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Sapinda marriages

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Why is in news? What are incestuous 'sapinda' marriages, and why has Delhi High Court reaffirmed the ban on them?

Delhi High Court rejected a challenge to the **constitutionality of Section 5(v) of the Hindu Marriage Act, 1955 (HMA)**, which **prohibits marriage between two Hindus if they are "sapindas" of each other** — "unless the custom or usage governing each of them permits of a marriage between the two".

In its order passed on January 22 on a petition filed by a woman who had been trying for long to have this section struck down, the court said that "If the choice of a partner in a marriage is left unregulated, incestuous relationship may gain legitimacy."

About sapinda marriage:

A sapinda marriage is one between individuals who are **related to each other within a certain degree of closeness**.

Sapinda relationships for the purposes of the HMA are **defined in Section 3 of the Act**.

Section 3 (f) (ii) says - "Two persons are said to be sapindas of 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".

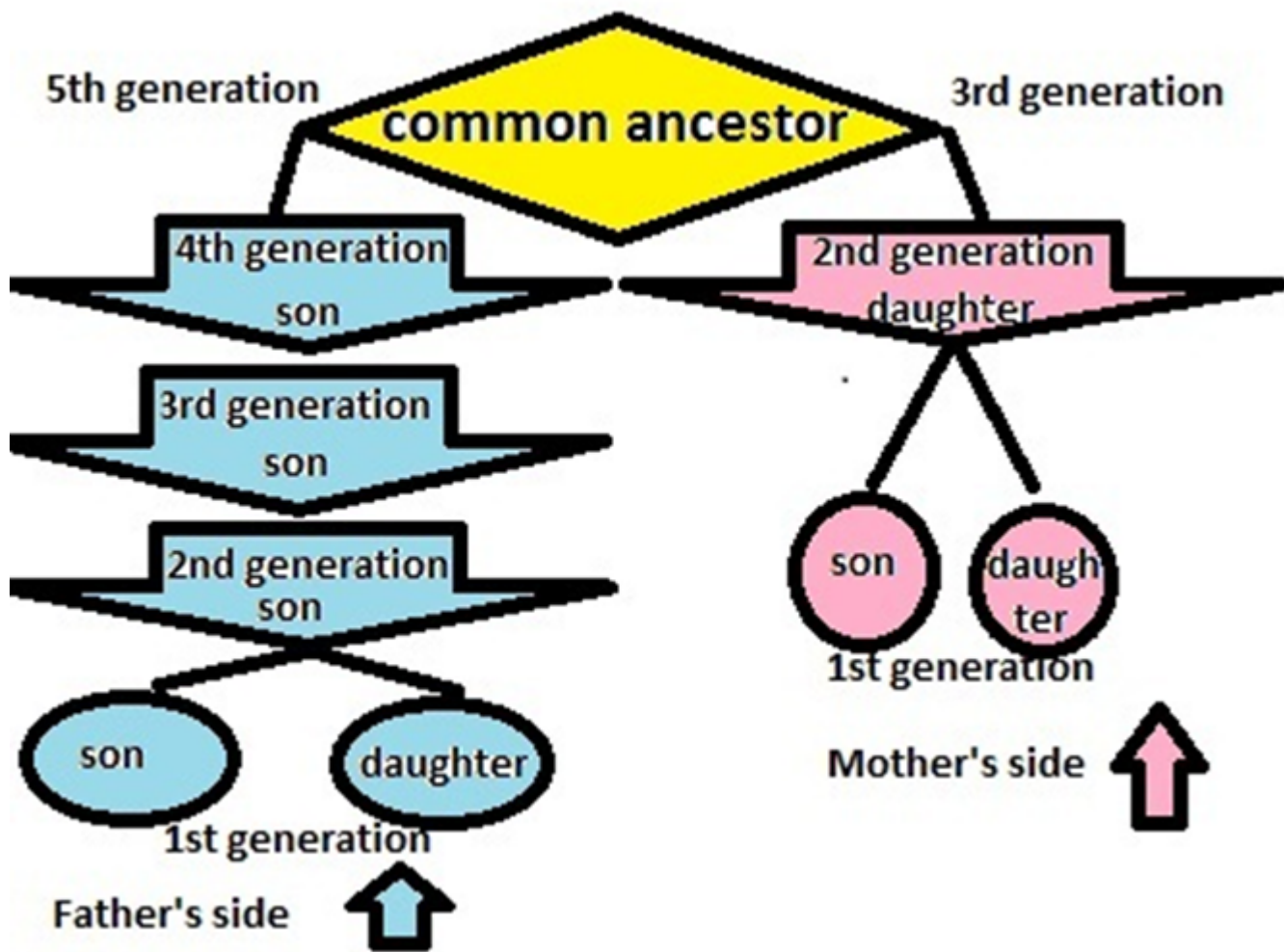
Under the provisions of the HMA, on the mother's side, a Hindu individual cannot marry anyone who is **within three generations** of them in the "line of ascent".

