



# FREQUENTLY ASKED QUESTIONS ON CUSTODY AND VISITATION RIGHTS

*Divorce, an unavoidable step in one's marriage can either prove to be a bitter experience for one party and a much-awaited event for the another. Regardless of how the parties to the divorce feel or experience, the party most affected by a divorce is the child. The question of child's custody is of utmost importance after a divorce has been granted to two spouses.*

## Q. WHAT IS CUSTODY OF THE CHILD ?

- A. Spouses at litigating terms seek the sole custody of their child. The Family Court has jurisdiction to decide the custody of the child.

## Q. WHAT PRINCIPLE GUIDES THE COURT IN CUSTODY MATTERS ?

- A. The principle on which custody is decided is the 'welfare of the child'. Best interests of the child includes child's emotional, educational, social and medical needs .

## Q. WHAT ARE THE RELEVANT FACTORS FOR DECIDING CUSTODY ?

- A.
- the age, health and sex of a child
  - which parent had continuing care of the child prior to separation
  - which parent has the best parenting skills
  - which has the willingness and capacity to provide primary child care
  - the employment responsibilities of both parents
  - the physical and mental health and age of parents
  - emotional ties of the parent and child
  - the parents' moral fitness
  - the child's home, school and community record
  - the preference of a child at the age of twelve
  - stability of the home environment and employment of each parent
  - and other relevant factors

## Q. WHAT IS THE VISITATION RIGHT ?

A. Child needs his/her mother and father both. Non-custodial parent and/or grand parent has right to meet the child. This is called visitation right.

## Q. WHO DECIDES FREQUENCY, PLACE AND DURATION OF SUCH VISIT ?

A. family Court decides frequency, place and duration of such visit.

## Q. WHAT IS BEST INTEREST OF CHILD ?

A. Although the best interests standard can be hard to define in some situations, some factors are common in this analysis in most custody situations:

- Wishes of the child (if old enough to capably express a reasonable preference);
- financial status of parent
- Mental and physical health of the parents;
- If a child has special needs, how does each parent take care of those needs;
- Religion and/or cultural considerations;
- Need for continuation of stable home environment;
- Other children whose custody is relevant to this child's custody arrangement;
- Support and opportunity for interaction with members of extended family of either parent such as grandparents;
- Interaction and interrelationship with other members of household;
- Adjustment to school and community;
- Age and sex of child;
- Is there a pattern of domestic violence in the home;
- Parental use of excessive discipline or emotional abuse; and
- Evidence of parental drug, alcohol or child/sex abuse.

Remember, best interests determinations are generally made by considering a number of factors related to the child's circumstances and the parent or caregiver's circumstances and capacity to parent, with the child's ultimate safety and happiness being the paramount concern.

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