Chapter - II

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An exploratory study is the primary stage of research and the next stage is occupied by the descriptive study and the final stage is to establish causal relationships in the variables studied.

In an exploratory study it is necessary many to be familiar with the subject to determine the scope and limit of research, to clarify the concepts and to formulate the hypothesis. The main aim is the discovery of facts and insights. The correct beginning of such a study is to make a review of pertinent literature.

The survey of literature helps the researcher to survey the existing written and published material on the topic selected for research. The review given an insight into the problem chosen, and also enhances familiarity with the subject matter. The vital element is to pin point an area, hitherto uncovered or less touched upon. Thus, it is possible to know what work has been done and what areas of the subject remain relatively less studied. Finding a ‘gap’ in the literature, gives a focus to the research helps in formulating the research problem. Many kinds of published material like books, articles in journals, reports and unpublished research theses have been consulted in the preparation of this research.

The study of the family court, required an initial understanding of the concepts of law and development of the judicial administration in India. It was also essential to study the customary law in Indian society. Custom and tradition are the foundation of the modern legal system. Contemporary Indian law is palpably foreign in origin and inspiration, but it is also in some ways incongruent with values and norms of the population of this vast subcontinent. A seminal account of the displacement of traditional law in modern India, is given by Marc Galanter (1989). He makes a study of law as it existed in Pre-British India in numerous local formats based on religion and custom. There is no unified system in Hindu law and absence of written records made unification difficult. The system allowed for the change but it allowed the old to remain alongside the new. For Galanter, the major problem for the Indian state, is the management of multiple overlapping, co-existing and often conflicting moralities. He also observes that to protect the autonomy of the individual, the state would have to play a highly interventionist role in liberating individuals from choosing between a multitude of moral values. A historical review of the emergence of the modern legal system and displacement of traditional and indigenous law gives a valuable base for study of sociology of law. Galanter emphasizes the changing the legal conceptions of caste, group member help this work deals with the policy of reservation and legal redressal of untouchability.
Rajeev Dhavan in an extensive introduction to Galanter's book, also traces the history of law in India. But he feels that legal studies show that Indian legislation is purely symbolic, as in the case of anti-untouchability and anti-dowry enactment. Many varieties of social and economic legislation have not only failed to achieve social reform and justice, but actually became a vehicle through which certain groups and classes obtained social and economic power. "A whole range of social forces appropriate legislation and instrumentalities created by it, to liberate them from this allegedly intended purpose". The study of law in Indian society is thus a vital area of interest for sociologists.

Dispute settlement in village India has been studied by M.N. Srinivas and Dumont. But these studies do not focus on the eco-political pressures within which, dispute settlement takes place. Little work of sociological interest has been done on Indian litigation processes. Uppendra Baxi, a noted scholar has taken deep interest in sociology of Indian law; He emphasizes 'Social action litigation'. In his many researches in Indian jurisprudence he has traced the peculiar features of the British policy regarding framing laws in the matter of family, inheritance, caste and religion. Hindus and Muslims were to be governed by their personal law i.e. the law of their religious group. In other cases the judges were instructed to decide according to "justice, equity and good conscience". This puzzling formula whatever its original meaning, was the medium for the uneven application of some indigenous law and for the importation of a great deal of English law. He further deposes that one of the remarkable and anticipated result of the British administration of Hindu law was the elevation of the textual law over lesser bodies of customary law.

On the backdrop of these historical studies of the Indian law of its origins, the need to study the practice and percept of personal laws in modern India becomes a pressing sociological concern. The striking empowerment of Sastric law over customary law in British India was the result of the colonial need for uniform administrative strategies. In modern India, the conflict and deep distrust regarding the implementation of a uniform civil code, overriding religious differences, is a manifestation of political need pitted against cultural interests. The deep cleavages in terms of religious belief, customary behavior and ethnic identities makes the practice of law a difficult process. During the British period, there were many scholars who take a revivalist but reformist view of Vedic law. An article by A. Mahadeo Sastri (1907) expounds the effort to revitalize the Hindu marriage as an ideal type of union and emancipation of woman.

According to Shastri, a study of the important mantras in marriage, which are Vedic in origin, shall give proper insight. The purpose of marriage, adult marriage, mutual understanding equality of status of spouses are described in the original Vedic sutras. In fact the author advocates the replacement of Vedic ideal of marriage and proposes that Vedic law should replace traditional customary practice.
During Vedic period, both boys and girls were educated and there was no advocacy of child marriage. The smritis which came later have been the reason for the evil of child marriage. The effort to revive the old scriptures to stop onslaught of western marriage age etc. should be stopped. The contractual idea of marriage and loss of sanctity, would threaten the stability of family and marriage. There should be careful study of customary law before new laws are framed by the British and educated intellectual in India.  

A number of studies focus on the development of colonialism and the process of social reform through legislative change. In the area of personal laws regarding the private spheres of marriage family and inheritance, the issue of women's status is a subject of great concern. A number of writings on women in colonial India, discuss the legislative changes in the 19th and 20th century, that deeply affected women's lives.

