

SECTION II.

BETROTHAL.

Question 1.—At what age can betrothal take place ?

Answer 1.—In betrothal there is no restriction with respect to age. A betrothal can take place at any age after birth. (All tribes.)

Note.—Instances are given of children being betrothed at all ages, from less than a year to the age of 30 or more. It is common to betroth children at a very early age, especially among those Musalmán tribes which allow first cousins to intermarry. It is not necessary that the girl should be younger than the boy, but ordinarily she is at least two years younger, so that they may both reach puberty about the same time. The age at which betrothal takes place depends much on the means of the family, but it is thought very improper to allow a girl to grow up unmarried, and girls are, with few exceptions, betrothed before the age of 18. Some of the poorest of the inferior tribes combine the ceremonies of the betrothal with those of marriage, but ordinarily there are in all tribes two distinct sets of ceremonies with a considerable interval between.

Question 2.—In the case of persons between whom marriage is lawful, who can make the contract of betrothal ?

State whose consent is necessary to the validity of a betrothal. Can a person consent to his or her own betrothal ; or is it in every case necessary that parents or guardians should consent on behalf of the child or ward, whether male or female ?

Answer 2—

(a) The contract of betrothal is made by the father or near agnates in the following order, and their consent is necessary to the betrothal of a minor, whether male or female, and of an adult female :—

(1) The father, (2) the father's father, (3) elder brother, (4) father's brother, (5) father's brother's son, (6) more distant male agnates.

The mother cannot herself make the contract of betrothal, but her consent is generally obtained.

A man of full age can make his own contract of betrothal, but if his father be alive, the father usually makes it for him.

(Bágrí and Sikh Jats, Kumhár, Khátí, Lohár, Banya, Rora, Gaur Bráhmán, Bodla.)

Among Chishtís the same, except that the father's brother makes the contract, even though there be an elder brother of full age. (Chishtí.)

Among Sársut Bráhmans, the same, except that, when the father is dead, the mother arranges the betrothal, and the uncles do not interfere. If the mother also be dead, the brother makes the contract; failing him, the uncles make it. (Sársut Bráhmán.)

(b) The contract of betrothal is made by the near agnates. Where the father and father's father are both alive, it is not clear which of them makes the contract; sometimes the father makes it and sometimes the grandfather; usually they make it together. Failing them, the father's brother or the elder brother makes the contract, it is not clear which.

If the mother be alive, her consent is obtained; and if there be no near agnate, the mother can herself make the contract. A man can make his own contract of betrothal, but the consent of the guardian is necessary to a girl's betrothal. (Musalmán Rájputs and Jats.)

(c) No female, whether minor or adult, can make her own contract of betrothal. A male adult can make his own contract of betrothal, but if his father or uncle be alive, the contract is generally made by the father or uncles.

The power of making a contract of betrothal for a female, whether minor or adult, or for a minor male, rests with the father if alive, and if the father's father be alive, his consent is obtained. If the father be dead, then the power rests with the mother, who, however, takes the advice of the elder brother, father's father, or fathers' brothers. If both father and mother be dead, then the contract is made by the elder brother, father's father, father's brothers, or other near male agnates, who all take counsel together. (Ráíns.)

Note.—The family generally unite in arranging the betrothal, which is carried out by the most influential male agnate, whatever be his relationship. So long as the family is living jointly and the grandfather retains the management of the estate, it is generally he, and not the father, who arranges the betrothal; but if the father have separated off from the grandfather, usually the father makes the arrange-

ments. There is generally a family consultation, and often the maternal relations also are consulted. The mother has a good deal of influence in the matter, especially if the father be dead. The chief difference in the different tribes is regarding the power of the mother, when the father is dead. The Jats, Rájputs, and most other tribes say that in such a case the agnate uncles make the contract, obtaining the consent of the mother; the Ráíns and Sársut Bráhmans say that the mother arranges the betrothal with the advice of the male agnates. Probably there is little practical difference. The right to consent to betrothal goes much in the same order as do guardianship and inheritance, and the person entitled to succeed to the estate of a deceased relative is also entitled to dispose of his minor children in marriage.

