



ISSN Print: 2394-7500
ISSN Online: 2394-5869
Impact Factor: 5.2
IJAR 2016; 2(5): 1155-1158
www.allresearchjournal.com
Received: 20-03-2016
Accepted: 24-04-2016

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Sagotra marriages in India: Conflict of tradition and law

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Abstract

Sagotra marriages are the marriage union between the two individuals of same gotra. Such marriages have been subject of debate among intelligentsia, media, judiciary and the masses. Sagotra is an endogamous category. Almost all over India Hindus practice Sagotra exogamy (though adherence to it may vary according to the regions). In some of the regions, especially Northern India, Sagotra exogamy is a visible normative pattern. The paper investigates on the basis of information and data collected through primary and secondary sources. This is an analytical paper and explains the concept of Sagotra through the ancient text and modern law.

Keywords: Sagotra, normative pattern, exogamy, ancient text

Introduction

In states of western Uttar Pradesh and Haryana, practice of Sagotra exogamy is sacrosanct; therefore norms attached to it are strict. Few cases related to Sagotra marriages in the region created uproar. Incidence like Manoj-Babli, Ramniwas-Gayatri Devi and Arti-Purushottam are the example of couples who endangered their lives by entering into marital relationship which is otherwise a taboo in a society to which they belong. In all the cases the couples were either brutally killed, got death threats or were ostracized.

The Concept

The champions of 'anti Sagotra marriage campaign'-'Khap panchayats of western Uttar Pradesh and Haryana strongly opposed Sagotra endogamy and want amendment in the existing 'Hindu Marriage Act', as they claim it to be incestuous. Ghastly acts like 'honour killings' and social rebuke as excommunication of the so called 'social deviant' has brought the judiciary and the Khap panchayats to loggerheads.

For judiciary Sagotra marriage has become a formidable task; as it involves the sentiments of the community which considers it as a 'more', a custom and a long cherished tradition.

A community chastises its violation. In contrary to a custom, law is objective, ideal and conscientious. In such a situation if law intervenes, then a community looks it as an infringement of a more or a custom, as a consequence, vehemently, oppose any law or act which permits Sagotra endogamy.

Before entering into the further debate, it is essential to define some concepts and notions which are related to this social practice. To establish marital alliance, there are rules of prohibition, preference and prescription:

Endogamy and exogamy

Endogamy is the custom or practice which requires performance of marriage within one's own social group, class or caste. Hindu Great Tradition prescribes for its members to practice caste or jati endogamy. Reverse to this practice of marrying within one's own group is, preference of marrying outside a specific group of which he is not a member. As for example, Hindus are simultaneously caste endogamous but Sagotra exogamous i.e. a man must not seek wife from one's own gotra but should choose partner from his caste.

There are almost three forms of exogamy:-

- Gotra exogamy: there is a practice of marrying outside the 'gotra'; as people of same gotra are believed to have similar blood, so they cannot intermarry.

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- b) Pravara exogamy: marriage between same Pravara is a taboo, especially among Brahmins. It is believed, people who utter the name of a common saint at religious function, belong to same Pravara. It is a kind of religious and spiritual bond.
- c) Sapinda exogamy: 'Pinda' means common parentage. Among Hindus Sapinda exogamy is a prohibited marital alliance. Brahhaspati recommends offspring from seven paternal generations and five maternal generations should not intermarry.

Literature on Sagotra

While defining the intricate concepts of 'Sagotra', 'Sapravara' and 'Sapinda', it is a difficult task to delineate a clear defining boundary between the three assumingly overlapping concepts. As for in usage, Sapravara and Sapinda are subsumed under the broader category of Sagotra. As mentioned in Mitakshara Hindu Law (also basis of modern codified Hindu Law)-"a girl who is Sapinda, Sagotra or Samanapravara does not acquire the status of a wife in marriage".

Manusmriti recommends - "she who is not a Sapinda of the mother and she who is not Sagotra of father is recommended to the twice born for being selected for wife."

