



## Prohibition on Sapinda Marriage

**For Prelims:** [Hindu Marriage Act, 1955 \(HMA\)](#), Prohibition on Sapinda Marriage, Crime of incest, Closely Blooded Relations.

**For Mains:** Prohibition on Sapinda Marriage, Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

[Source: IE](#)

### Why in News?

Recently, the Delhi High Court in the case of **Neetu Grover v. Union of India & Ors, 2024** has 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.

- A sapinda marriage involves **individuals who share a specific degree of familial closeness.**

### Why Was the Law Challenged, and What Was the Court's Ruling?

#### ▪ Arguments of Petitioner:

- In 2007, the petitioner's marriage was **declared void after her husband successfully proved** that they had **entered into a sapinda marriage**, and that the woman was not from a community where such marriages could be considered a custom.
- The petitioner challenged the constitutional validity of the **prohibition on sapinda marriages, arguing** that sapinda marriages are **prevalent even when there is no proof of custom.**
- Hence, **Section 5(v) which prohibits sapinda marriages** unless there is an established custom, violates the right to equality under Article 14 of the Constitution.
  - The petitioner also argued that if the marriage had received the consent of both families, **which proved the legitimacy of the marriage.**

#### ▪ Delhi Court's Order:

- The Delhi High Court found no merit in her arguments, holding that the petitioner did not **provide “stringent proof” of an established custom**, which is necessary to justify a sapinda marriage.
- The court held that the choice of a partner in a marriage **can be subject to regulation.** With this in mind, the court held that the petitioner did not present any **“cogent legal ground”** to show that the prohibition against sapinda marriages was violative of the right to equality.

### What is a Sapinda Marriage?

#### ▪ About:

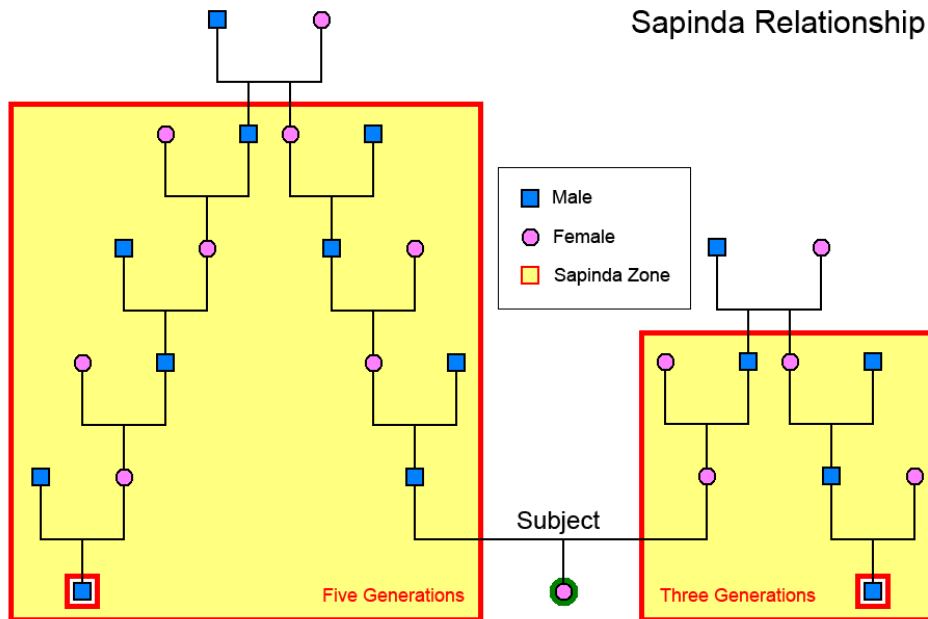
- A sapinda marriage is one **between individuals who are related to each other** within a **certain degree of closeness.**

- Sapinda marriages are defined under **Section 3 of the HMA**, as two persons are said to be “sapindas” of each other if one is a lineal ascendant of the other in 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.

▪ **Lineal Ascendant:**

- 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.
- 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’ grandparents, and anyone who shares this ancestry within five generations.

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▪ **Section 5(v) of HMA 1955:**

- 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.

