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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12th October, 2021
Date of decision: 29th October, 2021

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W.P.(C) 1271/2020

S.D.

..... Petitioner

Through: Mr. Vikas Singh, Sr. Advocate with Mr. Varun Singh, Ms. Deepeika Kalia, Mr. Kapish Seth, Mr. Mrityunjay Singh, Ms. Alankriti Dwivedi, Ms. Samruddhi Bendbhar and Mr. Satwik Misra, Advocates. (M: 8587073661).

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Anupam Srivastava, ASC for GNCTD with Mr. Vasuh Misra, Advocates for R-1.

Mr. K.K. Rai, Sr. Advocate with Mr. Anshul Rai, Mr. S.K. Pandey, Mr. Chandrashekhar AC, Mr. Awanish Kumar & Ms. Sreoshi Chatterjee, Advocates for R-3.

Mr. Mahesh Jethmalani, Sr. Advocate with Mr. Ravi Sharma, Ms. Gunjan Mangla, Ms. Madhulika Rai Sharma & Mr. Anjani Kumar Rai, Advocates for R-4. (M:9650176161)

Dr. Abhishek Manu Singhvi, Sr Advocate with Mr. B. Shrivanth Shanker and Ms. Monalisa Kosaria, Advocates for R-5.

Mr. Harish Salve, Mr. Gopal Subramaniam, Mr. Mohit Mathur, Sr. Advocates with Mr. D. Abhinav Rao, Advocate for R-6.

Mr. Sandeep Sethi, Sr. Advocate with
Mr. D. Abhinav Rao, Advocate for
Applicant. (M:9818144867)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

JUDGMENT

Prathiba M. Singh, J.

1. The well-known proverb “*health is wealth*” has deep and varying connotations. Historically, it connoted physical health but in modern society the word “*health*” would include physical, mental and emotional health of a person. The plight of an extremely well to do mentally ill person (*hereinafter ‘Mr. DMP’*) with a large family is the subject matter of the present petition. Due to the sensitive nature of this case and the persons involved, all the individuals are referred to by their abbreviated initials and not by full name. The Petitioner is the wife of the mentally ill Mr. DMP. An application has been moved by the Respondent no. 5 in respect of the nomenclature used for the Petitioner which is dealt with below, before proceeding further.

CM APPL. 21096/2021 (for modification of o/d 4th June, 2021)

2. This application has been filed on behalf of Respondent No.5 seeking partial modification of order dated 4th June, 2021, to the extent that it refers to the Petitioner - Mrs. SD as the “*wife of DMP*”. During the course of hearing, Respondent Nos.5 and 6 have repeatedly objected to Mrs. SD being referred to as Mr. DMP’s wife.

3. It is seen from the record that, Mrs. SD has been shown as the wife in the election records of Mr. DMP since inception. She has also borne three children with Mr. DMP. Mr. DMP himself has never challenged the fact that

she was his wife. The judgment of the Patna High Court in *Civil Writ No. 22948/2011* titled *Smt S.D.& Ors. v. Bihar State Housing Board & Ors.*, relating to a land dispute also clearly acknowledges that Mrs. SD is the wife of Mr. DMP. The Id. Division Bench of this Court in *W.P. (Crl.) 2255/2019* titled *R.S. v. State & Ors.* has also referred to Mrs. SD as the wife of Mr. DMP repeatedly.

4. Thus, the objections of Respondent Nos.5 and 6 are bereft of any merit.

5. With these observations, the application is dismissed.

W.P.(C) 1271/2020 & CM APPLs. 4396/2020, 7762/2020, 23213/2020, 24330/2021 (for interim arrangement), 24951/2021 (for adjudication on maintainability), 36031-32/2021 (for directions), 36345/2021 (for exemption)

Brief Facts:

6. The Petitioner – Mrs. SD is a 76 year-old lady and the wife of the mentally ill individual who is referred to as Mr. DMP. He was diagnosed with Fronto-temporal Dementia (*hereinafter, 'FTD'*) in 2019, the details of which shall be gone into hereinafter. He is a 7th term Member of Parliament from Bihar and from the facts that have emerged in this case, he is a man of means. Mr. DMP had three sons, one of whom has pre-deceased him. His current family consists of his wife, his other two sons, their wives and their children, as also the wife and children of his deceased son. Mr. DMP's younger son – Mr. RJS is Respondent No.3 in this petition and his older son – Mr. RS is Respondent No.4 in this petition. He also has a younger brother – Mr. US, who has filed an intervention application in this matter. Mr. DMP has also been in the company of one Ms. UD, who is stated to have been living with him for approximately 47 years, who also claims that she is the

wife. In so far as Ms. UD is concerned, this Court has not expressed any opinion on the status of Ms. UD, though it appears to have been broadly accepted that Ms. UD was the companion of Mr. DMP. Whether Ms. UD was his wife or not is clearly not an issue which has been raised in the present petition, for adjudication. Mr. DMP currently lives in his official residence in New Delhi, along with Ms. UD and Mrs. KR i.e., his daughter-in-law from the deceased son. Ms. UD is Respondent No.5 in this petition and Mrs. KR is Respondent No.6 in this petition.

7. Mr. DMP is the owner of various moveable and immovable assets. His assets, as have been declared before this Court, run into more than Rs.3,000/- crores or even higher. He is a substantial investor in a pharmaceutical company and its group companies. He also has other investments such as shares, bonds, provident funds etc. Conflict has arisen between the wife of Mr. DMP, his two sons and their families on the one hand and his companion - Ms. UD, his brother – Mr. US and his daughter-in-law from his deceased son – Mrs. KR, on the other hand. Owing to the mental condition of Mr. DMP, his wife has filed the present petition praying that this Court exercise its *parens patriae* jurisdiction to grant the following reliefs:

“(a) Pass a writ, order or direction in the nature of Declaration appointing the Petitioner as the sole Legal guardian of Mr. DMP for the purpose of dealing with his medical and mental disability and with regard to all matters relating to his estate including immovable and movable properties, control and management over Bank Accounts ,financial affairs, investments such as shares, investments, bonds, public provident fund, salary, pensions etc. on such terms and conditions , if any, that this Hon’ble Court deems appropriate while exercising

its parens patriae jurisdiction

(b) Pass a further writ, order or direction in the nature of Mandamus directing the Respondent No. 1 and /or any such other authority/s as this Hon'ble Court deems appropriate person or agency to ensure that the Petitioner is facilitated in all respects to effectively discharge her duties as the legal guardian of Mr. DMP and in relation to his properties and financial assets until further orders as mandated by Section 13 of the Right of Persons with Disabilities Act, 2016,

(c) Pass any other order (s) that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

8. By the above prayers, the Petitioner prays that she be appointed as the sole guardian of Mr. DMP, being his lawfully wedded wife and considering his mental condition.

Genesis of the Dispute

9. In 2019, Mr. DMP's younger son, Mr. RJS, filed a writ of habeas corpus, being *W.P. (Crl.) 2255/2019* titled *R.S v. State & Ors.*, before a Division Bench of this Court. The prayer in the said writ petition was for production of his mother, Mrs. SD, who, according to him, was illegally confined by Mr. DMP, Ms. UD and others acting on their behalf. Mr. RJS also sought the custody of his mother. The facts which thereafter unfolded before the Id. Division Bench revealed an extremely sorry state of affairs.

10. On 14th August, 2019, when the writ petition was listed before the Id. Division Bench, the Court directed Mrs. SD, Mr. DMP etc. to be personally present on the next date. An attempt was made to seek exemption from their appearance. However, on 19th August, 2019, Mrs. SD, Mr. DMP and their son - Mr. RJS appeared before Court. After interacting with them in

Chamber, the Court observed as under:

“While Mrs. SD was hard of hearing and it was difficult to communicate with her, we found that respondent no. 2 Mr. DMP did not recognize either the petitioner (his son) or Mrs. SD (his wife). He, in fact, told us that Mrs. SD was his mother and the petitioner’s name was Aradhya and not Mr. RJS. Respondent no. 2 repeated ad nauseam that he had travelled to all the countries of the world.

Enquiry from the staff who accompanied Mrs. SD and respondent no. 2 revealed that respondent no. 2’s younger brother was managing the business empire.”

The Court, thus, concluded that the situation is quite grave as Mr. DMP could not even identify his own wife and son or give their correct names.

11. The Division Bench, keeping in mind the allegations levelled in the case, directed investigation by the Crime Branch and called for a status report from the DCP on 27th August, 2019. The DCP filed two Status Reports dated 3rd September, 2019 and 19th September, 2019.

12. As per the first Status Report dated 3rd September, 2019, enquiry was conducted by the DCP, Crime Branch. The police made enquiries from 15 persons, including Mrs. SD, Mr. DMP, Ms. UD, Mr. US, Mrs. RD - who is the wife of Mr. US, Mr. RJS, various staff and employees and the domestic help working at the residence of Mr. DMP. The conclusions of the said enquiry proceedings as recorded in Status Report dated 3rd September, 2019 is summarized as under:

- As per the son - Mr. RJS, he was not allowed to meet his mother, Mrs. SD, since 2013. He further alleged that in the year 2017, when his mother was admitted in Fortis Escorts hospital, she was discharged one day early, against medical advice, at the behest of Ms. UD.
- As per Mrs. SD, she was not allowed to meet her son - Mr. RJS.

Accordingly, the police arranged a meeting between Mr. RJS and Mrs. SD, who, as per the report, were happy to meet each other. Mrs. RD, wife of Mr. US i.e., the brother of Mr. DMP, was living in the same bedroom as Mrs. SD. She expressed her desire to meet her son and her husband - Mr. US. When asked as to whether they were illegally detained or beaten up, both, Mrs. SD and Mrs. RD remained silent.

- Mr. DMP made a statement to the police that he had three sons, one of whom had passed away. He claimed Ms. UD to be his wife but did not deny that Mrs. SD was his wife. He further stated to the police that he has disowned his son Mr. RJS and did not wish to meet him.
- During examination of Mr. DMP, the police found that Mr. DMP was suffering from amnesia and was repeating his sentences again and again. He was unable to recognize the police officers he had met on 30th August, 2019, when they met for the second time on 2nd September, 2019.
- Ms. UD told the police that she met Mr. DMP in 1973 and they mutually agreed to live together as husband and wife. She admitted that Mrs. SD is the lawfully wedded wife of Mr. DMP. As per the report, Ms. UD had a diplomatic passport where Mr. DMP was shown as her husband. She has no children from Mr. DMP. During the examination, it was observed that she was managing all the domestic affairs at Mr. DMP's house.
- Mr. US, who is the younger brother of Mr. DMP and the husband of Mrs. RD, was also examined. As per the report, he is the Managing Director of M/s Aristo Pharmaceuticals Pvt. Ltd. He stated that he manages the affairs of all the companies owned by his brother. The police observed that Mr. US did not live with his wife Mrs. RD. Mrs. SD and Mrs. RD

live together in the house of Mr. DMP.

- An ex-employee, who had worked with Mr. DMP for 17 years, informed the police that when Mrs. SD was unwell, she was admitted to Fortis Escorts Hospital and her husband's name was wrongly shown as Late Sh. Mohan Sharma, at the behest of Ms. UD. Mrs. SD was also discharged from the hospital one day early, contrary to medical advice, at the behest of Ms. UD.
- Another ex-employee of Mr. DMP informed the police that both Mrs. SD and Mrs. RD were kept in confinement under lock and key at Mr. DMP's official residence.
- Another domestic help, who was working as the butler, stated that Ms. UD was the wife of Mr. DMP but she did not have any children with Mr. DMP. He further stated that Mrs. SD had three sons with Mr. DMP, however, due to old age, Mr. DMP frequently forgets. He denied any physical torture or confinement of anyone in the house.
- Mr. T.R. Narayanan, the Private Secretary of Mr. DMP, who was working with him since 1986, was also examined. He was initially under the impression that Ms. UD was the wife of Mr. DMP. However, he later came to know that Mr. DMP was married to Mrs. SD. He stated that Mrs. SD, Ms. UD and Mrs. RD, as also Mr. DMP, lived in the official residence.
- Two other employees of Mr. DMP denied confinement or physical torture.

13. On the basis of the evidence recorded, the police gave the following findings:

“Discussion of evidence

In the enquiry conducted so far, the following issues have emerged.

1. That Mrs. SD is the lawfully wedded wife of Mr. D.M.P., whereas, Smt U.D. has been living with D.M.P. as his wife since 1973. Smt. S.D. is an illiterate lady while Smt. U.D. is a Science Graduate from Maitreyi College, Delhi University.

2. That Smt. S.D. and Smt. R.D. have been living together since long. They were staying at ...(farmhouse in New Delhi) for about the past one year and had shifted to ...(Safdarjung house) about a month ago.

3. That Smt. S.D. had not been able to meet her son, Sh. R.S. (petitioner) for quite some time. She desired to meet her son R.S., her daughter in law G. and her grandson A.

4. That D.M.P. calls Smt. U.D. as his wife but does not accord the same status to his lawfully wedded wife Smt. S.D.

5. That D.M.P. has disowned his son Sh. R.S. in the year 2016 and does not want to either talk to him or to let him enter his house.

6. That Smt. U.D. holds a Diplomatic Passport stating that she is D.M.P.'s wife.

7. That two ex-employees have stated that Smt. S.D. and Smt. R.D. were kept in confinement and not allowed to go out.

8. That neither Smt. S.D. nor Smt. R.D. have stated that they had been confined or beaten by anyone.

9. That none of the servants who are presently employed with D.M.P. have corroborated the allegation of confinement or physical torture.

Findings

During the enquiry conducted so far, it is apparent that both Smt. S.D. and Smt. R.D. are estranged from their husbands. They live together and are totally dependent

on D.M.P. and Smt. U.D. for everything. Due to old age, D.M.P. is also suffering from some memory loss. During enquiry, no female attendant was found to be looking after the two ladies.”

14. On the basis of the above Report, on 5th September, 2019, the Id. Division Bench of this Court directed that Mrs. SD and Mrs. RD be shifted to a flat owned by Mr. DMP in Vasant Vihar. Mr. DMP’s counsel also volunteered to get Mr. DMP admitted in AIIMS. Accordingly, the Court directed the constitution of a Medical Board for examining Mr. DMP and filing a status report with respect to his medical condition.

15. On 12th September, 2019, the Medical Board, consisting of a Professor of Neurology and five other doctors from AIIMS, submitted its report. The findings of the said Board are as under:

*“**Report: D.M.P., an existing Hon’ble M.P. (Rajya Sabha) was examined in detail. His all available relevant investigation reports were evaluated. The Medical Board is of the opinion that D.M.P. is suffering from dementia (fronto-temporal dementia).”***

16. Thus, the Medical Board diagnosed that Mr. DMP had ‘*Fronto-Temporal Dementia*’. The police filed a fresh status report on 19th September, 2019 wherein further persons were examined. The conclusions in the said Status Report are summarized as under:

- The sister of Mr. DMP stated that Mrs. SD is the wife of Mr. DMP and Ms. UD used to work with him but she never married him. She had not been in touch with Mr. DMP for a very long time.
- An ex-employee of Mr. DMP’s company, who retired on 30th April, 2019 as Senior Vice-President, stated that Mr. DMP was suffering from

memory loss for the last two years. He gave some instances to support his statement. He informed the police that Ms. UD had taken control of the affairs of the company and had fired several employees. She employed persons with whom she could take control of the company. Shares of the company were transferred by getting signatures on blank forms by Mr. DMP's Private Secretary - Mr. T.R. Narayanan and the Company Secretary.

- Another ex-employee of the company, who resigned as President, Material and Planning, informed the police that Mr. T.R. Narayanan and Mr. Shrinath Banerjee, who are the Personal Assistants of Mr. DMP used to interfere in his work because of which he was forced to resign. He was not given access to Mr. DMP, even though he was a distant cousin. He also gave instances to show that Mr. DMP was having issues with memory loss. He informed the police that Mr. DMP's brother i.e., Mr. US was only a silent spectator, and the affairs of the company were being run by Ms. UD, who was earlier the Secretary of Mr. DMP.
- The nephew of Mrs. SD i.e., Mrs. SD's sister's son, who was working as an AC plant operator, was also examined. He stated that he was almost made to resign on 23rd August, 2019 at the behest of Ms. UD, however, with the intervention of his cousin - Mr. RJS, he was transferred to another plant. He claims that he was repeatedly ill-treated at this plant, leading to his resignation in September, 2019.
- Mrs. SD was again examined. She informed the police that the Vasant Vihar property and farmhouse were in her name. Though Ms. UD was given some properties, she wanted more, and this resulted in a lot of acrimony within the family. Her son - Mr. RJS was ousted from the

company due to Ms. UD, who was also responsible for causing tension between her deceased son and his wife. She stated that Ms. UD has given all the property to her nephew Mr. K. She further stated that she was locked up by the servants at Ms. UD's behest. She claimed that she was subjected to physical torture by Ms. UD, who was responsible for instigating Mr. DMP and creating disharmony in the family. She was happy to live in the Vasant Vihar house.

- Mrs. RD was also examined. She claimed that her husband, Mr. US had come to visit her sometime. She then lived with Mrs. SD at Mr. DMP's official residence and Ms. UD would beat them up. They were not provided food on time. The servants used to lock them up in the same room and make obscene gestures towards them. She claims that Ms. UD told them that she was their *malkin*.

17. On the basis of the above evidence, the police recorded the following findings:

“Discussion of evidence

In the further enquiry conducted in the matter, the following issues have emerged.

- 1. That Smt. S.D. and Smt. R.D. have alleged beating and confinement by Smt. U.D. and some servants on her behest. Both the ladies do not remember dates but shared their experience as per incidents.*
- 2. That Smt. S.D. and Smt. R.D. want to live at C-1/21, Vasant Vihar, New Delhi.*
- 3. That they do not want to meet D.M.P. and Smt. U.D. but Smt. S.D. wants to meet her son R.S., her daughter in law and her grandson. Smt. R.D. wants to meet and live with her husband.*
- 4. That Smt. R.D. has alleged that when she was living at the farm house, one servant named S. used to make obscene gestures at her and made fun of her. He would*

also lock her up inside the bathroom and not let her come outside and would keep standing outside the bathroom.

5. That Smt. R.D. has alleged that Smt. U.D. has taken away all the gold items belonging to her and S.D.

6. That two ex-employees of the Company have stated that D.M.P. has been having memory related issues and that the company is now being controlled by his erstwhile Secretary, Smt. U.D.

7. That Director, AIIMS had been directed by the Hon'ble Court to constitute a Medical Board to examine and take care of D.M.P. and file a Status Report in this regard a day before the next date of hearing i.e. 19.9.19. Request in this regard was sent to the Medical Superintendent, AIIMS on 06.09.19.

Findings

1. During the enquiry conducted so far, both Smt. S.D. and Smt. R.D. have alleged confinement and physical abuse.

2. Smt. R.D. has alleged that a servant S. used to make obscene gestures at her and used to lock her up in the bathroom at the farm house.

3. Smt. R.D. has further alleged that Smt. U.D. has taken away gold items belonging to her and Smt. S.D.

In view of the above submission made therein, the undersigned is ready and willing to abide by any directions of this Hon'ble Court."

18. On 19th September, 2019, the Id. Division Bench recorded that Ms. UD denied the allegations made by Mrs. SD and the ex-employees of Mr. DMP. She claimed that she is the legally wedded wife of Mr. DMP and has been living with him for over 45 years. Mr. DMP could still not recollect the names of any of his family members. On the next date, i.e., 20th September, 2019, the Court directed Mrs. SD and Mrs. RD to continue to live in the Vasant Vihar property and to be taken care of by two lady nurses from Apollo hospital at the expense of Mr. DMP. Mrs. SD was free to meet

anyone, including Mr. RJS. It was directed that the investigation headed by the DCP, Crime Branch be concluded within four weeks. Mr. DMP was to undergo a medical assessment by filing an appropriate application under Section 102(1)(a) read with Sections 3, 4 and 5 of the Mental Healthcare Act, 2017 (*hereinafter*, 'MHA-2017').

