



NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM

PROGRAMME : B.A., LL. B. (HONS.) FYIC

DETAILS OF THE COURSE OFFERED

SEMESTER: EVEN SEMESTER (IV)- ACADEMIC YEAR:.....

SL. NO	COURSE CODE	COURSE TITLE	L	T	CR	CH
1	BL404	FAMILY LAW- I	4	1	4	

- A. CODE AND TITLE OF THE COURSE: BL404, FAMILY LAW-I**
- B. COURSE CREDIT: 04 (TOTAL MARKS- 200)**
- C. MEDIUM OF INSTRUCTION: ENGLISH**
- D. COURSE COMPILED BY: DR. THANGZAKHUP TOMBING**
- E. COURSE INSTRUCTOR: DR. THANGZAKHUP TOMBING**

1. DETAILS OF THE COURSE OFFERED

Course on Family Law was imparted as one of the major law paper from the time since formal legal education was first introduced in India in 1857. Study of Family Law Course in India requires exposure and acceptance of the plurality and diversity of personal laws, with each personal law adhering to its own specific religious tenets. The framers of our constitution had envisioned a Uniform Civil Code vide Article 44 of the Constitution, however, parties to matrimonial disputes continue to be governed in accordance with personal laws they subscribe to, be it Hindu, Muslim, Christian or Parsi etc. in matters pertaining to marriage, divorce, maintenance, adoption, guardianship, succession and inheritance. Thus, students are motivated to study historical and contemporary aspects of personal laws to inculcate in them a fine balance of social and professional objectiveness and deep secular fervour for religion as prescribed within the framework of the Constitution.

Family being the cornerstone of the society of a healthy society it pertinent that students are engaged in academic discourse on the importance and value of family. It also attempted that there is meaningful discussion on the changes in the nature of family like the concept of mutual co-habitation, same sex marriage, inter marriage and other emerging trends in domestic and international family law.

2. OBJECTIVE OF THE STUDY

It is envisaged that through the course the students shall get an opportunity to study in depth the intricacies of personal laws which govern all the religions that are thriving in India, so that they developed a sense of fraternity, brotherhood and religious tolerance among themselves and towards the nation in general. Thus, the course objectives in a more concise form are as follows:

1. To familiarise students with the diversity and plurality of personal laws within the constitutional framework.
2. To examine and identify emerging trends in the study of national and international family law.

3. To explore and study the historical evolution of sources of law of personal laws and its jurisprudence, ancient as well as contemporary.
4. To identify and get acquainted with current controversial family issues, also articulate on gender sensitive issues in matters pertaining to marriage and matrimonial cases.

3. COURSE LEARNING OUTCOME

1. On completion of the Course it is expected that students would have learnt the intricacies of study of personal laws in India.
2. It is also expected that students would learnt contemporary world view on emerging trends in family law which shall enable them to foray into family law related litigations and adjudications in the courts of law and also in the field of academia as a researcher.
3. The course is expected to help the learners and prospective young lawyers to become socially relevant and professionally sound family law researchers and lawyers.

4. DETAILED STRUCTURE OF THE COURSE (SPECIFYING COURSE MODULES; REFERENCE MATERIALS AND SUGGESTED/COMPULSORY READING)

MODULE I

Emerging Trends in Family Law

The concept and nature of family; types of family, significance and importance of family; family as a cornerstone of society, economics of family.

Marriage; forms of marriage; pre- nuptial agreement, forced marriage; same sex marriage; transsexual marriage; relationship in the nature of marriage and live-in –relationship (civil partners), debate of legitimacy of marriage in- fact and in- law, and inheritance of property attached with marriage, emerging trends assisted reproductive technology, DNA identification of parent; law and legal issues and challenges in surrogacy law in India and abroad.

The Nature, Origin and Source of Law

Nature, Origin, Source and application of Hindu, Muslim, Christian and Parsi Personal laws and Civil laws in India.

Hindu Law- Vedas, dharmasastras (*smritis*), dharmasutras (*shrutis*), commentaries and digest, customs, judicial precedents and legislations.

Mahomedan law- Quran, hadis ijma and qiyas, and legislation.

Law Commission Report

- ❖ 228 Report (2009) on “Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and obligations of Parties to a Surrogacy”.