Janaki Nayar has given extensive treatment to the issues of patriarchy, sexuality and personal law in Indian society. She has criticized the pervasive discrimination faced by women within and without the family. The home is no longer a site of female power, rather it is an area where her very existence and sexuality are controlled through custom and patriarchy. Constitutional provisions like Article 15 and 25 have imparted fundamental rights to all women, but personal laws are still discriminatory on the basis of religion and gender bias. The four principle areas of colonial legislation addressed the spheres of production, reproduction property and sexuality. Colonial legal interventions dealt with access to property for women, marital relations and family laws regarding guardianship and adoption. Nayar develops a framework derived from feminist theory and historiography through which legislative attempts to transform status of women in colonial India can be understood. Her contention is that colonial social reform did not actually make a dent in the entrenched patriarchy and unequal man-woman relationship in Indian communities. The question arises here whether the post-independent phase and the passing of the Hindu code bill in 1955 brought significant transformation in the status of women in Hindu families. There have been numerous amendments to the existing laws as well as introduction of new legislation like the anti-dowry act 1960, and the act banning female foeticide on July 22,1986. Maharashtra was the first state to ban female foeticide if legal reform is the manifest function of a collective consciousnes of deprivation in society, the various phases of personal law reform become signposts of transformation in values and more important, changing balances of power in society. The various issues discussed in Nayar's work make it imperative to understand how the actual practice of law takes place and how the social environment affects the amendments in law and legal procedure. There have been many similar field studies of the impact of legislation on the status of Hindu women. Shailly Sahal studies a sample of three hundred women in Varanasi. She makes a resume of interventionist effort through
constitutional reform, the concept of ‘Stridhana’ and laws regarding property and adoption. Her study shows that higher education and higher income are correlated with better awareness of law. Awareness of laws regarding divorce however does not directly lead to acceptance of divorce as a solution to marital disputes. Laws regarding judicial separation and bigamy are not known even by educated urban women. A significant finding in the study is that uneducated and rural women had knowledge of customary law and religious sanctions, which were related to orthodox methods of resolving disputes. The question arises here whether awareness and knowledge of personal laws by men and women, leads to assertion of personal rights through a court of law. A sociological appraisal of the working of a family court can lead to a better understanding of the reasons and procedures of litigation and the ultimate consequence and outcome members who feel that the law can solve their disputes. Law can be understood only through its practice, not merely as a formal document. The social constructionist of meaning of law as viewed by the court officials, the lawyers, the judges and the actual parties or litigants, indicates a site of discourse which comes within the sociology of law.

Swapna Makhopadhyay’s\textsuperscript{10} collection of proceedings of the “National Seminar on Woman and law”, held in 1997 in New Delhi, includes papers on various themes. The main thread is of course the analysis of law as an instrument of change. The question asked here is whether legal reforms are capable of bringing gender justice in Indian society. Ambivalence about law and legal reform is not new, it existed even in social reform movements in the 19\textsuperscript{th} century. The tension between liberalist thinking and nationalist revivalist movements among at social reform, form the crux of the conflicting ideas of Gopal Ganesh Agarkar and Bal Gangadhar Tilak.

The above work also expresses the disenchantment with potential of law to redress social wrongs Flavia Agnes\textsuperscript{11} in her contributory paper remarks that “The dominant social culture within which such justice is sought to be mediated, have proved to be much too strong for legislation or judicial activism alone. Mukhopadhyay\textsuperscript{12} and Kapur and Cossman\textsuperscript{13} see the area of law as a site for discursive struggles where dominant notions of gender tradition and culture are challenged by feminist arguments, sociology of law and sociology of the family.

Nivedita Menon’s view in this collection on ‘Justice and Women’, points out that law can effective only if the dominant ideologies regarding gender and patriarchy within the family are taken into account. Kapur and Cossman\textsuperscript{14} stress the need to explore the moral and substantive weaknesses of familial ideology in the legal arena.
In another study of feminist politics and law, Niivedita Menon points out that law functions by assumption of certainty and exactitude. When personal laws are framed in India and put into practice there is immense complexity and multiplicity of meanings within this field. This is an area which needs to be probed by understanding the actual functioning of a personal law in a court of law, the interpretations and the effect on all parties involved. The present research aims at precisely this field of inquiry within the family court. The sociological study of the law in practice becomes the focus of this study. In this respect Marc Galanter poses that such an understanding would require courts to adopt an empirical approach as opposed to a formal approach. It is precisely this lacunae of law that is a subject of research on family court. Courts cannot control the way various persons perceive judicial procedure and pronouncements. The family court tries to mete out justice in a realm of complex customs religious values and family structures. By applying the theoretical paradigms of the sociology of law, this interface between a quest for exactitude facing the barrier of personalized privatized modes of family interaction becomes a fruitful site for the present research.

The above cited reviews open up the need to do research and frame acceptable principles to understand human behavior in the context of legal control which is sanctioned by the state and the polity. The sociology of law is a comparatively less researched field in India, especially in the realm of personal and religious law as applied to marriage and family affairs. There are a number of studies on Divorce per se, but few on the sociological understanding of the law, the legal procedures, the court as a space for litigation and the social ecology of the court with complex socio-cultural institutions. (religion, caste, community and moral beliefs). The over-arching influence of the state and the market and economic factors involved, are parameters to be taken into serious consideration.

