

Habeas corpus - Minor - For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction. Habeas corpus Father fitness. Best welfare of the child - Hindu Minority and Guardianship Act, 1956, S. 6 [SCe] 3312405]

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**2019 PLRonline 3500 (SC) , Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari And Others,**

[writ](#) of habeas corpus in child custody matters - The writ of habeas corpus is an extraordinary remedy used to secure the liberty of the subject - Writ of habeas corpus is maintainable when it is proved that the detention of a [minor](#) child by a parent or others was illegal and without any authority of law - The power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody - The writ of habeas corpus is not to justify or examine the legality of the custody - The writ of habeas corpus is not issued where the ordinary remedy provided by the law is available or is effective.

**Habeas corpus - Minor - Is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention - The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it - The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child - For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has [jurisdiction](#). [Para 13]**

**Habeas corpus - Minor - In child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. [Para 18]**

**Hindu Minority and Guardianship Act, [1956](#), S. 6 - Child custody - Welfare of the minor child is the paramount consideration - Court while deciding the child custody cases is not bound by the mere legal right of the parent or guardian - Though the provisions of the special statutes govern the rights of the parents or guardians, but the welfare of the minor is the supreme consideration in cases concerning custody of the minor child - The paramount consideration for the court ought to be child [interest](#) and welfare of the child. [Para 25]**

**Hindu Minority and Guardianship Act, 1956, S. 6 - Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child - Father is the only natural guardian alive and has neither abandoned nor neglected the child - Only due to the peculiar circumstances of the case, on account of the fathers ill health , the child was taken care of by the appellants (brother and sister of the deceased mother) - The child went to the custody of the appellants in unavoidable conditions - Only the circumstances involving his health prevented the father from taking care of the child - Under Section 6 of the Act, the father is the natural guardian and he is entitled to the custody of the child and the appellants have no legal right to the custody of the child - In determining the question as to who should be given custody of a minor child, the paramount consideration is the `welfare of the child' and not rights of the parents under a statute for the time being in force - Father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor [children](#) in the context of all the relevant circumstances - The welfare of the child shall include various factors like ethical upbringing, economic well-being of the guardian, child's ordinary comfort, contentment, health, education etc. - The child lost her mother when she was just fourteen months and is now being deprived from the love of her father for no valid reason - Welfare of the child has to be determined owing to the facts and circumstances of each case and the court cannot take a pedantic approach.**



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