

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND  
DHARMADHIKARI**

**&**

**HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA**

**ON THE 18<sup>th</sup> OF JANUARY, 2024**

**WRIT PETITION No. 1220 of 2024**

**BETWEEN:-**

**VATSALYAPURAM JAIN WELFARE SOCIETY THROUGH  
ITS AUTHORIZED SIGNATORY MS. SUMAN W/O LATE  
GAJENDRA KUMAR (A SOCIETY REGISTERED UNDER  
THE PROVISIONS OF THE RAJASTHAN SOCIETIES  
REGISTRATION ACT 1958) ADDRESS AG-75, SCHEME NO.  
54 INDORE (MADHYA PRADESH)**

**.....PETITIONER**

**(SHRI VIBHOR KHANDELWAL, LEARNED COUNSEL FOR THE  
PETITIONER)**

**AND**

**THE STATE OF MADHYA PRADESH, THROUGH ITS  
PRINCIPAL SECRETARY, DEPARTMENT OF WOMEN  
AND CHILD DEVELOPMENT, GOVERNMENT OF**  
1. **MADHYA PRADESH, VALLABH BHAWAN, BHOPAL  
(MADHYA PRADESH)**

**DIRECTORATE WOMEN AND CHILD WELFARE  
DEPARTMENT, THROUGH ITS COMMISSIONER,**  
2. **VIJAYA RAJE VATSALYA BHAWAN 28-A ARERA HILLS  
BHOPAL (MADHYA PRADESH)**

3. **DISTRICT COLLECTOR, DISTRICT: INDORE,**

ADMINISTRATIVE COMPLEX, MOTI TABELA DISTT.  
INDORE (MADHYA PRADESH)

4 SUB DIVISIONAL OFFICER, TEHSIL JUNI INDORE,  
ADMINSTRATIVE COMPLEX, MOTI TABELA DISTT.  
INDORE (MADHYA PRADESH)

5 CHILD WELFARE COMMITTEE, DISTRICT INDORE  
PRABHU NAGAR, ANNAPURNA ROAD, INDORE  
(MADHYA PRADESH)

.....RESPONDENTS

*(SHRI GAURAV CHHABRA, LEARNED COUNSEL FOR THE RESPONDENT [INT])*

*(SHRI ROSHAN VERMA, LEARNED COUNSEL FOR THE RESPONDENT [INT])*

*(MS. ARCHANA KHER, LEARNED ADDITIONAL A.G., FOR RESPONDENT/STATE)*

*(SHRI ADITYA VAIBHAV JHA, LEARNED COUNSEL FOR THE RESPONDENT [INT].*

*(SHRI BHAKTI VYAS, LEARNED COUNSEL FOR THE RESPONDENT [INT].*

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*This petition coming on for orders this day, JUSTICE SUSHRUT ARVIND DHARMADHIKARI passed the following:*

**ORDER**

Heard finally with the consent of both the parties.

In this writ petition under Article 226 of the Constitution of India, the petitioner is aggrieved by the inaction of the respondents whereby they have illegally kidnapped 21 minor girl children from the lawful custody of the petitioner and have further detained them illegally.

2. The brief facts of the case are that, the petitioner is a Society registered under the provisions of the Rajasthan Societies Registration Act, 1958 (hereinafter referred to as “Act of 1958”) and is managing and administering about 13 hostels across India. One hostel is situated in

Indore in the name of “**Vatsalyapuram Jain Hostel**”.

3. The petitioner had admitted 21 minor girl children in the hostel on the instructions and authority given by their parents/ legal guardians. The admission is given to those students who were either belonging to economically weaker section or financially poor families, after obtaining written consent, authority and permission from their parents/ legal guardian. Apart from providing accommodation to the students, it also supports their school education, food, medicines and other healthcare.

4. It is alleged that the respondent No.4 and 5 have illegally entered the hostel owned, managed and administered by the petitioner on 12.01.2024 and have wrongfully taken physical custody of 21 minor girl children that too after sunset.