19. In view of the serious allegations of theft, physical torture, illegal confinement etc. against Ms. UD by Mrs. SD and Mrs. RD, Ms. UD was directed to live separately from Mr. DMP for a period of four weeks. It was directed that Mr. DMP's daughter-in-law - Mrs. KR and two male nurses take care of Mr. DMP in the meantime. The Court observed that there was an attempt made to conceal the exact medical condition of Mr. DMP till it was accidentally discovered by the Court on 19th August, 2019. Ms. UD and Mr. US i.e., the brother of Mr. DMP, did not inform the Court as to the serious ailment which he was suffering from. The Habeas Corpus petition was accordingly disposed of in the above terms.

20. Post the said order, an application was moved by Ms. UD for modification of judgment dated 20th September, 2019. A status report was also filed, as per which Ms. UD had temporarily shifted to a five-star hotel near the residence of Mr. DMP. Ms. UD was, thereafter, arrested. The application filed by Ms. UD was withdrawn on 17th October, 2019. It was clarified that Ms. UD's bail application would be decided uninfluenced by judgment dated 20th September, 2019. On 17th October, 2019, the Court also observed that Mr. RJS cannot permanently shift into the Vasant Vihar house. An application was then moved by Mrs. SD, objecting to Ms. UD living with Mr. DMP. The same was, however, withdrawn with costs being imposed. Pursuant to the investigation directed by the Id. Division Bench, a

criminal case has been registered, in which chargesheet is stated to have been filed but charges are yet to be framed.

Crl. M.C. 2182/2020 and Crl. M.C. 2184/2020

21. Pursuant to judgment dated 20th September, 2019 in **W.P. (Crl.) 2255/2019** titled **R.S v. State & Ors.**, a petition was filed before the Metropolitan Magistrate under Sections 101 read with 102(1)(a), 3, 4, 5 and 14(4)(b) of the MHA-2017. In the said petition, the background of the matter was set out and the following directions were sought:

“A. Direct the petitioner herein to All India Institute of Medical Sciences (AIIMS), New Delhi for further assessment and treatment under the Mental Healthcare Act, 2017 to ascertain as to when his mental illness started and

B. After the discharge from AIIMS, New Delhi transfer the petitioner herein to ...(farmhouse in New Delhi) so that his family can ensure he gets the best care and treatment.”

22. This petition was, however, disposed of by the Metropolitan Magistrate, vide order dated 30th January, 2020, with the following observations:

“The Ld. Senior Counsel for the Petitioner in his submissions has admitted that the petitioner’s ability to take such informed decisions for self is not as adversely affected as would require some external support for facilitating his access to mental care facility. This is affirmed by the factum of his presence in this proceedings that had taken place before the Hon’ble High Court of Delhi, when the order dated 20.9.2019 was passed and he himself having given the necessary instructions to the Ld. Senior Counsel for the purpose of the undertaking, given on his behalf before the Hon’ble High Court, for undergoing the necessary mental assessment. It is

equally noteworthy that during the pendency of the habeas corpus petition, the petitioner had moved an application for recall of the previous order to the extent it recorded the conduct of the parties post the in-chamber meeting, seeking to explain the petitioner's speech and dictation as inaccurate on account of his shot up thyroid levels and depleted sodium levels. This Court clarifies that the findings of AIIMS in Report dated 12.9.2019 to the effect that the petitioner suffers from fronto temporal dementia cannot be discredited. Yet, the Ld. Senior Counsel for Petitioner's submission to the effect that the decision making capacity of the petitioner continues to remain intact cannot be ignored. If such were the condition of the Petitioner, the law rather encourages him to approach the mental healthcare establishment himself for assessment and proper diagnosis. The argument of the Ld. Senior Counsel to the effect that the recourse for assessment as would precede any admission is not provided for under Section 85/86, fails to appeal to reason, for Section 86 requires a preliminary 'satisfaction' of the medical officer or mental health professional with respect to, inter-alia, severity of mental illness as would necessitate admission in a mental health facility. Even otherwise, one cannot contemplate any admission without a prior assessment of the patient. If voluntary exercise of discretion by the patient himself for the purpose of admission is recognized by the law, willingness for having self subjected to assessment, is also covered under Sections 85 and 86.

In the light of the afore-discussed reason, there being no statutory bar under the MHA-2017, the petitioner is well within his rights to approach the concerned mental health facility of his choice for abiding by the undertaking given by him before the Hon'ble High Court of Delhi. In a case such as at hand, the need and occasion for judicial intervention would arise in the event of the mental healthcare institution not entertaining the request of the petitioner for assessment, admission

and mental healthcare. Recourse to Section 102 for judicial directions against the existing backdrop of events is not only pre-mature but unnecessary. Accordingly, recognizing the liberty of the Petitioner to approach the concerned mental health care establishment on his own for assessment and further treatment, and giving to him liberty to approach the Court for appropriate relief in the event of his voluntary request being not entertained by the concerned mental healthcare institution, the present petition is disposed of.

Copy of order be given dasti to the counsel for petitioner/petitioner/ caregiver. File be consigned to Record Room as per rules.”

23. Another petition was filed under Sections 101 read with 102(1)(a), 3, 4, 5 and 14(4)(b) of the MHA-2017, through the wife of Mr. DMP. It was claimed that neither Mrs. SD nor her family had any idea about the earlier petition filed under Sections 101 read with 102(1)(a), 3, 4, 5 and 14(4)(b) of the MHA-2017 and the said petition was a collusive petition filed by Mrs. KR i.e., the daughter-in-law of Mr. DMP. In the said petition, two certificates dated 14th February, 2020 and 27th February, 2020, given by Dr. Nand Kumar, Professor (Department of Psychiatry), AIIMS and Dr. Kameshwar Prasad, Professor of Neurology, AIIMS were relied upon. On the basis of the said two reports, it was found that recourse to Section 102 of the MHA-2017 was not required. Accordingly, the petition was disposed of. The finding of the Metropolitan Magistrate in order dated 28th October, 2020 are recorded as under:

“Thus, the fact that the petitioner had himself undertaken to undergo voluntary assessment through instructions to his counsel, before the Hon’ble High Court, makes it apparent that he had the capacity to understand the said information, before binding himself

with the said submission. Furthermore, as per the report dated 27.02.2020 from Dr. Kameshwar Prasad, Professor of Neurology at AIIMS, the petitioner herein, is able to take decisions about his daily needs. The said report thus supports the fact that the petitioner's ability to take such informed decision for self assessment is not as affected which would require external support for facilitating his assessment under the Act. The said report given by an expert holds greater value, then any examination which this court may undertake, in order to assess the capacity of the petitioner under Section 4 of the Act.

Also, the order dated 30.01.2020 of this court had dismissed similar prayer under the Act, on the ground that in view of Section 85 and 86 of the Act of 2017, the petitioner was well within his rights to approach the concerned Mental Health Facility of his choice, for abiding the undertaking before the Hon'ble High Court of Delhi. Nothing has been placed on record by the Ld. Senior counsel for the petitioner, which would allow this court to take a different view, then that taken by the Ld. Predecessor.

Hence, in view of the above discussion, this court is of the opinion that recourse to Section 102 as prayed for is not required as the petitioner is at liberty to approach a mental health care establishment of his choice for his assessment and treatment, under Section 85 of the Act. Accordingly, the prayer of the petitioner seeking directions for assessment and treatment at AIIMS, in order to ascertain as to when his mental illness started is hereby declined. In view of the same, the capacity of Mrs. S.D to be the nominated representative of Sh. DMP, under the Act, need not be examined. The second prayer in the present petition is hereby declined being infructuous.

With this the present petition stands disposed of. Copy of this order be given dasti to the counsel for the petitioner."

24. CrI. M.C. 2184/2020 was filed challenging order dated 30th January, 2020 whereas CrI. M.C. 2182/2020 was filed challenging order dated 28th October, 2020. The prayer in both was for quashing the impugned orders and taking appropriate steps, in terms of the MHA-2017, in respect of Mr. DMP. However, on 19th July, 2021, in view of the fact that the medical assessment of Mr. DMP had already been conducted by a Medical Board of AIIMS appointed in this Petition, both the Criminal Miscellaneous petitions were disposed of. The relevant portion of order dated 19th July, 2021 reads as under:

“CRL.M.C.2182/2020

2. This petition has been filed challenging the impugned order dated 28th October, 2020 by which an application/petition which was filed by the Petitioner for assessment of the DMP was declined by the Magistrate. A perusal of the prayers made in the application shows that the relief prayed for are as under:

“A. Direct the petition herein to All India Institute of Medical Sciences (AIIMS), New Delhi for further assessment and treatment under the Mental Healthcare Act, 2017 to ascertain as to when his mental illness started and B. After the discharge from AIIMS, New Delhi transfer the petitioner herein to Khasra No.77/1, Harti Nilaya farm house, Dera Village, Dera Mandi Road, Tehsil Mehrauli Farm, New Delhi so that his family members can ensure he gets the best care and treatment. ”

3. Mr. Mohit Mathur, ld. Senior Counsel submits that the assessment of the DMP in terms of the Mental Healthcare Act, 2017 has been conducted, as directed both by the ld. Division Bench and by this Court and

hence this petition would no longer survive.

*4. Mr. Vikas Singh, ld. Senior Counsel concurs with this submission. Accordingly, after perusing the two prayers in the application and considering the fact that vide order dated 5th September, 2019 passed by the ld. Division Bench in **R.S. versus STATE & ORS. W.P.(CRL) 2255/2019** and vide order dated 4th June, 2021 passed by this Court, an assessment of the DMP has already been conducted by a Board of the AIIMS, nothing further survives in this petition and accordingly the same is disposed of as having become infructuous.*

CRL.M.C. 2184/2020 and CRL.M.A. 4741/2021

5. This petition arises out of the impugned order dated 30th January, 2020 which arises out of an application/petition filed by Ms. KR seeking medical assessment of the DMP. In view of the order passed in CRL.M.C.2182/2020, this petition would no longer survive and is disposed of accordingly. All pending applications are also disposed of.”

25. Thus, the petitions under Section 102 of the MHA-2017 have ultimately been disposed of, in view of the independent medical assessment conducted by the Medical Board appointed by this Court.

Proceedings in this Petition

26. The present petition, seeking the reliefs as extracted above, has been filed by Mrs. SD - the wife of Mr. DMP. Notice was issued in the petition on 4th February, 2020. On the next date of hearing i.e., 26th February, 2020, Ms. UD and Mrs. KR made a categorical statement that they have never intended to nor would they in any manner part with the possession of or create third party interest in any of the movable or immovable properties of Mr. DMP. They further undertook to not disturb the use and occupation of the Vasant

Vihar property by the Petitioner, in terms of orders dated 20th September, 2019 and 17th October, 2019 passed by the Id. Division Bench of this Court in *W.P. (Crl.) No.2255/2019* titled *R.S. v. State & Ors.* Ms. UD and Mrs. KR also submitted that they would file a sealed cover affidavit disclosing the operation of the bank accounts and investments of Mr. DMP since 1st January, 2020, till the date of filing of the counter affidavit(s), including any claim of the expenses made by them on his behalf. Thereafter, pleadings were completed by the parties. The criminal miscellaneous petitions, being *Crl. M.C. 2182/2020* and *Crl. M.C. 2184/2020*, were listed along with the present petition from time to time and were finally disposed of on 19th July 2021, in view of the report of the Medical Board. Medical reports submitted by doctors from AIIMS, that had been kept in a sealed cover before the predecessor bench, were called for vide order 28th January, 2021. Hearing commenced on 8th February, 2021. On the said date, Mr. US i.e., the younger brother of Mr. DMP, sought impleadment but the Court permitted him to intervene and make submissions in the matter.

27. On 19th May, 2021, parties were directed to file a complete list of litigations, including criminal complaints and other proceedings. The list revealed that there were more than 50 proceedings, mostly criminal cases and criminal complaints which were filed/pending before the police authorities, criminal courts, and offshoot petitions before the High Court. In order to ascertain the actual condition of Mr. DMP, on 28th May, 2021, the Court directed Mr. DMP, Ms. UD, Mrs. KR, Mrs. SD, Mr. RS and Mr. RJS to join Court proceedings online. The Court also appointed a Local Commissioner to be present at Mr. DMP's official residence at the time of the interaction and to place a report on record. On 2nd June, 2021, in the

presence of the Local Commissioner and the Assistant Court Master, who had reached the residence of Mr. DMP, the Court interacted with Mr. DMP. In the interaction with Mr. DMP, it was noticed that he was unable to respond to any of the questions put by the Court. The interaction with Mr. DMP on the said date, as recorded in order dated 2nd June, 2021, is set out hereinbelow:

“3. Through the video conference link which was generated by the Court Master, the Court has attempted to interact with the DMP. However, the DMP is unable to respond to any of the questions which have been put by the Court. When asked as to with whom he is living, the response of the DMP was that he is living with Bhagwan and he is unable to answer any questions relating to his daily routine. On being queried as to how many children he has, he initially said 6 and then 5. He is also unable to state as to whether his children are sons or daughters or name them. When asked as to who is his wife, he said that he has one wife and her name was initially stated to be ‘Pani’ and thereafter he said ‘Madam’.”

28. Interaction with Ms. UD, as recorded in the same order dated 2nd June, 2021, is set out below:

“Mrs. UD also joined the hearing online in the presence of the Court Commissioner. She was initially asked about the daily routine of the DMP. She is fully aware of the daily routine including the medicines being administered to him on a daily basis. She has informed the Court about the DMP’s daily routine. She states that the first time she noticed a change in the behaviour of the DMP was in May, 2018 when he was admitted in AIIMS. At that time, though he was broadly okay, he used to repeat his sentences. He is 81 plus and Dr. Kameshwar Prasad, Neurologist, AIIMS, was consulted at that time. Since then, there has been a change in behaviour. However, in

December, 2020, he suffered an asthmatic attack and was again admitted in AIIMS. Subsequently, he was admitted to Apollo Hospital, developed pain on the right side and an angiography was conducted which revealed some blockages in the heart. Open-heart surgery was performed by Dr. Nanda. According to Mrs. UD, the DMP's physical and mental condition improved substantially after the open-heart surgery and he started walking also. In July, 2020, however he contracted Covid and after his treatment of Covid, he seems to have lost a substantial part of his memory. In October, 2020 he again suffered an asthmatic attack. In February, 2021, his oxygen levels were dropping and he was accordingly admitted to Apollo hospital and after various tests were conducted, he was discharged. The medicines to be given to him were also confirmed by the doctors. Currently, he is comfortably staying at home.

5. Mrs. UD confirms that apart from her, Mrs. KR also lives in the same house. In her opinion, the two sons, Mr. RS and Mr. RJS have been estranged from the DMP. The DMP has a total of six grandsons, two each from each of the sons. On the question of assets/properties of the DMP, she makes a categorical assertion that she does not need anything from the DMP's assets and money and that she only requires that he lives happily and family does not disturb his comfortable living. She informs the Court that the DMP may have executed a Will about ten years ago.

29. Interaction with Mrs. KR, the daughter-in-law of Mr. DMP, revealed that she had good relations with Mrs. SD. Mr. DMP had three sons, one of whom, who was Mrs. KR's husband, had passed away. Mr. DMP has six grandsons. Mrs. KR was not aware as to who was operating the bank accounts of Mr. DMP. She stated that the same would be in the knowledge of Mr. DMP's Secretary - Mr. T.R. Narayanan. From the interaction on the said date, with the various individuals, it was clear that Ms. UD was

completely in charge of Mr. DMP and his residence. She was looking after all the affairs in the house, as also his medical treatment, etc.

30. The Court's interaction with Mrs. SD and Mr. DMP's two sons, Mr. RS and Mr. RJS showed that Mr. RS was completely removed from the family businesses from September, 2018. Mr. RS's salary was stopped and his shares were transferred, without his knowledge, first to his mother and thereafter to Mrs. KR. He also had a joint bank account with his father. He stated that Ms. UD was manipulating the whole family through his uncle - Mr. US and eventually, all rights of signing cheques etc. were taken away from him.

31. Mrs. SD could comprehend and answer the questions of the Court with the help of a lady nurse. She expressed that she was comfortable in the Vasant Vihar flat. Her statement, as recorded in the order is relevant and is set out below:

“8. Mrs. SD has also joined the Court proceedings today. Though the proceedings are online, she could comprehend and could answer the questions of the Court, with the help of the lady nurse who was present with her. It appears that she does have some hearing impairment. She stated that when she was married to the DMP her father had given 4.5 kilos of gold, from which the DMP started his business. She stated that she has three sons and one son has died. She blames Ms. UD and Mrs. KR for the death of her son. She used the words that her son was 'Hatta katta' and she is quite upset that he had passed away. She also answered the Court that she has grandsons and she does not have a grand-daughter or daughter. During the interaction with the Court, she became emotional and also cried during the proceedings. She stated that her husband used to respect her and all the daughters-in-law. However, in Hindi she stated that

'Abhi to main vyakul hoti hoon'. She stated that Ms. UD 'Nakli dikhawa karti hai'. She is comfortable in the Vasant Vihar flat where she is living. There are two nurses who take care of her. She also informed that the daughter-in-law (Bahu) - wife of Mr. RJS also takes care of her. When queried as to when she last met her husband, the DMP, she could not recall. She, however, expressed that she would like to meet him.'

32. Mr. RJS stated that till 2013, he was a joint Managing Director of M/s Aristo Pharmaceuticals Pvt. Ltd. As per him, around 2014-15, the process of transfer of money, shares and properties from Mrs. SD's account to Mrs. KR's children began at the behest of Ms. UD. As on date, he submits that the entire shareholding of Mrs. SD has been transferred to Mrs. KR. He was not allowed to meet his father, which resulted in the filing of criminal complaints. Mr. DMP had no difficulty with him or his brother - Mr. RS.

33. After hearing the parties, this Court permitted Mrs. SD to meet Mr. DMP with one lady nurse for 4-5 hours. The Local Commissioner was directed to be present at that time. A prayer was also made for the sons and grandsons to meet Mr. DMP, which was not granted at that stage as the Court wished to examine the matter further. Since then, vide order dated 4th June, 2021, Mrs. SD has been permitted to meet Mr. DMP along with one of the daughter-in-law's on five occasions. *Status quo* was directed to be maintained in respect of the movable and immovable assets of Mr. DMP. A Medical Board, consisting of three professors from AIIMS, was also constituted to visit Mr. DMP's house and submit a report. The constitution of the same was as follows:

i. Dr. M.V.Padma, Professor & HOD, Neurology, Chief – Neuroscience Centre, AIIMS, New Delhi. Email: vasanthapadma123@gmail.com (9810819167);

ii. Dr. Achal Srivastava, Professor Department of Neurology, AIIMS, New Delhi. Email: achalsrivastava@hotmail.com (9811178784)

iii. Dr. Nitish Naik, Professor, Department of Cardiology, AIIMS, New Delhi. Email: nitishnaik@yahoo.co.in (9810416170)

34. Considering Mr. DMP's financial position, that he was earning over Rs. 200 crores every year through dividends, this Court directed payment of Rs. 25,00,000/- per month from Mr. DMP's account to Mrs. SD for her everyday expenses, maintenance etc.

