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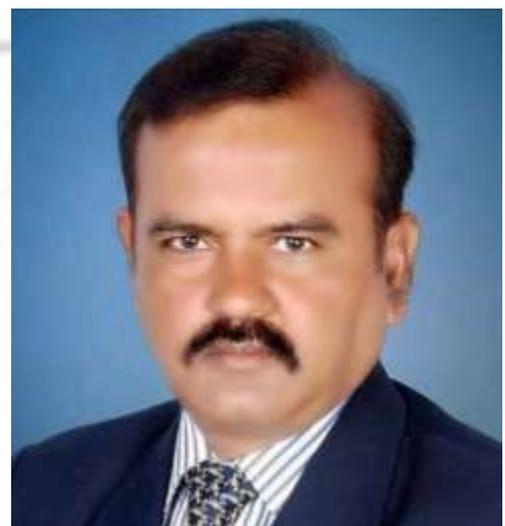


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

## **SURYA VADANAN VS STATE OF TAMIL NADU- AIR 2015 SUPREME COURT 2243**

AUTHORED BY - A MADHUVANDHI

### **ABSTRACT**

*Surya Vadan v. State of Tamil Nadu AIR 2015 SC 2243 is a landmark judgment by the Supreme Court of India on custody disputes-relating to children in transnational marriages. The decree has recognized the importance of the comity of courts while, at the same time, prioritizing the young child's interest. The case originated from the act of the respondent, who was the mother, taking her two daughters from the UK and bringing them to India without consent from appellant father. In this case, the father moved to execute the custody order given by a UK court that required the children to return to the UK. The Madras High Court dismissed his habeas corpus petition citing the paramount welfare of the children. However, against this ruling, the Supreme Court ruled in favor emphasizing upon the importance of honoring foreign court rulings unless there are exceptions beyond the usual.*

*The ruling said Indian courts will not pass orders that shall automatically nullify the foreign custody orders but have to ascertain whether such enforcement of orders is in consonance with the best interest of the child. The ruling has also taken note of the doctrine of forum non conveniens, since the UK, in view of the fact that the children are British citizens and have lived most of their lives there, was to be considered as the more appropriate jurisdiction. While the decision provides a more consistent point of law in cases of international custody litigation, it may raise the question of whether flexibility in approach should not be offered for cases where the child has really settled in India. The decision itself emphasizes that India has to seriously consider joining the Hague Convention on International Child Abduction to address similar cases.*

**Key Words:** *child, best interest, comity, forum non conveniens, parent.*

## **I. INTRODUCTION**

The concept of court comity is intricately linked to the efficient and effective management of justice globally. This principle has been essential in resolving disagreements between parents of different nationalities about custody of young children. The case of *Surya Vadan*

## **II. FACTS OF THE CASE**

The appellant (Surya Vadan) and the respondent (Mayura) got married in Chennai on January 27, 2000. Although both originate from India, the appellant is a citizen and resident of the United Kingdom. At the time of the wedding, the respondent was a citizen and resident of India.

Soon after their wedding, in March 2000, the respondent moved to the U.K. with the appellant. Then, in February 2004, she obtained British citizenship and a British passport. As a result, both the appellant and the respondent acquired British citizenship and were typically living in the U.K. Additionally, both were involved in productive work there.

On 23rd September 2004, a girl named Sneha Lakshmi Vadan was born to the couple in the U.K. She automatically received British citizenship at birth. On 21st September 2008, another daughter, Kamini Lakshmi Vadan, was born to the couple in the U.K., and she was also granted British citizenship at birth. Currently, the older daughter is just over ten years old, and the younger daughter is just over six years old.

Due to the couple facing marital problems, on 13th August 2012, the respondent departed the U.K. and went to India with her two daughters. Prior to departing, she had bought return tickets for herself and her daughters for September 2, 2012. She asserts that round-trip tickets were less expensive than one-way tickets, which is the reason she chose them. Nonetheless, the appellant argues that the tickets were bought with the intention of

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<sup>1</sup> *Surya Vadan v. State Of Tamil Nadu*, AIR 2015 SUPREME COURT 2243.

returning prior to the reopening of their children's school on 5th September 2012.

Upon reaching India, the respondent and her daughters went to her parents' home in Coimbatore, Tamil Nadu, where they have lived since then. On 21st August 2012, the respondent filed and signed a petition under Section 13(1) (i-a) of the Hindu Marriage Act, 1955<sup>2</sup>, requesting a divorce from the appellant. This petition was submitted to the Family Court in Coimbatore on 23rd August 2012. Moreover, a petition for the custody of the two daughters was submitted by the respondent, but no decisions have been made on the petition to date.

