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Uttarakhand UCC Bill

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Why is in news? Uttarakhand UCC Bill: What changes in marriage, divorce, guardianship, and adoption?

The Uttarakhand Uniform Civil Code (UCC) Bill, 2024 proposes a **common law on marriage, divorce, inheritance of property and live-in relationships** for all citizens, irrespective of their religion.

It covers matters related to **marriage, divorce, inheritance and adoption**.

Exception- Provisions of the UCC Bill do not apply to Tribal Communities:

Scheduled Tribes have been **kept out of the scope** of this law.

The provisions shall not apply to the members of any Scheduled Tribes within the meaning of **clause (25) of Article 366 of the Constitution of India** and the persons and group of persons whose customary rights are protected under **Part XXI of the Constitution of India**.

Existing laws on marriage and divorce:

They are governed by the- **Secular:** Special Marriage Act (SMA), 1954, and

Personal laws: Like the HindMarriage Act, 1955, the Indian Christian Marriages Act, 1872, the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, and uncodified (Shariat) and codified Muslim law through the Dissolution of Muslim Marriages Act, the Muslim Women (Protection of Rights on Marriage) Act, 2019, and the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Proposed framework on registration of marriages in the bill:

The Bill has made the registration of marriage and a decree of divorce compulsory with retrospective application.

While there is **no requirement of notice and objection** for registration of marriage, upon registration, the **Register of Marriages is open to public inspection**.

Although this may have been introduced with an intent to **prevent bigamy and fraudulent marriages**, it will likely **disproportionately affect inter-caste and inter-faith couples** by making them vulnerable to surveillance.

Under the Bill, while an **unregistered marriage remains valid**, the failure to register a marriage after issue of notice by the sub-registrar attracts a **fine of Rs 25,000**. Thus, the Bill uses a penal mechanism to nudge people towards compulsory registration of marriages.

In case of **non-registration for live-in relationships**, the punishment includes imprisonment.

Main features with regard to personal law and customs around marriage and divorce:

Marriages may be solemnised through any ceremonies or rituals applicable to the parties to the marriage.

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Prohibition on bigamy has been extended to **all communities**.

Enforcement of any customs imposing **conditions on remarriage** between divorced spouses is **criminalised**.

Extrajudicial modes of divorce through modes **not prescribed** under the Code have been penalised. Local customs such as customary divorce deed or panchayat divorce are **punishable** under the Code.

Divorce in the form of **talaq-us-sunnat** (pronouncement of divorce by the husband during the period between menstruation followed by sexual abstinence), **talaq-i-biddat** (triple talaq), **khula** (divorce on the instance of the wife), **maba'arat** (divorce by mutual consent), **zihar** (availability of judicial divorce to wife if husband compares her to any woman within prohibited degrees of relationship) are **all punishable with imprisonment**.

Mehr and dower have been acknowledged as payable in addition to any maintenance payable under the provisions of the Bill.

The Bill **maintains the minimum marriageable age at 21 for men and 18 for women**, as per the third condition under Section 4.

Existing laws on parent-child relations:

Parent-child relations are **regulated by laws on guardianship**.

While natural guardianship is governed by personal laws, court-appointed guardianship is covered by the secular **Guardians and Wards Act (GWA), 1890**.

All personal laws on guardianship follow the **archaic common law principle** wherein the **father is deemed the guardian of the child**, and has the right to take decisions in relation to the child and the child's property.

The **mother is the custodian of the child**, and is thus relegated to the role of a caretaker.

Further, all personal laws treat **children born out of wedlock as "illegitimate"**, and deny them certain rights, such as those pertaining to inheritance.

While the **Supreme Court** has attempted to correct this discrimination by stating that the **mother can be appointed the guardian of the child if the father fails at discharging his functions** as a guardian, and has granted inheritance rights in ancestral property to children born out of void and voidable marriages, these developments are limited to Hindlaw.

As far as **adoption** is concerned, **Hindus, Buddhists, Jains, and Sikhs** can adopt **under the Hindu Adoption and Maintenance Act (HAMA), 1956**, and everyone irrespective of religion can adopt **under the secular Juvenile Justice (JJ) Act, 2015**.

About Guardianship in the bill:

The Bill is **silent on the question of guardianship**, which means that the position under personal laws will continue to prevail. Similarly, the GWA will continue to govern court-appointed guardians.

Consequently, under the Bill, the father will be the guardian of the child, while the mother will be the custodian. The provision on custody under the Bill reinforces this by stipulating that the **custody of a child up to the age of five will ordinarily be with the mother**, while failing to clarify whether the mother will also be an equal legal guardian.

The **Law Commission in 2018** had recommended that guardianship laws must treat **both parents on an equal footing** to address the discrimination faced by mothers. This recommendation is not reflected in the Bill.

On a positive note, the Bill clarifies that all children born out of **void and voidable marriages and live-in relationships** will be deemed legitimate, and will have the same rights as children born within wedlock.

However, since live-in relationships have been defined to be in the “nature of marriage”, children born in relationships that fall short of this threshold may continue to be deemed illegitimate.

How does the UCC change the position on adoption?

The **HAMA and the JJ Act** will continue to prevail.

Adoption under HAMA involves the giving and taking of the child between the surrendering parent or guardian and the adoptive parents.

Demands have been made for **reforming HAMA**, because there is **no requirement of registration** of adoption or institutional oversight to address concerns of misuse such as trafficking of children.

The JJ Act, on the other hand, **provides sufficient safeguards** to protect the safety and best interests of the child being adopted.

The Uttarakhand Bill encourages **mandatory registration of marriages and live-in relationships**, but it **fails to do the same for adoptions** made under Hindlaw. This is a missed opportunity to reform Hindadoption.

Concerns around criminalisation:

The Bill relies on criminalisation for enforcement. This is likely to **disproportionately impact minority** communities, as several religious and customary practices of religious minorities have been outlawed.

Further, the surveillance regime enabled by the Bill can be **misused to harass inter-faith and inter-caste couples**.