35. The medical report was submitted by the Medical Board constituted by the Court on the next date i.e., 19th July, 2021. Some videos were also placed before the Court. On the said date, the two CrI. MC's were disposed of, as discussed above. This Court also directed the members of the Medical Board to join the proceedings on the next date so that the Court could interact with them. The Court interacted with the Medical Board on the next date i.e., 23rd July, 2021 and recorded their statements. The right of Mrs. SD to visit Mr. DMP was reiterated and a further arrangement was put in place vide order dated 9th August, 2021. On 12th August, 2021, considering that there was no objection amongst the parties on the release of Mr. DMP's medical reports, it was directed that the copies of the medical reports be released to both the parties.

36. LPAs challenging orders dated 4th June, 2021 and 19th June, were filed by Respondent Nos. 5 and 6. Vide order dated 24th August, 2021 in LPA 209/21, 219/21, 221/21, 223/21 and 224/21, the Ld. Division Bench

clarified that there was no stay on the proceedings in the present petition. Accordingly, hearings in the matter continued. However, on the next date i.e., 27th August, 2021, this Court was informed that an SLP, being ***SLP (Civil) Diary No(s). 18022/2021*** titled ***UD v. SD & Ors.***, has been filed before the Supreme Court and that the Court has directed the hearing in the present proceedings to be deferred. On 7th September, 2021, this Court was informed that the SLP has been dismissed on 1st September, 2021, after a lengthy hearing before the Supreme Court. The matter was accordingly listed for completion of submissions.

37. On 8th September, 2021, this matter was taken up on mentioning. The Court was informed that Mr. DMP was admitted to Apollo Hospital the night before and his physical condition had deteriorated. On the basis of the diagnosis of Mr. DMP with FTD, the medical report submitted by the Medical Board constituted by this Court, the Reports of the Local Commissioner, as well as the Court's own interactions with Mr. DMP, it was found that Mr. DMP is not able to take any decisions in respect of either his medical treatment or in respect of his movable and immovable assets. Owing to the urgency expressed in the matter and the medical condition of Mr. DMP, Justice Rajiv Sahai Endlaw (Retd.) was appointed as an Interim Guardian to administer the movable/immovable assets of Mr. DMP. Insofar as the medical treatment of Mr. DMP was concerned, Ms. UD, Mr. US and Mrs. KR were tasked with taking joint decisions for the welfare of Mr. DMP, with Mrs. SD and the Interim Guardian being kept updated regarding the medical status of Mr. DMP. The operative portion of order dated 8th September, 2021 reads as under:

“24. In view of the prevalent situation and keeping in mind the physical and mental condition of the DMP, the following directions are issued:

i) Justice (Retd.) Rajiv Sahai Endlaw (M: 9717495002) is appointed as the interim guardian who shall henceforth administer the movable/immovable assets of the DMP, including all the bank accounts (individual or joint), renewal of term deposits, property leases, filing of returns, compliance of statutory formalities etc., All decisions for securing and preservation of the moveable and immoveable assets shall be taken by the interim guardian. Reports shall be filed initially on a monthly basis before this Court in respect of all actions taken;

ii) The interim guardian shall henceforth, inter alia:

a) authorise and release funds for all the expenses which are to be incurred for the medical treatment of the DMP, maintenance of his residence and expenses of persons living with the DMP, expenses for the staff, etc.;

b) take any and all steps to preserve all movable and immovable assets of the DMP, including amounts lying in bank accounts, fixed deposits, term deposits, shares, debentures, bonds, PPF account, pension etc.;

c) take all steps to secure the revenues of the DMP in the form of lease or rental amounts, dividends from the various companies etc.,

d) make payments to Ms. Satula Devi in compliance with order dated 4th June, 2021.

iii) The interim guardian shall be paid an honorarium of Rs.3 lakhs per month exclusive of secretarial, travelling and other expenses which shall be borne from the DMP's accounts.

iv) The interim guardian may appoint a Manager to assist him in carrying out his functions and also fix a reasonable remuneration of the said Manager.

(v) Insofar as the medical treatment of the DMP is

concerned, Ms. Uma Devi, Mr. Umesh Sharma and Ms. Kanchana Rai shall be entitled to take joint decisions for the welfare of the DMP. The interim guardian Justice Endlaw (Retd) shall however be informed of his medical condition on a daily basis during the DMP's hospitalisation and thereafter on a regular basis. Ms. Satula Devi and the two sons of the DMP shall also be similarly updated as to the medical status of the DMP.

vi) Insofar as the request of the DMP's family i.e., Mrs. Satula Devi, the two sons and their families, to visit the Apollo Hospital to meet the DMP and be updated about the health condition of the DMP is concerned, they shall be permitted to visit the DMP at the hospital only two persons at a time. Visits shall be strictly in terms of the protocol of the Apollo Hospital, depending upon the physical condition of the DMP. The family is also free to contact Dr. Sandeep Guleria to enquire about the medical condition of the DMP;

(vii) Mr. Narayanan, Personal Secretary of the DMP who is currently stated to be maintaining all the records relating to the assets of the DMP as also all the financial documents, bank statements, deposits etc., shall meet the interim guardian on 10th September 2021, at 11.30 am and extend all cooperation.

(viii) The sealed covers, which have been filed before this Court which contain the details of the bank accounts, fixed and term deposits, details of immovable property, details of shareholding etc., along with the bank statements, etc. shall be transmitted by the Registry/Court Master to the ld. interim guardian.

(ix) All parties shall render complete cooperation to the interim guardian in discharge of his functions.

25. The above directions shall be subject to the final decision in this matter.”

38. On 16th September, 2021, this Court directed the alleged Will of Mr. DMP, as mentioned by Ms. UD in her interaction with the Court, to be

produced before this Court in a sealed cover. Pursuant to order dated 16th September, 2021, photocopy of an alleged Will of Mr. DMP dated 18th July, 2011 was produced before the Court. However, Dr. Singhvi, Id. Sr. counsel submitted that, he objected to the alleged Will being called for in these proceedings as Mr. DMP is still alive and considering the assets of the DMP, the copy may not be retained. Accordingly, the copy of the alleged Will was perused and was returned to Id. Counsel for Respondent No.5.

39. The Local Commissioner has submitted her reports from time to time. Submissions have been heard on behalf of the parties over several hearings. The Respondents challenged the maintainability of the Petition. Thus the submissions have moved back and forth. However, in order to avoid any confusion, the submissions of each of the counsels is recorded below in seriatim, as per their position in the memo of parties.

Submissions on behalf of the Petitioner

40. The submission of Mr. Vikas Singh, Id. Senior Counsel appearing on behalf of Mrs. SD, is that Mr. DMP, is suffering from a severe mental illness. Despite this, the Metropolitan Magistrate wrongly declared him to be mentally fit, based on the false statement of his daughter-in-law – Mrs. KR. Mr. DMP himself is being kept in confinement under the complete control of Ms. UD, who claims to be his wife, and the Petitioner, who is his lawfully wedded wife, has been separated from her husband and two sons/families for the last two years. Considering the mental condition of Mr. DMP, it is prayed that this Court appoint the Petitioner as the nominated representative of Mr. DMP.

41. Insofar as the status of Ms. UD is concerned, reference is made to charge-sheet dated 31st October, 2019 to show that even as per the charge-

sheet, the passport authorities are of the view that Ms. UD falsely claimed to be the wife of Mr. DMP. No evidence was led to prove a valid or legally acceptable marriage with Ms. UD under Hindu Law. Thus, it is submitted that the admitted position is that there has been no marriage which took place between Mr. DMP and Ms. UD. Mrs. SD cannot therefore be expected to seek any declaration in respect of the void nature of their marriage.

42. Ld. Senior counsel thereafter recapitulates the entire life history of Mr. DMP. He stresses on the fact that Mr. DMP initially worked in a school and it was only from the jewellery which was given to him by Mrs. SD did Mr. DMP start his business. It is submitted that Mr. DMP had first incorporated a business in which 70% shareholding was of Mrs. SD and their sons. The marriage between the Petitioner and Mr. DMP is stated to have taken place in 1960. It is submitted that since 1960, Mr. DMP has always shown Mrs. SD as his wife. The Petitioner is not very highly educated and has studied only till the 5th standard. She is, however, fluent in the regional dialect and can converse in Hindi.

43. Ld. Senior counsel relies on photographs filed on record to explain the chronology of events leading up to the present situation. His submission is that the photographs exhibit the fact that Mr. DMP always lived with his family, though Ms. UD was part of that family. Mr. DMP never lived alone with Ms. UD and in fact, right up till 2018-19, when Mr. DMP's mental condition deteriorated, Mr. DMP was living with his wife, Ms. UD, his sons and their families as one big family. Till 2018, both the sons were also part of the company and businesses. Since then, the Petitioner has been completely separated from her husband as well as both her sons. Mr. DMP's complete assets are under the control of Ms. UD. Mrs. KR i.e., Mr. DMP's

daughter-in-law, has got documents signed by Mr. DMP, including the affidavits of disownment of his sons, after the onset of his mental illness. Ld. Senior counsel submits that thus, while the actual family of Mr. DMP has been completely deprived of him and his company, Ms. UD has been in control of his personal life as also his businesses.

44. It is submitted that Mr. DMP was first diagnosed with mild atrophy in the frontal lobe in 1997, which is clear from the brain report taken at Lilavati Hospital, Mumbai. Thereafter, in 2019, during the proceedings before the Id. Division Bench, he was diagnosed with FTD. In 2019 itself, the Respondents had approached the Metropolitan Magistrate under the MHA-2017 seeking a declaration regarding Mr. DMP's mental health. However, even before the Metropolitan Magistrate, the stand taken by Mrs. KR was that Mr. DMP was instructing the lawyers in the proceedings before the Id. Division Bench and that no medical assessment of Mr. DMP was required.

45. Insofar as the legal position is concerned, reference is made to Section 14 (1) of the Rights of Persons with Disabilities Act, 2016 (*hereinafter, 'RPWD-2016'*) to argue that the statute applies only *qua* a person who has a partial disability. Reference is made to Rule 7 of the Delhi Rights of Persons with Disabilities Rules, 2018 (*hereinafter, 'RPWD (Delhi) Rules-2018'*), enacted under the 2016 Act, to argue that the fact that the limited guardian has to consult the person with the disability shows that the disability is one of a limited nature and not a complete disability. It is further submitted that RPWD-2016 deals only with limited guardianship, which, according to Mr. Singh, leads to the conclusion that full guardianship could not be granted under the RPWD-2016. Section 2(s) of RPWD-2016 and its Statement of

Objects and Reasons are relied upon to show that the purpose of the Act is to provide benefits to persons with disabilities (*hereinafter*, 'PwD'), in education, jobs, reservation, etc.

46. Coming to the MHA-2017, the argument of Mr. Singh is that under the Mental Health Act, 1987 (*hereinafter*, 'MHA-1987'), Sections 53 and 54 specifically provided for how the property of a mentally ill person was to be dealt with. However, the MHA-2017 does not contain any provisions in this regard. On the strength of various provisions of the Act, it is submitted that a nominated representative is the person who is supposed to take care of the mentally ill person. Under Section 2(a) read with Section 5, an advance directive can be issued by a mentally ill person. In the present case, since no Mental Health Review Board (*hereinafter*, 'Board') had been constituted in Delhi, Mr. DMP did not give any advance directive. In the absence of an advance directive, a nominated representative would be appointed under Section 14. The order of precedence for appointing a nominated representative is given in Sections 2 and 14, as per which the Petitioner would clearly be put at a higher pedestal than a caregiver. Ld. counsel also relies on the judgment in *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 to argue that a concubine can never be considered a relative.

47. On the strength of Section 15 it is argued that a legal guardian can be a nominated representative which itself shows that a nominated representative plays the role of a guardian. It is further submitted that Section 17, which sets out the duties of a nominated representative, would take within its fold the best interests of Mr. DMP, which would include management of the assets of Mr. DMP. Section 120 of MHA-2017 Act is also relied upon to argue that MHA-2017 has an overriding effect, thus,

Section 14 of the RPWD-2016 would clearly be overridden.

48. Ld. Senior Counsel places reliance on several judgments to *inter alia* submit that under the *parens patriae* jurisdiction, which can be exercised by a writ court in exceptional cases, the Court has to bear in mind the best interests of Mr. DMP. The judgment in ***Suchita Srivastava v. Chandigarh Admn., (2009) 9 SCC 1***, is relied upon to argue that there are two different tests i.e., the best interest test and the substituted judgment test which are applied. Further, reliance is placed on the judgment of the Supreme Court in ***Aruna Ramchandra Shanbaug v. Union of India, (2011) 4 SCC 454***, in which case, the Court, while considering whether or not to withdraw life support, observed that the best interest of the person ought to be considered. It is submitted that in the present case, the best interest test ought to be applied by the Court.

49. Ld. Senior Counsel submits that the following facts reflect Mr. DMP's wishes:

1. The entire family always lived together. Mr. DMP was never separated from his wife and children, though Respondent No. 5/Ms. UD was also living with the family.
2. The shareholding of Mr. DMP always vested in Mr. DMP himself. No joint bank account was opened while Mr. DMP was in his full senses.

50. Reliance is thereafter placed on the decision of the High Court of Bombay in ***Rajni Hariom Sharma v. UOI, [W.P. (St.) 3883 of 2020, decided on 27th August, 2020]*** to argue that the role of the wife is crucial when the husband is suffering from a mental illness. The status of the wife is superior to any other person and hence, the best person to be appointed as a

guardian is the wife. The said judgment was also relied upon by the Delhi High Court in *Vandana Tyagi & Anr. v. Govt. of NCT of Delhi & Ors.*, [W.P. (C.) 1103 of 2019, decided on 7th January, 2020] and the Allahabad High Court in *Uma Mittal & Ors v. UOI*, [W.P. (C.) 40096 of 2019, decided on 15th June, 2020].

51. The judgment of the Supreme Court in *Indra Sarma (supra)*, which, in the context of the Protection of Women from Domestic Violence Act, 2005, draws a distinction between a married person and a person in a domestic relationship, is also relied on to argue that Ms. UD cannot be treated as being married to Mr. DMP. Ld. Senior Counsel further submits that Respondent No. 5 never objected to being referred to in the pleadings as not his wife and there is no assertion or proof of a marriage having been conducted. Reliance was placed on three judgments i.e., *Gunwant Kaur v. Municipal Corp., Bhatinda, (1969) 3 SCC 769*, *National Thermal Power Corporation Ltd. v. Mahesh Datta & Ors., (2009) 8 SCC 339* and *ABL International Limited & Anr. v. Export Credit Guarantee Corporation & Ors., (2004) 3 SCC 553* to argue that even a Writ Court can go into disputed facts.

52. It is argued that allegations of forum shopping are completely baseless inasmuch as the family of Mr. DMP has taken steps to file a criminal complaint owing to various reasons:

1. The passport of Ms. UD was wrongly obtained; and
2. The amount of approximately Rs. 34 crores, which was lying in the Petitioner's bank account was unauthorisedly transferred out of her bank account by Mrs. KR.

53. Insofar as the Respondents' reliance on Order XXXIIA CPC is

concerned, it is argued that as per Section 116 of MHA-2017, in respect of all decisions which the Board can take, the Civil Court's jurisdiction is barred.

54. Insofar as the disownment affidavits are concerned, reliance is placed on the judgment in *Preeti Satija v. Raj Kumari and Anr.*, *ILR (2014) 2 Del 1246*, where the Court has observed that disownment would not take away the right of the son to be an heir if the person dies intestate. It is therefore submitted that unless and until there are executed deeds of relinquishment/formal deeds of partition/family settlements, disownment affidavits would not have any legal effect.

55. Reference is also made to two judgments from the United Kingdom passed under the Mental Capacity Act, 2005 i.e., *VAC v. JAD & Ors*, [2010] *EW COP 2159* and *Re D (J)*, [1982] 2 *All ER*, to argue that during the lifetime of a person who is mentally ill, the Court can implement a statutory will. It is submitted that the alleged Will of Mr. DMP, despite the fact that it was executed in 2011, cannot be justified in as much as after 2011, the family has always stayed together and there was no ill-will between the parties.

56. Finally, Mr. Vikas Singh, Id. Senior Counsel submits that the Kerala and Madras High Court judgments relied upon by Dr. Singhvi are consent judgments and hence, would not act as precedents for the purposes of deciding the present case.

Submissions on behalf of Respondent No.3

57. At the outset, Mr. K.K. Rai, Id. Sr. counsel appearing for Respondent No.3 – Mr. RJS i.e., the youngest son of the Petitioner, submits that he adopts the arguments made by Mr. Vikas Singh, Id. Sr. counsel and Mr.

Mahesh Jethmalani, Id. Sr. counsel.

58. Insofar as the affidavits of disownment are concerned, a comparison is made between the two affidavits to show how the language in the two affidavits is the exact same. This, according to Mr. Rai, Id. Senior counsel, establishes the fact that the affidavits are not genuine. The disownment affidavits are also challenged on the ground that even as late as 2018, a lease agreement has been entered into in favour of the second son by the DMP's company - M/s Aristo Pharmaceuticals Pvt. Ltd., which shows that there was no ill-will between the father and sons.

59. Insofar as the two enactments are concerned i.e., the RPWD-2016 and the MHA-2017, it is his submission that both statutes are to be harmonised and read together, however, if there is any conflict then the MHA-2017 would apply due to Section 120, as also due to the fact that it is a later enactment which is a special statute.

60. Id. Senior Counsel also points out the difference in wording of the preambles of the two acts. While the RPWD-2016 records that the intention of the statute is to *"implement the Convention"*, the MHA-2017 records that it has been enacted in order to *"align and harmonise the existing laws with the said Convention"*.

61. As per Id. Senior counsel, RPWD-2016 is meant to alleviate the suffering of PwDs and specifies the role of the State in such alleviation. However, MHA-2017 provides for the manner in which a mentally ill person is to be cared for. He submits that the person and the property i.e., the mentally ill person and his/her assets, are inseparable from each other and are, in fact, integral to each other. Reference is made to the Universal Declaration of Human Rights, as per which the right to property is

recognized as a human right. The same has also been observed by the Supreme Court in *Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705 and *Rame Gowda v. M. Varadappa Naidu*, (2004) 1 SCC 769. Therefore, it is argued that the distinction between the assets/property of the person and the person himself/herself cannot be read into the statute. Thus, it is submitted that even if the MHA-2017 does not contain any provision for the protection of a mentally ill person's property, the Court cannot be rendered helpless, especially while exercising *parens patriae* jurisdiction.

62. It is argued that even though in the UK, *parens patriae* jurisdiction is no longer exercised, that does not mean that the same cannot be exercised by Indian Courts. Reliance was placed upon *A. Subash Babu v. State of A.P.*, (2011) 7 SCC 616 and *M/s. Om Sai Cultural Recreation Association v. State of Karnataka & Ors.*, 2015 SCC OnLine Kar 883 to argue that in order to eliminate injustice there are no limits on the Courts. A judgment of the Bombay High Court, being *Vijay Ramachandra Salgaonkar v. State*, [W.P. 637 of 2021, decided on 17th July, 2021], where guardianship of the wife, who is suffering from vascular dementia, has been given to her husband, was also relied upon.

63. On facts, it is submitted that so long as Mr. DMP was in control, he did not disturb the institution of his family. However, when he was in captivity, his mental condition deteriorated. The entire conspiracy was unearthed during the proceedings in the writ of *habeas corpus*, being *W.P. (Crl.) 2255/2019* titled *R.S v. State & Ors.* It is submitted that a deliberate attempt has been made to conceal Mr. DMP's mental condition, which is clear from a reading of the order of the Division Bench dated 19th August,

2019 and the order dated 20th September, 2019. The Division Bench was given the impression that the reason why Mr. DMP could not recognise his wife and his son was due to a change in his thyroid levels and depletion of his sodium levels. Ld. Senior counsel submits that Mr. DMP was, in fact, incapable of engaging a counsel on his behalf but in the proceedings before the Division Bench, a counsel was engaged on his behalf. This shows that the conduct of Ms. UD was not *bonafide*.