While selecting a mate, a 'Hindu' has to follow some structural rules of marriage. Structural rules require that the couple belong to the same endogamous group, the jati and also the spouse come from a different exogamous category within the jati(Mandelbaum;101:87); to be precise husband and wife must not be related to each other before marriage in way that are prohibited.

The concept of gotra is unique and has been defined differently by the scholars and the social scientists. As Majumdar and Madan opine-" in practice a gotra consists of a large number of cognates, supposed to be descended from the same rishi -ancestor, who lived in the ancient past.....in course of time the number of descendent of each rishi-ancestor has increased, so that not only have all ties of common residence and even territorial proximity been snapped, but a large number of new derivative gotra kin groups has sprung up named after few rishis (Majumdar and Madan:58:80).

Majumdar and Madan maintain the view that, gotra comes to have its social significance in so far as the members of the same gotra, even though they have never known or heard of each other nor are related by blood, cannot intermarry. Gotra is regarded as a group of consanguineous kin, hence the question of marriage within gotra does not arise.

Concept and usage of gotra in scriptures: (Mandelbaum; 1975) ^[11] as far as concept and usage of gotra is considered, it deviates from the modern concept and usage. In Vedas it was used as 'cowpen'. In Chandogya Upanishad there is earliest mention of gotra in technical sense, commonly known as 'clan', an exogamous category in 'jati'. Its synonymous use in Vedic time was for 'Kula' or family. Mandelbaum in his study mentions three identifiable function of gotra:

- 1) Specification of gotra affiliation by a Brahmins in the daily devotions, while making an exact identification of himself before God.
- 2) Gotra connotes different groupings in different jatis and it is used by jatis at all levels.

- 3) Functional importance of gotra is to regulate marriage matches.

The variations in function attached to the grouping called gotra are visible in jatis and regions. Mandelbaum cites the example of Kashmiri Brahmins, where gotra category is used in more scriptural fashion for both exogamy and ritual identification. Nevertheless they allow some marriages within a gotra to be arranged through the use of some legal fiction or by performance of expiatory rites (Mandelbaum: 101:87).

Although, Sagotra exogamy is a strict explicit rule but there are instances of gotra endogamy. The degree of conformity and non-conformity to the very principle of Sagotra marriage vary from region to region and jatis to jatis. There are provisions of alternate arrangements to make Sagotra marriage sacrosanct. It is done either by performing expiatory rights or an alternate arrangement, where other than parents of a bride; rite of 'Kanyadaan' is performed by some relative, preferably maternal uncle. This 'ad hoc arrangement', ritually alters the gotra of a bride, as the daughter is now assumed to be given to a groom other than her gotra. This little abatement relieves the groom and the bride from any kind of repression from social group of which they are member.

But one cannot conclude that if one region or jati allows Sagotra marriage with some assuaging arrangements, other regions or jatis will do the same. As for example in Haryana and Western Uttar Pradesh, irrespective of caste status, link Sagotra marriages with incest. Therefore for them practicing Sagotra marriage is just like committing a heinous crime. It's an offence, as this custom is irrevocable.

Now some pertinent questions arise that how far the claims made by the custodians of this custom are valid? Do they have any rationale? Their assertion of degeneration of progeny, as well as equating Sagotra marriages to the marriages between the siblings, has to be seen in the light of biological explanations and anthropological & sociological explanations.

Biological Explanation

Darwin's Theory: If close inter-breeding carried on for too long a time is generally believed, loss of size, constitutional vigour and fertility, sometimes accompanied by tendency of malformation.

Racial Eugenics: Propagates that marriages should take place outside the clan.

But one cannot assert that there was any one plausible root cause of practice of exogamy. Exogamy can be viewed as a concomitant result of one or two factors or numerous factors.

Anthropological and Sociological Explanation

The widely accepted belief is that Sagotra exogamy is perhaps the outcome of prohibition of incest (Murdock; 1949). As it might be thought, in the beginning of human society, population was not so widely dispersed or heterogeneous; practice of Sagotra, Sapinda and Sapravara exogamy was the way of ensuring that no consanguine kins inter-marry. As for Hindus, practice of caste endogamy was strictly observed while match making. Consideration of Sagotra factor became essential and imperative. In a thin and relatively homogeneous population, exogamy was one

of the safeguard against the alliance between any kinds of tabooed relationships.

