

Class 12 Legal Studies

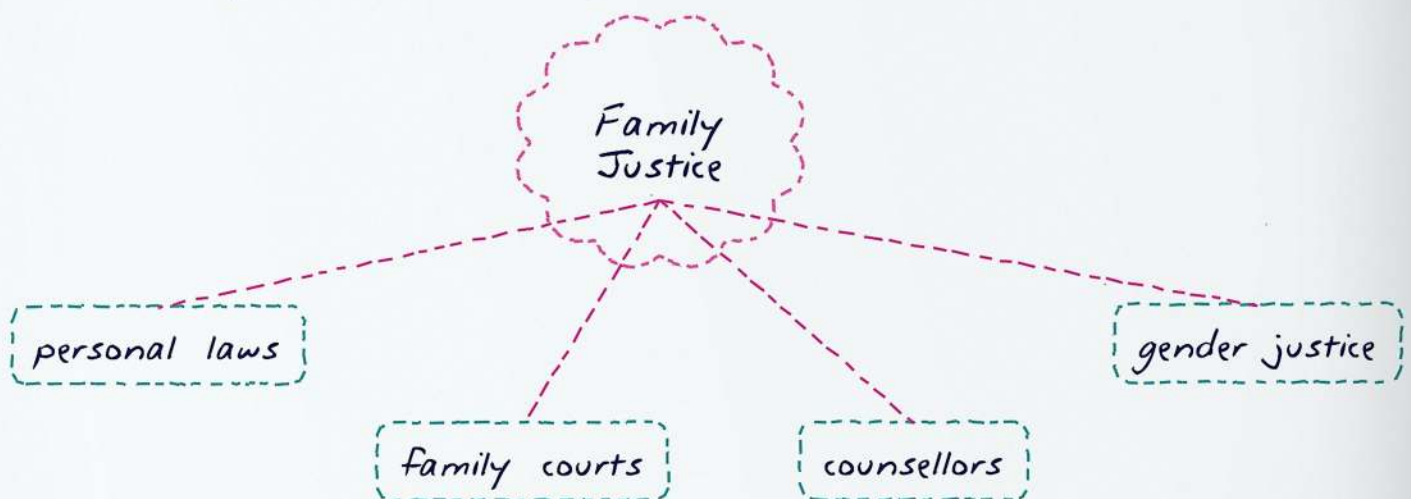
Family Justice System

CHAPTER SNAPSHOT

This chapter studies family law, family courts, counsellors, marriage and divorce. It asks how personal laws can work with equality and gender justice.

Big idea :-

Family justice is not only about private disputes. It also protects dignity, safety, equality and fair access to courts.



Revise in this order :

- nature and history of family laws
- gender perspective in personal laws
- Family Courts Act and counsellors
- marriage, void marriage and divorce
- Revision cue : Learning outcome : family law framework

NATURE OF FAMILY LAWS

Meaning :-

Family laws deal with marriage, dowry, divorce, guardianship, adoption, maintenance, gifts, wills, inheritance and succession.

Personal law link :-

In India, religion and family laws are closely linked. Different communities follow different personal laws for family matters.

Main examples :

- Hindus, Sikhs, Jains, Buddhists : Hindu law
- Muslims follow Sharia based personal law
- Christians and Parsis : separate marriage laws
- some tribal groups follow customary laws

Exam line :-

Family laws in India are not uniform like criminal law or general civil law.

- Revision cue : NCERT source : nature of family laws

ANCIENT PERIOD

Source of law :-

Ancient Indian family rules were mainly based on Dharmashastras and Dharmasutras. These were Sanskrit texts on religious and legal duties.

What they covered :-

They gave rules for the life of an ideal householder. They mixed religion, law, ethics and social duties.

Write these points :

- religious texts guided legal duties
- family conduct was linked with dharma
- rules were not fully separate from morality
- household life was a major focus

Memory line :-

Ancient family law grew from religious duty and social order.

- Revision cue : NCERT source : ancient period

MEDIEVAL PERIOD

Hindu law schools :-

Medieval Hindu law used smriti literature, Dharmashastra and later digests. Two main schools became important.

Two schools :

- Mitakshara : North and South India
- Dayabhaga : followed in the Bengal region

Muslim personal law :-

Muslims followed Shariat. It was based on the Quran and did not sharply separate law, morals and customs.

Mughal period point :-

Hindus and Muslims largely followed their own local customs and personal laws in family matters.

- Revision cue : NCERT source : medieval period

BRITISH INDIA

Warren Hastings plan :-

In 1772, Warren Hastings introduced uniform criminal law. But personal law matters stayed tied to religious texts.