Statutory Reference

The Special Marriage Act 1954 3)	(Act No. 43 of 1954) (Section 1-
The Hindu Marriage Act 1955 4)	(Act No. 25 of 1955) (Section 1-
The Indian Christian Marriage Act 1872 3)	(Act No. 15 of 1872) (Section 1-
The Parsi Marriage and Divorce Act 1936	(Act No. 3 of 1936) (Section 1-
3) The Muslim Personal Law (Shariat) Application Act 1937	(Act No. 26 of 1937)

Judicial Reference

Independent Thought v. Union of India	Writ Pet. (Civil) No. 382, SC
2017 Mr. X v. Hospital Z	AIR 1999 SC 495
Baby Manzi Yamada v. Union of India	AIR
Indra Sarma v. V.K.V. Sarma	AIR 2014 SC 309
Lata Singh v. State of Uttar Pradesh	AIR 2006 SC 664
Abraham v. Abraham	(1863) 9 MLA 195
Corbett v. Corbett (otherwise Ashley)	[1953] 2 All ER
69 Shastri Yagnapurudasji v. Muldas Bhundardas Vaishya	AIR 1966 SC
1119 State of Bombay v. Narasu Appa Mali	AIR 1952 Bom

84 Compulsory Readings

- ✓ Nigel Lowe and Gillian Douglas, Bromley’s Family Law, 10th ed. – pp. 1- 35; 36-105
- ✓ Barbara Stark, International Family Law: An Introduction, pp 13- 29; 31- 51
- ✓ Kusum’s , *Family Law- I*, 3rd ed. 2011, pp. 3-5
- ✓ Vijender Kumar (rev.) J.D. Mayne, Hindu Law & Usage, 17th ed. pp. 1- 97
- ✓ Satyajeet A. Desai (rev.), D.F. Mulla, Hindu Law 21st ed. 2010, pp. 1- 108
- ✓ Fayzee, A.A.A., *Outlines of Muhammedan Law*, Introduction

MODULE II

Marriage

Hindu marriage as a samskara/ contract; guardianship in marriage, sapindas and degree of prohibited relationship in marriage, marriage ceremonies- *saptapadi*; *factum valet*;

presumption of marriage; and valid, void, voidable marriage under Hindu Law; registration of marriage under Hindu law.

Muslim marriage (*Nikah*) as a contract- *muamlat* or religious- *ibadat*; *Shia* and *Sunni* schools approach to the essentials of Muslim marriage; prohibition of marriage on grounds of consanguinity, affinity and fosterage; effects of valid, irregular and void marriage; presumption of marriage- *muta* marriage and marriage of minors- guardianship in marriage; Muslim women and the socio- economic relevance of the concepts of *mahr* and *iddat*.

Essentials of valid marriage under Christian and Parsi personal laws.

Law Commission Report

- ❖ 211 Report (2008) on “Laws on Registration of Marriage and Divorce: A proposal for Consolidation and Reform”.
- ❖ 242 Report (2012) on “Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework”.

Statutory References

The Special Marriage Act 1954 (Act No. 43 of 1954)

The Child Marriage Restraint Act 1929 (Act No. 19 of

1929) The Prohibition of Child Marriage Act 1929 (Act No. 6 of

2007) The Hindu Marriage Act 1955 (Act No. 25 of 1955)

The Indian Christian Marriage Act 1872 (Act No. 15 of 1872)

The Parsi Marriage and Divorce Act 1936 (Act No. 3 of

1936) The Muslim Personal Law (Shariat) Application Act 1937 (Act No. 26

of 1937 Judicial Reference

Independent Thought v. Union of India 2017 Writ Pet. (Civil) No. 382, SC

S. Nagalingam v. Sivagami (2001) 7 SCC 487

A.N. Mukerji v. State AIR 1969 All 489

P. Venkataramana v. State AIR 1978 AP 193

V. Mallikaarjunaih v. H.C. Gowramma AIR 1997 Kant 77

Ravi Kumar v. State (2005) 1 DLT 124

Gullipilli Sowria Raj v. Bandaru Pavani AIR 2009 SC 1085

T. Perumal v. R. Nesammal AIR 2004 Mad 37

Seema v. Ashwani Kumar AIR 2006 SC 1158

Surjit Kaur v. Garja Singh	AIR 1994 SC 135
Fuzlunbi v. Khader Vali	AIR 1980 SC 1730
Chand Patel v. Bismillah Begum	AIR 2008 SC 1915

Compulsory Readings

- ✓ Vijender Kumar (rev.) J.D. Mayne, Hindu Law & Usage, 17th ed. pp. 184- 208
- ✓ Mulla, Principles of Mohammedan Law, 1972, pp. 261- 267.
- ✓ Kusum's , *Family Law- I*, 3rd ed. 2011, pp. 3- 19
- ✓ Iqbal Ali Khan (rev.), D.F. Mulla, Principles of Mahomedan Law, 20th ed. 2013, pp. 221- 236; 371- 388.