K.L. Sharma has made a study of sociology of law and the legal profession. Sharma's empirical study focuses on the social stratification and attitudes of lawyers and clients. Sharma makes an observation that the Indian lawyer is litigational, individualistic and influenced by his own family background. What is relevant in this study is the fact that the non-professional features of lawyers, clients play a very pivotal role in the legal process. The 'extra-legal status' of the legal practitioners creates a different legal sub-culture within the formal court procedures. This focus on the socialization, stratification, professionalization and social network of the lawyers and clients is a rich field for inquiry. The family court law had discouraged the involvement of lawyers according to the law of 1984, but in practice, majority of the cases show recruitment of professional lawyers by both parties who register a case in the court.
Another sociological study of the Indian legal profession is by J.S.Gandhi.\(^{18}\) the focus is on the relationship between law and the polity from colonial times. He traces the growth of the legal profession in colonial India, and participation of lawyers in the political life of the 19\(^{th}\) and 20\(^{th}\) century. Gandhi traces the structural and cultural connections between the profession and the polity and culture of criminal justice in the trial courts. The social network of the lawyers practices in district court is significant. The author emphasizes that the modern legal profession is ‘foreign’, it was implanted by the British only as a logical consequences of the extension and establishment of British rule.

The above observations make a case to study the changing features of post colonial law, especially personal laws in India. The enactment of the Hindu Code Bill and the various efforts of legal reforms and amendments is a backdrop for the present study of the family court that came into existence in 1989.

A detailed and studied account of Hindu marriage, Indian personal laws and the role of law in stabilizing changing marital behaviors in modern India is by Paras Diwan and Virendra Kumar.\(^{19}\) This is a collection of papers presented at the first “All-India conference of Law” held at Chandigarh in 1982. The theme of the conference was ‘Towards stable marriages’.

The main focus was on the traditional and modern views regarding indissolubility of marriage. The introduction of divorce as a means of solving marital dispute and ensuring family welfare along with social justice is discussed in detail. The theme of the conference was towards the pivotal role of the family as a unit of social and cultural harmony in the community. But the reality of the growing menace of dowry, child marriages and domestic violence cannot be ignored by this emphasis. The need and inevitability of divorce in the case of a ‘breakdown’ of marriage makes it necessary to provide a way whereby the partners can separate “with maximum fairness and minimum bitterness, distress and humiliation”.\(^{20}\) The authors however stressed the welfare of children and the case of the dependent wife as prime responsibilities to be directed by the court of law. “There must remain some connection between the spouses ... even after divorce for the sake of their children”.\(^{21}\) This is a paradoxical situation entailing not merely of making financial provision and settlement of spousal property but also means psychological trauma for all concerned persons.

The family court law came into existence by law in 1984 with these needs and problem being the thrust areas where special attention was to be given. The inclusion of counselors and the change in litigation procedure were instituted, keeping these difficulties faced by the entire family of the divorce. “Family problems and problems of broken homes are not be viewed in terms of failure or success of legal action but as real therapeutic problems. It has to be understood that
adjudicating family conflicts is a different culture. The present researcher has made this the subject matter of studying the various disputes that are registered and their outcome and consequences for the families and for the community of large. What is noted here in repetitive emphasis and marriage in India. 'Can law bring to the family the succour it needs,' is the question raised by this study.

Setting up special family court for the purpose of dealing with family problem in a broad frame rather than merely the legal, became the need of hour. Can the therapeutic and informal services envisaged in the Family Court Act 1984, be a successful venture? This question needs an in-depth analysis.

The above book also discusses the traditional value of indissolubility of marriage verses the modern trend for divorce procedure. The divorce structure to day is based on a three fold causal factor i.e. fault, consent or irretrievable breakdown of marriage. But the present researcher delves deeper to find that divorce is not an end but a beginning of a bitter aftermath in the form of petitions of custody, maintenance and property rights which ensue. Dissolution of marriage is a legally accomplished fact but socially it is an emerging site for struggles for power, autonomy and justice both for men and women. Diwan and Kumar examine the trend of modern law towards making divorce easy. They make a point that in India, certain communities castes and tribes have always condoned divorce, and thus by custom indissolubility of marriage applies to certain specific castes and groups in the Indian society. But will easy divorce laws threaten the stability of marriage? Under modern Hindu Law, couples married by religious rites can ask for divorce of various grounds. Moreover the idea of divorce by mutual consent makes the union, a contract, as in case of Muslims and some Christian communities. The authors here point out that conservative scholars and academics like Derrett are of the view, that recent amendments to the Hindu marriage Act of 1955, in the years 1964 and 1976, are not in consonance with the existing conditions in modern Hindu society. In his book, 'Critique of modern Hindu Law', Derrett has remarked that provisions of divorce under the Hindu marriage Act of 1955 "have aroused almost (unanimous) chorus of dismay". In a similar way, Agarwala also feels that the Hindu family law continued to be controlled by Dharmasastras, and she also remarks that the "laissez-faire doctrine cannot be said to have effectively penetrated the social philosophy of Hindu marriage, as it is the concern of the two families and not of the spouses alone." She, in fact even recommends that divorce law for Hindus should be abolished.