Personal law rule :

→ Quranic law applied to Muslims

→ Shastras applied to Hindus

→ pandits and Muslim jurists advised courts

→ judges later interpreted personal law

Development :-

Anglo-Hindu and Anglo-Islamic personal laws developed through reforms, law commissions and case law.

Exam angle :-

British rule made criminal law more uniform but kept personal law community based.

→ Revision cue : NCERT source : British India

POST-INDEPENDENCE FAMILY LAW

Uniform civil code debate :-

After Independence, efforts were made to create a uniform family law. Article 44 mentions a uniform civil code as a directive goal.

Hindu Code laws :-

In 1955-56, Parliament codified major Hindu family law subjects through four central laws.

Four laws :

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

Balance point :-

India kept different community laws while reforming some parts through statutes.

- Revision cue : NCERT source : post-Independence law

HUMAN RIGHTS AND GENDER

Constitutional values :-

The Preamble speaks of justice, liberty, equality and dignity. Articles 14 and 15 support equal treatment and bar discrimination.

Religion freedom issue :-

Articles 25 and 26 protect religious freedom. Communities may argue that family-law reform interferes with religious affairs.

Conflict to remember :

- gender equality asks for reform
- religious freedom protects practices
- courts and lawmakers must balance both
- gender justice remains a key concern

Exam line :-

Family law reform is difficult because personal laws sit between equality and religious freedom.

- Revision cue : NCERT source : gender equality

GENDER INEQUALITY EXAMPLES

Hindu law examples :-

The NCERT chapter lists areas where gender equity is still incomplete even after codification and reform.

Examples to write :

- different marriageable ages
- different succession routes
- mother's guardianship role was limited
- mother's adoption role was limited

Practical challenge :-

Many people do not know the rules on marriage age, dowry, divorce grounds, bigamy and polygamy.

Answer angle :-

Legal reform and legal awareness must work together for gender equity.

- Revision cue : NCERT source : Hindu law examples

ISLAMIC DIVORCE FORMS

Talaq-e-Ahsan :-

This is treated as the most ideal way of dissolving a marriage under Muslim law.

Talaq-e-Hasan :-

Talaq is pronounced once a month over three months. If cohabitation is not resumed, divorce becomes final after the third utterance.

Talaq-e-Biddat :-

Instant triple talaq allowed a husband to divorce by saying talaq three times. It is now illegal and void.

Current law point :

- instant triple talaq may be electronic
- new law makes it punishable
- Ahsan and Hasan remain valid forms
- Revision cue : NCERT source : Islamic divorce forms

FAMILY COURTS ACT, 1984

Purpose :-

The Act created special family courts for matrimonial and family-law disputes. It deals with procedure, not substantive personal law.



Main goals :

- reduce formality in litigation
- speed up justice delivery
- support conciliation and settlement
- shift family matters to special courts

Population rule :-

State governments must set up family courts in cities and towns with population above one million.

→ Revision cue : NCERT source : Family Courts Act

FAMILY COURT JURISDICTION

What family courts handle :-

Family courts hear disputes connected with marriage, matrimonial status, property, maintenance and children.

Important matters :

- nullity of marriage
- restitution of conjugal rights
- judicial separation
- validity of marriage and matrimonial status
- property disputes between spouses
- maintenance, custody and access

Short difference :-

Judicial separation suspends marital rights. Divorce ends the marriage tie.

→ Revision cue : NCERT source : family court jurisdiction

STATUTES UNDER FAMILY COURTS

Marriage and divorce laws :-

Several personal-law statutes come before family courts depending on the parties and the dispute.

Key statutes :

- Hindu Marriage Act, 1955
- Special Marriage Act, 1954
- Dissolution of Muslim Marriage Act, 1939
- Indian Divorce Act, 1869
- Parsi Marriage and Divorce Act, 1936
- Indian Christian Marriage Act, 1872

Maintenance and protection :

- Muslim Women Protection Acts
- Hindu Adoption and Maintenance Act
- Domestic Violence Act, 2005

→ Revision cue : NCERT source : statutes list

WOMEN AND FAMILY COURTS

Women's movement role :-

Women's groups strongly supported special courts for family matters. They wanted faster and more accessible procedures for women.

Reason for demand :-

Issues such as violence against women, wife murder, maintenance, custody and residence rights needed a more sensitive forum.

Family courts were expected to :

- be less formal
- be more accessible to women
- depend more on counsellors
- support negotiation and settlement

Exam line :-

Gender justice was a major reason behind the demand for family courts.