Question 3.—Describe the formalities which are observed upon a contract of betrothal. Is there any distinction between formalities after which the betrothal is revocable and formalities which are absolutely binding?

Answer 3.—There are several distinct sets of ceremonies employed in betrothal, sometimes more than one set in common use in a single tribe. Rarely, among very poor families the ceremony of betrothal is combined with that of marriage; but, as a general rule, there is a distinct and formal ceremony of betrothal, made after, by private consultation, the families have agreed to enter into the connection with each other.

Among Hindús, in the common form of betrothal, the girl's father sends his family barber (Nái) or priest (Bráhmaṇ) to the boy's house with a rupee and a cocoanut (*náriyal*). The boy's kindred are assembled and before them the messenger, barber or priest, applies the forehead-mark (*tíká*) to the boy's forehead, and formally makes over the rupee and cocoanut to the boy, announcing the name of the man to whose daughter the boy is betrothed. The messenger is then formally feasted and dismissed. This form of betrothal, or something similar to it, is commonly practised among the Bágrí and Sikh Jats, the Sikh Kumhárs and Tarkháns, the Banyas, Roras, and Bráhmans, and the Musalmán Joiyas and Bhattis.

Sometimes the boy's father goes to the girl's house with a rupee and cocoanut, and places them in the girl's lap before her relatives (Kumhár Hindú). The Musalmán Kumhár

places sugar in one-half the cocoanut and money in the other half, and gives them to the girl. The Chamár places money in a cocoanut and gives it into the girl's hand. The Báwariyas and Herís have the same custom. Among the Hindú Lohárs the boy's father offers the rupee to each of the girl's relatives in succession, and finally places it in the hand of the girl's father. Among the Bodlas and Wattus the boy's father takes his relatives with him to the girl's house, and there, before the assembled members of both families, he obtains the consent of the girl's father to the betrothal, and formally makes over to the girl a ring (*angú-thí*) and some sweetmeats and other presents.

Among the Joiya and Bhatti Musalmáns and the Chúhras who live among them, there is a curious custom which is no doubt a survival of the time, not yet long past, when they led a pastoral life. The boy's father goes with some of his relations and village menials to the girl's house, where her relations are assembled and a feast of rice prepared. A special dish of sweetened milk (*dudh ká chhaná*) is prepared and formally presented to the boy's father, who drinks the milk and puts a sum of money into the vessel to be kept by the girl's father.

A new form of betrothal has lately sprung up among the Bodlas and Wattus on the Satlaj. When the girl to be betrothed belongs to another tribe, her father sometimes takes a considerable sum of money for her, so that she becomes a piece of valuable property. Since British rule began, some difficulty has been experienced in proving the old ceremony of betrothal to be binding; so that, in order to make it more binding, or rather more easily capable of proof, it has become the custom for a Bodla or Wattu father, when betrothing his son to a girl of another tribe, to get the *qázi* or some *faqír* or *masítwá* (attendant on a mosque) to witness the betrothal ceremony; and besides the ordinary betrothal ceremonies, the form of *íjáb qabúl* is borrowed from the marriage service, the parties being formally asked by the *qázi* or *mulláh* whether they agree to betroth their son and daughter. As a rule, the boy himself does not go, and notwithstanding the *íjáb qabúl*, the ceremony is not considered a marriage, and if the boy dies, the girl is not considered a widow; the regular marriage ceremony (*nikáh*) is performed afterwards. Sometimes, however, instead of a betrothal, the regular *nikáh* is performed, and in this case at the regular *shádí* (*byáh*) or formal marriage,

the *nikáh* ceremony is not repeated. The reason of these innovations is to ensure that the girl's father will not draw back from his bargain, and the really binding form is the agreement of the fathers of the boy and girl before witnesses. Among other Musalmáns towards Fázilka, the *qázi* or *masit-wálá* attends at the ordinary betrothal ceremony and gives his blessing. Among the Ráíns also he attends and repeats some formal phrases.

Among almost all tribes, although it is not thought quite proper to take money for a daughter, and some say that extreme poverty is the only allowable excuse for such a transaction, the practice is by no means uncommon. In such cases the transaction is simply a sale of the daughter, and she is transferred as a valuable piece of property for a price. Sometimes no other ceremony is employed; the boy's father simply makes over the money to the girl's father before the assembled brotherhood.