On the contrary Paras Diwan, with a more progressive and reformist approach has supported the 1955 legislation and subsequent amendments. The Dharmasastras only touched a small class of people, while many lower classes of Hindus always had continue to have liberal customary law of divorce. Conservative view prevail only among the elite classes and ruling classes. Diwan's work stresses
the need to replace the "fault or guilt theory" which is manifest in the Hindu marriage Act. It must be replaced by the "breakdown" theory of divorce. This will lead to liberalization of law and will provide better social redressed for marital problems. This perspective is an important research question in the present study, where by the types of divorce cases and the causal factors in this process are analyzed in the detailed field study. Diwan and Kumar, by no means favor a policy which harms the structure of the Indian family, but they point out that amendments in the Hindu code of 1955 is necessary, to provide justice to women and children who have to suffer due to faulty and unjust rules regarding maintenance and right to property. The Hindu Law does not aim at 'easy' divorce, but proposes a way to divorce on equitable terms to provide a fair chance for the formulas to deal with the disputes without prolonging suffering or destitution of the weaker members. These problems are an important area of analysis made of the court cases in this study. Unless women have more education, economic independence and better decision making power in the family, any divorce law will be subversive in terms of social justice. Unlike urban areas, rural women have employment as labor and are permitted remarriage to a greater extent. This does not mitigate the problems faced by a female family head, but it is definitely a different scenario than in the urban areas and in the middle and upper classes in India. Diwan gives a detailed study of the aftermath of marriage dissolution in terms of custody, under Hindu, Muslim and Christian law and Its defects and limitations.

S. Pothen's research in 1986 in Indore is related to the passing of the Amendments Act in 1976. This act provides for divorce by mutual consent. Pothen's study shows that the conflict between traditional values and modern aspirations is a key factor in marital disruption. Also, childless couples tend to file for divorce more than those who have children. Pothen recommends premarital counseling and setting up family courts and legal aid for women after divorce. 24

On the similar theme of providing sociological framework within which personal laws are shaped, Michael Anderson's sociology of the family (1981) provides an interesting set of studies on the subject. 25 Though the studies are western in origin, they provide important parameters for research. T. Parsons (1959) views on the family in urban industrial America, and Ralph Linton's views, give valuable conceptual analysis of change and diversity in family system in the westerns society. 25 Turners seminal essay on significance of Kinship 26 and Elizabeth Bott's 27 important contribution to understanding family and spousal interaction based on the social network, is extremely relevant in the Indian context too. The marital relationship and patterns of conjugal role-relations in India are bound by custom and powerful sanctions. In any analysis of marital dissolution through law, these concepts provide a valuable groundwork.
William Goode’s excerpt on family disorganization gives valuable insight into establishment of individual background variables and the type and aftermath of divorce. This analytical framework has guided the conceptual frame for the present research also. Goode gives many sociological factors leading to a higher divorce rate and changing sex-role division of labor in an urban industrial society.

"It seems fair to say that women demand a greater range of rights than men are willing to concede, just as men are willing to impose a few more obligation than women, are willing to accept". Goode also predicts that the process is inevitable. "The United state is in the vanguard of a process which is becoming worldwide". Goode’s excerpt also includes a line of psychological research based on social homogamy and complimentarity mentality of needs. This is a concept that applies directly to the Indian society where homogamy is based on sub-caste. Caste religion and region is the common ground for arranged marriage. The present study has referred to this dimension in terms of problems that arise when the need-structure of spouses in Indian urban society is in flux. The theory of complementary needs throws light on adjustment and conflict in marriage and is incorporated in the search area of this research work. Is the need structure and role-interchange in the Indian family also changing in the western mode, with the onset of major upheavals due to globalization, liberalization and impact of powerful information technology (including mass media)? It is a worthwhile area of research in the field of family sociology and the sociology of law in India.

One significant area of research on family is the growing include of female headed families growing all over the world. K.Shanthi has studied a slum in Madras for micro-level study of female-headed households. She compares this new household pattern with female headed families in U.S.A. Though the census data in India does not give any data on the topic, women who are widowed, divorced and deserted by husbands face severe hardship. Migration of the spouse is another cause for this. Economic deprivation and responsibility of children makes the burden difficult for women in poorer classes. In U.S.A. state intervention in the form of family welfare dole, child supports and medical facilities, is provided. But such provision’s are absent in India and the only way is to provide better employment opportunities and efficient laws for maintenance of divorced women. Desertion is a very common incidence in India and is largely attributed to larger issues of gender discrimination and lack of education and paid employment for women in lower classes and lower castes. The major hindrance in India is lack of data on incidence of female headship, and failure to give a realistic definition of the head of the households in census data and national sample surveys. Moreover female headship is not a homogeneous phenomenon, and the problems are different in rural, urban and ethnic groups. Remarriage of divorced or deserted women with children is difficult in India as against a higher rate of remarriage among women in U.S.A.
In the present research the problems of women who have to live separately due to desertion by husbands or due to harassment in the marital home, are studied in detail. The higher incidence of divorce and greater burdens are women, has serious effect on the welfare of children, health and overall stability of the family. Legal provisions in the sphere of child custody, maintenance and adoption come within the purview of family court law.