MODULE III

Matrimonial Remedies

Bigamy; nullity of marriage; matrimonial home; weekend marriage; restitution of conjugal rights; judicial separation.

Divorce: from past faults to future need; theories of divorce- Guilt theory to no fault theory; causes of divorce; grounds of divorce- adultery, cruelty, desertion, conversion, fraud, bigamy, impotency, option of puberty; special grounds of divorce for women; mutual consent; irretrievable breakdown theory.

Customary divorce under Hindu, Christian and Parsi personal laws and civil law.

Divorce under Muslim Law: *talaq*- forms of *talaq- talaq-ul-sunnat, talaq hasan, talaq-ul-biddat, ilya, zihar, talaq-e-tafwiz, khula, mubarat*; socio- economic implications of *talaq*- as unilateral right of the husband; as delegated right to wife as well as *talaq* on mutual consent.

Use of ADR mechanism in matrimonial disputes; the family Courts; Lok Adalat; Mahila Adalats etc.

Law Commission Report

- ❖ 217 Report (2009) on “Irretrievable Breakdown of Marriage: Another Ground of Divorce”.

Statutory References

The Special Marriage Act 1954	(Act No. 43 of
1954) The Converts' Marriage Dissolution Act 1866	(Act No. 19 of
1929) The Hindu Marriage Act 1955	(Act No. 25 of
1955)	
The Indian Divorce Act 1872	(Act No. 15 of
1872) The Divorce Act 1869 (Amendment Act of 2001)	(Act No. 51 of

200) The Parsi Marriage and Divorce Act 1936	(Act No. 3 of
1936) The Dissolution of Muslim Marriage Act 1939	(Act No. 26 of
1937) The Indian Evidence Act 1972	(Act No. 1 of
1872)	
The Indian Penal Code 1860	(Act No. 45 of 1860)
The Family Courts Act 1984	(Act No. 66 of
1984) The Code of Civil Procedure 1908 (Amendment of 2002)	(Act No. 5 of
1908)	
The Legal Services Authority Act 1987 (1994 & 2004)	(Act No. 39 of
1987) The Arbitration and Conciliation Act 1996	(Act No. 26 of
1996) Judicial References	
Shayara Bano v. Union of India	Writ Pet. (C), SC 2017
Naveen Kohli v. Neeelu Kohli	AIR 2006 SC 1675
Poonam v. Sumit Tanwar	AIR 2010 SC 1384
Hitesh Bhatnagar v. Deepa Bhatnagar	AIR 2011 SC 1637
Srinivas Rao v. D.A. Deepa	AIR 2013 SC
2176 Bhaurao Shankar Lokhande v. State of Maharashtra	AIR 1965 SC
1564 Lily Thomas v. UOI	AIR 2000 SC
1650	
Swaraj Garg v. K.M. Garg	AIR 1978 Del 296
Harvinder Kaur v. Harmander Singh	AIR 1984 Del 67
T. Sareetha v. Venkatasubbarah	AIR 1983 AP 356
Saroj Rani v. Sudarshan Kumar	AIR 1984 SC1562
Changamunga v. Liapuri	AIR 1988 Gau 53
Amita v. A.K. Rathore	(2000) 1 HLR 588 (MP)
Tirath Kaur v. Kirpal Singh	AIR 1975 PLR 572
Dastane v. Dastane	AIR 1975 SC 1535
Samar Ghose v. Jaya Ghose	2007 (3) SCJ 253
Bhagwat v. Bhagwat	AIR 1967 Bom 80
Bipinchandra v. Prabhavati	AIR 1957 SC 176
Ashok Hurra v. Rupa	AIR 1997 SC 1266

