

CHASTISEMENT & PUNISHMENT

Common law definitions of custody and parental power refers expressly to the parents' powers of **moderate punishment**.

The definition of **care** in **SECTION 1 of Children's Act** does not mention *punishment, chastisement or discipline* but instead talks about *guiding the behaviour of the child in a humane manner and maintaining a sound relationship with the child*.

CARE also requires parents to protect their children from *maltreatment, abuse, degradation, and any other physical or emotional harm* and to *respect, protect, and promote the children's rights* as set out in **Bill of Rights**.

CHAPTER 8 OF THE ACT is concerned with the intervention in families where the children are at risk of harm. It also regulates removal into alternative care.

SECTION 144(1)(b) notes that early intervention programmes must focus on 'developing appropriate parenting skills and capacity of parents and care-givers to safeguard the well-being and best interests of their children, including the promotion of positive, **non-violent** forms of discipline.

DIFFERENCE BETWEEN 'CARE' & 'CONTACT'

'CARE'

THE CHILDREN'S ACT uses the word '**care**' instead of '**custody**' traditionally used in **common law**. Definition of care is broader in the act and more child-centred.

SECTION 1(1) OF THE CHILDREN'S ACT defines care in relation to the child as:

- a) within available means, providing the child with:
 - i) a suitable place to live
 - ii) living conditions that are conducive to the child's **health, well-being and development**
 - iii) the necessary financial support
- b) *safeguarding & promoting* the well-being of the child
- c) *protecting the child* from **maltreatment, abuse, neglect, degradation, discrimination, exploitation, and any other physical, emotional, or moral harm/hazards**
- d) **respecting, protecting, promoting and securing** the fulfilment of, and guarding against any infringement of the child's rights set out in the **BILL OF RIGHTS** and the principles set out in **CHAPTER 2 OF THE CHILDREN'S ACT**
- e) **guiding, directing and securing** the child's **education and upbringing, including religious and cultural** education and upbringing, in manner appropriate for the child's **age, maturity and stage of development**

DIFFERENCE BETWEEN 'CARE' & 'CONTACT' (cont)

f) **guiding, advising and assisting** the child decisions to be taken by them in a manner appropriate for their **age, maturity and stage of development**

g) guiding child's behaviour in a **HUMANE** manner

h) maintaining a sound relationship with the child

i) accommodating **special needs** child may have

j) ensuring child's **BEST INTERESTS** are **PARAMOUNT** in matters concerning them

Care has a wider ambit than **Custody** as its not just about providing child's daily needs but also prioritizing their **well-being, maintaining a sound relationship with them and attending to the child's best interests ALWAYS**

'CONTACT'

THE CHILDREN'S ACT uses the word '**contact**' instead of '**access**' traditionally used in **common law**. Contact is *primarily about maintaining a relationship between a parent and child when they no longer live in the same house*.

SECTION 1(1) OF THE CHILDREN'S ACT contact in relation to the child is:

- a) maintaining a personal relationship with the child
- b) if the child lives with someone else
 - i) communication on a **regular basis** with the child in person, including visiting the child/being visited by the child
 - ii) communication on a **regular basis** by other means, including, through post or by telephone or any other form of electronic communication.