Shoma Chatterjee has handled this issue in her book entitled “The Indian Women’s search for Identity”. According to the “State of the World’s Women Report, 1985(ILO), divorce, separation widowhood and migration in the Third world lead to increase in female-headed households. For women are equipped to take on the responsibility of heading a family due to lack of education, employment and little legal protection. She also points out that the law in any class and caste divided patriarchal society is formulated, legislated and implemented as well as interpreted by the male ruling elite. In a random study undertaken by this researcher, out of 100 cases for divorce filed in high courts between 1979 and 1985, 69% petitions were by male spouses and 31% by female. Further 96% of the petitions by men were granted divorce as against 33% of women’s petitions. This issue and finding is given detailed treatment in the male and female petitioner’s cases analyzed from the family court. Chatterjee also found that the age of asking for divorce is in the young age group, and within first two years of marriage. The first five years of marriage accounted for 70% of marital litigation. This trend is observed in the present cases of the family court in Pune between 1989 – 1995. As per Chatterjee’s findings, the male spouses are layely responsible for marital break-up, they misuse legal provision and litigation is an instrument to harass wives. These findings are significant. Chatterjee also makes the point that personals laws of different religious communities in India tended to reassert and almost insist on the Indian traditional woman – stereotype. The only way to improve states and empower women would be through a demand for reform in personals laws, mainly in favor of a uniform civil code to ensure equality and justice.

A report on the status of women in Maharashtra (1998), prepared by the Tata Institute of Social Studies in Mumbai merits some discussion at this point. The report covers the period between 1981 and 1995, and is sponsored by Maharashtra state Women’s Convention established in 1993. The concept of status here in defined is qualitative terms and indices used are –

1. participation of women in services
2. fertility and contraception use.
3. Birth rate, death rate and longevity
4. Education and
5. Legal status and awareness.
In this report Blumberg defines status depending on the alternatives open to women, i.e. the right to marriage and divorce, freedom in sexual activities and right to reproduction along with a right to decision making in the family. Veena Muzumdar also reiterates the above and stresses the right of women to take decision and control their lives.

An important area covered in this report is a detailed study of the National Policy for Women, formulated in 1994 and the legal provision therein. The findings of a committee appointed to review laws related to women recommended changes in the property right act. The criminal procedure code section 125 and the amount of alimony-payment by the husband of the divorce. The review also makes the telling comment on laws against domestic violence and deprivation of security to a woman in her marital home. It also recommended that women should have a full right adopt a child and moreover there are many laws reported in the legal aid scheme started by the state in 1996. A number of recommendations regarding family court are also including study. The above study also reports that domestic violence results in desertion, destitution and divorce, which jeopardize the well-being of the women and her children. The issue of female hardship entailed has come in for study again in this valuable field report.

Another report based on actual field data in prepared by the women study center of the S.N.D.T. University, Bombay in 1995. Edited by the activist lawyer Flavia Agnes it focuses on laws for women and provides an overview of recent legal enactments, and review of economic rights among different religions communities. Agnes documents the social process from activist campaigns for institutionalizing legal redressal for women, to actual passage of bills and acts to improve status of women. She focuses on major judgments on selected cases, thus laying bare the hiatus between letter and spirit of law, the ostensible and the real motives of legislators. Her major query is "Why is legislation infective in tackling problems?". Her comments are based on grass-root experience as she is a practicing lawyer in Bombay. According to her, constitutional rights are infective in areas ruled by different personal laws under Hindu, Muslim and Christian religious code.

Indira Jaising is a senior advocate of the Supreme Court and editor of ‘Lawyers’ Journal from 1986. In a collection of essays on personal law framed over a period of 10 years, she discusses the need for a uniform civil code. She criticizes the fact of that there are different personal laws for different communities. The Hindu law also needs to be reformulated and brought in line with the Constitution. The Muslim Women’s Protection of Rights on Divorce Act, 1986, has not been helpful. In fact it led to appeasement of the religious leaders and granted them full rights to interpret the Quaran. Discrimination is also inherent in Muslim and Christian law. Under most personal laws divorce is easier to obtain for men than
women (e.g. Christian law) Jaising also discusses policies and origin of personal law in different communities before and after 1947. Discussion of maintenance clauses, custody rule and guardianship rights of women are important issues discussed herein. The need for courts is to recognize that, maintenance is payment for economic partnership that existed between spouses, for the duration of marriage. The provisions, procedures and problem of the family court are discussed and reforms are suggested. The problem of domestic violence and the enactment of the Indian Panel code is also shown to be defective. Property and succession rights of women in all communities need to be reformed. Jaising has covered a large canvass of issues related to divorce and the pre - conditions as well as post – divorce complications, involved in the process.

In a field study of divorce J.N.Chaudhary refers, to the changing expectations of spouses and their families after marriage. He has conducted a field study on divorce cases, their causes and the aftermath of divorce too. Moreover he traces the fact that the decisions for divorce is not an individual one, rather it is affected by socio-economic characteristics of the concerned couple and the cultural surroundings. Though divorce is permitted by law, yet socially it is not accepted universally. The author also describes the process of role adjustment after divorce. This study is aimed at exploring the adjustment to divorce, especially after the decree for divorce is passed by the law court. The focus is to study the problems faced by divorce and process of adjustment after legal separation. In the present study it is need to further litigation, i.e. need to file subsequent petitions for custody of children and maintenance, which are closely related to Chaudhary’s attention to the socio – cultural aftermath of divorce. Additional litigation creates stress and economic problems to all family members, especially women, children and aged dependent members. Chaudhary’s focus is also on disorganization and reorganization, through remarriage of divorced couples. He points out that “the personality attributes, family environment and false definitions of statuses are main causes of divorce and maladjustment in Hindu household”.

