the lady turns to be the foster-mother of the child. A man is restricted from marrying the persons who come under the foster relationship. Sunni law has some exceptions regarding the absolute prohibition of fosterage, but Shia law and jurists deny such exceptions and consider the fosterage the same as consanguinity and consider the prohibitions to be absolute, all such marriages are rendered void.

Relative Prohibition: These prohibitions are those which render a marriage irregular or invalid. These are considered to be temporary bars, once these bars are lifted the marriage becomes valid.

All relative prohibitions make a marriage void under Shia law while they render them invalid in case of Sunni law. Below are some relative prohibitions which can render marriages invalid or void.

1. Unlawful Conjunction- This bars a man from marrying two different women at the same time if they are closely related to each other through consanguinity, affinity, or fosterage so that they could not have lawfully intermarried with each other if they had been of different sexes. A Muslim man cannot marry a woman who is related to his wife by consanguinity, affinity, or fosterage, before the death of his wife or divorce. However, a Shia male can marry his wife's aunt but to marry her niece, there has to be the consent of his wife.
2. Marriage with a fifth wife- A Muslim man can marry up to four wives if he wants to marry another woman he has to take divorce from one of her four wives. Hence, marriage with five or more women is unlawful under Islamic laws. Such marriages are invalid or irregular. Under both, Shia and Sunni laws, polygamy is valid up to four wives. Though it is not encouraged. However, a Muslim woman cannot marry more than one man. As long as his first husband is alive or there has been no divorce, she cannot marry a second man. If she marries a second man, she is guilty of bigamy under section 494 of Indian Penal Code.
3. Absence of witness- Under Sunni law, the presence of a witness is very necessary for the validation of a marriage, just the presence of guardians is not enough and if there is no proper witness present, then the marriage itself becomes invalid. However, under Shia law, the presence of a witness is not important. A marriage can be valid even if there is no witness present and marriages can be done in secret as well. But at the time of the dissolution of a marriage, the presence of a proper witness is required.
4. Differences of religion- Males and females of Shia and Sunni can marry among each other, however when it comes to religion, a Muslim woman marrying a non-Muslim man is generally considered to be void, but a Muslim man marrying a non-Muslim woman is considered to be invalid or irregular. Under Sunni law, males can validly marry non-Muslims of Christianity and Judaism (not Hinduism) but cannot marry a fire worshipper. However, marriage with fire-worshippers will be considered irregular and not void. A Shia male and female cannot marry any person of other religions and all such marriages are considered to be void.
5. Marriage during Iddat - Iddat refers to a period of time which a woman must follow after getting out of her previous marriage and before remarrying. The time period could vary from one situation to another. The different time period is defined for the different situation of separations like divorce, death of husband, etc. Under Sunni law the marriage of a Muslim man with a woman, who is following the time of

iddat is irregular but under Shia law, it is void. The child of such a marriage will be legitimate if it was born after 6 months, and the mother will be entitled to dower. Apart from these, there are various other miscellaneous prohibitions like marriage with a pregnant woman is void, marriage during a pilgrimage is void, etc. Different jurists have different opinions on various prohibitions and validation of marriages under the two major denominations of Islam.

V. CONCLUSION

The main reason for marriage within their group, caste, family or gotras is to retain their wealth & resources within their own .the consanguineous marriage happens in south Indian states like Tamil Nadu , Karnataka , Telangana , Andhra Pradesh. the Hindu Marriage Act 1955 makes restriction the two condition sapinda relationship and degrees of prohibited relationship. Muslim law makes restriction on the certain kind of marriage. Various history shows marriage with niece , uncle's daughter or son , nephew, aunt's son or daughter. the marriage within relation leads to genetic problems and disorders and this was proved scientifically by scientists . therefore the law which is prevailed in India have built a structure in the conditions of marriage.

Bibliography:

1. Prof. G.V.C. SUBBA RAO'S FAMILY LAW
2. FAMILY LAW BY PARAS DIWAN.
3. FAMILY LAW BY MULLA.