- Revision cue : NCERT source : women and family courts

DURGA BAI DESHMUKH POINT

Historical trigger :-

The need for family courts was strongly stressed by late Smt Durga Bai Deshmukh after her 1953 visit to China.

Consultations :-

She discussed the idea with Justice M. C. Chagla, Justice P. B. Gajendragadkar and Prime Minister Jawaharlal Nehru.

Core demand :

- speedy settlement of family disputes
- non-adversarial method
- conciliation instead of pure contest
- forum focused on marriage and family affairs

Memory line :-

Family courts were imagined as settlement-centred courts, not only judgment-centred courts.

- Revision cue : NCERT source : Durga Bai Deshmukh

LAWYERS AND COUNSELLORS

Special feature :-

The Family Courts Act restricts the usual role of lawyers and gives more space to counsellors.

Why counsellors matter :-

Family disputes often need communication, settlement and emotional support. Counsellors help parties explore amicable solutions.

Adversarial system :

→ judge acts as neutral arbiter

→ lawyers present opposing cases

→ decision is based on merits of rival claims

Family court shift :-

Family courts try to move from contest to settlement where it is fair and safe.

→ Revision cue : NCERT source : lawyers and counsellors

LIMITS OF COUNSELLING

Practice problem :-

In practice, counsellors are not always integrated well into family court work. Their role may remain superficial.

Problems listed in NCERT :

- limited role at preliminary stage
- not enough use during actual trial
- judges and lawyers may lack orientation
- states differ on appointment and training
- qualifications and remuneration vary

Exam point :-

The idea of counsellors is strong, but implementation differs widely across states.

- Revision cue : NCERT source : counsellor gaps

COUNSELLORS AND GENDER JUSTICE

Gender sensitivity :-

Women groups argue that counsellors must be trained in gender sensitivity. A neutral stand may ignore unequal power between spouses.

Risk in reconciliation :-

Counsellors may pressure women to return to unsafe homes in the name of preserving the family.

Important concerns :

- physical safety should not be ignored
- economic rights matter in settlement
- maintenance claims must not be weakened
- family preservation is not gender justice

Best answer line :-

Family settlement is useful only when it respects dignity, safety and equality.

- Revision cue : NCERT source : gender justice concerns

MARRIAGE : MEANING

Social union :-

Marriage is a social union between a man and a woman. It creates kinship and mutual rights between spouses.

Legal union :-

Marriage also creates legal consequences. Parties get the status of husband and wife and children gain legitimacy.

Legal consequences :

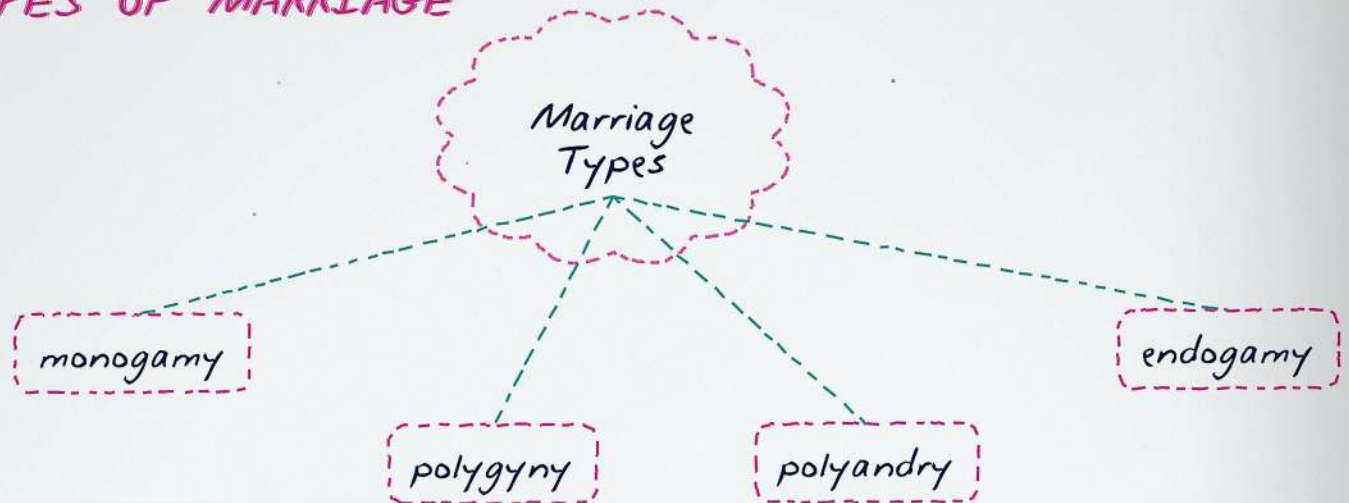
- status of husband and wife
- legitimacy of children born after marriage
- maintenance rights
- inheritance rights
- joint property and companionship rights

Memory line :-

Marriage is both a social relationship and a legal status.

