

# **FAMILY LAW – I**

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## **Introduction:**

Family Law is the branch of law, which touches each and every individual of the society. It governs an integral part of the life of the individual. In India we have a strange spectacle of personal laws. They owe their diversity to their varied origin, distinct principles and the bulk of substantive law itself. The personal laws play a vital role in governing the conflicting interest of the individuals. In India in personal matters there is no national or regional law. Personal law of a person is not determined by his domicile or his nationality but by his membership of the community to which he belongs. Study of Family Law is Unique. It is not like the rest of the civil laws. It lacks uniformity in application. It covers an enormous area of domestic relations such as marriage, matrimonial remedies, legitimacy of children, custody, guardianship, adoption, intestate and testamentary succession etc. so because of compulsion the sheer bulk of Family Law is divided into two as family Law-I and Family Law – II. Family Law-II deals with laws relating to Hindu Joint family, devolution of ancestral or coparcenary property, succession to separate property of a Hindu and the Muslim law relating to gifts, wills and inheritance.

## **Importance:**

The rules relating to marriage, matrimonial remedies, legitimacy of children, custody, guardianship, adoption is of immense importance as it involves the sensitive relationship between individuals in the society. In India persons belonging to different religious communities live together and each community have their own personal law. Therefore the courts enforce different personal laws for different individuals depending on the religion to which he belong. The Hindus are governed by the Hindu Law. The Muslims are governed by Muslim Personal law. The other religious communities have their own Personal Law. Personal law of one religious community cannot be applied to persons belonging to another religious community.

## **Objective:**

The course is designed to analyze the presence of different personal laws for different community to and to discuss in detail the personal laws of Hindus and Muslims.

The objective of the paper is to apprise the students with the laws relating to marriage, dissolution, matrimonial remedies, adoption, contemporary trends in family institutions in India, in particular the Hindus and Muslims Law.

## Family Law- I

The course shall comprise of the following:

**Module 1.** Origin, Schools and Sources of Hindu law 08 Hours

- Historical Development of Hindu law
- Schools of Hindu law
  - Mitakshara School of law
  - Dayabhaga School of law
- Ancient sources – Shruti, Smriti, Custom, Commentaries, etc.
- Modern sources – Legislations, Precedents, Justice, equity and good conscience, etc.

**Module 2.** Marriage and Matrimonial Relief (w.r.t. Hindu Marriage Act, 1955.) 12 Hours

- Essentials of a Valid Marriage, Void and Voidable Marriage.
- Concept and Grounds of Various Matrimonial Reliefs viz.
  - Restitution of Conjugal Rights
  - Judicial Separation
  - Nullity of Marriage
  - Divorce
- Legitimacy - Legal Status of Children Born of Void and Voidable Marriage

**Module 3.** Adoption and Law of Maintenance 08 Hours

- Origin and object of adoption
- Customary adoption
- Changes introduced by the Hindu Adoptions and Maintenance Act, 1956
- Requisites of a valid Adoption
- Law of Maintenance w.r.t. Hindu Adoptions and Maintenance Act, 1956 and Criminal Procedure Code

**Module 4.** Hindu Minority and Guardianship Act, 1956. 06 Hours

- Who is Minor?
- Natural Guardian, Testamentary guardian of Minor and their powers.

**Module 5.** Origin, Sources and Schools of Muslim law 08 Hours

- Historical Development of Muslim Law
- Schools of Muslim Law
  - Sunni School of Law
  - Shia School of Law
- Ancient sources- Sunnah, Hadith, Quran, Ijma, Qiyas, etc.
- Modern sources- Legislations, precedents, etc.

## **Module 6. Muslim Marriage, Dissolution of Marriage under Muslim Law, Dower/Mahr**

11 Hours

- Definition, Nature, Capacity, Classification and Legal Effect of Marriage.
- Dissolution of Muslim Marriage Act, 1939.
- Dissolution of Marriage under Muslim Law - (Divorce) Talaq, Ila, Khula, Mubarrat, Talaq-eTafweed, Lian, Faskh etc.
- Dower/Mahr –
  - Concept of Dower
  - Kinds of Dower - Unspecified Dower, Specified Dower
  - Remission of Dower
  - Enforcement of Right to Dower

## **Module 7. Maintenance and Acknowledgement of Paternity 07 Hours**

- Maintenance of Wives with Special Reference to Section 125 Cr. P.C.
- ShahBanu Case and the Ensuing Legislation.
- Acknowledgement of Paternity –
  1. Legitimacy
  2. Acknowledgement of Paternity

### **Suggested References:**

- Paras Diwan, Modern Hindu Law, Allahabad Law Agency publication.
- Mulla, Principles of Hindu Law, Lexis Nexis publication.
- Paras Diwan – Family Law, Allahabad Law Agency publication.
- Mulla, Principles of Mohammadan Law, Lexis Nexis publication
- Acts –
  1. Hindu Marriage Act, 1955
  2. Hindu Adoption and Maintenance Act, 1956
  3. Hindu Minority and Guardianship Act, 1956
  4. Dissolution of Muslim Marriage Act, 1939
- Relevant Landmark Cases