5. Being aggrieved with the action of the respondents whereby, the respondents have illegally kidnapped 21 minor girl children from the lawful custody of the petitioner and have further detained them illegally. The writ petition has been preferred before this Hon'ble Court on behalf of the petitioner under Article 226 of the Constitution of India

6. Learned counsel for the petitioner submits that the Respondent Nos. 4 and 5 without issuing any notice entered the premises of the petitioner and took away/ seized all the documents and records maintained even without preparing any panchnama. The illegal action taken by the respondents has been recorded in the CCTV camera installed at the petitioner's hostel. All the 21 minor girls have been lodged at the **Government Rajkiya Bal Ashram, Indore and Jeevan Jyoti Balika Grah, Indore**. The action of the respondents is in violation of various provisions of Juvenile Justice (Care and Protection of Children) Act, 2015

(hereinafter referred to as “J.J. Act”).

7. Learned counsel for the petitioner further contended that the due procedure as per the relevant provisions of J. J. Act has not been followed. The respondents without recording the child's version has kept the minor girls in illegal detention.

8. Per contra, learned counsel appearing on behalf of respondent/State vehemently opposed the prayer and submitted that the basic issues which require consideration in this petition are that:-

"(1) Whether a writ of habeas corpus is maintainable against the judicial order passed by the Child Welfare Committee appointed under Section 27 of the Act, sending the minor girls to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?;

(2) Whether detention of minor girls in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?; and

(3) Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of children in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes, is legally valid or it requires a modified approach in consonance with the object of the Act ?"

9. Learned counsel for the respondent further contended that it is not a case of illegal detention, the petition would itself not be maintainable or otherwise may proceed to hear the matter on merits, if occasion arise.

10. Heard learned counsel for the parties and perused the record.

11. Admittedly, the Child Welfare Committee Indore has passed an order declaring the children of the petitioner hostel to be the children in need of care and protection. In order to bring clarity to the matter, we deem it appropriate to consider whether a writ of habeas corpus is

maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee under Section 27 of the J.J. Act sending the victims to the Juvenile Home/Nari Niketan/Child Care Home and to firstly examine the literal meaning and ambit of writ of habeas corpus. In Halsbury Laws of England 24, it is observed :

"The writ of habeas corpus *ad subjiciendum*" which is commonly known as the writ of habeas corpus, is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from the unlawful or unjustifiable detention whether in prison or in private custody. It is a prerogative writ by which the queen has a right to inquire into the causes for which any of her subjects are deprived of their liberty. By it the High Court and the judges of that Court, at the instance of a subject aggrieved, command the production of that subject, and inquiry into the cause of his imprisonment. If there is no legal justification for the detention, the party is ordered to be released. Release on habeas corpus is not, however, an acquittal, nor may the writ be used as a means of appeal."

**12.** According to Dicey (A. V. Dicey), Introduction to the Study of Law of the Constitution, Macmillan and Co., Ltd., "if, in short, any man, woman or child is, or is asserted on apparently good grounds to be deprived of liberty, the court will always issue a writ of habeas corpus to anyone who has the aggrieved person in his custody to have such person brought before the court and if he is suffering restraint without lawful cause, set him free."

**13.** In **Greene vs. Home Secretary** reported in [1942] A.C. 284, it has been observed:

"Habeas corpus is a writ in the nature of an order calling upon the person who has Patna High Court CR. WJC No.1355 of 2019 dt. 05-03-2020 detained another to produce the later before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal jurisdiction of imprisonment."

14. In India, by Articles 32 and 226 of Constitution of India, the Supreme Court and all the High Courts got jurisdiction to issue writ of habeas corpus throughout their respective territorial jurisdiction when the Constitution came into force. Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

15. In **Smt. Maneka Gandhi vs. Union of India & Anr.** reported in (1978) 1 SCC 248, it has been held by the Apex Court that the procedure established by law as contemplated under Article 21 should be just, fair and reasonable and any unjust, unfair and unreasonable procedure by which liberty of a person is taken away shall destroy such freedom. There is also difference between a writ of Habeas Corpus maintained under Article 32 and under Article 226 of Constitution of India. A writ of habeas corpus under Article 32 of the Constitution of India in the Supreme Court is available in case of violation of fundamental rights guaranteed under Article 21 but it does not relate to interference with the personal liberty by a private citizen. However, the High Court has jurisdiction to issue writ of habeas corpus under Article 226 of the Constitution of India not only for violation of fundamental rights of freedom but also for other purposes. The High Court can issue such writ against a private person also.