- Revision cue : NCERT source : marriage meaning

TYPES OF MARRIAGE



Monogamy :-

Monogamy means one woman and one man are married to each other. Most marriages follow this form.

Polygamy forms :-

Polygyny means multiple wives. Polyandry means multiple husbands. These forms appeared for social reasons in some societies.

Endogamy and exogamy :-

Endogamy means marriage within one's own group. Exogamy requires marriage outside a tribe, clan, family or other social unit.

→ Revision cue : NCERT source : types of marriage

VALID MARRIAGE CONDITIONS

Condition 1 : monogamy :-

Hindus, Parsis and Christians generally require monogamy.
A first marriage must end before a later marriage.

Condition 2 : ceremony :-

Some communities need customary or religious ceremonies.
Muslim law mainly requires offer and acceptance.

Other conditions :

- prescribed marriage age
- no prohibited relationship
- no barred blood relationship
- sound mind at the time of marriage

Exam line :-

A valid marriage depends on personal-law rules about capacity, ceremony and relationship bars.

- Revision cue : NCERT source : valid marriage conditions

COMMUNITY COMPARISON

Age rule :-

Hindu, Christian and Parsi law prescribe 18 years for girls and 21 years for boys. Muslim law refers to puberty.

Marriage form :-

Monogamy is essential under Hindu, Christian and Parsi law. Muslim law permits polygyny up to four wives.

Ceremony cues :

→ Hindu : Saptapadi or customary rites

→ Sikh : Anand Karaj with Lavan

→ Parsi : Ashirwad ceremony

→ Christian : authorised person certifies

→ Muslim : offer and acceptance

Do not mix :-

Ceremony rules differ, but sound mind and relationship restrictions are common concerns.

→ Revision cue : NCERT source : community comparison

VOID AND VOIDABLE MARRIAGE

Void marriage :-

A void marriage is treated as no marriage. The court only declares what already exists in law.

Voidable marriage :-

A voidable marriage is valid until a court annuls it. Only the aggrieved party can seek annulment.

Hindu law void grounds :

- sapinda relationship
- prohibited relationship
- second marriage during spouse's lifetime

Hindu law voidable grounds :

- impotency
- force or fraud in consent
- pre-marriage pregnancy by another person
- unsoundness of mind
- Revision cue : NCERT source : void and voidable marriage

MUSLIM LAW STATUS OF MARRIAGE

Batil marriage :-

Under Muslim law, a void marriage is called Batil. It is treated as non-existent from the beginning.

Void grounds :

- polyandry
- consanguinity
- affinity
- fosterage

Fasid marriage :-

Muslim law recognises irregular marriage instead of voidable marriage. A Fasid marriage can become valid if the defect is cured.

Example :-

Marriage with a fifth wife is irregular. It may become regular if one earlier marriage ends.

- Revision cue : NCERT source : Muslim law marriage status

DIVORCE THEORIES

Meaning of divorce :-

Divorce ends the marital union. The status of husband and wife ceases after divorce.

Fault theory :-

Under fault theory, divorce is granted because one party has a recognised matrimonial fault or offence.

Examples of fault :

- adultery
- cruelty
- desertion
- insanity as later fault-based ground

Mutual consent theory :-

Sometimes both parties cannot live together and neither side is fully at fault. Mutual consent divorce responds to that situation.

- court decree is still needed
- Revision cue : NCERT source : divorce theories

ANSWER FRAMES

Family laws answer :-

- define personal law
- show community-based nature
- add Article 44 uniform civil code point
- end with gender justice challenge

Family courts answer :-

- start with Family Courts Act, 1984
- goals : less formality, speed, settlement
- add counsellor role
- mention gender-sensitivity concern

Marriage answer :-

- define social and legal union
- write conditions of valid marriage
- explain void and voidable difference
- Revision cue : Revision cue : answer frames

FAST REVISION SHEET

One-line answers :-

- family laws cover personal matters
- Article 44 is a directive principle
- Family Courts Act was enacted in 1984
- family courts reduce formality
- counsellors need gender-sensitive training
- family preservation is not gender justice
- marriage is both social and legal union
- void marriage is no marriage
- voidable marriage needs court annulment
- mutual consent divorce needs court decree

Common mistakes :-

- do not call all family law uniform
- do not mix separation with divorce
- do not ignore access-to-justice logic
- do not write settlement as always fair
- Revision cue : Last revision : full chapter map