

## Custodial parents' rights and father's rights in child custody

During a divorce proceeding, both the parents must be well aware of their custodial rights before seeking child custody. While awarding child custody to parents, primary importance is always given to the child to make sure the child's every need is met and is raised in a proper environment.

### Who is a custodial parent?

A parent who is granted custody of a child or children by a judge is called a custodial parent. Many different factors are evaluated before granting custody of the child including a parent's financial status and the child's best interest.

### What rights do custodial parents have?

Custodial rights are listed down in a document called order and it is signed by a judge. This document is binding to both the parents and if this is violated, a parent might lose his/her current custodial rights.

**Physical custody** is granted to a single parent who is the prime caretaker of the child and is in charge of the daily needs and wellbeing of the child. Even if the physical custodian is not financially capable, the other parent may be made accountable to cater to the financial needs of the child.

Joint physical custody will also be granted when both the parents share their responsibility of taking care of the child by having a chance to live with the child. While one parent is living with the child during weekdays, the other parent might have custody of the child during weekends. Such custody is called **joint physical custody**.

**Legal custody** is when both the parents are equipped with the right to make important decisions regarding education, medical, financial and moral requirements of the child.

In some cases, a parent who possesses both physical and legal custody of the child is called the **sole custody** of the child who makes every decision regarding the child. The other parent will remain just as a **non-custodial parent** but will still have visitation rights – the time and place of such visits are agreed upon by both the parents.

**Third-Party Custody** – The court appoints a third party as guardian and bestows guardianship rights on him/her if the court is satisfied that neither of the parents is fit to be appointed custody of the child.

### What are the father's custody rights?

Given the number of personal laws that provide custody of minors to mothers and after passing off certain age, mechanically passed on to fathers, these acts are always read with The Guardians and Wards Act which are laid down based on the universal principles of child welfare. The first and paramount consideration is the welfare and interest of the child and not the rights of the parents, even though the common perception is that the mother is the natural guardian. While granting child custody, the court will determine if the order is in the best interest of the child/children.

### **Where to file a child custody case?**

Child custody case should be filed in the family court where the minor child resides. If the father and the mother with the child are residing in different cities, and if the father wants to claim child custody, he should file the petition in the city where the child resides.

### **What should the father expect while seeking his child's custody?**

If the father seeks custody of the child, he should be prepared for an evaluation conducted by the court to determine if he is a fit parent and genuinely cares for the child. The court will evaluate various aspects to determine the father's financial status, his history with the child, his physical availability to care for the child, his mental and emotional state including the willingness of the child to live with the father.

### **What should the father do to get granted as a custodial parent?**

- The father should be able to provide a secure, stable environment and meet the child's basic needs.
- Earning a stable income will indicate the judge that the father will be able to meet the financial needs of the child.
- Proximity to the school will ensure the father's easy access to the school in attending parent-teacher conferences, physical availability in meeting the child's expectations and in emergencies as well.
- The ability of the father to be physically present to meet the emotional needs of the child also matters before granting custodial rights.

### **Can child custody rights be changed after the divorce is finalized?**

If the welfare of the child is omitted by the custodial parent, the non-custodial parent can approach the court by filing a child custody petition on change of circumstances, proving how the custodial parent has neglected the welfare of the child.

### **Who determines if the awarded visitation time is fair and reasonable?**

When one parent is awarded primary physical custody, the other parent is entitled to visitation rights. Usually, the parent with primary physical custody of the child chooses convenient time, place and frequency of visits. If both the parents agree on

visits on their convenience there shouldn't be any problem. There is no set visitation schedule and varies depending upon the case.

However, to avoid any disputes over child visitation, the court advises a detailed visitation plan that works out between both the parents so as to not deprive the child of substantial time with non-custodial parent. When the judge orders a visitation schedule it doesn't allow much room for the parents to interpret and thus avoids any argument between parents over visitation. Visitation schedules are laid out in detail and determine the following important arrangements among others:

- Where the child will reside
- The days and times of visitation and with which parent
- Decides where the child will spend summer holidays, birthdays and other family gatherings
- Decides where the child exchange should occur

Since most of the details are covered in the document, both the parents can plan visitation accordingly.

#### **What is the procedure to file child custody case?**

- The parent who is seeking child custody can file a petition in the court for interim/temporary custody as well as visitation rights.
- The custodial parent is required to respond to the petition and appear in the court.
- In some cases, a writ petition may be filed under article 32 and/or article 226 depending upon the situation.
- Both the parties will produce their evidences and respective witnesses in the court followed by the judgement.