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Child's Right to Affection of Both Parents

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The Supreme Court recently in a case has ruled that **'a child has the right to affection of both his parents'**.

- The order is based on a plea by a man for custody of his child, who is with the wife.
- The court declined to interfere with the family court's order granting custody of the child to the mother.
- However, it gave the man liberty to approach the family court for enhancement of his visitation rights.

SC's Observations

- The **interest of the child should be kept foremost** in custody battles between separated parents.
- Family courts should grant visitation rights in such a manner that **a child is not deprived of the love and care of either parent.**

Issues related to the Custody of a Child

- The legal provisions which currently exist as per various personal laws are in the **nature of entrusting the custody of children exclusively to one of the parents** in case of separation.
Also, there are a number of provisions in various family law statutes which **discriminate** on the custodial rights of separated parents solely **on the basis of their gender.**
- This presumption severely **affects the rights of the spouse who has been denied custody rights** and the **rights of the child** who will be deprived of care and love of both parents.
It is argued that the present family laws **lack** a child-centric approach, which is based on the idea of **shared parenting.**

- The Supreme Court has recently agreed to examine provisions in family laws which allow exclusive custody of children to just one parent after a marital separation.

Divorce and Article 142

- Recently, the Supreme Court exercised its inherent powers **under Article 142** of the Constitution **to annul a marriage** of an estranged couple, residing separately for over two decades, **saying it was a case of irretrievable breakdown of wedlock.**
- Article 142 empowers the apex court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it".
- The apex court in a series of verdicts **has asked the Centre to amend the law to introduce irretrievable breakdown as a ground of divorce but the law remains unamended** and divorce is denied even if the couple are not living together for years and their relationship bruised beyond repair. This effectively denies them an opportunity to explore life afresh as their marriage survives in law even if not in substance.
 - Even the Law Commission, in its reports in 1978 and 2009, recommended the Centre to take "immediate action" to amend the laws with regard to "irretrievable breakdown" where a "wedlock becomes a deadlock".
 - As the **Centre failed to act on the suggestions**, the apex court has from time to time invoked Article 142 for dissolution of a marriage where the court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted.

Source: TH