The present research reaches out to a new area namely, the court records of cases of divorce custody and maintenance, to unravel the legalities and kind of procedure involved during the case and after divorce has been legally granted. The causes and effect of divorce have been studied in numerous studies and monographs, but there is no detailed study of the sociology of divorce law which delves into the various socio-cultural characterization of petitioners, court officials judges, lawyers and counselors, who conduct the procedure in formal terms within the family court. The family court law aims at reducing the complicated procedure involved for fastest disposal of the case but in this process is social justice done and improvement of weaker sections in the family (women and children) achieved to
some extent? The question of law and justice is at the core of all welfare measures in a society. Jaya Sagade has compiled a reference book in Marathi for legal reference, helpful for women. The gap between constitutional guaranty of freedom and equality for every woman is just a myth according to the author. The problem is more due to powerful patriarchal conditioning in Indian society and culture. Women are treated as secondary citizens in various types of legal cases where family and personal law, criminal law, and labor laws are used to settle cases. Sagade calls for more legal awareness and knowledge of rights applicable to women. She also feels that the role of police and NGO’s should be to help women in distress and provide for immediate action against abusers. The question raised is whether social legislation can be an instrument for social reform and welfare. To do this, women also need to participate in the political process in the region or even in a village. Sagade emphasizes the need for reform in personal law, especially laws dealing with marriage, maintenance, and divorces. The lack of a uniform civil law code hampers the quest for social justice. The various legal conditions and procedures need to be clarified and discussed in relationship to all types of people and particularly women, in exploitative and unhappy circumstances.

A similar work giving detailed information by Vijay Sharma, is entitled 'Protection to women in matrimonial home.' The author deals with status of women from the Vedic period, to the medieval and British period with reference to position of wife, widow, and other problems of women in these periods. The evil of dowry, anti-dowry legislation, and cruelty to married women is discussed with emphasis on the ineffectiveness of law and police in offering shelter and support to victims of abuse. Sharma also touches upon the incidence of bigamy and legal loopholes that emerge in the case of bigamy, and the injustice to the first wife. Lastly, Sharma touches on women’s right of dissolution of marriage and divorce provision and Hindu marriage Act and equality of sexes.

The area of human rights is a significant area for law to intervene. A women’s right to adopt and have custody of children is also discussed. The most important aspect of law is a women’s right to property, maintenance, and streedhana. Sharma says that the above legislative measures are still inadequate and more research on actual cases in the court and family court would give some direction to the state and legislature in forming effective legislation and guidelines for conducting cases related to divorce and all kinds of family conflicts.

By taking the sample of family disputes cases from the family court, the present researcher has used the information on laws on paper and studied the actual consequences of legal procedure in the Family Court Pune. Each case presents a whole complex of legal provisions available for redressal of disputes, the method and phase through which a dispute and disputers have to proceed, finally granting a
decision for or against the petitioners and respondent. The law as an ideal on paper comes under severe pressure when the actual dispute is debated in the court and the judgement is passed. The infusion of cultural, social, religious and psychological variables influence the law givers and those who are the parties of the disputes. Hence the need to frame, relevant paradigms through the sociology of law and take an ecological respective regarding the structure of functions in the urban family families at the present time.

Many studies of Hindu marriage focus on prescriptive literature, (e.g. the Dharma Shastras) which interpret marriage as a set of normative rules and attitudes to be pursued in order to achieve merit and engender social harmony. In a different vein, Hindu marriage has also been studied from a different angle altogether by Halkan and Lindsey. The essays in this edited volume trace a variety of conceptual boundaries, delineating the institution of marriage and reveals crucial notions about, marriage, which are termed as ‘margins’. These margins are imaginative boundaries at those thresholds of entry and exit, renunciation and violation or breakdown. The purpose is to discover how marriage actually works as a social and imaginative reality by considering the various experiences and perceptions of those who have transgressed its borders. Implicit in this is a recognition of the multiple conceptions of marriage by people, at various stages of their lives and situated in different circumstances. The gap between a collective experience of a married person and the individual perception are both interwoven and should be studied analytically. The various essays in this volume enlarge our understanding of the multi-layered multi-dimensional nature of this most enduring and complex human institution. This volume tries to take a subaltern view of contemporary writing on marriage and women’s status in a dynamic society. The institution of marriage is not seen as a sort of cultural monolith possessing an essential characteristic, but to show that there are myriad perspectives that can be brought to see marriage as manifold and often discontinuous. Reflecting on the shifting peripheries of marriage, the authors focus on diversity and ambiguity that exists in social reality. The concept of the woman as ‘Shakti’ as a powerful destroyer, a devotee and professing strong sexuality, are explored in various essays. This volume provides valuable insight into the social status, cultural expectations and conflicting status role systems that surround women in the context of marital and familial activity.

The present research has taken up this dynamic view of ‘marriage as an institution’ and ‘marriage as a perception’ through the eyes of women and men, within and without the family system.
There are few studies on divorce in the whole Indian society. Some early studies are of sociological significance Rama Mehta (1975)\(^3\) Mabel Fonseca (1966)\(^4\) and Promilla Kapur (1979)\(^5\) have done field studies in this area. Kapur mentions that there is a paucity of studies and those on marital adjustment are very few. Traditionally a Hindu man or women could never think of legal divorce. Fonseca has correctly remarked that studies in the field of inter-personal relationships in the family, especially between the spouses, are few. But at the present time such studies on family relationships, disputes and divorce invite intensive research. The sociology of divorce and sociology of law are still new fields needing research and study. Marital disruptions like divorce, desertion, separation and annulment are very vital subject to be studied in sociology of the family. Much of the research in India has been on village communities, tribes, castes etc. Not much research has been done on urban social institutions and their various aspects. The expectations of young educated men and women from marriage are gaining new dimensions today, such as resolutions of their psychological and emotional problems apart from the physical and biological needs.