Though Hindu texts widely recommend Sagotra exogamy, but there are variations too. Apastamba, Kausika, Budhayana and Paraskara, all avoid Pravara marriage but not gotra. However, from the time of Dharamsutra, Sagotra and Sapinda marriages were prohibited. Rishi Vasistha prohibits Sagotra marriages, where he limits the range from father side to seventh generation and from mother's side to fifth generation. On the contrary, Hindu Marriage Act of 1955 and Special Hindu Marriage Act 1954 permit Sagotra, Sapravara and Sapinda marriage, though with some reservations. Hindu Marriage Act permits an individual to seek partner from father side beyond fifth generation and from mother's side beyond third generation. Hence law allows Sagotra marriage, certainly with some limitations.

The provision of Sagotra marriage in Hindu Marriage Act has been subject to harsh criticism among some of the northern Indian castes, particularly Jatis of western UP and Haryana. Rural community of this region strictly adheres to this normative pattern; therefore any aberration (regarding this practice) is not permissible. A micro level survey conducted on the sample of 200 undergraduate students, who particularly hail from the villages of Gautam Buddha Nagar district, out of these 200 students 90% were against Sagotra endogamy; whereas about 7.5% students were in favour of Sagotra exogamy. Rest of them was not clear about the issue. Similarly around 62% were in favour of village excommunication and 35% were in favour of 'honour killing' for those who violated this societal rule. Hence this micro level study reveals that Sagotra endogamy is not even acceptable by the rural youths. When these respondents were asked about the reason for their opposition to Sagotra marriage, most of them replied- ".....individuals born in same gotra are brother and sisters.....how can they marry each other". Now, one can easily infer that Sagotra exogamy is unquestionably accepted practice, which cannot be challenged. Any threat to such long tradition is intolerable and this intolerance may extend to village excommunication to 'honour killing.'

These practices are largely based on community sentiments; rural community and rural society rests on community sentiments. Any violation of a norm which community upholds, invites ostracism and repression. Durkheim while elaborating the concept of mechanical solidarity mentions about the repressive law of the primitive community. An individual who violates the societal norm has to pay for it, which may even get translated into capital punishment.

Durkheim's (Abraham, Morgan; 1989) ^[1] concept of mechanical solidarity and repressive law can be very well implemented on this Sagotra issue. The northern Indian region, where castes like 'Gujjars' and 'Jats' consider, Sagotra endogamy as a practice, which uproots their cultural ethos. The prevalent gotra's among them like 'Baliyan', 'Nagar', 'Bhati', 'Shekhawat' and many more to the list, follow the rules of prohibition.

Their idea of not marrying within the same gotra comes from the belief that the people born in the same gotra belong to the same lineage, hence all those who are born in the same lineage are considered to be siblings. Therefore any kind of affinal tie between the blood relatives is a taboo. The 'Jats' and 'Gujjars', as a practice, consider the gotra while match-making. One cannot have marital alliance in the gotra that of his father, mother, and maternal grandmother and in

few cases even paternal grandmother's gotra is considered. Although, some relaxation is visible in the system as, the gotra of grandmother is now not of much relevance. This practice is contrary to the other parts of north region where only father's gotra is important in marriage alliances. The Jatis under study take the mother's gotra more seriously (though an individual can neither marry in the gotra of father nor in the gotra of mother). Gotra practice in this region has distinguishing feature, for example, a boy who belongs to the gotra of his father (Baisoya) and to the mother's gotra (Bhati) - as a rule, he will not choose a girl as his bride neither from the Baisoya gotra, nor from the Bhati gotra, thus two groups from his list of the preferential mates get erased.

