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Essential Conditions For The Valid Marriage Under Old Hindu Law

Eight Forms of Marriages Under Old Hindu Law —

According to Manu there were formerly eight forms of marriages—four approved and four unapproved. The legal consequences of the approved and the condemned marriages were different. A wife married in a approved form become a 'Patni' and in no condition of life either of the two couldleave or divorce other.

The eight kinds of marriages are as under—

Approved Forms — There were four forms of approved marriages.

1. **The Brahma** "The gift of a daughter, clothed only with a single robe, to a man learned in the Vedas, whom her father voluntarily invites and respectfully receives, is the nuptial called Brahma." The chief feature 'of this form is that the parents do not receive any consideration -for giving the girl in marriage, their choice of the bridegroom not being determined by a desire to trade on their daughter.

2. **Daiva** —In the 'Daiva' marriage the damsel is given to a person who operates as a priest in a sacrifice performed by the father, in lieu the *Dakshina* or fee due to the priest; it is inferior to theBrahamabecause the father derives a benefit, which is not deemed reprehensible.

3. **Arsha**— In 'Arsha' marriage the bridegroom makes a present cow and a bull or two cows and two bulls to the bride's father accepted for religious purpose only.

4. **Prajapatya** —The fourth kind of approved marriage is called "prajapatya" which does not materially differ from the Brahma, but in this the gift is made with condition that "you two be partners for performing secular and religious duties."

According to *Apastamba and Vasistha* there are only six forms of marriages. They omit *Prajapatya and Paisacha*. An inference that these forms had then become obsolete is plausible.

Unapproved Forms — There were four forms of unapproved marriages —

5. **Asura** —When the bridegroom having given as much wealth as he can afford, to the father and paternal kinsman, and to the damsel herself takes her voluntarily as his bride, that marriage is named Asura. This form of marriage, the striking feature of which is the receipt of pecuniary benefit by the bride's parents amounts to a virtual sale of the bride.

6. **Gandharva** —The Gandharva marriage was the union of a man and a woman by mutual consent. This marriage was contracted for the purpose of amorous embraces and proceeded from sensual inclination.

7. **The Rakshasa** This consists in the seizure of a maiden by force from her house, while she weeps and calls for assistance, after her kinsman and friends have been slain in battle or wounded, after breaking their houses open. This form of marriage is still practised among certain classes of Gonds of Berar and Betul. This kind of marriage was effected by forcible capture and was allowed only to the Kshatriyas or military classes.

8. **Paishacha** —The Paishacha marriage was the most reprehensible

as being marriage of a girl by a man who had committed the crime of ravishing her either when asleep or when made drunk by administering intoxicating drug or when in the state of mental disorder.

It appears, therefore, that the 'Gandharava' and the 'Paishacha" marriages were, preceded and Caused by sexual intercourse, in the former with the consent of the girl, and in the latter by fraud.

Conditions for a Valid Hindu Marriage Under Old Hindu Law—

Under the textual Hindu Law, the following three conditions were required for avalid marriage i.e., —

1. There must be Identity of Caste

If the parties did not belong to the same caste, the marriage was invalid, unless it was sanctioned by Custom. Ancient Hindu texts prohibited *'Pratiloma'* marriage i.e., between males of lower caste and females of higher caste. But *'Anuloma'* marriage, i.e., between males of higher caste and females of lower caste were permitted and recognized by the texts. But with the passage of time the rigours of caste system dominated the whole scene and it was required that the parties to marriage must belong to the same caste.

The requirement of pure Hindu Law that both parties to the marriage must belong to the same caste was changed from time to time through legislations providing inter-caste marriages. Similarly, the prohibitions on the basis of *Gotra* and *Pravara* were also relaxed through legislation.

Marriages between Hindu, Jain, Sikh and Buddhists were also legalized. The legislations like the Arya Marriage Validation Act, 1937, the Hindu Marriage Disabilities Removal Act, 1946, the Special Marriage Act, 1872, and the Hindu Marriages Validity Act, 1949 deserve special mention in this respect.

2. Parties must be Beyond the Prohibited Degrees —

Vishnu declared that one should not marry a wife belonging to the same Gotra or having the same Pravara. A man cannot marry a girl of the same Gotra or pravara and they should not be *'Sapindas'* of each other. Hindu Law prohibited marriage between persons related to each other within certain degrees, probably for physiological and social reasons so that a marriage is invalid if it is made between persons related to each other within the prohibited degrees, unless such marriage is sanctioned by customs.

A man, therefore, cannot marry a girl of the same Gotra or Pravara as the girl and boy are deemed to have descended from a common ancestor in the male line. The rule does not apply to Shudras as they have no Gotra of their own. Even among the higher castes *Sagotra* marriages may be recognised by custom, e.g., among the Vaishya *Agarwalas*. The issues of such marriages are perfectly legitimate.

BaudhayanaSrautaSutra says, "Vtshwamitra, Jamadagni, Bharadwaja, Gautam, Atri, Vasisiha and Kasyapa are the seven sages and Agastya is the eighth; the progeny of these eight sages is declared to be Gotra."

Furthermore, the parties marrying should not be the Sapindasof each other. *'Sapindas'* according to *Mitakshara*are the persons who have in them particles of the body of the same ancestor; according to the *Dayabhaga*,

Sapindas are persons connected by the offering of funeral cake. According to Mitakshara, all Sapindas cannot inter-marry, who have descended from a common ancestor, and being traced on the father's side are not beyond the seventh degree or on the mother's side not beyond the fifth degree, both the ancestor and the person in question being counted as one degree.

Marriage within the same Gotra or between families having the samePravaras is prohibited and the text of Visu, "one should not marry a wife within the same Gotra or having the same Pravara" has been interpreted by the jurists and Nibandhars as an excluding clause.

3. There must be Performance Of Marriage Ceremonies—

There are three stages in the ritual of all forms of Hindu marriage. The rituals are— (i) the betrothal, (ii) the formalities including the recital of holytexts before the sacred fire, and (iii) the SaptapadiGamana. Of these, the betrothal, though in some cases celebrated with much ceremony and ostentation, is only a promise to marry and is revocable.

Even the second stage of the ritual consisting of the invocation before the sacredfire and *Kannikkadhana* does not form the operative part of the transaction which is really the completion of the Saptapadi, or the taking of seven steps by the bridal pair in the marriage ceremony. It is on the completion of the last step that the marriage takes place and till then the transaction incomplete and can be revoked. In this connection Manu declares,

"The recital of the holy text in connection with joining of the hands of bridegroom and the bride determines the growth of marital relationship. These should be deemed by the learned to attain finality in the taking of the seven steps.

Sources

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2. D. F. Mulla, Principles of Hindu Law, 2013