64. It is submitted that in fact, attempts were made to avoid production of Mrs. SD in Court. At that stage, the Court suspected that something was amiss and directed the entire family to be present in Court. A shocking observation made by the Court was that Mr. DMP did not recognize his own wife and son.

65. The pleadings of Ms. UD are also relied upon to argue that even the stand of Ms. UD shows her poor conduct. On page 1440 of the pleadings, in a reply filed by Ms. UD, it is denied that Mrs. SD is the wife of the DMP and that the DMP is incapable of taking cogent and intelligent decisions, which is contrary to what has been recorded by the Division Bench of this Court.

66. Ld. Senior counsel took the Court through Mr. DMP's medical records to argue that since 1997, the DMP has been detected with some cognitive impairment, which has only worsened with time.

67. Ld. Senior Counsel emphasizes upon the fact that Ms. UD, who is described in different documents as Manager (Public Relations), Vice-President (Public Relations) etc., was merely an employee who had come into the household. It is the Petitioner who is Mr. DMP's lawfully wedded wife. He argued that the present case raises a question of public policy i.e.,

whether the Court can recognise an extra-marital affair? It is submitted that Mr. DMP has repeatedly filed declarations in Parliament declaring Mrs. SD as his wife. Even during the Court ordered investigation, Ms. UD has stated that Mrs. SD is the wife of Mr. DMP. Id. Senior counsel submits that if the institution of marriage is being pitted against the role of Ms. UD, who, in his words, is nothing but a “*concubine*”, public policy would require the Court to side with the institution of marriage.

68. It is further submitted that recognising Ms. UD as the wife of Mr. DMP would also be contrary to Section 16 of the Hindu Marriage Act, 1955 and Section 18(2)(e) of the Hindu Adoptions and Maintenance Act, 1956. The acceptance of any arrangement apart from marriage would also demean the institution of marriage, which cannot be done as per the judgment of the Madras High Court in *Chinnammal and 8 Others v. Elumalai and 4 Others, 2000 (II) CTC 214* and the triple talaq judgment in *Shayara Bano v. UOI & Ors., (2017) 9 SCC 1*.

69. Finally, it is submitted that Mrs. SD is the most non-controversial person against whom no allegations have been levelled by any of the parties. Though Mrs. SD may be an illiterate person but it is not necessary that every illiterate person does not understand the finer values which are enjoyed within families. In any event, she is a good human being who has taken care of the entire family and therefore, she is entitled to the guardianship of the DMP.

Submissions on behalf of Respondent No.4

70. Mr. Mahesh Jethmalani, Id. Senior Counsel appears on behalf of Respondent No.4. It is the case of Mr. RS that he and his brother had a very good relationship with their father. This is evident from the fact that one of

them stayed with Mr. DMP even in August, 2018. Their relationship turned sour with the intervention of Ms. UD, who is taking advantage of Mr. DMP's mental condition.

71. Ld. Senior Counsel challenges the validity of the affidavits of disownment on the ground that they are completely unbecoming of any father. It is submitted that the language used in the affidavits seems to be of a third party and only the signatures have been obtained from Mr. DMP, whose mental condition was degenerating. It is further submitted that no mention was made of any disownment affidavit to the police and in fact, even the statement of Mr. DMP to the police, that he did not want his son in his house, was a tutored statement. Mr. Jethmalani emphasizes that the affidavits may have been signed at an earlier point of time as the date of the affidavits, as also the age of Mr. DMP, are not up to date.

72. Ld. Senior counsel submits that from 2016 onwards, various financial decisions have been taken, undermining Mr. DMP's financial capacity, in respect of shares, bank accounts, disownment of sons, etc., which clearly shows that since the time Mr. DMP has been suffering from this condition, Respondent No.5 has taken over his decision-making powers. It is further submitted that the manner in which Respondent No.4's shares and joint accounts have been transferred without his signatures also shows that during this period Mr. DMP did not take any decision on his own.

73. Insofar as the conduct of Mr. US i.e., the younger brother of Mr. DMP is concerned, ld. Senior Counsel claims that there is collusion and conspiracy involving Mr. US, who is now controlling the company along with Ms. UD. It is submitted that there can otherwise be no explanation as to why Mr. US is not willing to acknowledge Mrs. SD as the wife of Mr. DMP.

Reliance was placed on a writ petition filed by Mrs. SD and Mr. US, as Petitioner Nos.1 and 2 in *Civil Writ No. 22948/2011* in the Patna High Court. It is submitted that in the said writ petition, Mrs. SD has been described as the wife of Mr. DMP and Mr. US is Petitioner No.2. Thus, in judicial proceedings, Mr. US has admitted that Mrs. SD is the wife of Mr. DMP. It is thus argued that Mr. US is guilty of *suppresio veri* and *suggestio falsi*.

74. Insofar as the applicability of RPWD-2016 is concerned, Mr. Jethmalani, Id. Senior Counsel submits that FTD would not be a disability as defined under the RPWD-2016. Reliance is placed on Section 2(s), as per which, a *'person with disability'* would be a person with a partial impairment. It is submitted that only those mental conditions which do not completely destroy the person's full and effective participation in society would come under this definition. In the case of a person with FTD, such participation is foreclosed, owing to the permanent nature of the condition and the gradual degeneration it causes to the person's senses. The aim of RPWD-2016 is primarily to ensure that *PwDs* are duly empowered, in light of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol published on 13th December, 2006 and entered into force on 3rd May, 2008 (*hereinafter*, '*UNCRPD*').

75. It is submitted that Section 14 of RPWD-2016 provides for the appointment of a limited guardian for a person who is unable to take legally binding decisions. However, Section 14 itself postulates that a PwD is enabled and empowered to take decisions in consultation with the limited guardian. Specific reference is made to the language used in Section 14 - *'full and effective participation'*, *'unable to take legally binding decisions'*,

'limited guardianship', 'system of joint decision', 'will of the person with disability'. Thus, it is submitted that Section 14 cannot extend to persons who are unable to take decisions in consultation with a guardian. RPWD-2016 would therefore only extend to persons with partial impairments and not to persons such as Mr. DMP.

76. The language used in RPWD-2016 is contrasted with the language used in Section 2(s) of MHA-2017, which uses terminology such as *'substantial disorder'* and *'grossly impairs'*, to argue that in the case of a person suffering from a condition such as FTD, RPWD-2016 would have no application.

77. Reliance is also placed on Section 13, as per which a PwD can alter, modify or dismantle the support provided to him/her, to argue that the intent behind it is to empower a PwD to control his/her own financial affairs. It is submitted that as per order dated 23rd July, 2021, it is clear that Mr. DMP does not have any comprehension of or powers of decision making. Reliance is placed upon the medical assessment of the DMP by both the Neurologists - Dr. M.V. Padma, Professor and HOD, Neurology, Chief Neuroscience Centre, AIIMS, New Delhi and Dr. Achal Srivastava, Professor, Department of Neurology, AIIMS, New Delhi, as recorded in order dated 23rd July, 2021. Specific reliance is placed upon the fact that both doctors were unanimous in their opinion that no major decisions can be taken by Mr. DMP.

78. On the strength of Section 13(5), it is submitted that any person who is providing support to a PwD ought not to exercise undue influence over them. However, in the present case, the disownment affidavits have been executed in 2016 and 2017, by which time FTD had already set in. Thus, it

is submitted that these disownment affidavits are not fully the acts of the DMP.

79. Insofar as the *parens patriae* jurisdiction of this Court is concerned, Id. Senior Counsel distinguishes the situation in the United Kingdom with India. Reference is made to the judgment in *In re F. (Mental Patients: Sterilisation)* to demonstrate the manner in which the *parens patriae* jurisdiction of the Court was revoked in the United Kingdom. It is submitted that even in the United Kingdom, the *parens patriae* jurisdiction, which existed for several hundreds of years, was taken away only with the enactment of the Mental Health Act, 1959 and the revocation of the Crown's Warrant, which was signed at the time when the Mental Health Act, 1959 was enacted. Reliance is also placed upon the judgment of the Supreme Court of Canada in *E v. Eve (1986) 2 SCR 388*, where the Court cautioned that this jurisdiction cannot be taken away unless and until it is removed by a specific legislation.

80. Id. Senior counsel submit that in the Mental Health Act, 1959 of the United Kingdom, specific provisions were enacted to deal with issues relating to the financial affairs of patients. In the absence of such provisions in India, it cannot be inferred that the *parens patriae* jurisdiction does not exist. Reliance is placed upon the judgment of the Bombay High Court in *Ali Muntazir Abbas Lehry & Anr. v. Secretary, Department of Health and Family Welfare, Mantralaya & Ors., [W.P. (L.) 2851 of 2018, decided on 25th October, 2018]* wherein a person suffering from FTD was diagnosed by a medical team and his son was appointed as his guardian. Reliance is also placed on the judgment of the Supreme Court in *Shafin Jahan (supra)*, wherein the Court has cited with approval judgments from various

jurisdictions, to emphasize that the need for providing care for citizens under this jurisdiction is now not restricted to persons who are mentally ill but it extends to vulnerable adults who can be subjected to undue influence, duress or any other coercive means.

Submissions on behalf of Respondent No.5

81. The submission of Dr. Singhvi, Id. Senior Counsel appearing for Ms. UD is that the factual matrix of this case is different from what has been projected by the Petitioner and the two sons of Mr. DMP. It is submitted that Mr. DMP is comfortable with the persons with whom he is currently living i.e., Ms. UD and Mrs. KR. Taking Mr. DMP away from them would put enormous pressure on his entire wellbeing. Hence, the current arrangement ought not to be disturbed.

82. Insofar as the legal position with respect to the appointment of a guardian is concerned, a chart is placed on record tracing the various legislations in respect of persons with mental illnesses. After going through the historical background leading up to the enactment of the RPWD-2016, the following propositions are urged by Dr. Singhvi:

- (i) The MHA-1987 had vested the power of granting guardianship to District Courts under Sections 50 to 55. However, the MHA-2017, eliminates guardianship totally and completely.
- (ii) Guardianship jurisdiction exists exclusively with the District Court.
- (iii) Only limited guardianship is recognized under the RPWD-2016.

83. The specific submission in respect of RPWD-2016 is that Section 2(s) is quite wide and includes persons suffering from any kind of mental illness. Reliance is placed on ***Bombay Anand Bhavan Restaurant v. ESI Corpn., 2009 (9) SCC 61*** and ***Edukanti Kistamma and Others v. S.Venkataraeddy***

and others, 2010 (1) SCC 756 to argue that RPWD-2016 is a liberal Act and the interpretation of such an Act has to be purposive. A narrow and pedantic approach cannot be taken and the statute's utility cannot be watered down in any manner. It is thus submitted that the Court cannot cut down on the applicability of RPWD-2016 in the manner in which the Petitioner and the supporting Respondents are attempting to.

84. It is submitted that the provisions of RPWD-2016 only provide for limited guardianship under Section 14, read along with Rule 7 of the RPWD (Delhi) Rules-2018. The said Act does not recognize plenary guardianship at all and the entire jurisdiction for granting limited guardianship lies with the District Court. Section 14(2) also makes it abundantly clear that any guardian appointed under any law would be deemed to be a limited guardian.

85. Reference is made to Clause 13(1) of the Rights of Persons with Disabilities Bill, 2014, which recognized plenary guardianship under extraordinary circumstances by way of a proviso. It is submitted that when the final statute was passed, the said provision did not find its presence in the Act. Thus, it is submitted that the guardianship that has been sought for by the Petitioner in this case is not at all recognized in law and writ jurisdiction cannot be exercised by this Court to grant a guardianship which is legally unrecognizable.

86. Coming to the MHA-2017, reference is made to the Statement of Object and Reasons of the Act to show that it only deals with the healthcare to be provided for mentally ill people and not with guardianship or management of finances and property. The Chapter headings are also relied upon to argue that nowhere in the MHA-2017 is there any mention of

appointment of a guardian. Reliance is placed on the judgments in *Latha TB v. UOI, (2021) 4 KLT 17* and *Govindraj v. Vijaykumar [C.R.P.(PD) No.615 of 2020 & C.M.P.No.3229 of 2020, decided on 21st July, 2020]*, which judgments specifically deal with Section 14 of the MHA-2017 and RPWD-2016 to hold that the MHA-2017 does not provide for appointment of a guardian.

87. On the issue of maintainability, Dr. Singhvi submits that as a matter of law, the *parens patriae* jurisdiction cannot be invoked if a statute is applicable. Reliance is placed upon the judgment of the House of Lords in *In re F. (Mental Patient: Sterilisation), [1990] 2 A.C. 1*. Dr. Singhvi submits that the RPWD-2016 does not exclude property from the enquiry by the designated authority, which deals with the care of a mentally ill person. It is submitted that all these issues are to be gone into by the designated authority by adducing oral evidence and not in writ jurisdiction where factual enquiry would not be permitted. Thereafter, reliance is placed upon *E. v. Eve, [1986] 2 S.C.R. 388* passed by the Canadian Supreme Court to argue that the *parens patriae* jurisdiction cannot be exercised for the benefit of a third party.

88. It is further submitted that the exercise of *parens patriae* jurisdiction cannot be contrary to the doctrine of privacy and the right to live with dignity. Reliance is placed upon the judgments of the Supreme Court in *Anuj Garg & Ors. v. Hotel Association of India, (2008) 3 SCC 1* and *Subhash Jain v. Rajeshwari Shivam & Ors. [Civil Appeal No. 2848/2021, decided on 20th July, 2021]*. Reliance is also placed upon the judgment of the Supreme Court in *Shafin Jahan v. Ashokan K.M. & Ors., (2018) 16 SCC 368*, wherein the Supreme Court recognizes the right of any person to

choose the partner of his choice, within or without marriage.

89. Ld. Senior Counsel relies upon various international conventions to emphasize that the changes in the law bear in mind the interests of the mentally ill person. He submits that even people with lucid intervals need not be confined to care institutions and should be allowed to live in familiar surroundings. It is submitted that neither Mr. DMP nor the parties on behalf of the Respondents have any objection to the regular visits by Mrs. SD, accompanied by a nursing attendant and one family member. However, to deprive Mr. DMP of the ecosystem to which he is used to i.e., living along with Ms. UD and Mrs. KR, under the support of Mr. US, would be completely violative of Mr. DMP's right to privacy and dignity.

90. Reliance is placed upon pages 1593, 1604, 1613 and 1616 to argue that the contentions being raised today are the same as those raised in an application filed before the Id. Division Bench, which was dismissed with costs vide order dated 23rd October, 2020.

91. Two judgments, being *Minu Seth v. Binu Seth*, AIR 2018 Delhi 54 and *Avinash Chander Mookhy v. General Public & Ors.*, 2014(3) RCR (Civil) 1031, are thereafter relied upon to emphasize that the conduct of the person seeking appointment as a guardian would be extremely relevant while exercising *parens patriae* jurisdiction.

92. Insofar as Mrs. SD is concerned, it is submitted that she herself is a person who is around 76 years of age and who has been using her thumb impression to sign the pleadings before this Court. Her medical condition does not entitle her to be appointed as the guardian of Mr. DMP by any stretch of one's imagination.

93. Ld. Senior counsel highlights the fact that both the sons of Mr. DMP

were disowned by him. One was disowned in 2016 and the second in 2017, which was a conscious act which Mr. DMP took prior to him having been diagnosed with a mental illness. It is submitted that the factum of disownment not being under challenge, judicial review of the two disownment affidavits is not possible in this writ petition. One of the sons is stated to have made completely unfounded allegations against Mr. DMP and given media briefings with a view to embarrass him in public. It is submitted that the mere fact that the language in the affidavits of disownment is identical would not take away from the fact that Mr. DMP took a conscious step in this regard.

94. Insofar as the grandsons of Mr. DMP are concerned, videos were relied upon by Id. Sr. counsel to show that their conduct towards Mr. DMP is vicious as they have taken to the media to criticize their grandfather.

95. It is submitted that the Petitioner's side, including the sons of Mr. DMP, have grossly abused the process of the Court and have sought the same reliefs in multiple proceedings. Reliance is placed on a chart to demonstrate that the intention of the Petitioner has been to keep approaching different forums for the same relief.

96. Various allegations which have been made against Ms. UD are objected to by Dr. Singhvi on the ground that Ms. UD was, in fact, the person who kept the family together and brought back Mrs. SD from Patna. Reliance is placed upon various photographs to establish that Ms. UD was not a stranger to the family. It is submitted that since 1981, the entire family has been living together and Ms. UD has been accepted as the wife of Mr. DMP.

97. It is submitted that Respondent No.5 has repeatedly asserted, as

recorded in order dated 2nd June, 2021, that she is not interested in the money or estate of Mr. DMP. She has even filed an affidavit to this effect. Ld. Senior counsel submits that if the intention of Respondent No.5 was to siphon off the funds or the estate of Mr. DMP, she could have done so earlier as she has been enjoying control over Mr. DMP's assets, along with the brother of Mr. DMP. The fact that the estate is well preserved shows that Respondent No.5 has no such intentions.

98. On a query put by the Court as to who would be the natural guardian for a married person, the submission of Dr. Singhvi, ld. Sr. counsel is that this question ought to be worded in the reverse i.e., whether there is any inhibition in appointing a person, whose companionship Mr. DMP has enjoyed for the last approximately 47 years, as his guardian? Reliance is placed upon Rules 7(6) and 7(7) of the RPWD (Delhi) Rules-2018 to argue that there are various relationships that are recognized in the said provisions and the ultimate test would be as to what would be in the best interests of the DMP. A view has to be taken not from the perspective of a third-party or in the interest of a third-party but in the interest of Mr. DMP.

99. It is submitted that irrespective of whether Respondent No.5 is the wife of Mr. DMP or his companion/partner, unless and until there has been any misdemeanour which she has exhibited *qua* Mr. DMP, any other conduct of hers *qua* third parties would be irrelevant. If Mr. DMP expressed his desire to live with Respondent No.5, this ought to be respected by the Court and there is no prohibition on the Court appointing her only because of her status as a companion. The Court is not concerned with a legally valid relationship or a legally recognized relationship, such as a blood relative or a spouse, but what is important is only the wish of Mr. DMP and the benefit of

Mr. DMP.

100. A query was put to Dr. Singhvi as to when was the first time Mr. DMP was diagnosed with FTD or any other mental illness and since when has he been administered medicines in respect of any such illness. Dr. Singhvi responded by referring to order dated 2nd June, 2021, wherein Mrs. SD is recorded as stating that the first time she noticed changes in Mr. DMP's behaviour was in May, 2018 and he was formally diagnosed with FTD only in September, 2019. When he was formally diagnosed with FTD, Mr. DMP was advised to continue with Tab. Aricep. Later, he was advised to start Tab. Admenta by Dr. Kameshwar Prasad and Dr. Nand Kumar, AIIMS from February, 2020.

101. However, it is submitted that the fact that fleeting symptoms of memory loss may be there for a brief period, does not mean that Mr. DMP had no consciousness while dealing with daily activities. In fact, from 1997 onwards, he has taken oath 5 times. Photographs of Mr. DMP from Republic Day, where he is interacting with various dignitaries, are relied upon. Mr. DMP is also stated to have travelled to 87 countries since 1997. The doctors have also supported the fact that the medicines being administered to the DMP are proper and no fault has been found with the current care being given to the DMP.

102. The judgments cited by the Petitioner, as well as the supporting Respondents, are distinguished on the ground that all the judgments deal with comatose patients who do not have any lucid intervals and in which cases there is no contest by any family member.

Submissions on behalf of Respondent No.6

103. Mr. Harish Salve, Id. Senior counsel appears on behalf of Mrs. KR, one of the daughters-in-law of Mr. DMP. He challenges the maintainability

of the present writ petition on the ground that the present petition has not been filed in accordance with law.

