

## Parental and Quasi- Parental Authority under Law of Torts

### What is Parental Authority under Law of Torts?

**Meaning of Parental Authority:** – Parental Authority under the law of torts is an **authority given to parents to control and correct their children** by either kind of force and such people are protected under the law of torts only if they act in a reasonable manner and for a good cause. It is upon the Judge to decide whether the act was reasonable or not.

In India, there is a Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956 which empowers the guardian to dispose of or transfer movable or minor's real estate for the benefit of a minor. Just as parents give birth to a child, they have certain rights over the child and certain responsibilities towards the child, such as the right to education, the right to determine religion, the right to custody, the right to supervision, protection and health care, etc. According to Hindu law, the father and mother are the natural guardians of the children. A guardian is a person who takes care of a minor and his property. From the birth of the child, the parents acquire the rights and duties of the guardian by a natural relationship. It is the duty of the natural parent to take care of the child. There is equality of rights of both parents with respect to the custody, education, control, correction and chastisement and upbringing of children.

The future of a child is in the hands of the parents. Various restrictions are required to be followed according to the needs of the society and for this the parents are given the right to control and correct them by any kind of force and such people are protected under the law of tort only if they work in a proper way and in good faith. However, what is deemed appropriate by the judges or jury changes over time i.e., no precise method is defined.

The father and mother or other person i.e., the guardian of the child may inflict moderate and reasonable corporal punishment to the child with the aim of improving the behaviour of his child. This right is protected by the Children and Young Persons Act, 1933.

### What are the rights of Parental Authority under Law of Torts?

The rights of Parental Authority under Law of Torts are as follows: –

1. **Right to Custody:** – Parents have every right to keep custody of their children. They do everything necessary for their children. There are two types of custody. The

first is legal custody which has the right to make decisions for the child and the second is Physical custody which means the right and duty to provide accommodation and care to the child.

2. **Right to determine the Religion:** – We know that there are 4 main religions in India, Hindu, Muslim, Sikh and Christian. Parents have rights and duties to determine the religion of the child. If he is born in a Hindu family, he is considered a Hindu and if he is born in a Muslim family, he is considered a Muslim. It is an absolute right given to the parents.
3. **Right to Education:** – Education is one of the basic needs of human beings, so every parent provides basic education to their children. Education is very important for livelihood. Without education one cannot survive in this world. The Government of India also takes many steps to promote education in schools. Free education is provided to girls in government schools and there are seats reserved for one child in every school, whether private or government.
4. **Right to Supervision:** – If parents perform their duties towards their children, then they have certain rights towards their children. One of them is the right of supervision which means, they can monitor the activities of their children such that their children cannot indulge in any kind of activities which is illegal or wrongdoing. If they are involved in any kind of activities, they take steps for the betterment of the child.
5. **Right to Control:** – This right is very important for the welfare of the children. The right to control means that if they believe that their children are not safe or that they are doing something that is not right, then in that case they can control their child's life but not all times they can control their children's lives because they have their own personal life if they are attaining the age of 18 and then they are legal adults and attain adulthood and let them make their own decision.
6. **Right to Reasonable Chastisement (Punish):** – The parents have the right to punish the child for their mistakes in a reasonable and moderate manner. They chastise their child because parents always love their children, they respect their children. Where there is love there is always a chastisement involved. Some relationships are from the heart, from the faith and also with respect. Respect plays a major role in chastisement.
7. **Right to Protection and Health Care:** – As we all know the importance of health in the COVID-19 situation. Everyone's life is equally important. It is the

responsibility of the parents to protect the life of their children by providing proper and healthy food, nutrition and vitamins also and to provide proper medical facilities and look after their children.

What is Quasi-Parental Authority under Law of Torts?

**Meaning of Quasi-Parental Authority:** – Quasi-Parental comes from the Latin word “*loco parentis*” which means ‘in place of the parent’ or a person acting in a parental capacity. A **quasi-parental authority** has fewer rights than a parental authority. The quasi-parental authority also has the option of delegating its responsibilities to the other person. Others include the school, local parents or relatives, who may look after their children. The babysitter also acts as a quasi-parental authority for some specified time period.

The authority of a schoolmaster or a teacher is similar to that of the parent. It resembles the **authority of the parent**, and therefore, it is **quasi-parental authority**. People with such authority include the schoolmaster, superintendent or warden of the orphanage, hostel or children observation home, etc. When a parent places his child with a schoolmaster, he/she delegates to him all his/her own authority, as far as it is necessary for the welfare of the child. The schoolmaster can, therefore, inflict a moderate chastisement on his pupil. This authority is not limited to acts done on the premises of the school but may extend to acts done by them while on the way to and from the school.