Subsequently, the appellant learned about the respondent's plan to stay in India with their two daughters. As a result, on 27th August 2012, he journeyed to Coimbatore to peacefully settle their disagreements. Interestingly, during his time in Coimbatore, the appellant resided in the same home as the respondent and their two daughters, at the residence of his in-laws. The appellant claims he was not aware that the respondent had already initiated divorce proceedings.

Taking into account that the children were probably not going to return to the U.K. soon, and aiming to prevent any interruption in their education, they were enrolled in a school in Coimbatore with the appellant's agreement.

As the appellant and respondent could not come to an agreement, the appellant went back to the U.K. on 6th September 2012. About a month later, on 16th October 2012, he got a summons dated 6th October 2012 from the Family Court in Coimbatore concerning the divorce petition submitted by the respondent, asking him to appear and state his case on 29th October 2012. It is observed that the divorce case remains underway in the Family Court in Coimbatore, with no significant or effective directives issued so far.

#### *Proceedings in the U.K.*

Confronted with the circumstances, the appellant filed a lawsuit in the U.K. On 8th November 2012, he requested the High Court of Justice in the U.K. (hereinafter called 'the foreign court') to recognize the children as wards of the court. Alongside this petition, he

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<sup>2</sup> Hindu Marriage Act, 1955 (Act 25 of 1955), s. 13.

provided documents that showed: (i) He had covered the fees for a private school in the U.K. with the aim of having the children continue their education there. (ii) The children had departed their school in the U.K. without advance notice, implying they might not go back to continue their studies.

On 13th November 2012, the High Court of Justice issued an order designating the children as wards of the court “for the duration of their minority or until this aspect of the order is changed or revoked by another court order.” The directive additionally mandated the respondent to send the children back to the authority of the foreign court.

#### *Proceedings in the Madras High Court*

As the respondent failed to adhere to the order issued by the foreign court, the appellant submitted a writ petition in the Madras High Court in February 2013 (HCP No.522 of 2013) requesting a writ of habeas corpus. He contended that the respondent was unlawfully holding their daughters, Sneha Lakshmi Vadan and Kamini Lakshmi Vadan, and sought their appearance in court for suitable orders to be issued.

Once the pleadings were finished, the Madras High Court heard the petition. By a ruling and directive dated 4th November 2013, the writ petition was essentially dismissed. The Madras High Court ruled that the well-being of the children outweighed the legal rights of both parents. Regarding the facts, the court stated that because the children were under the respondent’s care and she held legal guardianship, her custody could not be considered unlawful.

The High Court additionally observed that the appellant was permitted to have custody of the children each Friday, Saturday, and Sunday while the proceedings were ongoing. Furthermore, it was noted that the order issued by the foreign court had been properly adhered to and that the appellant had later returned to the U.K. Given these circumstances and the existing law, the Madras High Court “dismissed” the petition submitted by the appellant for a writ of habeas corpus.

#### *Appeal to the Hon’ble Supreme Court*

Dissatisfied with the ruling of the Madras High Court, the appellant has filed an appeal with the Hon'ble Supreme Court.

### **III. ISSUES**

The following issues were dealt in this case:-

- Whether Indian courts should recognize and enforce a foreign court's custody order?
- Whether Indian courts have jurisdiction over a child custody dispute where a foreign court has already passed an order
- Whether the best interests of the child should override the foreign court's order?
- Whether the mother's act of bringing the children to India without the father's consent amounted to wrongful retention?

### **IV. APPELLANT CONTENTION**

The appellant argued that the mother had illegally taken the children out of the UK, breaching a valid UK court order that awarded him custody. He contends that both parents share equal authority in determining the child's residence, and in this case, the respondent has engaged in unlawful removal as well as unlawful retention. Even with the ruling made by the UK Court, the children were not brought back to their home. He advocates that the Indian Court should adhere to the principle of comity. He contended that Indian courts ought to honor and implement the UK court's ruling based on the comity principle and carry out the UK court's directive to return the children to the UK. The appellant contends that the UK is the child's usual place of residence and that they would receive superior care, education, and greater stability in that location. The concept of Forum Non Convenience was likewise utilized in this case. He claimed that because the children were born and grown up in the UK, that jurisdiction was better suited for resolving custody issues.

### **V. RESPONDENT CONTENTION**

The respondent contended that the children's well-being should be the top priority, and that they received better care in India. She claims that she is the main caregiver for the children and that she is more suited to care for them. She goes on to claim that removing them from her would harm their well-being. She argued that because the children were currently in India, the Indian courts had the authority to determine their custody regardless of the UK court's order.