104. Ld. Senior counsel submits that under the Guardians and Wards Act, 1890, which only applies to minors, Civil Courts have a right to administer the estate on behalf of the minor who does not have any guardian or parent etc. Even in the case of a mentally ill person, the matter would have to be filed in properly constituted proceedings before the Civil Court and not in a writ petition filed under Article 226 of the Constitution of India.

105. After taking the Court through The Family Courts Act, 1984, as also the RPWD-2016 it is submitted that both the statutes do not deal with persons with mental disabilities. Accordingly, a petition can only be entertained by a Court exercising original civil jurisdiction under the *parens patriae* doctrine, which can be invoked under Section 9 of the CPC. The test reports, if any, after due medical examination of Mr. DMP, would have to be verified by cross-examination of the medical expert. Since the matter involves the taking away of a person's right to administer his own estate or think of his own welfare, the short-cut writ jurisdiction cannot be invoked.

106. Reference is made to paragraphs 5-6 of the writ petition wherein the Petitioner seeks to invoke Sections 53 and 54(4) of the MHA-1987. Admittedly, the said Act is no longer in operation and there are no similar provisions under the MHA-2017.

107. Mr. Gopal Subramaniam, ld. Sr. counsel has also made submissions on behalf of Respondent 6. Ld. Senior counsel raises the following major objections as to maintainability:

i. That in order for a writ petition to be maintainable, there has to be a public law element involved in the petition. Since, in the present case, there

is no public law element involved and the issues are among private family members, the appropriate remedy is a suit under Order XXXIIA CPC.

ii. There are no judicially manageable standards in respect of how a writ petition like this has to be dealt with, inasmuch as there are allegations made which are factual in nature.

iii. The Court has to bear in mind the dignity/privacy of the individual i.e., Mr. DMP, as also Respondent Nos. 5 and 6 who are providing care to Mr. DMP.

iv. The motive behind filing the present writ petition is completely clouded inasmuch as in the earlier writ petition for *habeas corpus*, being ***W.P. (Crl.) 2255/2019*** titled ***R.S v. State & Ors.***, allegations were also made against the mother. The Division Bench made an arrangement in respect of the care to be given to the mother and the aunt. However, insofar as the present writ petition is concerned, the mother herself not being in a very stable medical condition, the averments being made on behalf of the mother are in doubt.

108. Ld. Senior Counsel relies upon three medical reports which have been placed on record by Senior Neurologists/Psychiatrics. The submission is that Mr. DMP is not completely disorientated and in fact, has various moments of lucidity and awareness. Therefore, he cannot be held to be a completely disabled person who requires a guardian to be appointed.

109. Various photographs of Mr. DMP along with Respondent No. 5 and other family members are relied upon to argue that Respondent No. 5 has been recognized as a member of the family and is, in fact, publicly treated as the wife of Mr. DMP. Mr. DMP is well looked after by Respondent Nos. 5 and 6 and therefore, the current arrangement ought not to be disturbed in any

manner whatsoever.

110. The documents which have been filed in a sealed cover, including the bank statements of the joint accounts of Mr. DMP and Ms. UD and the list of immovable properties and term deposits, are relied upon to show that Mr. DMP has always held various assets jointly with Ms. UD. It is submitted that there is no misuse of any assets of Mr. DMP in any manner whatsoever and Mr. DMP is conducting his own business and is capable of doing so.

111. Reference is made to order dated 20th September, 2019 in ***W.P. (Crl.) 2255/2019*** to submit that the said order passed by the Id. Division Bench was a consensual arrangement wherein it was agreed that the Petitioner could visit Mr. DMP whenever she wanted. However, since 2019, the acrimony that has been created is extremely high and there are several criminal complaints and cases being filed by the parties against each other. This may have resulted in the arrangement recorded by the Id. Division Bench not being fully implemented. However, the grant of any relief in this writ petition would interfere with the arrangement put in place by the Id. Division Bench.

112. It is further submitted that the credentials of the Petitioner – Mrs. SD are under severe doubt and it appears that the two sons who are estranged from their father are using the name of Mrs. SD to file various proceedings and make allegations against Respondent Nos.5 and 6. Reliance is placed on a report filed by the police in a connected writ petition which shows that the son of Mrs. SD is in fact living with her in Vasant Vihar, contrary to the orders passed by the Division Bench.

113. Mr. Subramaniam has taken this Court through various orders passed by the Magistrate, as also by the Sessions Judge, to emphasise that the

criminal complaints being filed with various police stations are all *mala fide* in nature inasmuch as the same allegations are being repeated across these proceedings. Reference is made to the orders passed by the Division Bench on 5th September, 2019 and 20th September, 2019 in the habeas corpus petition, being *W.P.(Crl.) 2255/2019* and *I.A. 14889/2020* filed in *W.P.(Crl.) 2255/2019*, which was withdrawn with Rs.10 lakhs being imposed as costs.

114. Emphasis is also laid on the SDM's order dated 27th October, 2020, which directed production of Mr. DMP before the SDM with medical assistance through Mrs. SD, which was challenged before the Sessions Judge. The Sessions Judge clearly notes that wrongful confinement of Mr. DMP was not established. Various suspicious circumstances surrounding the record of the SDM were also noticed by the Sessions Judge. The conclusion of the Sessions Judge, that the proceedings before the SDM were completely *mala fide*, is relied on.

115. While conceding that the *parens patriae* jurisdiction exists with this Court, Mr. Subramaniam submits that the petition ought not to be entertained owing to the conduct of the Petitioner and her two sons.

116. Mr. Mohit Mathur, Id. Senior Counsel has also appeared on behalf of Respondent No.6.

117. Id. Senior Counsel submits that the Court has been sought to be prejudiced by selective readings of the statements made to the police. Thus, no credibility should be attached to such statements. It is submitted that Respondent No.6 has been made a target by various family members in view of an application moved by her seeking to evict the son of Mr. DMP from the Vasant Vihar property where Mrs. SD is currently residing. It is denied

that she has siphoned off any funds. It is submitted that she has already given an undertaking about funds, moveable and immovable property etc. It is further submitted that the Id. Division Bench has directly interacted with her and deemed it fit to appoint her as the care giver, which would itself show that the Division Bench expressed confidence in her character and mannerisms.

118. As regards the conduct of the Petitioner and the supporting respondents, it is submitted that the relationship between the son and Mr. DMP was so strained that in the marriage of both his grandsons in 2018, Mr. DMP was not even invited.

119. It is submitted that the medical report of 1997 was not filed with the original writ petition and the credibility of those documents is not yet proved. Thus, the same ought not to be considered.

120. In so far as the GPA dated 14th January, 2020, which was executed by Mr. DMP, is concerned, it is submitted that the entire purpose of the said GPA was to make various statutory compliances and to enter into leases etc. There was no ill-intention and in fact, only three properties are covered in the GPA.

121. On a query as to how Mrs. KR allowed Mrs. SD and Mr. US's wife to live at the residence in such an uncomfortable manner, it is submitted that she was herself partly living in Delhi and partly living in Mumbai. Mr. DMP was the man of the house and had an overbearing personality and therefore she did not interfere in the manner in which the house was being run. It is further stated that she is willing to take care of Mrs. SD, as her daughter in law. Allegations as to confinement and physical abuse are denied, though the same are contained in the status report. The denial is on the ground that

only the charge sheet has been filed but the charges are yet to be framed. It is argued that the Court ought not to go into the allegations, apart from what is recorded in the orders passed by the Division Bench, as the same would affect the trial of the said proceedings.

122. On a query from the Court as to how Ms. UD came back to the Safdarjung house after the order of the Division Bench, it is submitted that the order of the Division Bench applied only for a period of four weeks.

Submissions on behalf of Mr. DMP's brother

123. Mr. Sethi, Id. Sr. Counsel appearing for Mr. US submits that he is the younger brother of Mr. DMP.

124. The father of Mr. US and Mr. DMP passed away when the brother of Mr. DMP was two years old. Therefore, Mr. US considers Mr. DMP like a father and he was treated by Mr. DMP like a son. Mr. US's family consists of his wife and five children i.e., four daughters and one son who are all married. The family of Mr. US used to reside for long periods in Delhi along with Mr. DMP and his family and they were treated as one homogenous family.

125. Id. Senior counsel submits that Mr. DMP was always actively involved in politics and therefore, the companies of Mr. DMP were entrusted to Mr. US. It is submitted that Mr. US has been managing the companies since 1979. The companies which are being looked after by him have manufacturing facilities in Bhopal, Sikkim, Himachal Pradesh and a corporate office in Mumbai. Mr. US does not own any shares and he continues to manage all the companies at the pleasure of Mr. DMP.

126. It is submitted that no proceedings have been initiated in respect of the management of these three companies. In so far as the shares of Mrs. SD

and the two sons are concerned, it is submitted that they did have shareholdings, however, these have either been transferred or gifted. Though a criminal complaint was filed by Mrs. SD on the ground that her signatures were forged, the report submitted in those proceedings has found to the contrary.

127. Ld. Senior counsel further submits that all the three companies are doing extremely well and their turn over and profits have grown by leaps and bounds. In the last few years, the profit of the companies has increased by 300%. There is no grievance by any of the family members that the companies are being mis-managed or that the funds are being diverged/mis-appropriated. None of the family members have approached the NCLT, which would be the appropriate forum. Even if Mr. DMP's mental condition deteriorates, it would not make any difference as Mr. US has been running the companies since the last 40 years.

128. Ld. Senior counsel then challenges the maintainability of the present petition by relying upon a caselaw compilation containing the following judgments:

- i. ***Sahibzada v. State of MP, AIR 1960 SC 768*** - This case is relied on to argue that a writ court cannot appoint a guardian even in respect of minors and the proper remedy is to file a suit.
- ii. ***Dhulabhai v. State of Madhya Pradesh, (1968) 3 SCR 662*** – This case is relied on to urge the proposition that exclusion of a civil suit cannot be readily inferred by the Court. In the present case, the appropriate remedy would be to relegate the party to a civil suit under Section 9 CPC.
- iv. ***M. Govindaraj (supra)***- This is a case under the Mental

Healthcare Act, 2017 where the district judge has been clearly recognized as a competent authority to deal with mental health disputes.

129. In response to a query put by the Court as to how the events which transpired before the Id. Division Bench did not come to his notice prior to the Division bench taking cognizance thereof, he submits that he cannot be expected to control the adults living with Mr. DMP, so long as he is assured that Mr. DMP is fully taken care of.

130. The petition is opposed on the ground that Mr. DMP is with the people that he wished to be with i.e., Ms. UD and Mrs. KR. Any attempt by the Court to vary the situation would negatively impact his mental condition. There is no allegation by the Petitioner that the assets or estate of Mr. DMP have been destroyed or wasted away. It is further submitted that Mrs. SD herself has various ailments and would, therefore, not be a proper person to be appointed as Mr. DMP's guardian. The conduct of Mr. DMP's sons is also doubted. Reliance is placed on order dated 13th January, 2021 passed in Cont. Cas. (C) 892/2020 filed by Mrs. KR against one of the sons of Mr. DMP for residing in the Vasant Kunj property of Mr. DMP under the guise of visiting his ailing mother i.e., the Petitioner.

131. On the issue of the applicable law for appointing a guardian, Mr. Sandeep Sethi, Id. Sr. counsel has submitted before the Court that the stand of the Central Government in another matter involving a person who is mentally ill is that in such cases, the RPWD-2016 would apply and not the MHA-2017. He submits that he would email a copy of the said counter affidavit to the Court.

132. Id. Senior Counsel has thereafter sought to argue that the RPWD-

2016 is, in fact, the later enactment. The dates of introduction, passing and notification of the two Acts are set out below:

Dates	MHA-2017	RPWD-2016
Introduced in	19 th August, 2013	24 th February, 2014
Passed on	8 th August, 2016	16 th December, 2016
Notified on	7 th April, 2017	19 th April, 2017

133. It is submitted that the RPWD-2016 is the only statute which deals with the guardianship of a PwD. RPWD-2016 being the subsequent Act, all other laws, including the MHA-2017, would be deemed to have been examined. Reference is made to the judgment in *Vandana Tyagi & Anr. v. Govt. of NCTD & Ors. [W.P.(C)No.11003/2019, decided on 7th January, 2020]* where the person was in a comatose condition and in that context the Id. Single Judge held that a comatose person is not covered by the RPWD-2016. Thus, it is submitted that it is only in the case of comatose patients that the RPWD-2016 would not apply.

134. Countering Mr. Jethmalani's argument that RPWD-2016 is not applicable, he submits that there are various provisions in the Act which show that different stages and measures of disability and impairment are covered in the Act. Reference is made to Section 2(r) defining 'persons with bench march disability', Section 2(s) defining 'person with disability', Section 2(z)(c) defining 'specified disability', the explanation to Section 14, the schedule to the Act as well as the Preamble to the Act.

135. Id. Senior Counsel submits that the legislature was conscious of the fact that some persons may not be competent to take legally binding decisions. Despite this, a mechanism of consultation is provided for.

Reliance is placed on the definition of 'mental behavior' in the Schedule to the RPWD-2016 in which substantial disorders are also covered. It is in this background that Section 14 has to be considered. It is submitted that under Section 14, the guardianship, even in the case of total disability, is limited in nature. It is meant for a specific period, for a specific decision and for a specific situation. The guardian would have to be guided by the will and desire of the subject. If the mentally ill person cannot express his will, the same would have to be determined by taking surrounding facts into consideration, such as written documents or any other form of expression. The guardianship cannot be plenary.

136. It is submitted that Mr. DMP is clearly covered by the RPWD-2016. The Court can consider appointment of a limited guardian for the purposes of handling the financial affairs, property etc. of Mr. DMP. Directions can also be issued in respect of the place where Mr. DMP would be residing and the kind of mental assistance to be granted. The will of Mr. DMP could be ascertained from written documents and other forms of expressions. The Court can continue to review the situation, however, no plenary power can be given to the guardian.

137. On facts, Mr. Sethi contrasts the stand taken in the *habeas corpus* petition in 2019 and the present petition. In the former, it was submitted that Mr. DMP and Ms. UD have confined Mrs. SD. There is no allegation about Mr. DMP's mental capacity in the *habeas corpus* petition. However, in the present petition, allegations have been made to the effect that there was a pre-existing mental condition since 1997. These grounds have been taken by way of various applications. If the date of 1997 is considered, it would be 21 years prior to the *habeaus corpus* petition. It is submitted that there can be

no explanation as to why the relatives did not deem it fit to approach the Court about the mental condition of Mr. DMP earlier. This proves the *malafide* conduct of the family of Mr. DMP.

138. Insofar as the differences between the UK Act and the Indian Acts on mental health are concerned, Id. Senior counsel submits that this Court cannot supplant the legislative intent with its own wisdom. The Id. Division Bench of this Court in the *habeas corpus* petition could have appointed the guardian but it did not.

139. Id. Senior counsel ends his submissions by stating that his client is willing to act as the guardian of Mr. DMP.

Analysis & Findings

140. The facts of the present case are extremely stark. Mr. DMP is mentally ill and is suffering from '*Fronto Temporal Dementia*'. He barely has any understanding of the happenings around him. He has a large family consisting of his wife, sons, daughters-in-law, grandchildren and his brother. He also has a companion who claims to be his wife. The family of Mr. DMP, including his companion, are split into two groups before this Court. One group consists of Mr. DMP's companion, his brother, his daughter-in-law from his deceased son and her children. The second group consists of Mr. DMP's wife, his two sons and their wives as well as his four grandsons. Mr. DMP himself is oblivious to the large scale of the disputes between the two groups within his family, who have more than 50 cases, mostly criminal, pending against each other. In the present petition, this Court is concerned with the following questions –

- Who should be the guardian for Mr. DMP?
- Who should take decisions relating to the medical treatment of Mr.

DMP?

- Who should be given control of Mr. DMP's movable and immovable assets and other financial affairs?

141. On behalf of the Petitioner and the supporting Respondents, the plea is for invoking the *parens patriae* jurisdiction of this Court. The contesting Respondents challenge the maintainability of this petition and argue that this Court ought not to exercise *parens patriae* jurisdiction. It is their submission that the prevalent arrangement ought not to be disturbed. Since there are several aspects to be dealt with, this Court has broadly categorised them as under:

- a) Medical Condition of Mr. DMP;
- b) Legislative Framework for Mentally Ill Persons and Guardianship;
- c) Interplay between the MHA-2017 and the RPWD-2016; and
- d) Analysis on Guardianship.

The Court deals with each of these aspects hereinbelow:

a) *Medical Condition of Mr. DMP*

142. There are various medical reports that have been placed on record. The reports which were part of the Division Bench proceedings as also the reports filed before this Court including the statements of the doctors as recorded by this Court, are not in dispute. Other reports filed by parties include reports from doctors/hospitals in Mumbai, reports from Apollo hospital Delhi etc., Some of these reports have been challenged during submissions, but owing to the reputation of these doctors and hospitals, for the purposes of this petition, the same are being considered.

143. A perusal of the medical reports placed before this Court, the submissions made by the doctors and the statements made by the various

family members reveals that Mr. DMP initially reported transient memory loss in 1997. Mr. DMP has also been suffering transient ischaemic attacks and small strokes since then. In 2013, as per one of the sons of Mr. DMP, he was diagnosed with Encephalopathy. The MRI reports of Mr. DMP also record that Encephalopathy existed since 2013. By 2019, when Mr. DMP was admitted to AIIMS, according to Dr. MV Padma, as per the history recorded therein, changes were noticed in Mr. DMP's behaviour since 2017 i.e., two years before he was admitted to AIIMS. In 2019, Mr. DMP was conclusively diagnosed with FTD by the medical board constituted by the Id. Division Bench of this Court in *W.P (Crl.) No.2255/2019*. Since then, he has been under medication for FTD. The separate reports: (i) report dated 5th December, 2020, filed by a doctor at the Apollo Hospital; and (ii) report dated 1st December, 2020, filed by a doctor at AIIMS, both before the Metropolitan Magistrate, are sketchy and without any reasoning. These reports issued by AIIMS and Apollo Hospital seem to suggest that there was some improvement in his behaviour and he was able to manage some of his daily activities. However, the reports of 2020 clearly record that Mr. DMP is suffering from Major Cognitive Disorder.

144. In June, 2021, when this Court interacted with Mr. DMP, Mr. DMP was clearly not able to comprehend most of his activities. He required complete help, even for his daily activities. The Local Commissioner appointed by this Court has confirmed this position after visiting Mr. DMP's residence on at least 6 to 7 occasions.

Local Commissioner's reports

145. The Local Commissioner has submitted three reports i.e., on 3rd June, 2021, 16th July, 2021 and 28th August, 2021. The reports of the Local

Commissioner show that Mr. DMP could not answer any questions about his surroundings or his daily routine. He could not recall the name of his wife or children and did not recognise Mrs.SD. Mrs. SD had to time and again introduce herself as his wife. He referred to his wife as *bhagwan*, *madam* or *pani*. He repeated words such as *bhagwan*, *pehalwan*, *paani* and *paisa* repeatedly, without context. He was not coherent in his speech. The conversations were cordial and congenial. On one occasion, while walking to the rest room, he sat on the floor and required help to get up.