However, the law is that the parents and quasi parents both can administer punishment on a child for his good or to prevent him from hurting himself or any other person. They have lawful control over the children and can correct him at every point. Parents may also delegate their authority to a babysitter who for a particular time period takes care of the child, she acts as a quasi parent. Similarly, when the child is in the school the parents are deemed to delegate their responsibility to teachers.

In this the main important point of the right of both parents and semi-parents is that both have the legal right of their children. In parental authority there is no delegation of rights and duties, but in quasi authority there is some delegation of duties and rights to other persons or authority. Let's take an example- parents give some authority to school teachers, principle or tuition master, for the welfare of the children. So, they can study properly and achieve their goals in future. This is for the betterment of the child. Nanni or babysitter also act as a quasi- parental authority. Quasi parent is also important for the student to leans the social norms and how to live in the society. At the end, human has to do things for the society.

## Conclusion

This parental and quasi parental authority provides immunity to the persons against any liability for doing something for the welfare of the child. Parenting comes with certain rights and duties for a good upbringing of the child. Hence, it comes with the right to correct him either by words or chastisement in a moderate manner. The court says that the nature of punishment should be such that a prudent man would have considered right. With these rights comes the responsibility to show the child the right path and to correct him either by words or chastisement in a moderate manner. But this can't be the excuse to skip the criminal or civil liability like assault, battery etc. The test of reasonability depends upon the courts. The punishment administered should be of such nature that a prudent man would have considered right.

## Case Laws

### 1. **R.C. Thampan and Ors. vs. The Principal, Medical College AIR 1979 Ker 171**

In this case, one student (The petitioner) involve in the ragging of the junior students. As we know that the ragging is offence under the law. The principal of the Medical College take action against the Thampa, and suspend him from the college because that is against the protocol of the college, also effect the reputation of the college. "He also said: "It seems to me that the authority to administer moderate and reasonable-corporal punishment, which any parent who sends a child to school is presumed to give to the authorities of the school, extends to the mistress occupying the position which the defendant occupied in this school". The incidents are happened in the campus and the hostel areas. The written statement of the juniors who have been the victim of the ragging. Kept as an evidence for the case. The petitioner also beat the students, ill- treatment, or mentally and physically harm the students. The management committee record the evidence of the victims and personally investigate the matter because this will effect the reputation pf the college. Later, the petitioner threatened the juniors, to give their statement back or not to tell the truth otherwise, they will kill them and many of the student's withdrawal from the statement or evidence. In this case, later it was also came up that, the principal of the medical college not having the jurisdiction to suspend the students or nay of the committee.

### 2. **Cleary vs. Booth ((1893) 1 Q.B. 465)**

**Facts of the case:** – The respondent was the headmaster of the school. Two boys fought on the way to school and the defendant punished them. The headmaster has been held responsible for assault and battery.

**Judgment of the case:** – In this case, the court held that the teacher was not liable as the authority of teachers is not limited only to the school premises but also outside the school. It is clear that the parents have control over the children at home and the teachers and principals in the school but the main question is who is in charge between the school and the home. It can be rightly said that the authority here is delegated to the teachers. They can not only correct them for their mistakes but also punish them. So, in the above case, the boys fought outside the school and the headmaster had the right to punish them.

3. **Eisel vs. Board of Education (1991)**

**Facts of the case:** – A student threatened the school counsellor with suicide but they failed to inform the parents. This negligence of not imparting knowledge to the parent was a loophole and since the school was in authority to control the child, it should have informed the parent of the danger as stated by the Maryland High Court. Therefore, in England by law the authority of the schoolmaster is the same as that of the parent and he or she represents the parent in matters of improvement as **Regina v. Hopley (1860) 2 F & 7 202) and Fitzgerald v. Northcote ((1865) 4 F & F 665).**

In India, many times it has been recognized that a teacher plays a very important role in a student's life. It is well recognized over the years that the quasi-parental rights of the teacher come with an inherent right to take disciplinary action against the student and are enshrined in the philosophy of the country as stated in **R.C. Thampan and Ors. v The Principal Medical College (AIR 1979 Ker 171).**

4. **Sankunni vs. Swaminatha Pattar**

In this case, the court held that the teacher cannot abstain from punishment on the pretext that the punishment has left no mark on the body, in one way or another if the punishment is likely to cause damage to the life and limb of the child, the teacher shall be charged under the law of Torts.