The essence of all these ceremonies is that the parties make a formal agreement before the assembled relatives, and it is this agreement which makes the betrothal binding. A betrothal, however, always has something of the character of a sale, and money plays a principal part in the proceedings. Money changes hands during the ceremony among the Bágri and Sikh Jats, Kumhárs, Khátís, Lohárs, Chamárs, Chúhras, Bawariyas, Herís, Banyas, Roras, Bráhmans, Ráíns, and Musalmáns generally; in fact, among all tribes;—sometimes it is simply a small sum or token, such as the single rupee, among the Játs, Bráhmans, Khátís, and Lohárs; sometimes a considerable sum of money, the amount of which seems to be fixed by custom for all except those who absolutely cannot raise it, such as Rs. 12 among Chamárs and Chúhras, Rs. 12 to Rs. 14 among Bawariyas and Herís, and Rs. 21 among Bhatti and Joiya Rájputs. The cocoanut is used among the Bágri Játs, Kumhárs, Khátís, Chamárs, Bawariyas, Herís, Mahesrí Banyas, Bráhmans, and Ráíns; it does not seem to be used by the Musalmáns generally. A ring (*angúthí* or *chhalla*), often of plain gold, is employed by the Bodlas, Wattus, Bhattis, and Joiyas. Presents of cloth or of made-up suits of clothes are often exchanged, and sugar is generally distributed. The family barber (Nái) or priest (Bráhman) is usually sent among the Bágri and Sikh Jats, the Kumhárs, Tarkháns, Banyas, Roras, Bráhmans, Ráíns, Bhattis, and Joiyas. The messenger is called *lágí*, and gets a recognised fee (*lág*), besides being feasted and made much of.

The customary signs or tokens of betrothal which are formally handed over, such as the cocoanut or ring, are called *nishání* or *ropná*. A betrothal is called in Hindí *sagái*, in Panjábí *mangewá* or *mangní*, from *manggná* (to ask in marriage). The contract is rarely, if ever, reduced to writing.

Question 4.—Is a man who has contracted a betrothal entitled to marry another woman before he marries her to whom he was first betrothed; or does priority in betrothal entitle the female to priority in marriage?

Answer 4.—A man who has contracted a betrothal is not entitled to marry another woman before he marries her to whom he was first betrothed. If he does marry another woman first, the girl's relatives are at liberty to cancel the betrothal. (Bágrí Játs, Sikh Jats, Banya, Rora, Bráhmaṇ, Ráin.)

A man who has contracted a betrothal may marry another woman before he marries her to whom he was first betrothed. Priority in betrothal does not entitle a woman to priority in marriage. (Rájput Musalmán and Jat Musalmán.)

Note.—First wives have no peculiar privileges, and among Musalmáns generally a prior marriage of the boy does not entitle the girl's relatives to break off the betrothal. Even among Hindús, the boy is sometimes permitted to marry another girl first, especially when the boy reaches puberty some time before the girl.

Question 5.—Upon what grounds can a contract of betrothal be annulled?

State whether

- (1) Impotence,
- (2) Immorality,

of either party are considered sufficient grounds for the annulment.

Answer 5.—(a) There is no instance of a contract of betrothal having been annulled on account of any physical or moral defect in either of the parties. (Bodlas, Chishtís, Wattus, Ráíns, Bágrí Játs.)

Note.—The Bodlas, Chishtís, and Wattus say that nothing, not even the impotence or immorality of the boy, is a sufficient reason for the girl's family to break off the betrothal. Perhaps, if the boy were to become very immoral, or were suffering from any serious infirmity, the girl might remain unmarried in her mother's house, but she

could not marry into another family. They consider a betrothal irrevocable, but as the advantage of completing the marriage is considered to be all on the boy's side, they think he could let off the girl if he chose. There is, however, no instance of a contract of betrothal having been annulled in this way. The Ráíns and Bágrí Játs say that if either of the parties be insane, or impotent, or leprous, or if the man take a strange woman into his house, or the girl be unchaste, the other party is at liberty to cancel the betrothal. But blindness or imprisonment, or gambling or drinking, or general immoral conduct on the part of the man, is not sufficient reason for cancelling the betrothal. All betrothals which have been cancelled were cancelled by reason of some quarrel or from greed of gain.