## **VI. JUDGEMENT**

The Supreme Court allowed an appeal regarding the Madras High Court's denial to issue a writ of habeas corpus for presenting the children for Surya Vadan. After careful review, the Supreme Court concluded that the High Court mistakenly favoured the children's welfare within Indian jurisdiction over the legal regard due to foreign court orders based on the principle of comity of courts. As a result, the Supreme Court instructed that the children be returned to the U.K. to allow for their cases to be resolved in the suitable foreign court, while also implementing temporary measures to uphold the children's welfare throughout the transition. By ordering the return of the two children to the UK for a custody decision by the UK Court, the Supreme Court outlined the legal principles that the Indian judiciary had utilized in international child abductions up to that time:

*“(1) The comity of nations does not require a court blindly to follow an order made by a foreign court but requires that the foreign order be given serious consideration.*

*(2) The welfare of the child is the paramount consideration.*

*(3) When considering the return of a child, the domestic court may conduct a summary or elaborate inquiry.*

*(4) The modern theory of conflict of laws recognises and prefers the jurisdiction of the state which has the most intimate contact with the issues arising in a case”.<sup>3</sup>*

It was also determined that we should show appropriate respect for orders issued by a Foreign Court. If a Foreign Court's interim or interlocutory order is to be ignored, there must be a specific reason for that. Certainly, we anticipate that Foreign Courts will honour the decisions made by Courts in India, and thus there is no valid reason for Domestic Courts to not reciprocate and uphold the orders issued by Foreign Courts.

If a valid order from a Foreign Court with competent authority exists and the Domestic Court opts for a detailed investigation (instead of a brief inquiry), it must provide specific justifications for this choice. A detailed investigation should not be mandated automatically. In determining if a summary or a detailed investigation is necessary, the Domestic Court should consider:

- The nature and effect of the interim or interlocutory order passed by the Foreign Court.
- The existence of special reasons for repatriating or not repatriating the child to the

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<sup>3</sup> Surya Vadan v. State Of Tamil Nadu, AIR 2015 SUPREME COURT 2243.

jurisdiction of the Foreign Court.

- Whether the repatriation of the child causes any moral or physical or social or cultural or psychological harm to the child, or causes any legal harm to the parent with whom the child is in India. There are instances where the order of the Foreign Court may result in the arrest of the parent on his or her return to the foreign country. In such cases, the Domestic Court is also obliged to ensure the physical safety of the parent.
- The alacrity with which the parent moves the Foreign Court concerned or the Domestic Court concerned, is also relevant. If the time gap is unusually large and is not reasonably explainable and the child has developed firm roots in India, the Domestic Court may be well advised to conduct an elaborate inquiry.

The Court stated that if a capable foreign court has previously decided on a child's custody, Indian courts should generally honour and implement that ruling unless extraordinary circumstances are present. The Court used the doctrine of Forum Non-Convenience and stated that the UK was the more suitable venue for determining the custody of the children as they were British citizens and had lived the majority of their lives in the UK. The Court recognized that the child's welfare is of utmost importance, the Court observed that there was no convincing evidence to suggest that a return to the UK would harm the children's well-being. The ruling vehemently criticized the action of a parent independently removing the child to a different jurisdiction to obtain a favourable ruling. It asserted that these actions weaken the rule of law and international collaboration in family law issues.

## **VII. PRECEDENT ANALYSIS**

In *Sarita Sharma v. Sushil Sharma*<sup>4</sup>, the court highlighted that domestic courts should prioritize the child's welfare over foreign court orders, though it did not fully incorporate the principle of comity. *Shilpa Aggarwal v. Aviral Mittal*<sup>5</sup> took a balanced approach, emphasizing that child welfare remains paramount while still recognizing the importance of foreign court rulings. Similarly, *V. Ravi Chandran v. Union of India*<sup>6</sup> clarified that comity does not demand blind obedience to foreign judgments, reinforcing the child's best interests as the overriding concern. In *Ruchi Majoo v. Sanjeev Majoo*<sup>7</sup>, the Supreme Court reiterated that

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<sup>4</sup> *Sarita Sharma v. Sushil Sharma*, 2000(2) ALD(CRI)110.

<sup>5</sup> *Shilpa Aggarwal v. Aviral Mittal*, 2009 AIR SCW 7694.

<sup>6</sup> *V. Ravi Chandran v. Union of India*, 2009 INSC 1238.

<sup>7</sup> *Ruchi Majoo v. Sanjeev Majoo*, AIR 2011 SUPREME COURT 1952.

while comity is significant, the child's welfare is the primary consideration in custody matters. Lastly, *Arathi Bandi v. Bandi Jagadrakshaka Rao*<sup>8</sup> underlined the necessity of respecting foreign rulings unless they contradict the child's best interests, reaffirming the principle that the welfare of the child must always take precedence.