16. The nature and scope of the writ of habeas corpus has been considered by the Constitution Bench of the Hon'ble Apex Court in the case of **Kanu Sanyal vs. District Magistrate, Darjeeling & Ors.** reported in (1973) 2 SCC 674, it was held that :-

"It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained

of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint". The form of the writ employed is "We command you that you have in the King's Bench Division of our High Court of Justice -- immediately after the receipt of this our writ, the body of A.B. being taken and detained under your custody -- together with the day and cause of his being taken and detained -- to undergo and receive all and singular such matters and things as our court shall then and there consider of concerning him in this behalf". The italicized words show that the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy Patna High Court CR. WJC No.1355 of 2019 dt. 05-03-2020 for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness and, as pointed out by Lord Halsbury, L.C., in *Cox v. Hakes* (supra), "the essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom" and his release, if the detention is found to be unlawful. That is the primary purpose of the writ; that is its substance and end. ..."

**17.** It is also well settled that in dealing with a petition for habeas corpus the Court has to see whether the detention on the date, on which the application is made to the Court, is legal, if nothing more has intervened between the date of the application and the date of hearing.

**18.** Before we proceed to set out our answer and examine the provisions of J.J. Act, we will pause to observe that J.J. Act is a self-contained Act and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of J.J. Act is to ensure and cater the need of the child, who is in conflict with law and child in need of care and protection etc. The language of J.J. Act is

conclusive and must be construed according to ordinary principles, so as to give effect to the plain meaning of the language used. No doubt, in the case of an ambiguity, that meaning must be preferred which is more in accord with justice and convenience, but in general the words used read in their context must prevail. We may now proceed to examine the relevant sections of the J.J. Act, which generally deals with the issue before us. Sub-section (4) of Section 1 of the J.J. Act reads as under:-

"(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including -

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection."

Sub-section 14 (iii) (a) of Section 2 of the Act is as under:

"(14) "child in need of care and protection" means a child-

(iii) who resides with a person (whether a guardian of the child or not) and such person--

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child"

**19.** The "juvenile" has been defined in Section 2(35) of the J.J. Act to mean a child below the age of eighteen years. The word "child" has been defined in Section 2(12) of the J.J. Act to mean a person who has not completed eighteen years of age. The phrase "child in conflict with law" has been defined under Section 2(13) of the J.J. Act to mean a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. Section 2(14) of the J.J. Act defines the phrase "child in need of care and protection", as under:-



"(14) "child in need of care and protection" means a child-

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or
- (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or
- (iii) who resides with a person (whether a guardian of the child or not) and such person-
  - (a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or
  - (b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or
  - (c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or
  - (iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or
  - (v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or
  - (vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or
  - (vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or
  - (viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or
  - (ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or
  - (x) who is being or is likely to be abused for unconscionable gains; or
  - (xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or
  - (xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;"

20. The 'Child Welfare Committee' finds place in Section 27 of Chapter-V of the J.J. Act. Section 27 (1) provides that the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the

powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act. The powers of the Committee are defined in Section 27 (9). Provisions of Section 27 (9) of the J.J. Act make it clear that while passing such orders, the Committee exercises the power of Judicial Magistrate. Section 27 of the Act reads as under:

"27. Child Welfare Committee.--(1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

(2) The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children.

(3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.

(4) No person shall be appointed as a member of the Committee unless such person has been actively involved in health, education or welfare activities pertaining to children for at least seven years or is a practicing professional with a degree in child psychology or psychiatry or law or social work or sociology or human development.

(5) No person shall be appointed as a member unless he possesses such other qualifications as may be prescribed.

(6) No person shall be appointed for a period of more than three years as a member of the Committee.

(7) The appointment of any member of the Committee shall be terminated by the State Government after making an inquiry, if-

(i) he has been found guilty of misuse of power vested on him under this Act;

(ii) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee consecutively for three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.

(8) The District Magistrate shall conduct a quarterly review of the

functioning of the Committee.

(9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(10) The District Magistrate shall be the grievances redressal authority for the Child Welfare Committee and anyone connected with the child, may file a petition before the District Magistrate, who shall consider and pass appropriate orders."

**21. Section 29 of the J.J. Act is as under:-**

"29. Powers of Committee.

(1) The Committee shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection.

(2) Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection."