146. The Local Commissioner has also filed various videos and photographs, which were taken during her visits, which show that:

- Mr. DMP is very distressed in a video call stated to be made between Mr. DMP and Ms. UD, during the four-week period in which Ms. UD was asked to stay separately from Mr. DMP by the Id. Division Bench of this Court
- Mr. DMP and Mrs. SD look comfortable holding hands

147. The Medical Board constituted by this Court on 4th June, 2021, informed the Court on 23rd July, 2021 as under:

“4. Dr. M.V. Padma explained the nature of fronto-temporal dementia to the Court and as per her, this condition is worse than a condition of Alzheimer's and would become worse over time. She stated that in 2019 when the DMP was admitted in the AIIMS, as per the history recorded therein, the changes were noticed in DMP's behavior since 2017 i.e., two years before he was admitted to AIIMS. He presently requires assistance in most activities including visiting the bathroom, etc. At that time, when the DMP was admitted in AIIMS, the MRI of the brain and the PET-SCAN of the brain was also conducted. According to her, the DMP is incapable of taking any major decisions and this was the position

even in 2019. According to her, the same was recorded in the discharge summary when the DMP was discharged from AIIMS.

5. Dr. Achal Srivastava who is a Professor of Neurology at AIIMS, informed the Court that he had examined the DMP even in 2019. At that time, in 2019 the DMP was capable of taking smaller decisions such as visiting bathroom etc, however, according to him even then, the DMP was incapable of taking any major decisions. He also states that in comparison with the condition of the DMP in 2019, the DMP's condition has further deteriorated and he requires support for even all the basic activities much more than what it was in 2019.

6. Dr. Nitin Naik who is Professor of cardiology has stated that the DMP had a history of chest pain and in March, 2020 he had undergone angiography. He is currently being given medical treatment in respect of his heart problem which is satisfactory.”

148. From the above, it is clear that Mr. DMP is a mentally ill person suffering from FTD who is no longer able to manage any of his affairs, including his daily activities. Thus, all decisions on behalf of Mr. DMP were being taken by Ms. US and Mrs. KR until order dated 8th September, 2021, on which date this Court appointed an Interim Guardian.

b) Legislative Framework for Mentally Ill Persons and Guardianship

(i) Guardian and Wards Act, 1890:

149. The Guardians and Wards Act, 1890 (*hereinafter*, 'GWA') deals with the appointment of guardians for minors. The guardian under the GWA is a person who has the care of the minor and/or the minor's property. As per Section 5 read with Section 17 of the GWA, the Court can appoint a guardian, guided by the welfare of a minor. Such Court is the District Court having jurisdiction to entertain an application for appointment as guardian.

Section 12 of the GWA contemplates passing of interlocutory orders for production of the minor, and for interim protection of person and property, as the Court thinks proper. If the minor has several properties, Section 15 of the GWA provides, that the Court can appoint separate guardians for any one or more of the properties. While considering what is in the welfare of the minor, the factors to be considered are – age, sex and religion of the minor, character and capacity of the proposed guardian, his nearness of kin to the minor, the wish of any deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property. The preference of the minor, if the minor is capable of an intelligent preference, may also be considered. No one can be appointed as a guardian against the will of the minor. As per Section 20, the guardians stand in a fiduciary relationship to the ward and cannot make any profit out of his office. Any transactions concerning purchase of each other's property, entered into between the guardian and the minor, would also be within the ambit of the fiduciary relationship. The guardian can be given such remuneration as the Court thinks fit. The guardian has to take care of the minor's support, the minor's health, and education. If the guardian is appointed *qua* property, the guardian has to deal with it carefully as a man of ordinary prudence would, as it were his own. All acts which are reasonable and proper for the realization, protection or benefit of the property, may be done by the guardian. Section 29 however, caveats that the guardian would not be entitled to mortgage, charge, transfer, sale, gift, exchange or in any manner part with the immovable property of the ward, without previous permission of the Court. Similarly, without the Court's permission, the guardian cannot lease any part of the property for a term exceeding five years or one year

beyond the ward becoming a major. Section 31 further clarifies that this permission of the Court would not be granted except in case of necessity or for an evident advantage to the ward. Section 43 also provides that the Court may make an order regulating the conduct or proceedings of the guardian.

(ii) **The Mental Health Act, 1987**

150. The MHA-1987 was enacted as the law for treatment and care of mentally ill persons, and for making better provisions with respect to their property and affairs. While this statute has now been repealed, it would be useful to peruse certain provisions of the same, for a better understanding of the more recent enactments, as also considering the reliance placed upon these provisions, in the submissions of the parties. The Preamble to the MHA-1987 reads as under:

“An Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.”

151. As per Section 2(1) of this statute, any person who was in need of treatment by reason of any mental disorder other than mental retardation, was treated as a mentally ill person. For regulation, development, direction and co-ordination with respect of mental health services, under Sections 3 and 4 of MHA-1987, the Central Government established the Central Authority for mental health services and the State Governments established the State Authority. Large scale creation of psychiatric hospitals and nursing homes was also contemplated. The manner in which mentally ill persons were to be treated by such organisations was also contemplated.

152. For the present purposes, Chapter VI of the MHA-1987 is most relevant, which contemplated the following stage-wise custody and management of the person and property of the mentally ill person.

153. Under Section 50, a judicial inquisition could be sought into the mental condition of such person by any of the relatives or by certain public functionaries. The District Court was to appoint two or more persons, as the assessors. Once the inquisition was complete, the District Court was to record its findings as to whether the persons were in fact, mentally ill or not, and whether the person was incapable of taking care of himself and of managing his property or incapable of managing property only. The District Court after recording its findings could appoint a guardian to take care of the mentally ill person and to be the manager for management of his property. If the person was capable of taking care of himself but required only a manager, then an order for appointment of a manager was to be passed. If the Court deemed it fit, the same person could be appointed as a guardian and as a manager under Sections 50 to 54.

154. Sections 58 to 60 prescribed the duties of the guardian and the manager and the powers of the manager. The guardian or manager, was to take care of the mentally ill person or his property or both, depending upon the mandate assigned to them. As per Section 59, the manager of the property would exercise the same powers as the mentally ill person would have exercised as owner of the property, had he or she not been mentally ill. The manager was also entitled to realize all claims due to the estate of the mentally ill person and pay all debts and discharge all liabilities. However, the manager had no power to mortgage, create any charge on or, transfer by sale, gift, exchange or otherwise, any immovable property of the mentally ill

person or lease out any such property for a period exceeding 5 years, without permission of the District Court. The District Court would also adjudicate objections from any relatives or friends of the mentally ill persons, if any, in such transactions. Regular inventory and accounts were to be delivered by the manager to the appointing authority. Any relative of a mentally ill person could sue and seek accounts from the manager. Therefore, considerable safeguards were contained in the MHA-1987 for rendering of accounts, performance of contracts, and execution of conveyances by the manager/guardian. Section 69 also provided for removal of managers and guardians “*for sufficient cause*”. The manner of disposal and dissolution of a partnership or the property thereof, if a person became mentally ill, was provided in Section 70. As per Sections 72 and 73, if a mentally ill person owned stocks, securities or shares, the manager could deal with the same as well and could also receive and pay over dividends in respect of such shareholdings. Section 75 provided a further safeguard whereby the District Court would order all actions taken under the MHA-1987 to be set aside, if the mental illness was found to have ceased. Section 81 then recognized that mentally ill persons would be treated without violation of human rights.

(iii) **International Position**

155. The UNCRPD, was signed amongst 164 member countries, published on 13th December, 2006 and it entered into force on 3rd May, 2008. Article 1 of this convention covered physical and intellectual disabilities within the broad definition of disabilities. It also gave primacy to the PwD, his or her exercise of freedom of choice, and dignity. The opportunity for decision

making was to be vested with the PwD. It intended to promote their full and effective participation in society on an equal basis. The UNCRPD imposes various obligations on States to ensure protection of the human rights of disabled persons and to enable disabled persons to realize and exercise their complete freedoms. The UNCRPD recognizes in its Preamble as under:

“24. Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,”

156. It has an expansive list of detailed provisions relating to PwDs. Article 12 specifically deals with exercise of legal capacity of PwDs which reads as under:

“Article 12 – Equal recognition before the law

- 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.*
- 2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.*
- 3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*
- 4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time*

possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”

157. Article 13 further requires that PwDs are provided effective access to justice. Article 14 requires States to ensure that PwDs enjoy the right to liberty and security. Article 16 recognizes the right to PwDs of protection from being exploited and obligates States to have safeguards to prevent the same, with adequate support being provided to PwDs as well as their families and caregivers. The mental and physical integrity of PwDs is to be protected on an equal basis with others, under Article 17. Article 22 recognizes the respect for privacy of PwD and that there should not be arbitrary or unlawful interference with the privacy, family, home or correspondence of PwD. Various other measures to ensure adequate education, employment, etc. for PwDs are enshrined in the convention.

158. The UNCRPD, which was a convention in respect of persons with all kind of disabilities resulted in the enactment of two statutes in India, namely:

- a) The Rights of Persons with Disabilities Act, 2016; and
- b) The Mental Healthcare Act, 2017.

(iv) **Scheme of Rights of Persons with Disabilities Act, 2016**

159. The RPWD-2016 is stated to have been enacted to give effect to India's obligations under the UNCRPD. UNCRPD was ratified by India on 1st October, 2007. The statute contemplates various steps to be taken to safeguard the rights of PwDs. As per the RWPDA, there are three categories of PwDs:

- a) Person with disability –defined under Section 2(s) of the RPWD-2016 as under:

““person with disability” means a person with long term physical, mental, intellectual or sensory impairment which hinders his full and effective participation in society equally with others;”

- b) Person with benchmark disability –defined under Section 2(r) of the RPWD-2016 as under:

““person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;”

Notably, the description of various ‘*specified disabilities*’ is set out in the Schedule to the RPWD-2016.

- c) Person with disability having high support needs –defined under Section 2(t) of the RPWD-2016 as under:

““person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support;”

160. The RPWD-2016 confers rights of equality, non-discrimination, right to live as part of the community, protection from cruelty and inhuman treatment, protection from abuse, violation and exploitation, and protection in cases of armed conflicts/natural disasters/etc. under Section 3 to 8. Interestingly, the National Disaster Management Authority (NDMA) has an obligation to ensure inclusion of PwDs while taking measures for safety and protection of PwDs. In case of children with disability, primacy has been given to the home and family of the child for their care. Reproductivity rights of PwDs have also been recognized under Section 10. Rights of PwDs for exercising universal adult franchise and accessibility to the same, are recognized under Section 11.

161. Section 12 provides for measures to be taken for PwDs, to be able to exercise their right of access to justice. Section 13 deals with the legal capacity of PwDs and is meant to ensure that the appropriate Government takes sufficient measures to enable PwDs to control their financial affairs. Section 14 provides a mechanism for guardianship for PwDs, in specific situations, while Section 15 designates authorities to support PwDs in exercising their rights. Sections 12 to 15 are of enormous significance in adjudicating the issues raised in the present petition, and are set out below:-

“12. Access to justice.—(1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those

disabled requiring high support for exercising legal rights.

(3) *The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987) shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.*

(4) *The appropriate Government shall take steps to—*

(a) *ensure that all their public documents are in accessible formats;*

(b) *ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and*

(c) *make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.*

13. Legal capacity.—(1) *The appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit.*

(2) *The appropriate Government shall ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.*

(3) *When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such supporting person shall abstain from providing support to the person with disability in that transaction:*

Provided that there shall not be a presumption of conflict

of interest just on the basis that the supporting person is related to the person with disability by blood, affinity or adoption.

(4) A person with disability may alter, modify or dismantle any support arrangement and seek the support of another:

Provided that such alteration, modification or dismantling shall be prospective in nature and shall not nullify any third party transaction entered into by the person with disability with the aforesaid support arrangement.

(5) Any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy, dignity and privacy.

14. Provision for guardianship.—(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

Explanation.—For the purposes of this sub-section, “limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability,

which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

(3) Any person with disability aggrieved by the decision of the designated authority appointing a legal guardian may prefer an appeal to such appellate authority, as may be notified by the State Government for the purpose.

15. Designation of authorities to support.—(1) The appropriate Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity.

(2) The authority designated under sub-section (1) shall take measures for setting up suitable support arrangements to exercise legal capacity by persons with disabilities living in institutions and those with high support needs and any other measures as may be required.”

162. The remaining chapters being, Chapters III, IV and V of the RPWD-2016 deal with special provisions for PwDs, in education, skill development, employment, social security, health, rehabilitation and recreation. Chapter VI sets out various special provisions for persons with benchmark disabilities, which includes free education for children, reservation in higher education and institutions, special employment provisions, special schemes and development programmes. Chapter VII deals with special provisions for PwDs with high support needs. Certification of specified disabilities is provided for in Chapter X.

163. Chapter VIII enshrines the duties and responsibilities of the appropriate governments. Chapter IX further provides for the registration of institutions for PwDs, and grants to such institutions. The constitution of various committees at the central state and district level is also contemplated in Chapter XI. The executive officials in the form of Chief Commissioner and State Commissioner are to be appointed for the purposes of the RPWD-2016, under Chapter XII. Offences and penalties are provided for in Chapter XVI and Special Courts providing speedy trial to deal with such offences are contemplated under Chapter XIII. Finally, a national fund for disabilities is also provided for in Chapter XIV and state fund in Chapter XV.

(v) **Scheme of the Mental Healthcare Act, 2017**

164. Unlike the MHA-1987, the MHA-2017 has the following Preamble:-

“An Act to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services and for matters connected therewith or incidental thereto.

WHEREAS the Convention on Rights of Persons with Disabilities and its Optional Protocol was adopted on the 13th December, 2006 at United Nations Headquarters in New York and came into force on the 3rd May, 2008; AND

WHEREAS India has signed and ratified the said Convention on the 1st day of October, 2007; AND

WHEREAS it is necessary to align and harmonise the existing laws with the said Convention.”

165. Under this statute, mental illness is defined in Section 2(s), as under:-

“(s) “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence;”

166. Under Chapter II, the MHA-2017 deals with mental illness and the capacity to make decisions relating to healthcare and treatment. As per Section 4, a person with mental illness, is deemed to have the capacity to make decisions regarding his mental healthcare and treatment under certain circumstances, i.e., if he can understand relevant information, appreciate reasonably foreseeable consequences of a decision and communicate the decision. Section 5 contemplates the right of the mentally ill person to make an advance directive in writing, as to the manner in which the person wishes to be cared for and treated for mental illness and the manner in which he does not wish to be treated. The advance directive may also contain the individual(s), in the order of precedence, who can be appointed as the nominated representative under Section 14 of the MHA-2017. Such an advance directive has to be invoked only once the person ceases to have the capacity to make decisions. The advance directive so made, if any, has to be in terms of the regulations made by the Central Mental Health Authority constituted under the MHA-2017. Such advance directive shall, however, not apply to emergency treatment, as per Section 9 of this statute.

167. Under Section 11, the advance directive can be reviewed, altered, modified or cancelled, in case certain factors are established, such as lack of

free will of the mentally ill person, at the time of making the advance directive. Section 14 permits the mentally ill person, who is not a minor, to appoint a nominated representative. However, where a nominated representative is not appointed under Section 14(4), the persons who would be deemed to be the nominated representative *in the order of precedence*, is stipulated, as below:-

“14. (1) Notwithstanding anything contained in clause (c) of sub-section (1) of section 5, every person who is not a minor, shall have a right to appoint a nominated representative.

(2) The nomination under sub-section (1) shall be made in writing on plain paper with the person’s signature or thumb impression of the person referred to in that sub-section.

(3) The person appointed as the nominated representative shall not be a minor, be competent to discharge the duties or perform the functions assigned to him under this Act, and give his consent in writing to the mental health professional to discharge his duties and perform the functions assigned to him under this Act.

(4) Where no nominated representative is appointed by a person under sub-section (1), the following persons for the purposes of this Act in the order of precedence shall be deemed to be the nominated representative of a person with mental illness, namely:—

(a) the individual appointed as the nominated representative in the advance directive under clause (c) of sub-section (1) of section 5; or

(b) a relative, or if not available or not willing to be the nominated representative of such person; or

(c) a care-giver, or if not available or not willing to be the nominated representative of such person; or

(d) a suitable person appointed as such by the concerned Board; or

(e) if no such person is available to be appointed as

a nominated representative, the Board shall appoint the Director, Department of Social Welfare, or his designated representative, as the nominated representative of the person with mental illness:

Provided that a person representing an organisation registered under the Societies Registration Act, 1860 or any other law for the time being in force, working for persons with mental illness, may temporarily be engaged by the mental health professional to discharge the duties of a nominated representative pending appointment of a nominated representative by the concerned Board.

(5) The representative of the organisation, referred to in the proviso to sub-section (4), may make a written application to the medical officer in-charge of the mental health establishment or the psychiatrist in-charge of the person's treatment, and such medical officer or psychiatrist, as the case may be, shall accept him as the temporary nominated representative, pending appointment of a nominated representative by the concerned Board.

(6) A person who has appointed any person as his nominated representative under this section may revoke or alter such appointment at any time in accordance with the procedure laid down for making an appointment of nominated representative under sub-section (1).

(7) The Board may, if it is of the opinion that it is in the interest of the person with mental illness to do so, revoke an appointment made by it under this section, and appoint a different representative under this section.

(8) The appointment of a nominated representative, or the inability of a person with mental illness to appoint a nominated representative, shall not be construed as the lack of capacity of the person to take decisions about his mental healthcare or treatment.

(9) All persons with mental illness shall have capacity to make mental healthcare or treatment decisions but may require varying levels of support from their nominated

representative to make decisions.”

168. Under Section 17, the nominated representative has various duties which are set out below:-

“17. While fulfilling his duties under this Act, the nominated representative shall—

(a) consider the current and past wishes, the life history, values, cultural background and the best interests of the person with mental illness;

(b) give particular credence to the views of the person with mental illness to the extent that the person understands the nature of the decisions under consideration;

(c) provide support to the person with mental illness in making treatment decisions under section 89 or section 90;

(d) have right to seek information on diagnosis and treatment to provide adequate support to the person with mental illness;

(e) have access to the family or home-based rehabilitation services as provided under clause (c) of sub-section (4) of section 18 on behalf of and for the benefit of the person with mental illness;

(f) be involved in discharge planning under section 98;

(g) apply to the mental health establishment for admission under section 87 or section 89 or section 90;

(h) apply to the concerned Board on behalf of the person with mental illness for discharge under section 87 or section 89 or section 90;

(i) apply to the concerned Board against violation of rights of the person with mental illness in a mental health establishment;

(j) appoint a suitable attendant under sub-section (5) or sub-section (6) of section 87;

(k) have the right to give or withhold consent for research under circumstances mentioned under sub-section (3) of section 99.”

169. Chapter V vests the mentally ill person with the right to access mental healthcare, right to community living, right to protection from cruel, inhuman and degrading treatment, right to equality, non-discrimination, information and confidentiality and the right to personal contacts and communication and to access medical records. Section 27 also entitles mentally ill persons to receive free legal aid.

170. In the following chapters, various obligations of the central and state authorities are enshrined. Chapter VI sets out the duties of the appropriate government. Chapter VII and VIII contemplates the establishment of the Central Mental Health Authority and State Mental Health Authority. The establishment and regulation of mental health establishments is contained in Chapter X. Mental Health Review Boards are to also be appointed by the State Authorities in terms of Chapter XI and the manner in which persons with mental illness would be admitted, treated and discharged from such establishments is set out in Chapter XII. Section 99 permits research in respect of mental illness, provided and free and informed consent of the person with mental illness is obtained. Finally, Sections 100 to 102 casts various duties on other agencies, such as police officers and Magistrates, in respect of the protection of persons with mental illness. It is pertinent to note that the MHA-2017 had repealed the MHA-1987.