**Legal Provisions Related to Marriage**

- The Constitution of India guarantees the [right to life and personal liberty under Article 21](#), which includes the **right to marry a person of one’s choice**.
- [The Special Marriage Act of 1954](#) allows any person to register and **solemnize their marriage with a person of their choice**.
- The **Supreme Court of India has dealt with several cases** involving the marriage of person of his/her choice. Like:
  - [Lata Singh v. State of U.P., 2006](#): The Court held that the right to marry a person of one’s choice is a fundamental right under Article 21, and that no one, including the parents or the community, can interfere with or object to such marriages.
  - **Shakti Vahini v. Union of India, 2018**: [The Supreme Court](#) held that consensually choosing life partners is a manifestation of their freedom of choice guaranteed under [Articles 19 and 21 of the Constitution](#).

## What are the Exceptions to the Prohibitions Against Sapinda Marriages?

- The exception is mentioned in Section 5(v) of the Hindu Marriage Act, 1955 and it states that **if the customs of the individuals involved permit sapinda marriages, then such marriages would not be declared void.**
- In other words, if there is an established custom within the community, tribe, group, or family that allows sapinda marriages, and if this custom is continuously and uniformly observed for a long time, it can be **considered a valid exception to the prohibition.**
  - The definition of "**custom**" is provided in **Section 3(a) of the HMA**, stating that a custom must be continuously and **uniformly observed for a long time and should have gained enough legitimacy among Hindus in a local area**, tribe, group, or family, such that it has obtained "the force of law."
- However, **certain conditions must be met for a custom to be considered valid.** The rule in question must be "certain and not unreasonable or opposed to public policy," and in the case of a rule applicable only to a family, it should not have been "discontinued by the family."
  - If these **conditions are satisfied**, and there is a valid custom permitting sapinda marriages, the marriage would **not be declared void under Section 5(v) of the HMA.**

## Are Marriages Similar to Sapinda Marriages Allowed in Other Countries?

- **France and Belgium:**
  - In France and Belgium, the **crime of incest** was abolished under the **Penal Code of 1810**, allowing marriages between consenting adults.
    - Incest is the crime of sexual relations or marriage taking place between a male and female who are **closely linked by blood.**
  - Belgium maintained this legal stance even after introducing a new Penal Code in 1867.
- **Portugal:**
  - Portuguese law does not criminalise incest, implying that marriages between close relatives **may not be prohibited.**
- **Republic of Ireland:**
  - While the Republic of Ireland recognised same-sex marriages in 2015, the law on **incest has not been updated to explicitly** include individuals in same-sex relationships.
- **Italy:**
  - In Italy, incest is considered a crime only if it causes a "**public scandal**," suggesting that the legal framework takes into account certain circumstances.
- **United States:**
  - In the United States, incestuous marriages are generally banned in all 50 states. However, there are variations in laws related to incestuous relationships between consenting adults.
    - For example, New Jersey and Rhode Island **allow such relationships under certain conditions.**

## Conclusion

- The concept of Sapinda marriages, as regulated by the HMA, reflects an effort **to preserve familial and social harmony** by prohibiting unions within certain lineal ascendants. The law includes provisions that declare marriages **void if they violate these restrictions unless there is a well-established custom** permitting such marriages.
- Internationally, various countries have different legal stances on incestuous relationships and marriages, showcasing the diversity of legal approaches to issues of personal choice and family relationships.

**Legal Insight:** [Prohibition on Marriage within Sapinda Relationships](https://www.drishtijudiciary.com/en)

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## UPSC Civil Services Examination, Previous Year Question (PYQ)

**Q. In the context of Indian history, the Rakhmabai case of 1884 revolved around (2020)**

1. women's right to gain education
2. age of consent
3. restitution of conjugal rights

**Select the correct answer using the code given below:**

- (a) 1 and 2 only  
(b) 2 and 3 only  
(c) 1 and 3 only  
(d) 1, 2 and 3

**Ans: (b)**

**Exp:**

- Rakhmabai (1864 - 1955) made her mark in history due to the legal case she was involved in, which contributed to the enactment of the Age of Consent Act, 1891.
- In 1885, after 12 years of marriage, her husband sought "restitution of conjugal rights", Rakhmabai was ordered to go live with her husband or spend six months in jail. Hence, 3 is correct.
- Rakhmabai refused to live with the man she was married to as a child, as she had no say in the marriage. Rakhmabai wrote to Queen Victoria. The Queen overruled the court's verdict and dissolved the marriage.
- The ripples that the case created led to the influence on the passage of the Age of Consent Act, 1891, which made child marriages illegal across the British Empire. Hence, 2 is correct.
- Though Rakhmabai became the first women doctor to practice medicine in British India, the case was not related to the women's right to gain education. Hence, 1 is not correct.
- Therefore, option B is the correct answer.