The study of 363 divorce cases carried out by Y.B.Damle\(^6\) in Poona District had shown a castewise incidence of divorce cases. Marathas and intermediate Hindus had a higher rate of divorce. Rama Mehta studied 50 divorced women in Delhi, Udaipur and Bombay. Her major finding is that women who were from joint families are more traditional in outlook and thus less motivated to initiate divorce. Conjugal relationship was significant and adjustment of the spouses was a major issue in initiating divorce. Women, in spite of being educated and even employed had difficulties after divorce. Their position and status was lower than married or widowed women.

Fonseca\(^7\) in her study has made an important point about the need for marital counseling and services for troubled couples. This point is reiterated in the present research.

The studies all point to changes in values and perceptions of the spouses in relation to marriage education, professional careers and employment of women which have played a vital role in affecting the attitudes towards marriage and divorce. However none of the studies have treated divorce as an indication of weakening ideology of formalism. The role of law and judicial measures which are enacted, to deal with familial and internal disputes resulting in total breakdown of the marriage, have to be taken into account, as powerful state interventions.

Jaya Sagade's doctoral thesis on the Family Court law and procedure in Pune\(^8\) has concentrated on the problems of maintenance and alimony granted to divorced parties. Sagde stresses the strong patriarchal bias, that dominates the
settlement of cases. The maintenance provision in law is not recognized as compensation for the contribution that the woman makes to her matrimonial family. The predominant consideration behind it remains the notion of charity. It is treated as an act of benevolence on the part of the husband. The law of maintenance is part of all religious codes as well as the criminal procedure code. But in most cases, the amount of alimony granted is minimal, and that too is granted in some cases only. The lack of legal awareness and legal rights by women, as well as the adversary procedures adopted by courts, affect the decisions of the court. In Sagade’s analysis maintenance was granted in 41% cases only. She also makes a perceptive observation that litigation in regard to family problems should not be viewed in terms of failure or success of legal action, but should be viewed as a social therapeutic problem needing a humane solution. She also recommends a conciliatory method and informal procedure for settlement of family disputes and divorce cases. Her research focuses on maintenance petitions in the family and Civil Courts only, and focused on marginalisation of women in the course of divorce and other such petitions.

Dr. Satyaranjan Sathe, noted legal scholar has discussed the need for family courts and how they differ from other types of Civil Courts. "Women suffer not only from gender biased laws but also from the gender biased system of delivery of justice". He strongly recommends a system of dispute settlement free from gender bias. He also stresses the pivotal role of the judge in the Family Court who needs to be democratic, objective and impartial in delivering decrees and judgements. Sathe has advocated a non-adversarial procedure and tribunal type of system for settling family disputes. He distinguishes and compares the tribunal to the structure of family courts. He remarks “The whole purpose of the setting up of family courts has to provide for a less formal, less expensive and expeditious disposal of matrimonial and other family disputes”. The present research is an inquiry into the actual procedure of the Family Court and how far it has been successful in achieving the objectives mentioned above. Moreover the importance of appointing judges suited to the Family Court procedure and objectives is stressed by Sathe, is an important focus in the present research.

Upendra Baxi refers to three ways in which legal systems can be conceptualized) as an aggregate of legal norms, as a sum of its parts b) as systems of model behavior, statutes and institutions involving patterned interactions between the makers, interpreters, enforcers and compilers of norms of law c) as social control systems, involving differential bases of social authority and power, different normative requirements of sanctions and distinctive institutional complexes. The two different systems of command of control, namely the state with its formal rules and the indigenous legal systems operate informally in this case. The two above systems may well have contradictory values. A legal system has two dimensions a)
legal system as a normative cultural system and b) legal system as a social system. The formal legal systems encompasses legislative institutions, local self govt. institutes, of institutions for rural a economic development. The researcher focus research in these areas would be on the social context of their organization and function of interdependence, relevance to social stability, order, growth and social justice.

The review of literature on Family Court and state intervention for social welfare, cannot be complete without a reference to judicial activism in Indian society. In India it is not a new development and has been a part of the political and social process since the 19th century. In recent times it has been directed towards the institution of public morality and preservation of the spirit of the directives of the Indian constitution. Many jurists, lawyers and academies have professed views on this process. Scholars take Upendra Baxi and Justice Krishna Iyer argue in favor of the right type of judicial activism to protect and promote the interest of the citizen in India. 46 One vital area where the judiciary should show concern and internal the actively is the legal system itself. The present system has been borrowed from the West and in some cases needs to be re-structured to suit Indian conditions. But Baxi quotes focus Althusser, who remarks that “Courts every where, at the end of the day are strategic domains of both repressive and ideological state apparatus”. Courts and justices wield the power of the state even as they are constituted by it.

“The central role of the judiciary in arresting absolutisms of the executive and legislative organs is obvious “Justice without power is inefficient, power without justice is tyranny”.