**22. The functions and responsibilities of the Committee are defined in Section 30 of the J.J. Act, which read as under:-**

"30. Functions and responsibilities of Committee.- The functions and responsibilities of the Committee shall include-

(i) taking cognizance of and receiving the children produced before it;

(ii) conducting inquiry on all issues relating to and affecting the safety and wellbeing of the children under this Act;

(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child

requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012;

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed."

**23.** Section 36 of the J.J. Act deals with the Inquiry. It reads as under:-

36. Inquiry.- (1) On production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner as may be prescribed and the Committee, on its own or on the report from any person or agency as specified in sub-section (2) of section 31, may pass an order to send the child to the children's home or a fit facility or fit person, and for speedy social investigation by a social

worker or Child Welfare Officer or Child Welfare Police Officer:

Provided that all children below six years of age, who are orphan, surrendered or appear to be abandoned shall be placed in a Specialised Adoption Agency, where available.

(2 ) The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child:

Provided that for orphan, abandoned or surrendered children, the time for completion of inquiry shall be as specified in section 38.

(3 ) After the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years:

Provided that the situation of the child placed in a children's home or with a fit facility or person or a foster family, shall be reviewed by the Committee, as may be prescribed.

(4 ) The Committee shall submit a quarterly report on the nature of disposal of cases and pendency of cases to the District Magistrate in the manner as may be prescribed, for review of pendency of cases.

(5 ) After review under sub-section (4 ), the District Magistrate shall direct the Committee to take necessary remedial measures to address the pendency, if necessary and send a report of such reviews to the State Government, who may cause the constitution of additional Committees, if required: Provided that if the pendency of cases continues to be unaddressed by the Committee even after three months of receiving such directions, the State Government shall terminate the said Committee and shall constitute a new Committee.

(6 ) In anticipation of termination of the Committee and in order that no time is lost in constituting a new Committee, the State Government shall maintain a standing panel of eligible persons to be appointed as members of the Committee.

(7 ) In case of any delay in the constitution of a new Committee under sub-section (5 ), the Child Welfare Committee of a nearby district shall assume responsibility in the intervening period."

**24.** Section 37 empowers the Child Welfare Committee that on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, it may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a

view, pass one or more of the following orders as provided in clauses (a) to (h) of Sub-Section (1) of Section 37. Section 37 of the J.J. Act is reproduced below:

"37. Orders passed regarding a child in need of care and protection.-

(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:--

- (a) declaration that a child is in need of care and protection;
- (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;
- (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;
- (d) placement of the child with fit person for long term or temporary care;
- (e) foster care orders under section 44;
- (f) sponsorship orders under section 45;
- (g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;
- (h) declaration that the child is legally free for adoption under section 38.

(2) The Committee may also pass orders for--

- (i) declaration of fit persons for foster care;
- (ii) getting after care support under section 46 of the Act; or
- (iii) any other order related to any other function as may be prescribed."

**25.** We are also of the opinion that the Magistrate or the Committee

in case directing the girl to be kept in protective home under the J.J. Act the Magistrate or the Committee, as may be, should give credence to her wish.

**26. Section 101 of the Act reads as under:-**

"101. Appeals.- (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Childrens Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,--

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974)."

**27. Section 102 of the Act is as under:**

"102. Revision.- The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and

may pass such order in relation thereto as it thinks fit:  
Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard."

**28. In Kanu Sanyal vs. District Magistrate, Darjeeling & Ors.** (*supra*), while dealing with writ of habeas corpus, the Supreme Court has held that it is essentially a procedural writ. It deals with the machinery of justice and not the substantive law. The object of the writ is to secure release of a person, who is illegally restrained of his/her liberty.

**29. In Manubhai Ratilal Patel vs. State of Gujarat & Ors.** reported in **(2013) 1 SCC 314**, the Supreme Court has held that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical or wholly illegal manner.

