



Shared Parenting

For Prelims: United Nations Convention on the Rights of the Child (UNCRC).

For Mains: Custodial Rights, “best interests of the child” , Shared parenting, Supreme Court Judgments on Custodial rights.

Why in News

Seeking custody of a child in the event of a marriage breaking down of parents, is a very traumatic event for children. Although parents get separated after the divorce, this is not in the **“best interests of the child”** .

- The Supreme Court, in 2019, ruled that **‘a child has the right to affection of both his parents’**.
- In this context, the concept of **shared parenting** can help the child. However, it is not an option in India, **due to the archaic laws**.
- **Shared parenting** is when children are brought up with the love and guidance of both parents following a separation.

Key Points

- **About ‘Best Interests of the Child’:**
 - India is a signatory to the [United Nations Convention on the Rights of the Child \(UNCRC\)](#).
 - The definition of **“best interests of the child”** has been incorporated from the UNCRC in the [Juvenile Justice \(Care and Protection of Children\) Act, 2015](#).
 - The **“best interests of the child”** means **“the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development”** and is **paramount in any custody battle**.
- **Laws Determining the Custody of Children in India:**
 - **Hindu Minority and Guardianship Act (HMGA) of 1956:**
 - It states that the **natural guardian of a Hindu minor boy or unmarried girl** shall be the father and mother, provided that custody of a minor who has **not completed five years of age** shall ordinarily be with the mother.
 - However, the HMGA does not contain any independent, legal or procedural mechanism for **deciding custody rights or declaring court-appointed guardians**.
 - **Guardian and Wards Act of 1890 (GWA):**
 - This deals with the appointment of a person as a **‘guardian’ to a child, both with respect to the child and property**.
 - Child custody, guardianship and visitation issues between parents are determined under the GWA, **if a natural parent wants to be declared as an exclusive guardian to his/her own child**.

- Upon disputes between parents in a petition under the GWA, read with the HMGA, **guardianship and custody can be vested with one parent with visitation rights to the other parent.**
- In doing so, the welfare of the minor or “best interests of the child” shall be of paramount consideration.
- **Related Supreme Court Judgments:**
 - In 2017, in ***Vivek Singh v. Romani Singh***, the Supreme Court highlighted the concept of **Parental Alienation Syndrome**.
 - It refers to the unjustified disdain of a child towards his or her parents.
 - The judgement underlined its **“psychological destructive effects”**.
 - In 2019, the **Supreme Court of India** held in ***Lahari Sakhamuri v. Sobhan Kodali*** that the “best interests of the child” is **wide in its connotation** and **“cannot remain the love and care of the primary care, i.e., the mother in case of an infant or the child who is only a few years old.”**
 - In 2022, the Supreme Court in ***Vasudha Sethi v. Kiran V. Bhaskar*** held that a **child’s welfare, not the individual or personal legal right of the parents**, is of paramount concern in a custody battle. Welfare of the child must get precedence over the parents’ rights.
- **Legal Opinion on Shared Parenting:**
 - The Law Commission of India Report in 2015, on Reforms in Guardianship and Custody Laws in India, **recommended joint custody and shared parenting**.
 - It disagreed with the idea of singular child custody with one parent.
 - It made exhaustive recommendations for amendments in the HMGA and GWA for joint custody and for guidelines for such custody, child support, and visitation arrangements.
 - **Report 263 of the Law Commission of India**, titled **The Protection of Children (Inter-Country Removal and Attention) Bill, 2016**, recommended a draft Bill for protecting the “best interests of the child” relating to custody as per the UNCRC.
 - The report of the **Justice Bindal Committee**, submitted to the Government in 2018, also said that “best interests of the child” are of paramount importance in matters relating to child custody in view of the UNCRC.

Way Forward

- A **child-centric human rights jurisprudence** that has evolved over a period of time is founded on the principle that public good demands proper growth of the child, who is the future of the nation.
- Therefore, shared or joint parenting with **equal rights can be a viable, practical, balanced solution for the child’s optimal growth.**

[Source: TH](#)