

FAMILY LAW- INAGURAL ADDRESS

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Introduction

- Importance of Family law in the contemporary world
- Subjects of Family law
- Emerging areas of Family Law
- Existing family legislations
- Conflicting areas of Family Law
- Working of family courts
- Family dispute resolution mechanisms

Introduction- Social change

- Change is the law of the nature
- Structural, functional, doctrinal, jurisprudential and normative changes in every branch of science
- Influence of western ideology, individualism, equality, freewill, free life etc

SOCIAL CHANGE- PARADIGM SHIFT

- **SOCIAL CHANGE:**

Sanskritization, Modernization, Westernization, Urbanization, Industrialization, Liberalization, Privatization, Globalization, Computerization

- **CHANGING STATUS OF MOTHER**

Biological Mother, Step Mother, Adoptive Mother, Spiritual Mother, Surrogate Mother

- **MARTIAL STATUS**

Sagotra Marriage, Bhinnagotra Marriage, Inter-caste Marriage, Inter-denominational Marriage, Inter-religious Marriage, Inter-state Marriage, NRI Marriage, Online Marriage Agreement, Live In relationship, Same sex marriage, Polygamy, Polyandry, monogamy, hypergamy, hypogamy, surrogate, arranged and love marriages, defacto marriages/Common Law marriages

SOCIAL CHANGE- PARADIGM SHIFT

Reproductive and sexual rights:

- Right to health
- Right of spouses
- Assisted reproductive technology
- Socio legal implications of surrogacy
- Health risk
- Human rights issues
- Care and custody of children
- Identity of biological parents
- Passport and visa issues

SOCIAL CHANGE- PARADIGM SHIFT

Violence in homes and impact on family relations:

- Assault, physical, psychological and sexual abuse, kidnapping, coercion, verbal abuse, destruction of property, sexual violence, marital rape, dowry related issues etc
- **Child care and protection:** Arrangement for children, child support, best interest of the child.
- **Property relationship:**
No estate, Limited estate, Absolute estate, Father's estate and Real estate

Major identified Family Problems

- Divorce – Dissolution of Marriage – Dowry – Domestic Violence – Child Marriage – Custody of Children – Extra-Marital Relations – Problems of Non-Resident Indian Marriages – Online Marriage Agreements – Intra-Country Marriages – Inter-Country Adoptions – Surrogate Motherhood – Guardianship – Maternity and Paternity

CAUSATIVE FACTORS OF FAMILY DISPTES

- Ego – Hate – Violence – Incompatibility
- Social and Economic Factors – Caste Denominations, Religion, Low Income, High Income, No Income
- Education – No Education, High Education, Lack of meaningful Education
- Influence of Peer Groups and Family Members
- Psychological Factors and Physical Factors
- Male Chauvinism and Radical Feminism
- Personality Traits – Education, Beauty, Activeness, Over activeness
- Employment – Late working hours, Shift duties, working in different places

HINDU LAW

Uncodified

- Hindu Joint Family

Codified

- Hindu Marriage Act, 1955
- Hindu Minority & Guardianship Act, 1956
- Hindu Adoptions & Maintenance Act, 1956
- Hindu Succession Act, 1956

MUSLIM LAW

Uncodified

- Shariat law

Codified

- Shariat(Application) Act, 1937
- Dissolution of Muslim Marriage Act, 1939
- Wakf Act, 1954(as amended in 1995)
- Muslim Women (Protection of Rights on Divorce) Act, 1986

CHRISTIAN LAW

Codified

- Christian Marriage Act, 1872
- Indian Divorce Act, 1869(as amended in 2002)
- Indian Succession Act, 1925

PARSI LAW

Codified

- Parsi Marriage and Divorce Act, 1936
- Indian Succession Act, 1925

JEWISH LAW

- Uncodified Law
- Customary law

OTHERS & MISCELLANEOUS

- Customary Law
- Special Marriage Act, 1954
- Foreign Marriage Act, 1969
- Family Courts Act, 1984
- Dowry Prohibition Act, 1961
- The Protection of Women From Domestic Violence Act, 2005

UNIFICATION OF FAMILY LAW WITHIN THE RELIGION

- Shastric Law to Statutory Law
- Polygamy to Monogamy(in all schools of Mitakshara Hindu Law)
- Application of Shariat to all sections of Muslims in India

MARRIAGE LOSES ITS SACROSANCTITY AND GAINS CONTRACTUAL FLAVOUR

By Introduction of

- Fault Theory
- Breakdown Theory
- Consent Theory

under the Marriage Laws Amendment Act, 1976

HINDU ADOPTION LOSES ITS RELIGIOUS SIGNIFICANCE AND IS RECOGNISED AS A SECULAR INSTITUTION

- Adoption serves both spiritual & secular purpose
- Daughter can be adopted
- Hindu Female can also adopt

Mother's Right of Guardianship during the lifetime of the Father is Recognized

- *Geetha Harihran vs. Reserve Bank of India*
(AIR 1999 SC 1149)
- Section 6 of the Hindu Minority and Guardianship Act, 1956 - the word 'after' should be interpreted broadly in sequential order
- Welfare of the child is the paramount consideration

Christian Law of Divorce Rationalized

- Old Section 10 replaced by new Section 10
- Fault Theory, Breakdown Theory & Consent Theory are adopted to provide equality for both men and women in case of divorce.

Registration of Marriage made compulsory

- Hindu Marriage- Registration is not compulsory
- Muslim Marriage- Registration is optional
- Christian Marriage- Registration is compulsory
- Foreign Marriage- Registration of Marriage is compulsory
- Andhra Pradesh Compulsory Registration of Marriages Act, 2002 (25-10-2002)

- *Seema vs. Aswani Kumar*
(AIR 2006 SC 1158)
- The Supreme Court directs the States and Union Territories to enact legislation for compulsory registration of marriages of all religions
- Compulsory registration of marriages to fulfill the following objectives

- Child marriages can be prevented
- Bigamous marriages can be prevented
- Proof of the *factum* of marriage is available
- Inter-country marriages and divorces can be regulated
- Interest of the children is protected

ADR Methods for Resolution of Family Disputes

- Section 23(2) of Hindu Marriage Act, 1956
- Section 34(2) of Special Marriage Act, 1954
- The Family Courts Act, 1984
- Legal Services Authority Act, 1987
- Arbitration and Conciliation Act, 1996
- Section 89 of Civil Procedure Code
- *Salem Advocates Bar Association vs. Union of India*, (2003 (1) SCC 49)

Protection of Women from Domestic Violence

- Protection of Women against Domestic Violence Act, 2005
- Right to life in domestic matters
- Right to reside in shared house
- Right to Legal Aid
- Right to Shelter
- Right to in camera proceedings
- The significant role of Magistrates, Protection Officers and NGO's

Hindu Succession (Amendment) Act 2005

- Definition of the coparcenaries under *Mitakshara* Law has changed
- Concept of *Mitakshara* coparcenary has been diluted
- Daughter is given equal rights & duties in coparcenary property
- Son's pious obligation has been removed
- The concept of dwelling house has been abolished

replaced by

Child Marriage Prohibition Act, 2006(10-01-2007)

- Marriage is voidable according to Sec. 3
- Marriage is void according to Sec. 12

CHECK LIST FOR CONCILIATORS/FAMILY COUNSELLORS

- Commitment for protection of the institution of Family
- Maturity to understand the problems of others
- Patience to listen to the parties
- Maintenance of confidentiality
- Unbiased, open mind
- Control of one's own emotions
- Special training in Sociology, Psychology and Family Law
- Persuasive ability to solve the problem