Compulsory Readings

- ✓ Vijender Kumar (rev.) J.D. Mayne, Hindu Law & Usage, 17th ed. pp. 208- 411; 411- 572.
- ✓ Kusum's , *Family Law- I*, 3rd ed. 2011, Introduction, pp. 23- 46; 49- 196.
- ✓ Iqbal Ali Khan (rev.), D.F. Mulla, Principles of Mahomedan Law, 20th ed. 2013, pp. 329- 370; 389- 419.
- ✓ Nigel Lowe and Gillian Douglas, Bromley's Family Law, 10th ed. – pp. 262- 304; 36- 105

MODULE IV**Maintenance**

Evolution of maintenance as Constitutional and Universal right, maintenance *pendent lite* and expenses of proceedings, maintenance of wife/ husband, children on divorce under Hindu, Muslim, Christian, Parsi personal laws, permanent alimony and maintenance; jurisprudence of maintenance mandated under CrPC and Civil laws.

Custody, Minority and Guardianship

Custody, custodian, minor and the court of law, doctrine of welfare of child, wishes of child and best interest of the child.

Guardianship and the law, natural guardian, testamentary guardian, de facto guardian, doctrine of tender age of the child or *Hizanat*, legal incidents of guardian's appointment, power and removal under personal laws and civil law.

Adoption

Right to adoption as universal right of child, evolution of the concept of adoption from personal laws to rights based jurisprudence, legal incidents of adoption- effects of adoption. Concept of adoption under the personal laws of Hindu, Muslim, Christian and Parsi; adoption under civil law.

Law Commission Report

- ❖ 252 Report (2015) on "Right of Hindu wife to maintenance" a relook at Section 18 of the Hindu Adoption and Maintenance Act 1956.
- ❖ 218 Report (2009) on "Need to accede to the Hague Convention on the Civil aspects of International child abduction".

Statutory Reference

The Special Marriage Act 1954	(Act No. 43 of 1954)
The Guardians and Wards Act 1890	(Act. No. 3 of 1890)
The Hindu Marriage Act 1955	(Act No. 25 of
1955) The Hindu Minority and Guardianship Act 1956	(Act No. 32 of
1956) The Hindu Adoption and Maintenance Act 1956	(Act No. 78 of

1956) The Indian Divorce Act 1872	(Act No. 15 of
1872) The Divorce Act 1869 (Amendment Act of 2001)	(Act No. 51 of
200) The Parsi Marriage and Divorce Act 1936	(Act No. 3 of
1936)	
The Muslim Women (Protection of Rights on Divorce) Act 1986	(Act No. 25 of 1986)
Juvenile Justice (Care and protection of Children) Act 2015	(Act No.2 of 2016)
Code of Criminal Procedure 1973	(Act No. 2 of 1974)
The Indian Evidence Act 1972	(Act No. 1 of 1872)
The Indian Penal Code 1860	(Act No. 45 of 1860)
The Family Courts Act 1984	(Act No. 66 of
1984) The Code of Civil Procedure 1908 (Amendment of 2002)	(Act No. 5 of
1908) Judicial Reference	
Shabnam Hashmi v. UOI	AIR 2014 SC
1281 Mohammed Ahmed Khan v. Shah Bano Begam	AIR 1985 SC 945
Noor Saba Khatoon v. Mohd. Qasim	AIR 1997 SC
3280	
Rameshwari Devi v. State of Bihar	AIR 2000 SC 735
Daniel Latifi v. UOI	AIR 2001 SC 3262
Savitaben v. State Gujarat	AIR 2005 SC 1809
Badshah v. Urmila Badshah Godse	AIR 2014 SC 869
Mohammed Amin v. Vakil Ahmad	AIR 1952 SC 358
Gita Hariharan v. RBI	AIR 1999 SC 1149
Vikram Vir Vohra v. Sahlini Bhalla	AIR 2010 SC 1675
Sawan Ram v. Kalawanti	AIR 1967 SC 1761
Sitabai v. Ramachandra	AIR 1970 SC 343
Khazan Singh v. UOI	AIR 1980 Del 60
Philips Alfred v. Y.J. Gonsalvis	AIR 1999 Ker 187
Brijendra v. State of MP	AIR 2008 SC 1058
Chandan Bilasini v. Aftabuddin Khan	AIR 1996 SC 591