(b) If after the betrothal the boy become blind, leprous, insane, impotent, or otherwise hopelessly diseased, the girl is not married to him, but to his brother. If he be sentenced to a short term of imprisonment, or take to gambling or drinking or general immorality, this is not a sufficient reason for annulling the betrothal. If the girl become blind or unchaste, the boy's family can relinquish their right to her and thus cancel the betrothal. Blindness, however, though a sufficient excuse, does not necessarily cancel the betrothal. (Sikh Jat.)

The same, except that blindness of the girl or boy is not sufficient excuse for cancelling the betrothal. (Kumhár and Lohár.)

(c) A contract of betrothal can only be annulled on account of the impotence, leprosy, insanity, or long imprisonment of one of the parties. In such a case the girl's father is still bound to give her in marriage to some other member of the boy's family. Blindness, immorality, lameness, or short imprisonment, is not a sufficient reason for annulling the contract. (Musalmán Jat and Rájput, Chamár, Chúhra.)

The same, except that if there is no younger brother to marry the girl, the contract between the families is altogether at an end if the boy becomes insane, leprous, or impotent. (Báwariya and Herí.)

(d) If after betrothal the boy or girl become blind, dumb, insane, impotent, leprous, or affected by other incurable disease, or the boy cohabit with a woman of another caste, or the girl become unchaste, the other party is at liberty finally to cancel the betrothal, but immorality on the

part of the boy or his being imprisoned is not sufficient reason for annulling the contract.

(Banya, Rora, Bráhmaṇ, Khátí.)

Note.—It may be noticed how reluctant most tribes are to allow any excuse to be sufficient for cancelling a betrothal once made with the customary formalities ; and how, when compelled by the insanity or infirmity of the boy to allow that marriage with him should not be consummated, most of them still maintain the right of the boy's family to claim the girl in marriage for one of the boy's near agnates. It is only in a few tribes that the betrothal is considered to be a contract with the boy individually ; ordinarily it is looked upon as a contract made with the boy's whole family.

Question 6.—If the betrothal be annulled at the request of either party, on any of the grounds stated in reply to question 5, are the expenses incurred repayable to the person who discharged them ?

Answer 6.—(a) When the betrothal is annulled by mutual consent, neither party is bound to pay the expenses incurred by the other ; but any jewels or money which may have been exchanged are returned. If the annulment of the contract of betrothal is made in favour of one party, he generally pays some money consideration to the other party to secure his consent. (Bágrí Játs, Banya, Rora, Bráhmaṇ.)

(b) If a betrothal be annulled at the request of either party, the requesting party repays the expenses of the other. (Rájput and Jat Musalmán.)

(c) The boy's father can at any time relinquish his claim to the girl, and provided it be done so as to bring no disgrace on the girl's family, he is not bound to pay anything. The girl's father cannot withdraw from the contract without the consent of the boy's agnates, and in that case he pays them whatever is agreed between them. (Sikh Jat.)

(d) There is no instance of a betrothal having been annulled with the express consent of both parties.

(Bodla, Chishtí, Wattu, Ráín.)

Note.—Among all tribes a girl is regarded as a valuable piece of property, and betrothal is a contract to transfer the ownership of the girl to the boy's family when she reaches a marriageable age. In the great majority of cases, a valuable consideration in money or property is given for the girl by the boy's family to the girl's family, and betrothal always has something of the character of a sale, money playing a principal part in the ceremonies which complete the con-

