



NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM

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

DETAILS OF COURSE OFFERED

EVEN SEMESTER(IV) – ACADEMIC YEAR :

SL. NO	COURSE CODE	COURSE TITLE	L	T	P	CR	CH
1	404	FAMILY LAW- I	4 PER WEEK	1 PER WEEK		4	

A. CODE AND TITLE OF THE COURSE: 404, FAMILY LAW- I

B. COURSE CREDIT: 04 (TOTAL MARKS- 200)

C. MEDIUM OF INSTRUCTION: ENGLISH

D. COURSE COMPILED BY: THANGZAKHUP TOMBING

E. COURSE INSTRUCTOR: THANGZAKHUP TOMBING

1. COURSE OBJECTIVES

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, except for the state of Goa, personal laws of Hindu, Muslim, Christian, Parsi etc. governs in dispute pertaining 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 is the cornerstone of the society, as it is a proven fact that healthy family breeds healthy nation. A nation where the rate of divorce is high has higher rate of crime, substance abuse, teenage pregnancy, school drop outs and destitution of woman, child and aged people. The objective of this course is to firstly teach the students the importance and value of family. 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.

It is also envisaged that through the course the students shall get an opportunity to study in depth the intricacies of personal law 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:

- ❖ To familiarise students with the diversity and plurality of personal laws within the constitutional framework.
- ❖ To examine and identify emerging trends in the study of national and international family law.
- ❖ To explore and study the historical evolution of sources of law of personal laws and its jurisprudence, ancient as well as contemporary.

- ❖ To study, analyse and interpret sacred sources of law and legislative enactments of law on the basis of sound judicial pronouncement with a fervour for qualitative research.
- ❖ To identify and get acquainted with current controversial family issues, also articulate on gender sensitive issues in matters pertaining to marriage and matrimonial cases.
- ❖ To invigorate learners and prospective young lawyers to be socially relevant and professionally sound family law researchers and lawyers.

2. TEACHING METHODOLOGY

National Law University and Judicial Academy, Assam (NLUJAA) framed its own teaching methodology to train the students in learning and understanding of socio- legal problems. The methodology of teaching is participatory teaching with discussion on socio- legal principles and precedents in the classroom. The students are informed in advance the topic for discussion and the topic of project/ assignments so as to encourage them to undertake independent research. The project/ assignments are in coordinated to enhance class room teaching. Thus students are required to present their projects/ assignments through participatory dialogues between students and teachers to summarise and clarify doubts.

3. COURSE OUTCOMES

- On completion of the Course it is expected that students would have learnt the intricacies of study of personal laws in India
- 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.

4. COURSE EVALUATION METHOD

The Course shall be assessed for 200 marks. The Evaluation Scheme would be as follows:

Internal Assessment: 70% (140 marks)

Semester End Examination: 30% (60 marks)

Sl. No.	Internal Assessment	
1.	Assignments (written or in presentation mode)(2 Assignments of 20 marks each)	40 marks
2.	Seminar/Group Discussion(Topics will be announced by concerned course teacher)	20 marks
3.	Class Tests(Twice in a semester)	2x 35 = 70 marks
4.	Attendance in class	10 marks
5	Semester End Examination	60 marks

5. 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	(Act No. 43 of 1954) (Section 1- 3)
The Hindu Marriage Act 1955	(Act No. 25 of 1955) (Section 1- 4)
The Indian Christian Marriage Act 1872	(Act No. 15 of 1872) (Section 1- 3)
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 Frame Work”.

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

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 SC 1562
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
V. Bhagat v. D. Bhagat	AIR 1994 SC 710

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 Khatoun 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.

6. 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.