(vi) **Concerns under the RPWD-2016 and MHA-2017**

171. A reading of the UNCRPD along with the RPWD-2016 and the MHA-2017, leaves no manner of doubt that the two statutes have been enacted in the background of the UNCRPD. The UNCRPD marks a paradigm shift in the manner in which mentally ill persons or PwDs are to

be treated. It gives primacy to the wishes of the PwD. It seeks to change forced decision-making to voluntary decision-making, in respect of the care, treatment and financial affairs concerning the property and assets of PwDs, including mentally ill persons. This Court notes that the Committee on the Rights of Persons with Disabilities, highlights this shift as below:¹

“21. Where, after significant efforts have been made, it is not practicable to determine the will and preferences of an individual, the “best interpretation of will and preferences” must replace the “best interests” determinations. This respects the rights, will and preferences of the individual, in accordance with article 12, paragraph 4. The “best interests” principle is not a safeguard which complies with article 12 in relation to adults. The “will and preferences” paradigm must replace the “best interests” paradigm to ensure that persons with disabilities enjoy the right to legal capacity on an equal basis with others.

22. All people risk being subject to “undue influence”, yet this may be exacerbated for those who rely on the support of others to make decisions. Undue influence is characterized as occurring, where the quality of the interaction between the support person and the person being supported includes signs of fear, aggression, threat, deception or manipulation. Safeguards for the exercise of legal capacity must include protection against undue influence; however, the protection must respect the rights, will and preferences of the person, including the right to take risks and make mistakes.”

172. Therefore, the crux of the provisions of the UNCRPD, which is reflected in the two statutes as well, is that to the maximum extent possible, the PwD or person with illness ought to be consulted.

¹ UN Committee on the Rights of Persons with Disabilities, *General Comment No.1, Article 12: Equal Recognition before the law*, CRPD/C/GC/1 (May 19, 2014) ¶¶ 21-22.

173. While both these recently enacted statutes reflect significant progress in incorporating the crux of the UNCRPD, the statutes have raised several other concerns. This was also expressed by legislators, when the bills of these two statutes were still being debated and discussed in the Indian Parliament. Illustratively, the said concerns were as under:-

- a) That the details regarding the guardianship of mentally ill persons and management of their property were provided for only in the MHA-1987, which would be repealed by the enactment of the Mental Healthcare Bill, 2013 (*hereinafter, 'MHA Bill 2013'*). Such guardianship provisions were absent in the MHA Bill 2013 and were only provided for in the Rights of Persons with Disabilities Bill, 2014 (*hereinafter, 'RPWD Bill'*) which was still being debated in the Parliament. If the MHA Bill 2013, were passed without the guardianship provisions and without enactment of the RPWD-2016, the MHA-1987 would be repealed and consequently, there would be a legal vacuum on the law of guardianship of mentally ill persons and their property. Thus, the MHA Bill 2013 ought not to be enacted prior to the RPWD-2016;²
- b) That the concept of nominated representatives was a western concept. People with high illiteracy are unlikely to give advance directives;
- c) That the Mental Healthcare Bill, 2016 ignores the role of parents and families. However, considering the social context in

² Shri. D. Raja, *Rajya Sabha Debates on the Mental Healthcare Bill, 2013*, on 8th August, 2016 (17 Sravana, 1983 (Saka)) in Vol. 240, No.16.

India, it is important to recognize the role of families and parents, so that they can take decisions on behalf of the patient. There are chances of mentally ill persons being defrauded by nominated representatives;³

- d) That the mentally ill person may be in denial and, therefore, may not give advance directive; resultantly, the nominated representative may not, in fact, be nominated. There is also a possibility of the nomination being under duress or coercion;⁴ and
- e) That sufficient room has to be given for medical institutions and family members to take actions on behalf of a patient, which would then strike a balance between involuntary treatment and the rights of the patient.⁵

174. In addition to these concerns, this Court also notes that the statutes are recent and the various institutions contemplated under them are yet to be completely established. From the submissions made in the present petition by various Id. Sr. Counsels, it is not clear as to which of the establishments under both these enactments have, in fact, been put in place.

175. Section 15 of the RPWD-2016 requires the designation of one or more authorities to mobilize the community and create social awareness to support PwDs in exercise of their legal capacity, especially for those with

³ Shri Bhartruhari Mahtab, *Lok Sabha Debates on the Mental Healthcare Bill, 2016*, on 27th March, 2017 (Chaitra 06, 1939 (Saka)) in Sixteenth Series, Vol. XXIII, Eleventh Session, 2017/1939 (Saka) No. 19.

⁴ Dr. Shashi Tharoor, *Lok Sabha Debates on the Mental Healthcare Bill, 2016*, on 24th March, 2017 (Chaitra 03, 1939 (Saka)) in Sixteenth Series, Vol. XXIII, Eleventh Session, 2017/1939 (Saka) No. 19.

⁵ *Ibid.*

high support needs. The authority concerned can also take any other measures as may be required in providing suitable support arrangement. Thus, Section 15 contemplates providing of sufficient infrastructure to enable PwDs to have access to banking and financial institutions to deal with their own assets.

176. At this stage, some limited guidance concerning the relevant authorities under the RPWD-2016, may be obtained from the Government of Delhi which has enacted the RPWD (Delhi) Rules-2018 under the RPWD-2016, as of 27th December, 2018. These Rules contemplate notification of the Certifying Authority pursuant to Section 57 of the RPWD-2016 and the issuance of Certificate of Registration under Section 50 of the RPWD-2016. In so far as the present dispute is concerned, Rules 7 to 9 of the RPWD (Delhi) Rules-2018 are relevant and are set out below:-

“7. Limited Guardianship. - (1) A District Court on its own, or on an application filed by the person with disability, or through a blood relative or filed on behalf of the person with disability through a Government organization or a Registered organization under whose care the person with disability is residing, shall grant the support of a limited guardian to take a legally binding decision on behalf of the person with disability in consultation with such person.

(2) The District Court, before granting the support of a limited guardian for the person with disability shall satisfy itself that such a person is not in a position to take legally binding decision on one's own.

(3) The District Court shall hold hearings to determine the legal capacity of the person with disabilities; During such hearings, the person with disabilities shall be present. If required, expert opinion shall be sought by the court to determine the legal capacity of the person with disabilities.

(4) *The validity period for limited guardianship as appointed under sub-rule (1) shall be initially for a period of three years which can be further extended by the District Court as the case may be:*

Provided that the District Court shall follow the same procedure while extending the validity of the limited guardianship as followed while granting the initial guardianship.

(5) *The District Court shall take a decision preferably within a period of one month from the date of receipt of an application regarding grant of limited guardianship or from the date of coming to its notice of the need of such limited guardianship:*

Provided that the consent of the person to act as a limited guardian shall also be obtained before grant of such limited guardianship:

Provided that the District Court shall follow the same procedure while extending the validity of the limited guardianship as followed while granting the initial guardianship.

(6) *While granting the support of such limited guardianship, the Court shall consider a suitable person to be appointed as a limited guardian in the following preference of merit, namely: -*

(a) *The parents or adult children of the person with disability;*

(b) *Immediate brother or sister;*

(c) *Other Blood relatives or care givers or prominent personality of the locality; and*

(d) *In case the family of the person with disability is not known, Superintendent of the Government Institution or In charge of the Registered organization under whose care the person with disability is residing, may be considered.*

(7) *Only those individuals who are over the age of 18 years and who have not been previously convicted of any cognizable offence as defined in the Code of Criminal Procedure, 1973 (1 of 1974) shall be appointed as a*

limited Guardian.

(8) The limited guardian appointed under sub-rule (1) shall consult the person with disability in all matters before taking any legally binding decisions on behalf of the person with disability.

(9) The appointed limited guardian shall ensure that the legally binding decisions taken on behalf of the person with disability are in the interest of the person with disability.

8. Appellate Authority. – *The Appellate Authority to appeal against any decision of the District Court for appointment of limited Guardian under sub-rule (1) of rule 7, shall be the High Court.*

9. Designated authority. – *The Dy. Commissioners of the Department of Revenue, GNCT of Delhi shall be the designated authority under sub-section (1) of section 15 of the Act to take measures for creating social awareness to support persons with disabilities in exercising their legal capacity.”*

177. Therefore, the RPWD (Delhi) Rules-2018 only provide for a designated authority for the purposes of limited guardianship or for creating social awareness for PwDs to exercise their rights, including of access to finance and assets.

c) Interplay between the MHA-2017 and RPWD-2016

(i) Scope of the Statutes

178. A conjoint reading of the provisions of the RPWD-2016, MHA-2017 and the RPWD (Delhi) Rules-2018 in the backdrop and spirit of the UNCRPD, as also the concerns expressed during the Parliamentary debates, shows that there is a clear delineation between the provisions of the RPWD-2016 and the MHA-2017.

179. Unlike MHA-1987, the MHA-2017 makes a fundamental change in respect of dealing with property and affairs of mentally ill persons.

180. In the opinion of this Court, the MHA-2017 has to be interpreted as having been enacted only to deal with the delivery of mental healthcare, and services and for connected matters. The deletion of provisions with respect to property and affairs and the absence of any provisions in respect of moveable or immovable assets, financial affairs, legal capacity, legal aid, etc. in the said statute is clearly a conscious departure from the earlier regime. Such issues are dealt with under the RPWD-2016. Various submissions have been addressed by all parties in this petition, as to which is the prior and which is the later enactment. However, for the present purposes, the said issue does not require adjudication as it is clear that both these statutes deal with mentally ill persons. It is in fact, the purpose and scope of both these statutes, that is distinct and different. Thus, the debate as to which is the earlier and the later enactment would be unnecessary.

(ii) Support/Guardianship Arrangements

181. Under the MHA-2017, the nominated representative can be decided by the mentally ill person by giving an advance directive. However, in the absence of an advance directive under Section 14(4) of the MHA-2017, the order of precedence has been set out. As per the said order, a relative would be the person who shall be deemed to be a nominated representative in order to carry out the duties in accordance with under Section 17 of the MHA-2017.

182. The nominated representative is responsible for providing support in respect of decisions of treatment, and for taking all decisions in respect of

providing access to family, rehabilitation services, planning of admission, planning of discharge, appointments of attendants, give or withhold consent for research on behalf of the mentally ill persons. However, all these decisions are to be taken considering the current and past wishes of the person concerned, the life history, values, cultural background and the best interest of the person. Credence has to be given to the views of the person with mental illness to the extent that the person understands the nature of the decisions. Thus, the treatment and healthcare to be given to the mentally ill person has to be in the particular context of that person's life history. Further, the nominated representative has to ensure that timely treatment is also given to the mentally ill person. In fact, access to mental healthcare is a recognized right under Section 18 and Section 18(2) of the MHA-2017, contemplates that the mental healthcare and treatment provided should be of good quality and easily accessible. However, the provision also requires that the same is provided in a manner that is acceptable to the person with mental illness and to his/her family. Section 18 reads as under:-

“18. (1) Every person shall have a right to access mental healthcare and treatment from mental health services run or funded by the appropriate Government.

(2) The right to access mental healthcare and treatment shall mean mental health services of affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and caregivers.”

183. Therefore, the nominated representative has to be a person who can

ensure that the rights of the mentally ill person are not in any manner prejudiced, curtailed or harmed. In this background, it is notable that Section 14(4) of the MHA-2017, gives precedence to the ‘relative’ of a mentally ill person over a care-giver, and such relative could be person related by blood, marriage or adoption. The definition of ‘relative’ comes from Section 2(za) of the MHA-2017, as under:-

“(za) “relative” means any person related to the person with mental illness by blood, marriage or adoption;”

184. Thus, it is clear that under the MHA-2017, while appointing a nominated representative, a relative by blood or marriage or adoption under Section 14(4)(b), is given precedence over a care-giver under Section 14(4)(c). The measures taken qua the mentally ill person ought to be acceptable to the family members, who cannot be ignored.

185. Having discussed the scope of the MHA-2017, this Court now turns to the RPWD-2016. The first and most important right in the context of the present case would be the right of access to justice and the right to legal capacity, for PwDs. Some other important rights include the right of the person to live in community, and to be protected against abuse, violation and exploitation. It is relevant to note that under Section 13 of the RPWD-2016, the right to legal capacity is to be ensured, which contemplates the right of the PwD to take all decisions in respect of his or her financial affairs, and own or inherit movable or immovable property, have access to bank loans, etc. To protect this right further, Section 13(3) provides that if a conflict of interest arises between the PwD and the person providing support in respect of financial, property and other economic transactions, the conflicted persons providing support shall abstain from providing support. Section

13(3) *proviso* clarifies that the mere fact that the person is related by blood, affinity or adoption, would not lead to presumption of conflict of interest. This therefore, leads to the conclusion that there has to be something more than the existence of a relationship by blood/affinity/adoption, for such a conflict to arise. Section 13(5) further protects PwDs from undue influence and respect is to be accorded to their autonomy, dignity and privacy.

186. In so far as the question concerning appointment of guardian or support arrangements under the RPWD-2016 is concerned, Section 14 of the RPWD-2016 becomes relevant, in addition to Section 13. While a nominated representative is contemplated under the MHA-2017 for healthcare and treatment decisions, under the RPWD-2016, Section 14 stipulates the manner in which limited guardians can be appointed, to take legally binding decisions on behalf of the PwD – only in consultation with the PwD. If the PwD is unable to do so, despite the support already provided, the power to appoint a guardian, vests with the District Court or any designated authority. This provision has been considerably debated during the course of arguments in the present case. The submission on behalf of the Respondent Nos. 5 and 6 as also the Intervenor, is that only a limited guardian can be appointed, as the RPWD-2016 has limited the scope of all guardianship under law. There cannot be a plenary guardian unlike the MHA-1987, as per Respondents 5 & 6. It is this submission that needs to be tested while interpreting Section 14 of the RPWD-2016.

187. Section 14 contemplates provision of support by appointing a guardian. Such a guardian is termed as a limited guardian, as it is presumed under this provision that a PwD would have expressed or would be able to express his or her desires to such a limited guardian. This is evident from

both from the language of Section 14 and from the definition and categorization of disabilities under the RPWD-2016. There are certain features of the guardianship contemplated under this provision.

188. First, the Explanation to Section 14(1) deals with limited guardianship as having the following elements:-

- a) It is a system of joint decision.
- b) It operates on mutual understanding and trust between the guardian and the PWD.
- c) It is for a specific period.
- d) It is for specific decisions.
- e) It is for specific situations.
- f) It should operate as per the will of the person with disability.

189. All the above elements contemplate an inherent capacity in the person with disability to express his or her will, which is the basis for operating on “mutual understanding and trust”. If such will of the person is not capable of being expressed or if a person is suffering from a mental condition which can grossly impair his or her judgment, behaviour or capacity to even understand the ordinary demands of life, such a person cannot be assisted by a limited guardian. Consequently, Section 14 envisages limited guardianship in the case of such PwDs, who have expressed their desires in the past or are able to express their desires, going forward.

190. Second, the RPWD-2016 applies to persons with varying degrees of disabilities, as the definition of disabilities is extremely wide. A person who has low vision and hearing impairment or a physical disability is a PwD as much as a person with a mental disability or blood disorder. The gamut of

disabilities thus covered under Section 2(s) of the RPWD-2016 is any long-term physical, mental, intellectual or sensory impairment. Notably, while specified disabilities are set out in the Schedule to the MHA-2017, general disabilities are not. Thus, the kind of disabilities which a person can be afflicted with in terms of Section 2(s) is broad, elastic and ever-changing. It is not restricted to a disability that is currently known. As scientific advances are made in the medical field, there could be disabilities which are unknown today which may be identified in the future. Section 2(s) would then have to cover disabilities which are even yet to be identified.

191. A perusal of the definitions shows that the categories of PwD are broadly – simple PwD and persons with benchmark disabilities. In order to determine who are the *‘persons with benchmark disabilities’*, the statute gives guidance through the Schedule, pursuant to Section 2(zc) of the RPWD-2016. It includes persons with physical disability including visual impairment, intellectual disability, mental behaviour disability, disability due to chronic neurological conditions or blood disorders, or a combination of the above disabilities, and any other categories notified as specified disabilities by the Central Government. Section 2(r) of the RPWD-2016 further deals with a further sub-category that if a person has such specified disability which is 40% or higher, it would be a person with *‘benchmark disability’*. Within persons with benchmark disabilities, a further sub-set, namely, *‘persons with disability having high support needs’*. Such persons could be persons with mental illness whose judgment, behaviour and capacity are grossly impaired or persons who have chronic neurological conditions such as multiple sclerosis, Parkinson’s disease, blood disorders, etc.

192. Keeping this scope of the RPWD-2016 in mind, it is clear that Section 14 could not restrict support to only appointment of a limited guardian, which would cater merely to PwDs who would be able to participate in a limited guardianship arrangement. This becomes clearer in view of the proviso to Section 14(1) which recognizes the grant of ‘total support’ under two conditions:-

- a) In respect of PwDs requiring such support; or
- b) If the limited guardianship is to be granted repeatedly.

193. Since the RPWD-2016 deals with an extremely wide range of disabilities, Section 14 is suitably crafted to take into consideration those persons who are unable to express their will to the limited guardian. A PwD having high support needs or a PwD requiring such support due to any other factors, would be squarely covered as a PwD requiring total support under Section 14.

194. It is interesting to note that the word used in the Proviso to Section 14 is ‘total support’ and not ‘plenary guardian’, as was contained in the RPWD Bill, in the spirit of the UNCRPD which gives primacy to the PwD and to his or her will, preference or consent. ‘Total support’ is also a terminology which is used in contrast with ‘plenary guardian’, as it recognizes the possibility of the PwD being treated or cured in a manner which would enable him or her to take decisions in the future in which case, the nature and manner of support could also be decreased. This is clear from a reading of a proviso which contemplates that the provision of total support shall be reviewed i.e., if the person with disability is treated, cared for and cured or empowered to take decision, then the nature and manner of support could also be decreased.

195. This is also confirmed by a perusal of the drafting history of the UNCRPD, where during the discussion on Article 12 of the UNCRPD when asked how supported decision making would be implemented in a situation where the PwD was incapable of decision making. The relevant excerpt reads as under:⁶

“The Chair believed that paradigm shift of operating on an assumption of competence rather than incompetence exists already in Article 12, via the progression that states begin with a premise of legal capacity, proceed to supported decision making when required and move to substitute decision making only as a matter of last resort. Nonetheless, a number of states have asserted that, because there will be cases that require substitute decision making, or guardianship, it is better to provide safeguards in these extreme cases rather than leaving it open. The IDC’s position opposes mentioning guardianship at all in the text. The Chair asked for clarification regarding whether the IDC does accept that there will be circumstances in which there will be a need for substitute decision making.

The IDC stated that it expects the notion of guardianship to be phased out.

The difference between supported and substitute decision making is that, in a supported situation, the person with a disability is at the center of the discourse. The premise of supported decision making is that it ranges from zero to 100% and is a dynamic concept. As capacity increases, support decreases – a concept that is not allowed in guardianship.

The Chair responded by referring to the IDC’s assertion that the need for support ranges from zero to 100%, and asked if 100% support is not the same as substitute decision making. While he understood the support

⁶ UNCRPD AdHoc Committee, *Daily Summary Record of the 7th Session*, Vol. 8 (No.3) (Jan. 18, 2006) (Statement of the Chair and IDC).

paradigm, he asserted that, whether it is referred to as “100% support “substitute decision making” or “guardianship”, the result is the same if the subject of the decision does not participate in the decision. When this does occur, states are arguing that it is better to specify safeguards rather than leaving it open.

The IDC responded that the point regarding abuse and the need to regulate are addressed by text proposed by Canada and can also be taken care of in other articles. The IDC goal is to not legitimize guardianship. The point is that a need for 100% support percent will become 99% and then 98% percent if we are talking about supported decision making and this would not be possible in a guardianship situation.

Xxx

The Chair concluded the discussion of Article 12, with the following summary:

Xxx

There may be a way to frame the idea of substitution within the context of support with some creative thinking about the idea of the scale of support ranging from zero to 100%.”

