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Confident, Major, Educated?

MAYANK AGNANI¹ AND TANISHEE RANJAN²

ABSTRACT

The article examines the discrepancies faced by the parents of minor girls who run away from their homes and are unable to get them back due to the boundation of the courts to abide by the will of the corpus and are unable to get them back. The Article also examines the Doctrine of Sole Respository and how the writ of Habeas Corpus directly comes under the perview of Article 21 and emoahsizes its enforcement. It further highlights the reasoning of various high courts while granting the writ of habeas corpus in such scenarios. The Article concludes by examining how the courts are committed to safeguard the rights and act according to the will of the Corpus. It also examines the socio-legal aspect of such right granted by the Constitution.

Keyword: Writ, Article 21, Habeas Corpus, Courts, Doctrine of Sole Respository.

I. INTRODUCTION

The Constitution offers all citizens, individually and collectively, some basic freedoms. These are guaranteed in the Constitution in the form of six broad categories of Fundamental Rights, which are justifiable. Article 12 to 35 contained in Part III of the Constitution deal with Fundamental Rights³, which also includes Right to Constitutional Remedies, which allows the citizens of the country to approach the High Court or The Supreme Court under the specified Articles. The same has been reiterated over the years by the judiciary in many landmark cases such as Romesh Thappar vs. State of Madras, 1950,⁴ the Supreme Court held that Article 32 is to provide protection to an individual in case of infringement of fundamental right. The court acts as the protector and guarantor of the rights of the citizen of India.

Habeas corpus is a recourse in law by which a report can be made to a court in the events of unlawful detention or imprisonment, requesting that the court order the person's custodian, usually a prison official, to bring the prisoner to court, to determine whether their detention is lawful.⁵ Habeas Corpus is a principal under the common law for the protection of the personal

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³ 'Profile - Fundamental Rights - Know India: National Portal of India' (*Home | Know India: National Portal of India*) <<https://knowindia.india.gov.in/profile/fundamental-rights.php>> accessed 22 July 2024

⁴ *Romesh Thappar vs The State Of Madras*, Supreme Court, 26 May 1950, XVI of 1950, SCC (India)

⁵ Contributors to Wikimedia projects, 'Habeas corpus' (*Wikipedia, the free encyclopedia*, 7 November 2001) <https://en.wikipedia.org/wiki/Habeas_corpus> accessed 22 July 2024

liberty of individuals. Habeas Corpus literally means "to have the body of".

Habeas Corpus under Article 32, filed in the Supreme Court, is a Fundamental Right but when the same is being filed by the remedy of Article 226, in the High Court, is a Constitutional Right.

II. ARTICLE 21: DOCTRINE OF SOLE REPOSITORY

At the outset of the Third Emergency, a number of persons were detained under the Maintenance of Internal Security Act, 1975 (MISA). A number of detenus filed petitions under Article 226 of the Constitution in various High Courts, inter-alia, challenging the legality and validity of their detentions and seeking issuance of writs in the nature of Habeas Corpus.

The High courts were of the view that such petitions could be examined whether such detentions were in accordance with the Provisions of MISA, whether such was malafide, or whether such detention was not based on relevant materials by which the detaining authority could have been satisfied that the order of detention was necessary.

In preview of this, the Supreme Court in its various judgments laid down that the Doctrine of Article 21 being the sole Repository of the Right to Life and Personal Liberty and also as the Doctrine of Inalienable and Natural Right to Life and Personal Liberty. Therefore, any claim to a writ of Habeas Corpus is deemed as the enforcement of Article 21 also⁶.

III. JUDICIAL APPROACH IN ISSUING THE WRIT OF HABEAS CORPUS

In India, the power to issue the writ of Habeas corpus has been vested upon by the High Courts and the Supreme Court, as an effective means of promptly addressing the loss of personal liberty without legal justification. The petitioner while filing the Writ of Habeas Corpus has to satisfy the court that the person concerning whose liberty the petition has been filed is illegally detained by the respondent in the petition.⁷ And by the virtue of this, the court directs the detenu to be brought before the court to examine the legality of detention, because the writ of Habeas Corpus challenges the liberty of an individual which is governed by Article 21 of the Indian Constitution.

But while witnessing the recent trends, the Writ of Habeas Corpus is being filed by the parents to bring back their daughters who voluntarily or involuntarily got away from the custody of their parents and fled along with their beau. The learned courts while examining such petitions,

⁶ *Additional District Magistrate, Jabalpur v. Shivkant Shukla*, Supreme Court, 28 April 1976, 1207/1976, India Kanoon (India) <<https://indiankanoon.org/doc/1735815/>> accessed 22 July 2024

⁷ *Swapan Das vs. The State of West Bengal & others*, West Bengal High Court, 28 June 2013, 17965 of 2013, SCC (India)

majorly relied on three factors-

1. Whether the corpus is educated?
2. Whether the corpus is confident? And
3. Whether the corpus is major?

Where, education has no such defined criteria, a corpus of 8th class pass and a corpus of a graduate level were considered educated. Confident, which means that the corpus is not under any undue influence or a threat by their beau to stay with them. And Major, which means that the corpus should be above 18yrs. of age as per The Majority Act, 1875.⁸ But even in a petition where the corpus was 17yrs. and 10 months of age, was sent to 'Naari Niketan' as she did not wanted to go to her parental house. Further, adding to this, it was also stated that "the court is bound to let the corpus follow it's free will in such instances."

The Supreme Court in its latest judgment *Devu G. vs. The State of Kerala*⁹ also reiterated the same that the courts while dealing with the matters of Habeas Corpus should not by any way try to change the mind of the corpus and grant her such an environment where she can without any hesitation follow her free will. The courts have to adopt a sensitive and an empathetic approach while listening to the corpus. The Hon'ble Supreme Court has also issued the guidelines for the judiciary upon how such matters should be heard and decided which is more inclined towards the convenience of the corpus.

Personal Liberty has become such an inviolable right that judicial pronouncements have relaxed the rule of locus standi as reiterated in the landmark judgment of *Sunil Batra vs. Delhi Administration*.¹⁰ But while making personal liberty inviolable can the right of that person, who should legally have the custody, can be compromised is the question which the learned courts should have considered while deciding such cases.

IV. CONCLUSION

In conclusion, while the judiciary's commitment to safeguarding personal liberty is commendable, it necessitates a nuanced approach that considers the rights of all parties involved. The ongoing discourse surrounding Fundamental Rights in India reflects the dynamic interplay between individual freedoms and societal norms, necessitating continuous judicial scrutiny to uphold the principles of justice and equity enshrined in the Constitution.

⁸ The Majority Act, law respecting the age of majority No ACT NO. 9 OF 1875, 2 March 1875 (India)

⁹ *Devu G. vs The State Of Kerala*, Supreme Court, 6 February 2023, *Devu G. vs The State Of Kerala*, SCC (India)

¹⁰ *Sunil Batra vs Delhi Administration*, Supreme Court, 20 December 1979, 1009/1979, SCC (India)

Liberty is a good ideology which should be respected as it is one of the values granted by the constitution, but should it be granted against the diminishing rights of the innocent parents is a matter of concern, which should be taken care of. Though Personal liberty is important, courts should also consider the rightful custody in such instances.