It is important to mention here, that in other backward castes and schedule castes there has been traditionally no provision of gotra system. Gotra system has been religiously practiced by 'Dwij jatis' (Ahuja; 1997, Chauhan; 1960). It can be assumed that other jatis emulated this practice of 'Dwij' jati during a long cultural contact, thereby enabling them to rise up in the caste hierarchy. This puritan value of gotra system has been the part of Hindu great traditions. (Ahuja; 1997)

By and large there has been a tradition of tracing once descent from some hypothetical ancestor; but in case of Gujjars and Jats (as they claim), they are the descendant of some known ancestor. As this custom and practice in these communities has not been in existence from time immemorial therefore to trace almost exact line of descent is somewhat possible. It is observed that while emulating the upper castes, Sagotra system in these communities too, became one of the rules of prohibition and preference in establishing marital alliance.

Hence it can be concluded that these jatis are distinct in regard to this feature from rest of India, as they don't have merely hypothetical link with their ancestors, rather real one. So it is essential to view their claims differently. Rural community of the region has resisted and vociferously demanded exemption of the community from the Hindu Personal law which allows Sagotra. Hindu Marriage Act two adult individuals man and woman who if enter the marriage alliance, beyond prohibitive range, their marriage is valid and does not stand null and void. Castes on the other, had to do away with Sagotra marriage engage themselves to the practice of village excommunication and 'honour killing', such that, whosoever violates the community sentiments, will be punished in the similar fashion.

The practice of 'honour killing' and village excommunication can be seen as direct infringement to the human right that is right to live and right to property respectively. In such a situation, modern Hindu law acts as a saviour to those who enter such marital alliance. In corollary to the incidents of 'honour killing', law ministry advocated amendment in the Section 300 of IPC to book 'all members' of the Khaps, those who committed murders and also those who instigated the killings; besides this Law Ministry advised for the change in evidence act, so as to shift the 'burden of innocence' on the accused and with the 30 days of notice period it is required to register marriages, solemnized under special Hindu Marriage Act, 1954.

Nevertheless, law is there to protect the aggrieved, thereby upholding the value of human rights; but one cannot coercively bring change in the beliefs and practices of the community of which it is a custom, a tradition and a cultural

ethos. Sociologically speaking, customs and traditions of any community or social group cannot be rated good or bad, until and unless it violates human rights, therefore one cannot be judgmental on the practice of Sagotra exogamy. Any objective criteria, such as—a scientific research which advocates marriage between blood related kins may not necessarily lead to degeneration of human progeny or a modern value which disregard this age old practice, cannot be taken as substantial ground for uprooting their value system. As long as any custom which is for the welfare of a group or a community and simultaneously does not violate the law of the land, the community has every right to survive with its ethos.

In the Sagotra issue, there is visible conflict between the uniform law and diverse tradition. It is a fact that when a law attacks a custom, with great force custom attacks the law; both come into clash; as McIver (1965) ^[9] observes—“custom when attacked, attacks law in turn, attacks not only the particular law which opposes it, but what is more vital, the spirit of law-abidingness, the unity of general will”. The Khap members with the fear of losing their age old custom threaten to violate the law, thereby establishing the supremacy of custom over law.

Members of the Khaps erroneously equate Sagotra endogamy with the marriage between the siblings, thus counter attack on those who advocate Sagotra endogamy. The members should not misinterpret the Law and the individuals, who are in favour of some relaxation in gotra restriction, are actually in support of marriage between blood relatives, precisely brothers and sisters. In present context Sagotra endogamy is not necessarily synonymous with sibling marriage. The claims and arguments of Khap members raise some relevant question like- if Sagotra marriage is essentially considered a marriage between brothers and sister, than why allow marriage between the siblings, who do not belong to same gotra (as in the case of cross cousins)?

Conclusion

The leaders have to revisit and rethink on their claim that – do they oppose Sagotra endogamy in general or marriage between the blood relatives who do not belong to same gotra? The fallacious claim of the khaps can be answered by a quote from Manusmriti—“a time might come when their rules would become obsolete and have therefore declared that if any rules framed by them are found not to be conducive to the welfare of the society, or against the spirit of the age, they should be unhesitatingly abrogated or modified.”(Prabhu).

However, if a community or a society wants a change than it should be endogenous, any orthogenetic force of change may disrupt the cultural fabric of a concerned society. Irresponsible media journalism and scientific reductionism in support of Sagotra endogamy and marriage between cousins may bear the consequence of turning a human society into a promiscuous herd.

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