It has to be noted that the judicial process, is imperceptibly influenced by the country’s legal culture, social reality and political processes. In post independence India, courts, judges and laws may play the role of road blocks or catalysts and instruments of such change. The assumption is that the judicial system has to respond to the changing, varied and highly complicated needs of the society, economy and polity, arising out of the vast technological and socio-economic changes all area the world.47 Poonam Saxena approaches the process from a feminist perspective.48 The impact of judicial activities from a feminist perspective would reveal the stark realism of its effect on an Indian women, adverse or positive. The process of codification of personal laws which started actively from the early 1950s by the Independent Indian legislature, through the promulgation of the constitution, pronouncing equality for men and women, raised the hopes of Indian women. Saxena discusses various cases related to women’s security rights and freedom and criticizes the judgements as being predominantly in favor of patriarchy. She has discussed the Hindu code Bill and also posed severe criticism on the Indian Divorce Act, 1869. The law in this case is again not able to give
protection to women from other religions, especially in cases of adultery by the
husband. Saxena also remarks “The interpretation of the various provisions in the
matrimonial laws should be balanced, keeping in view the present day socio-
economic scenario only then would we be able to say that Indian courts have really
emerged as courts for the Indian people and not merely for Indian men.

The present researcher has included sizeable sample of non – Hindu cases
registered in the Family Court, Pune. The complicated procedures and the problems
faced by Muslim, Christian woman are a special area of study.

The preceding review of literature of the subject of personal laws and
settlement of disputes in the family court, give many insights into the newly
emerging field of sociology of law. The emergence of civil law and the
establishment of special family courts is a significant area for research. Except for
legal studies and research articles law journals there has been little work on the
working of Family courts since the passage of the Family court Act, 1984. There are
a number of western studies on the issue of divorce and the family in transition. But
a western model of family and family court can not be utilized to understand the
intricacies of family laws in Indian society. However western scholars like Marc
Galanter and Derrett have made valuable contributions to the understanding of
emerging law codes and the social, political and religions environment where in the
present law came into existence. The review also shows that studies of Indian law,
in terms of gender justice and the Indian woman’s status roles in family, are
numerous. Most studies emphasize, that mere legislation cannot empower women to
light injustice and abuse in their marital family. There is need to study the legal
provisions in the light of the changing socio – economic and cultural scenario in
Indian society. Law is after all a type of social control sanctioned by the state and
the constitutional guaranties. Law operates within a specific environment and most
studies stress the fact that even civil law codes are affected by strong values of
patriarchy, religious dictums and traditional forms of marriage and family in India.
An ecological perspective and can explain a social framework, within which laws
are formulated, enacted and utilized through law courts. Similarly, the inter-
relations between customary law and primordial affiliations that shape intra-family
relationship also need to be researched. The legal framework and the family system
are not ‘closed’ systems rather both are “interactive and open”, receiving in-puts
from each other, as well as the various factors like economy, market exchanges,
religion, caste and political ethos in the society at a certain points of time. The
researcher has therefore adopted an ecological theoretical framework to be able to
‘place’ the institution of marriage and family as well as the institution of civil law,
in a proper social perspective. A study of the changing balance of power and
authority within the family and within the legal sub-system is relevant at the present
juncture.
The changes in values and perceptions of the spouses in relation to the institution of marriage has been transformed due to changing perceptions and expectations of all parties involved. The efforts of social reformers and educationists in 19th and 20th centuries have resulted in passing of many legal enactments. These laws and the sanctions as well as support for reformist legislation has contributed to fundamental changes. Education and employment of women means a total re-arrangement of family. A natural off shoot has been the awareness of human rights and constitutional guarantees among men and women in urban as well as semi-urban towns and fringe villages. Legal awareness alone is not enough, as the intricacies of the written law have to be sorted out. Moreover the actual cases where particular personal laws are evoked and family disputes are contested in a special court, adds a very vital dimension which needs to be researched. The present research is based on the court records of cases for divorce, custody maintenance and adoption handled and disposed by the Family court procedure. Each case is studied through the stage of registration of petition, responses of respondents, leading to a detailed analyses of the case until a judgement is given.

To sum up, common law culture is highly court-centered. The doctrines of law are considered as 'given' and justice is to be meted out in legal framework. Therefore law is identified with the normative cultural aspect and accounts for much importance given to study of the court system in researches on sociology of law. The study of sociology of law must focus on a group of persons who approach the court for justice. Which rights are violated and are reported and lead to favorable decrees is to be understood. This includes the problem of gender sensitization regarding problems affecting women. There is also need to find out about those who do not resort to law and under what constraints does this occur? Is it because there is fear of law courts, or lack of awareness of constitutional guarantees? Are there culture specific attitudes which affect a person approaching the court or lawyers? Why is there disenchantment with the existing court procedures? These questions require research into the social background of litigants in terms of education, power and economic status differentials. There is also an attempt in this thesis to understand areas of compatibility and of conflict between informal customary control and formal rational legal authorities. Micro-studies of such processes can be valuable. Legal norms are not absolute, they are subject to human decisions. They undergo change or need to change in dynamic contexts of socio-economic and political processes in society. They must also address the values and aspirations of the people. Application of law is partly determined by its interpretation by professionals and also due to the expectations of the litigants who want the law to settle their disputes and grievances. This research study has to make an effort to show the kind of relationship that exists between the formal law and informal and primordial means of social control in Indian urban life. There is
paucity of studies on the sociology of law in respect of the above areas of legal application for dispute settlement. The present study of the Family court is thus of clear concern for academic interest as also directed towards providing some new guidelines for formation of new socio-legal policies.
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