### **VIII. ANALYSIS**

Indian judicial rulings concerning child abduction have primarily been influenced by the concept of the child's 'welfare'. However, due to a lack of legislative direction on which factors to consider when determining a minor's best interests, uncertainty exists, and courts have provided differing interpretations based on individual beliefs about what is best for the children involved in the cases, which are affected by idealized views on parenthood influenced by differing levels of gender bias and cultural assumptions. In addition to emphasizing the principle of child welfare, Indian courts have also utilized 'comity' as a key legal principle in child abduction cases, mandating the return of the child to their usual place of residence. Nonetheless, in instances where the judiciary has depended on the principle of comity, it has consistently framed the matter considering the child's welfare and asserted that the 'comity of courts' does not necessitate the automatic enforcement of foreign rulings.

The ruling reinforces India's adherence to global legal standards on child custody. Acknowledging the UK as the suitable venue for custody decisions emphasizes the necessity to deter forum shopping in marriage-related conflicts. Nonetheless, this rigid observance of comity among courts brings up questions about whether Indian courts ought to adopt a more adaptable approach in evaluating foreign custody orders, especially in cases where a child has lived in India for a significant duration after moving. A significant obstacle in international custody conflicts is achieving equilibrium between parental rights and the child's best interests. In this situation, the mother argued that she was the main caregiver and that going back to the UK might harm the children. Although the Court reviewed these arguments, it ultimately placed greater emphasis on following the UK court's custody order than conducting an independent assessment of the children's welfare within the Indian context.

The parental patriae process that allows for the fair analysis of children's interests has been

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<sup>8</sup> *Arathi Bandi v. Bandi Jagadrakshaka Rao*, 2013 AIR SCW 6571.

cited as a justification for the child's return to the UK. Critics, however, argue that this judgment ignores a thorough investigation into the children's mental health and adaptation issues. Earlier ruling such as *Nil Ratan Kundu v. Abhijit Kundu*<sup>9</sup>, however, has brought forward the importance of pretty straight assessment of a child's welfare just before custody decisions.

Initially, the Hon'ble High Court considered the comity and the best interest of the child as 'opposed legal principles.' They do not 'contrast' as one being the inverse of the other; they contrast-as distinct principles-in each case with respect for the circumstances of the specific case. The decision, therefore, harmonizes Indian law with international standards in regard to child custody matters through the principle of comity of courts. It is a decision by which the Supreme Court has very carefully examined whether the sending back of the children to the UK would harm their interest, thereby taking a child-focused view. It also underlines the need for India to accede to the Hague Convention on Civil Aspects of International Child Abduction to prevent international parental child abduction.

The Decision Sets the Standard for the Indian Courts in Cases of a Similar Nature to Consistency in Custody Conflict. The Comity of Courts Principle Infers to Reciprocal Rearing in Legal Systems, thus Not Allowing the Courts from Exceeding the Jurisdictional Limits Imposed by Foreign Jurisdiction. The court affirmed that temporary foreign orders must be honored unless there is a strong justification for not doing so. Simultaneously, it upholds the well-being of the children as well. The court examined whether the children would benefit in any way by being brought back to the U.K, as well as whether there would be any unnecessary harm inflicted on them.

The supreme court's decision in *Surya Vadan* insists on retaining the principle of comity of courts to the extent that it ensures foreign judgments receive their recognition. At the same time, this principle cannot be a one and only dogma or be considered a complete justification for all the matters because it necessarily requires balancing with a child's best interest, which is an essential consideration in custodial matters. The Indian courts have always professed that the welfare of the children should rank at the top of all other legal principles; however, in this case, the Court put a lot of weight on the foreign court's ruling.

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<sup>9</sup> *Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413.

## **IX. CONCLUSION**

Through the judgment in *Surya Vadanam v. State of Tamil Nadu*<sup>10</sup>, the Supreme Court gives a very careful balance between the international legal optics and issues with respect to the interests of children in custody. Comity has been given its due and, at the same time, the interests of the child have been kept paramount. Therefore, this judgment provides a solid architecture to deal with legal issues across jurisdictions. It would encourage quick, respectful cross-border legal action while preserving the procedural integrity of international courts with necessary rights and welfare of minors.

The ruling is not only beneficial for future cases concerning international custody conflict but also reaffirms the access to justice and welfare for children through national and international norms within which India's practice operates.



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<sup>10</sup> *Surya Vadanam v. State Of Tamil Nadu*, AIR 2015 SUPREME COURT 2243.