**30.** In that view of the matter, it was not a case of illegal detention but the petitioner corpus are in Children Home (Girl) Indore by virtue of an order passed by CWC. Even if there is lack of following due procedure under the Act and Rules by the Magistrate or by the Committee that can be agitated by the petitioner under the provisions of appeal/revision, as referred to above by taking out separate proceedings

**31. In Janardhan Reddy & Ors. vs. The State of Hyderabad & Ors.** reported in **AIR (1951) SC 217**, the Apex Court has held that, "while considering the maintainability of the writ petition, has observed that there is a basic difference between want of jurisdiction and illegal or irregular exercise of jurisdiction, Mere non-compliance of the rules of procedure cannot be made a ground for granting a writ under Article 32 of the Constitution. The defect, if any, can, according to the procedure



established by law, be corrected only by a court of appeal or revision, and if the appellate court, which was competent to deal with the matter, has to consider the matter and pronounce its judgment, it cannot be reopened in a proceeding under Article 32 of the Constitution. The Apex Court further observed that the writ of habeas corpus could not be granted as a return that the person is in detention in execution of a sentence on indictment of a criminal charge, is sufficient answer to an application for such a writ”.

**32.** Section 27 of the J.J. Act deals with Child Welfare Committee, wherein sub-section (8) provides that the District Magistrate shall conduct a quarterly review of the functioning of the Committee. Sub-section (9) also provides that the Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. Section 29 provides the powers of Committee, which shall have the authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children in need of care and protection, as well as to provide for their basic needs and protection. Sub-section (2) of Section 29 of the J.J. Act provides that where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection. Section 30 of the J.J. Act deals with the functions and responsibilities of Committee, which include taking cognizance of and receiving the children produced before it. Most importantly Section 30 (ii) of the J.J. Act provides for conducting inquiry on all issues relating to and affecting the safety and well-being on the children under the Act. Sub-

section (iii) of Section 30 of the J.J. Act provides for directing the Child Welfare Officers or Probation Officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee. Section 30 (vi) of the J.J. Act provides for ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard.

**33.** Full fledged mechanism is also provided in sub-section (viii) of Section 30 of J.J. Act for conducting an inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government. Sub-section (1) of Section 37 of the J.J. Act, which deals with orders passed regarding a child in need of care and protection, provides that the Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely (a) declaration that a child is in need of care and protection; (b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker; (c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if

traced, restoration of the child to the family is not in the best interest of the child; (d) placement of the child with fit person for long term or temporary care; (e) foster care orders under section 44; (f) sponsorship orders under section 45; (g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies and (h) declaration that the child is legally free for adoption under Section 38.

**34.** Once corpus is minor and the girl had refused to go with her parents, then in such situation arrangement has to be made. Her interest is paramount and before proceeding to pass order for custody of the minor, the welfare of the minor has to be kept in mind. The wish of minor and the wish/desire of girl can always be considered by the Magistrate concerned/Committee and as per her wishes/desire further follow up action be taken in accordance with law under the J.J. Act.

**35.** Admittedly, this present petition has been filed at the very threshold of the enquiry which is being conducted by the Child Welfare Committee under the J.J. Act, therefore, and the same is pending and final orders are yet to be passed, the proceedings cannot be termed to be illegal or against the provisions of law.

**36.** It is evident that a writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders

passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee. Suffice to indicate that an illegal or irregular exercise of jurisdiction by the Magistrate passing an order of remand or by the Child Welfare Committee under J.J. Act cannot be treated as an illegal detention. Such an order can be cured by way of challenging the legality, validity and correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the statutory provisions of law but cannot be reviewed in a petition seeking writ of habeas corpus.

37. We accordingly come to our conclusions in respect of question nos.1, 2 and 3 for determination and answer the same as follows:-

**Answer No.1 :** If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus.

**Answer No.2:** An illegal or irregular exercise of jurisdiction by a Magistrate or by the Child Welfare Committee appointed under Section 27 of the J.J. Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention.

**Answer No.3:** Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into

account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h) of the J.J. Act.

**38.** So far as all the I.As. for Interventions are concerned, since we have already held that the writ of habeas corpus is not maintainable, therefore, these I.As., cannot be considered and accordingly, all are **rejected**. However, the parties can apply before the Child Welfare Committee under the J.J. Act for taking over the custody of the corpus, if so advised.

**39.** In view of the aforesaid discussions, the objection raised by the learned counsel for the respondents is upheld, therefore, this petition is treated to be as not maintainable.

**40.** Accordingly, the writ petition being bereft of merits and substance is hereby **dismissed**. However, the petitioner and the interveners would be at liberty, if aggrieved, to avail the remedy as available under the provisions of law, if so advised.

No order as to costs.

**(S.A. DHARMADHIKARI)**  
**JUDGE**

**(DEVNARAYAN MISHRA)**  
**JUDGE**