tract. If the girl die after the betrothal, the contract is at an end ; the girl's family had contracted to transfer a specific piece of property, a particular girl, to the boy's family, and as that piece of property is no longer existent, the contract cannot be completed and is necessarily void ; the boy's family have no further claim on the girl's family, and cannot require them to give another girl in place of the one originally contracted for, or to return the consideration paid for the contract. But ordinarily the death of the boy does not cancel the betrothal ; it is his family that have purchased the girl, not the boy himself, and the family still can claim her and marry her to a brother or agnate cousin of the boy to whom she was first betrothed. In that case, the ceremony of betrothal is not repeated, the original contract is still in force ; but sometimes, if the girl is old and there is no brother of the deceased old enough to marry her, a younger sister or cousin is given to the boy's family instead of the girl originally bargained for. Sometimes, especially among the Ráíns, exchange-betrothals (*badleke sákh*) are made, each family agreeing to give a girl to the other ; when one of these betrothals fails for any reason, the losing party often tries to break off the other betrothal, but this is considered wrong ; the betrothal should be held irrevocable. If for any reason the contract of betrothal between the families is broken off, and the girl betrothed into another family, the full ceremonies of betrothal are repeated, as a new contract is made. But the betrothal ceremonies apply only to an unmarried girl ; marriage changes her status, changes the nature of the property to be transferred. A girl once married cannot be again betrothed according to the ceremonies of a first betrothal. If a widow re-marry, there are none of the elaborate ceremonies of a betrothal (*sagál*) and marriage (*byáh*). She is, if a Musulmán, married by the simple *nikáh*, and if a Hindú by *karáo*, which is hardly any form at all, and often consists in a simple sale with no more ceremony than is required in the sale of a cow or a camel. Marriage, however, does not so change the status of a man. A married man or widower, if he marries another virgin, goes through the full ceremonies of betrothal and marriage with her.

Almost all tribes are anxious to have the betrothal ceremony considered more binding than our courts are inclined to consider it, and complain that the courts will not compel specific performance of the contract, and that the

damages generally decreed against the girl's father for breach of the contract are wholly inadequate. They say that great injustice is sometimes done by the girl's family, who at the betrothal take money from the boy's family and afterwards exact large sums of money and property by delaying to complete the marriage, and by threatening that, unless their demands are complied with, they will marry the girl into some other family.

Among the Sikh Jats, and seemingly among most tribes, it is rare for a boy's family to give up their claim to the girl ; it is giving up their right to a valuable piece of property they have bargained and partly paid for. But it seems permissible for the boy's family to give up their claim to the girl, as, for instance, when the boy on growing up does not approve of the match arranged for him. Care is taken, however, among most Hindú tribes, to prevent the boy and the girl from seeing each other before marriage, and it would be thought very improper for a man to try to get a look at his betrothed before the marriage day ; indeed the Sikhs say that such profligate conduct would almost justify the girl's family in breaking off the match. Contrary to the state of things in Europe, suits for damages for breach of contract of marriage are very rarely brought by the girl's family against the boy ; while such suits brought on behalf of the boy against the girl's family are very common. Here, the advantages of the bargain are supposed to have been secured by the boy's family, and it is ordinarily not to his interest but to the interest of the girl's family that the contract should be broken off.

According to the Bodlas, Chishtís, Bágrí Játs, and Chúhras, the death of the boy does not cancel the betrothal ; the girl's father is still bound to give her to the boy's brother or cousin. According to the Wattus and Musalmán Jats and Rájpúts generally, Kumhárs, Lohárs, Chamárs, Báwaríyas, and Herís, the boy's brother can claim her ; but if there be no brother fit to marry her, the contract is at an end ; no more distant relative than a brother has any claim. Tribes which do not allow a widow to marry her deceased husband's elder brother, do not allow a girl to marry her deceased betrothed's elder brother. Among the Sikh Jats, it is common for a girl to marry the brother or cousin of her deceased betrothed ; and they say that formerly the boy's death did not annul the contract, but that now the death of the boy leaves the girl's family at liberty to consider the

contract void, and to betroth and marry the girl into another family. The Khátis, Banyas, Roras, and Bráhmans seem to consider that the death of the boy renders the contract void. Among the lower tribes, when for any reason the girl's father does not complete the contract, but marries her into another family, for instance, on the death of the boy, a *pancháyat* of the tribe compels the girl's family to pay the boy's family double the consideration they received for the girl. As this custom is so very general, and the feeling in these tribes about it is so strong, it would seem only reasonable and just that our courts should in such a case enforce repayment at least of the consideration advanced, especially as that is often a large amount when compared with the resources of the family.