On the father's side, this prohibition applies to anyone **within five generations** of the individual.

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· "SAPINDA" RELATION SHIP UNDER HINDU MARRIAGE ACT,1955

In practice, this means that on their mother's side, an individual cannot marry their sibling (first generation), their parents (second generation), their grandparents (third generation), or an individual who shares this ancestry within three generations.

On their father's side, this prohibition would extend up to their grandparents' grandparent, and anyone who shares this ancestry within five generations.

If a marriage is found to **violate Section 5(v)** for being a sapinda marriage, and there is **no established custom that allows such a practice**, it will be declared void.

This would mean that the marriage was invalid from the very beginning, and will be treated as though it never took place.

Exceptions to the prohibition against sapinda marriages:

The Hindu Marriage Act (HMA) provides an exception to the prohibition against sapinda marriages. This exception applies when the customs of each individual involved permit such marriages.

Criteria for Custom:

According to **Section 3(a) of the HMA**, a custom must be continuously and uniformly observed for an extended period to gain legitimacy. It should have the force of law among Hindus in a local area, tribe, group, or family.

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Conditions for Valid Custom: For a custom to be valid, it must be certain, not unreasonable, and in line with public policy. Additionally, if the custom applies only to a specific family, it should not have been discontinued by that family.

On what grounds was the law challenged?

2007: The woman's marriage was **declared void** after her husband successfully proved that they had entered into a sapinda marriage.

2023: This ruling was challenged before the Delhi HC, which dismissed the appeal in October 2023.

The woman then approached the HC again, challenging the constitutional validity of the prohibition on sapinda marriages.

Constitutional Validity: The petitioner contested **Section 5(v) of the Hindu Marriage Act**, arguing that it violates the right to equality guaranteed under Article 14 of the Constitution. She argued that sapinda marriages are prevalent even when there is no proof of custom.

What did the High Court say?

The **Delhi High Court dismissed the petitioner's arguments**, stating that she failed to provide sufficient evidence of an established custom to justify a sapinda marriage.

The court also held that the choice of a partner in a marriage can be **subject to regulation and found no legal grounds** to support the claim that the **prohibition on sapinda marriages violates the right to equality**.

Are marriages similar to sapinda marriages allowed in other countries?

In several **European countries**, the laws on relationships that are considered incestuous are less stringent than in India.

In **France**, the crime of incest was abolished under the **Penal Code of 1810**, so long as the marriage was between consenting adults.

This Code was enacted under Napoleon Bonaparte, and was also enforced in Belgium. A new Penal Code was introduced in Belgium in 1867 to replace the French code, but incest remains legal.

Portuguese law also does not criminalise incest.

The **Republic of Ireland** recognised same-sex marriages in 2015, but the law on incest has not been updated to include individuals in same-sex relationships.

Under **Italian law**, incest is a crime only if it causes a "public scandal".

In the **United States**, incestuous marriages are banned in all 50 states, though incestuous relationships between consenting adults are allowed in New Jersey and Rhode Island.

Conclusion:

The Delhi HC decision reaffirms the legal framework regulating sapinda marriages in India and emphasizes the importance of established customs in permitting such unions.

It also highlights the differing legal approaches to incestuous relationships and marriages in various countries.