

FAMILY LAW – I

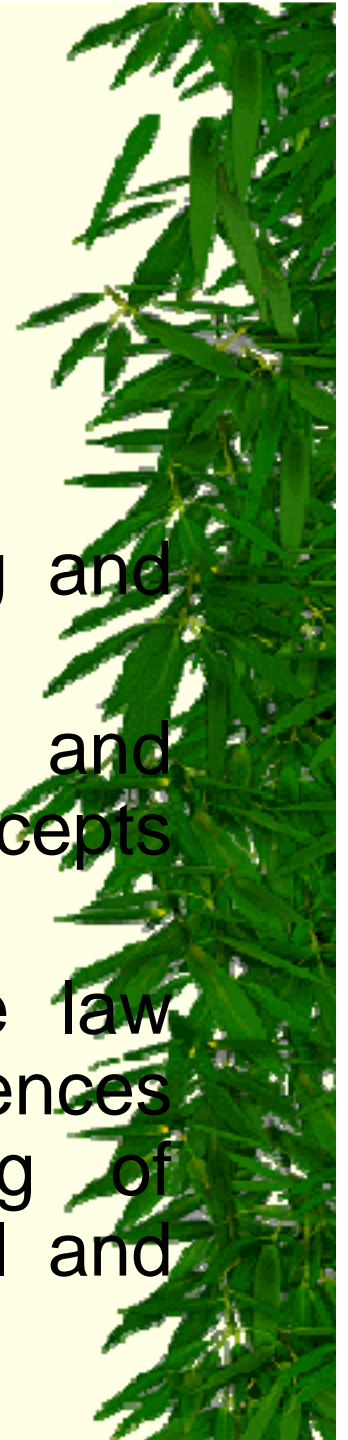
Course Content and Questions

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COURSE OBJECTIVES

- Encourage students to think critically
- Develop new ideas for legal reform
- Focus on the role of law in creating and reinforcing social values
- Highlight the foundational inequities and inequalities in the various family concepts across different personal laws
- Generate an understanding that the law may lead to just or unjust consequences and empowering or disempowering of people governed by it by their social and economic status



CONTENTS

1. **Introduction**
2. **Conditions for a valid marriage**
3. **Void and voidable marriages**
4. **Restitution of Conjugal Rights**
5. **Judicial Separation and Divorce**
6. **Minority and Guardianship of children**
7. **Maintenance**
8. **Adoption**



Focus of the Course

- ★ Family –social & legal meanings
- ★ Its nature – hierarchical / patriarchal, egalitarian?
- ★ Status of members – men, women & children
- ★ Accessibility to legal processes & their consequences for each member
- ★ Lawyers' role in family law practice



CRITICAL QUESTIONS



Age and Form of Marriage

- ★ Age: Reinforcement of the expectation of roles of men and women in marriage?
- ★ Impact of uniform age?
- ★ Should ‘form’ be given precedence over ‘substance’?
- ★ Who benefits?



Nullity

- ★ Impotency not infertility
- ★ Same sex marriages and pleasure
- ★ Gender neutral terms: differences in educational, financial and social status and the premium on virginity for women
- ★ Implications if marriages in violation of age were declared to be void or voidable?



Restitution of Conjugal Rights

- ★ Is law a bull or a system of rational principles governing human behaviour?
- ★ Right of the husband to set up the matrimonial home vis-a-vis the wife's right to work?
- ★ Reinforce and encourage women's economic dependency and subordination?



Divorce

- ★ Accessibility to court?
- ★ Consequences?
- ★ Right of residence?
- ★ Capability to earn a livelihood?
- ★ Guardianship of children?



Guardianship

- ★ Differential guardianship: Rationale
- ★ Division of custody and guardianship: implications?
- ★ Minor husband as guardian?
- ★ Whose protection: rights of guardians or children?



Maintenance

- ★ Principles and purposes underneath?
- ★ Similar : during marriage and after divorce?
- ★ Rationale vis-a-vis maintenance of children?
- ★ Why chastity a condition?



Adoption

- ★ What is paramount : Religion or welfare of the child?
- ★ Possibility of conflict between rights of parents and welfare of child?
- ★ Adoption and status of woman?



READING MATERIALS



- ★ Archana Parashar, “Just Family Law: A Basic Right of All Indian Woman”, *24 Delhi Law Review*, 1 (2002)
- ★ Poonam P. Saxena, “Matrimonial Laws and Gender Justice”, 45 (3&4) *JILI* 335 (2003)
- ★ S. G. Bhat, “Laws of Marriage from Sastras to Statutes: Inequality to Equality”, 45 (3&4) *JILI* 400 (2003)
- ★ Kusum, “How ‘Void’ is Void Marriage”, 42 (2-4) *JILI* 443 (2000)



- ★ Daljeet Singh, “Desirability of Instant Divorce by the Judiciary: A Critique”, 45 (2&3) JILI 439 (2003)
- ★ M. Afzal Wani, “Maintenance of Women and Children under Muslim Law: Legislative Trends in Muslim Countries”, 45 (3&4) JILI 409 (2003)
- ★ Excerpts: Archana Parashar, “Welfare of the Child in Family Laws – India and Australia”, 1 (1) *Nalsar Law Review* 49 (2003)



3 Hrs Written Exam

Criteria:

- ★ Memory vs. analyses and application
- ★ Sensitisation without indoctrination
- ★ Black letter law / social impact