Cumpolsory Readings

- ✓ Vijender Kumar (rev.) J.D. Mayne, *Hindu Law & Usage*, 17th ed. pp. 1432-1457; 1465- 1510; 731- 752; 573- 669; 680- 730.
- ✓ Kusum's , *Family Law- I*, 3rd ed. 2011, Introduction, pp. 23- 46; 49- 196.
- ✓ Iqbal Ali Khan (rev.), D.F. Mulla, *Principles of Mahomedan Law*, 20th ed. 2013, pp. 431- 453.
- ✓ Satyajeet A. Desai (rev.), D.F. Mulla, *Hindu Law*, 21st ed. 2010 pp. 1325- 1352; 1239- 1273; 657- 716.
- ✓ Barbara Stark, *International Family Law: An Introduction*, pp. 53- 73.
- ✓ Nigel Lowe and Gillian Douglas, *Bromley's Family Law*, 10th ed. – pp. 450-479; 480- 510.

5. PRESCRIBED READINGS

- ✓ A. Desai, Satyajeet (rev.), D.F. Mulla, *Hindu Law*, Twenty First Edition, Lexis Nexis India, 2011.
- ✓ Agnes, Flavia, *Family Law and Constitutional Claims*, Volume I, Oxford University Press, New Delhi, 2011.
- ✓ Agnes, Flavia, **Marriage, Divorce, and Matrimonial Litigation**, Oxford University Press, New Delhi, 2011.
- ✓ Ahmad, Aqil, *A Text Book of Mohammadan Law*, Twenty Third Edition, Central Law Agency, Lucknow, 2011.
- ✓ Davies, Donald R., *The Spirit of Hindu Law*, Cambridge University Press India Private Limited, New Delhi, 2010.
- ✓ Derret, J. Duncon M., *Introduction of Modern Hindu Law*, Oxford University Press, Oxford, 1963.
- ✓ Desai, Kumud, *Family Law in India*, Wadhawa Publication, Nagpur, 2006.
- ✓ Diwan, Paras, *Family Law: Hindu, Muslim, Christian, Parsis and Jews*, Allahabad Law Agency, Allahabad, 2010.
- ✓ Diwan, Paras, *Hindu Law*, Universal Law Publishers, Delhi, 2011.
- ✓ Eekelaar, John, *Family Law and Personal Life*, Oxford University Press, New York, 2009.
- ✓ Fayzee, A.A.A., *Outlines of Muhammedan Law*, Fifth Edition, Oxford University Press, New York, 2009.
- ✓ Freeman, Michael, *Understanding Family Law*, First Edition, Sweet Maxwell Limited, London, 2007.
- ✓ Gour, H.S., *The Hindu Code*, Law Publishers Private Limited, Allahabad, 1994.
- ✓ Khan, M.M., *Islamic Law and Society*, Discovery Publishing House Private Limited, New Delhi- 2011.

- ✓ Kesari, U.P.D., *Modern Hindu Law*, Central Law Publications, Allahabad, 2011.
- ✓ Kumar, Vijender (rev.) J.D. Mayne, *Hindu Law & Usage*, Seventeenth Edition, Bharat Law House, 2014.
- ✓ Kusum, *family law lectures- I*, Lexis Nexis Butterworths, New Delhi, 2006.
- ✓ Lowe, Nigel and Gillian Douglas, *Bromley's Family Law*, Tenth Edition, Oxford University Press, Oxford, 2007.
- ✓ Mahmood, Tahir, *The Muslim Law of India*, Lexis Nexis Butterworths, India, 2002.
- ✓ Mahmood, Tahir, *Introduction to Muslim Law*, Universal Law Publishers, Delhi, 2011.
- ✓ Masson, Judith, Rebecca Bailey Harris and Rebecca Probert, *Cretney Principle of Family Law*, Eight Edition, Sweet and Maxwell Limited, London, 2008.
- ✓ Menski, Wener F., *Hindu Law: Beyond Tradition and Modernity*, Oxford University Press India , New Delhi, 2008.
- ✓ Narayana, PS, *Hindu Law*, First Edition, Asia Law House, Hyderabad, 2011.
- ✓ Nazmi, Mohammed, *Mohammedan Law*, Second Edition, Central Law Publications, Allahabad, 2008
- ✓ Padmaja, K., *The Law of Marriage*, IFCAI University Press, India, 2007.
- ✓ Srinivasan, MN, *Commentary on Hindu Law*, Fifth edition, Delhi Law House, Delhi, 2011.
- ✓ Stark Barbara, *International Family Law: An Introduction*, Ashgate Publishing Limited, England, 2005