196. Based on this analysis, this Court is of the opinion that the intention of the RPWD-2016, is to first, examine if the PwD is capable of expressing his or her will or preferences, and second, under exceptional circumstances, where consultation is not possible, enable the provision of total support.

197. In this determination of consultation, and will and preferences, it is important to understand that the level of consultation required would also vary on a case-to-case basis. Recently, in *Latha TB (supra)*, the Kerala High Court while dealing with consultation under Section 14 of the RPWD-2016 held that consultation required under Section 14 would depend on the capacity of comprehension of the PwD. The observations of the Court are as under:-

“It is pointed out across the bar that, appointment of a guardian, in terms of Section 14 of the PwD Act, is to be done by the authority in consultation with the ward, and that, considering the degree of disability of the ward, “consultation” as prescribed under the provision would be a near impossibility. Here it is to be noticed that, the process of consultation with a person with illness and its efficacy, would in each case vary depending on the comprehending capacity of the person with illness. It is for the authority notified in terms of the Section to make its endeavour to have the process of consultation done; but it is to be noted that, the term “consultation” occurring in Section 14 will necessarily have to be understood and appreciated giving due regard to the degree of disability of the person with illness, and his capacity to comprehend and interact. Therefore, the term “consultation” occurring in Section 14 has to be understood in a practical way, that is, “consultation to the extent possible in a given circumstance”.”

198. Therefore, the extent of consultation would depend upon the capability of the person with mental illness to consult.

d) Analysis on Guardianship

199. In the light of the above legal position, this Court proceeds to deal with the issue of Maintainability and the issue of appointment of a Guardian.

(i) Maintainability

200. The maintainability of this writ petition has been vehemently contested by Respondent Nos.5 & 6. The following grounds have been raised for contesting maintainability:

- i) That the exercise of writ jurisdiction would deprive Mr. DMP of his right to privacy and dignity.
- ii) That the RPWD-2016 vests jurisdiction in the District Courts to deal with such cases. When there is a clear statutory mechanism

provided, *parens patriae* jurisdiction cannot be invoked.

201. On the other hand, the stand of the Petitioner and the supporting Respondents i.e., the sons of Mr. DMP, is that the present petition is maintainable as:

- (i) Mr. DMP is mentally ill and the present status as it prevails is not in the interest of Mr. DMP as Respondents Nos.5 & 6 have deliberately concealed his medical condition and, in fact, failed to provide timely treatment.
- ii) There is a threat to Mr. DMP's property and person.
- iii) The *parens patriae* jurisdiction of the Court has not been ousted by the statute and has been exercised in respect of persons with mental illnesses.

Parens Patriae

202. The question of maintainability has two aspects, one which is legal and the second, which is factual. This Court will first discuss the legal aspect of *parens patriae* jurisdiction. The doctrine of *parens patriae* traces its origin back to the 13th Century. The term literally means 'father of his country', which power vested in the Monarch. The doctrine of *parens patriae* recognises the power and duty of the Monarch to extend protection to such persons who are unable to care for themselves as also their property. In democratic countries, the same power vests in the people and is exercised by Courts. The said doctrine is elucidated in Corpus Juris Secundum (67A C.J.S. *Parens Patriae* (1978)) as under:

“Parens Patriae- The words “parens patriae,” meaning “father of his country,” were applied originally to the king. Since, on this country's achieving its independence, the prerogatives of the crown devolved on the people of

the states, the state, as a sovereign, is the parens patriae. The doctrine of parens patriae expresses the inherent power and authority of the state to provide protection of the person and property of a person non sui juris, and under the doctrine the state has the sovereign power of guardianship over persons of disability, and in the execution of the doctrine the legislature is possessed of inherent power to provide protection to persons non sui juris and to make and enforce such rules and regulations as it deems proper for the management of their property.”

203. Under this jurisdiction, protection is extended to vulnerable sections of the population, including minors, persons who are mentally ill and any other category of persons who are considered vulnerable persons or persons with a legal disability.

204. In the UK, under the *parens patriae* jurisdiction Courts would extend protection to vulnerable persons or persons with legal disability in society. Under this jurisdiction, directions can be passed in respect of safety and security of persons, medical treatment, management of property and other related matters, management of financial affairs etc. The said jurisdiction, has been held to no longer survive in respect of mentally ill persons after the enactment of the Mental Health Act of 1959, followed by the Mental Capacity Act of 2005. The observations in *In re F (supra)* qua the *parens patriae* jurisdiction are set out below:

“I consider first the parens patriae jurisdiction. This is an ancient prerogative jurisdiction of the Crown going back as far perhaps as the 13th century. Under it the Crown as parens patriae had both the power and the duty to protect the persons and property of those unable to do so for themselves, a category which included both minors (formerly described as infants) and persons of

unsound mind (formerly described as lunatics or idiots). While the history of that jurisdiction and the manner of its exercise from its inception until the present day is of the greatest interest, I do not consider that it would serve any useful purpose to recount it here. I say that because it was accepted by the Court of Appeal and not challenged by any of the parties to be appeal before your Lordships, that the present situation with regard to the parens patriae jurisdiction was as follows. First, so much of the parens patriae jurisdiction as related to minors survives now in the form of the wardship jurisdiction of the High Court, Family Division. Secondly, so much of the parens patriae jurisdiction as related to persons of unsound mind no longer exists. It ceased to exist as a result of two events both of which took place on 1 November 1960. The first event was the coming into force of the Mental Health Act 1959, section 1 of which provided:

“Subject to the transitional provisions contained in this Act, the Lunacy and Mental Treatment Acts, 1890 to 1930, and the Mental Deficiency Acts, 1913 to 1938, shall cease to have effect, and the following provisions of this Act shall have effect in lieu of those enactment with respect to the reception, care and treatment of mentally disordered patients, the management of their property, and other matters related thereto.”

The second event was the revocation by Warrant under the Sign Manual of the last Warrant dated 10 April 1956, by which the jurisdiction of the Crown over the persons and property of those found to be of unsound mind by inquisition had been assigned to the Lord Chancellor and the judges of the High Court, Chancery Division.

The effect of section 1 of the Act of 1959, together with the Warrant of revocation referred to above, was to sweep away the previous statutory and prerogative jurisdiction in lunacy, leaving the law relating to persons of unsound mind to be governed solely, so far as statutory enactments are concerned, by the provisions of

that Act. So far as matters not governed by those provisions are concerned, the common law relating to persons of unsound mind continued to apply. It follows that the parens patriae jurisdiction with respect to persons of unsound mind is not now available to be invoked in order to involve the court or a judge in the decision about the sterilisation of F.”

205. The US Supreme Court recognizes this power, as is clear from ***Heller, Secretary, Kentucky Cabinet for Human Resources v. DOE, by his mother and next friend, 509 US 312 (1993)***, where the Court has held as under:

“We think that application of the Mathews v. Eldridge factors compels the conclusion that participation as parties by close relatives and legal guardians is not a deprivation of due process. Even if parents, close family members, or legal guardians can be said in certain instances to have interests “adverse to [those of] the person facing commitment,” 965 F. 2d, at 113, we simply do not understand how their participation as formal parties in the commitment proceedings increases “the risk of an erroneous deprivation,” 424 U.S., at 335, of respondents’ liberty interest. Rather, for the reasons explained, supra, at 329, these parties often will have valuable information that, if placed before the court, will increase the accuracy of the commitment decision. Kentucky law, moreover, does not allow intervention by persons who lack a personal stake in the outcome of the adjudication. Guardians have a legal obligation to further the interests of their wards, and parents and other close relatives of a mentally retarded person, after living with and caring for the individual for 18 years or more, have an interest in his welfare that the State may acknowledge. See Parham v. J.R., 442 U.S. 584, 602–603 (1979). For example, parents who for 18 years or longer have cared for a retarded child can face changed circumstances resulting from their own advancing age, when the physical, emotional, and financial costs of

caring for the adult child may become too burdensome for the child's best interests to be served by care in their home. There is no support whatever in our cases or our legal tradition for the "statist notion," id., at 603, that the State's expertise and concern in these matters is so superior to that of parents and other close family members that the State must slam the courthouse door against those interested enough to intervene. Finally, "the state has a legitimate interest under its parens patriae powers in providing care to its citizens who are unable ... to care for themselves," as well as "authority under its police power to protect the community" from any dangerous mentally retarded persons. Addington, 441 U.S., at 426."

206. Especially in respect of insane persons, the legal position in the US is well-captured in **44 C.J.S. Insane Persons § 37 (1945)** as under:

"Appointment of Guardian

Power to appoint a guardian for an incompetent is in the sovereignty of the state. The purpose of the appointment is to safeguard the rights of the incompetent, and whether his welfare requires such appointment is a matter for the sound discretion of the court.

While it is generally said that the power to appoint guardians for insane persons is purely statutory, the power in fact lies in the sovereignty of the state, and the procedure only is statutory. The purpose of appointing a guardian or committee is to safeguard the rights of the incompetent by protecting his person and preserving his property, and whether a guardian should be appointed rests with the sound discretion of the court, the important consideration being the best welfare of the incompetent. The court should take into account the status of the estate and whether it is of such nature that its management requires considerable care and judgment, and, if the prospective ward has sufficient mental capacity, his wishes in the matter."

207. In *Heller (supra)*, the US Supreme Court was dealing with a challenge to the law relating to the involuntary commitment of mentally retarded and mentally ill persons to mental health institutions. The Supreme Court highlights the distinction between mentally retarded persons and mentally ill persons to hold that a lower standard of proof would be required for the involuntary commitment of mentally retarded persons. However, even while institutionalising such persons, the participation of close relatives and guardians is encouraged as, in the opinion of the US Supreme Court, parents and close relatives of a mentally retarded person, who have cared for the said person would have his/her best interest and welfare in mind. The Supreme Court rejected the submission of the State of Kentucky that the State's expertise and concern is superior to that of the parents and other close family members, which it termed as the '*statist notion*'. The Supreme Court held that the State does have a legitimate interest under its *parens patriae* power to provide care to those citizens who are unable to care for themselves.

208. Insofar as India is concerned, the recent judgment of the Supreme Court in *Shafin Jahan (supra)* has considered the scope of *parens patriae* jurisdiction and has observed as under:

“39. Constitutional Courts in this country exercise parens patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On

certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.

...

41. The Supreme Court of Canada in **E. (Mrs.) v. Eve** observed thus with regard to the doctrine of *Parens Patriae*:-

“The Parens Patriae jurisdiction for the care of the mentally incompetent is vested in the provincial superior courts. Its exercise is founded on necessity. The need to act for the protection of those who cannot care for themselves. The jurisdiction is broad. Its scope cannot be defined. It applies to many and varied situations, and a court can act not only if injury has occurred but also if it is apprehended. The jurisdiction is carefully guarded and the courts will not assume that it has been removed by legislation.”

While the scope of the parens patriae jurisdiction is unlimited, the jurisdiction must nonetheless be exercised in accordance with its underlying principle. The discretion given under this jurisdiction is to be exercised for the benefit of the person in need of protection and not for the benefit of others. It must at all times be exercised with great caution, a caution that must increase with the seriousness of the matter. This is particularly so in cases where a court might be tempted to act because failure to act would risk imposing an obviously heavy burden on another person.”

...

44. Recently, the Supreme Court of New South Wales, in the case of **AC v. OC (a minor)**, has observed:-

“36. That jurisdiction, protective of those who are not able to take care of themselves, embraces (via different historical routes) minors, the mentally ill and those who, though not mentally ill, are unable to manage their own affairs: *Re Eve* [1986] 2 SCR 388 at 407-417; *Court of Australia in Secretary, Department of Health and Community Services v. JWB and SMB (Marion’s Case)* (1992) 175 CLR 218 at 258; *PB v. BB* [2013] NSWSC 1223 at [7]-[8], [40]-[42], [57]-[58] and [64]-[65].

37. A key concept in the exercise of that jurisdiction is that it must be exercised, both in what is done and what is left undone, for the benefit, and in the best interest, of the person (such as a minor) in need of protection.”

45. Thus, the Constitutional Courts may also act as *Parens Patriae* so as to meet the ends of justice. But the said exercise of power is not without limitation. The courts cannot in every and any case invoke the *Parens Patriae* doctrine. The said doctrine has to be invoked only in exceptional cases where the parties before it are either mentally incompetent or have not come of age and it is proved to the satisfaction of the court that the said parties have either no parent/legal guardian or have an abusive or negligent parent/legal guardian.

46. Mr. Shyam Divan, learned senior counsel for the first respondent, has submitted that the said doctrine has been expanded by the England and Wales Court of Appeal in a case **DL v. A Local Authority and others**. The case was in the context of "elder abuse" wherein a man in his 50s behaved aggressively towards his parents, physically and verbally, controlling access to visitors and seeking to coerce his father into moving into a care home against his wishes. While it was assumed that the elderly parents did have capacity within

the meaning of the Mental Capacity Act, 2005 in that neither was subject to "an impairment of, or a disturbance in the functioning of the mind or brain", it was found that the interference with the process of their decision making arose from undue influence and duress inflicted by their son. The Court of Appeal referred to the judgment in Re: SA (Vulnerable Adult with Capacity : Marriage) to find that the parens patriae jurisdiction of the High Court existed in relation to "vulnerable if 'capacitous' adults". The cited decision of the England and Wales High Court (Family Division) affirmed the existence of a "great safety net" of the inherent jurisdiction in relation to all vulnerable adults. The term "great safety net" was coined by Lord Donaldson in the Court of Appeal judgment which was later quoted with approval by the House of Lords in In Re F (Mental Patient: Sterilisation)²¹. In paragraph 79 of Re: SA (Vulnerable Adult with Capacity : Marriage), Justice Munby observes:-

“The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent. The cause may be, but is not for this purpose limited to, mental disorder or mental illness. A vulnerable adult who does not suffer from any kind of mental incapacity may nonetheless be entitled to the protection of the inherent jurisdiction if he is, or is reasonably believed to be, incapacitated from making the relevant decision by reason of such things as constraint, coercion, undue influence or other vitiating factors.”

209. The Supreme Court therefore held that in order to invoke the *parens patriae* jurisdiction, exceptional circumstances have to exist. It quoted with approval the observations of the Supreme Court of Canada in *E v. Eve (supra)* that the said jurisdiction is carefully guarded and there shall be no presumption that the *parens patriae* jurisdiction is removed by legislation. The scope of *parens patriae* jurisdiction being unlimited, it has to be exercised with great caution and with enormous seriousness. The Supreme Court recognises that Constitutional Courts, including High Courts, can also act under their *parens patriae* jurisdiction to “meet the ends of justice”. Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction. If the Court is satisfied that the person concerned is either being abused or neglected, *parens patriae* jurisdiction can be exercised. Even vulnerable adults can be protected under this jurisdiction if there are any factors that point towards undue influence, coercion, constraint etc.

210. Under the RPWD-2016, the power to appoint guardians is vested both in the District Court as well as the Designated Authority. Under the RPWD (Delhi) Rules-2018, which are applicable to Delhi, the Designated Authority has only been notified under Section 15(1) and not under Section 14. The RPWD (Delhi) Rules-2018 itself show that the District Court is to proceed with quickness and alacrity when a guardianship request is received by it. As per Rule 7(5), a decision on limited guardianship has to be taken within one month. In effect, this means that the District Court is not to conduct a detailed trial before appointing a guardian. Depending upon the facts and circumstances of the case, the Court has to merely consider the suitability of the person in the order of preference as contained in Rule 7(6) and the PwD

has to be consulted. Rules 7 to 9 relating to limited guardianship, as extracted above, become relevant.

211. A perusal of the said rules shows that the District Court has to take the following steps:

- i) It has to satisfy itself that the concerned PwD is not in a position to take legally binding decisions.
- ii) Hearing would be held to determine the legal capacity of such a person.
- iii) The Court may consult an expert to determine legal capacity.
- iv) The period of validity of the appointment would be three years, which can be further extended. For such extension, the same procedure as is required for appointment of a limited guardian shall be followed.
- v) The decision has to preferably be taken within a period of one month.
- vi) The consent of the limited guardian has to be obtained before appointing him/her.
- vii) The order of preference for granting limited guardianship is as follows:
 - (i) The parents or adult children of the person with disability;
 - (ii) Immediate brother or sister;
 - (iii) Other Blood relatives or care givers or prominent personality of the locality; and
 - (iv) In case the family of the person with disability is not known, Superintendent of the Government Institution or In charge of the Registered organization under whose care the

person with disability is residing, may be considered.

212. The RPWD (Delhi) Rules-2018 provide that the limited guardian who has been appointed in terms of Section 7(1) would consult the person in all matters before taking any legally binding decisions. Interestingly, the rules do not stipulate any mechanism for providing total support under the proviso to Section 14(1).

213. The fact that the power under Section 14 of the RPWD-2016 is vested with the District Courts and the Designated Authority and the procedure itself does not involve recording of evidence or a trial shows that the Court's primary concern is with the timely appointment of the guardian.

214. Even under Order XXXIIA of the CPC, the Civil Court would have jurisdiction to appoint guardians in respect of all persons with disability, including a minor. Even in Rule 5 of Order XXXIIA, the inquiry by the Court into facts is "so far it reasonably can". Again, a trial is not contemplated. The said provision reads as under:

"1. Application of the Order.—(1) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:—

(a) a suit or proceeding for matrimonial relief, including a suit or proceedings for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(b) a suit or proceeding for a declaration as to legitimacy of any person;

(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member

of the family, under a disability;

(d) a suit or proceeding for maintenance;

(e) a suit or proceeding as to the validity or effect of an adoption;

(f) a suit or proceeding, instituted by a member of the family, relating to wills, intestacy and succession;

(g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

...

5. Duty to inquire into facts.—*In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.”*

215. While exercising power under Order XXXIIA CPC, the Court can seek the assistance of a welfare expert. Even these provisions do not bar the exercise of *parens patriae* jurisdiction.

216. In any event, since the power under Section 14 of RPWD-2016 can be exercised by a Designated Authority, such a Designated Authority would fall within the overall superintendence of this Court exercising writ jurisdiction. In the absence of a Designated Authority having been notified under Section 14, this Court is also vested with the power to exercise jurisdiction under the proviso to Section 14(1), as there is a clear legal vacuum that has been created.

217. While exercising *parens patriae* jurisdiction, Courts used to apply the principle of “best interest of the individual”. However, with the introduction of the UNCRPD, “best interest” of the individual has to be in the light of the “wills and preferences” of the individual. The same could be determined

by means of advance directives and in the absence of advance directives, facts and circumstances which point towards the wishes/intent of the concerned person. Thus, the “wills and preferences” of the mentally ill person have to be considered by the Court in deciding the manner in which care is to be given.

218. As noted in the concerns raised during the Parliamentary debates concerning the MHA-2017 and also from the lack of designated authorities explained above, there are gaps unaddressed by the legislations. The social fabric of family structures in India ought to be considered. In the same vein, the Court notes that the MHA-1987 had laid down certain standards and factors to be considered while determining the “*best interest*” of the mentally ill person. However, under RPWD-2016 and the MHA-2017, no guidance exists as to what would constitute the “*wills and preferences*” of the person. Under Section 14 of RPWD-2016, limited guardianship is for a specific period, a specific decision and a specific situation, in accordance with the will of the PwD. Even in the proviso to Section 14(1), the factors to be considered for providing total support are conspicuously absent. The MHA-2017 has no provision in respect of management of financial affairs, appointment of guardians or the manner in which the moveable/immovable property of the mentally ill person is to be taken care of. Thus, there is a clear statutory vacuum.

219. On the issue of Maintainability therefore the following factors are noted:

- (i) The RPWD-2016, the MHA-2017 or the RPWD (Delhi) Rules-2018 do not create any embargo on the exercise of *parens patriae* jurisdiction.

- (ii) Providing '*total support*' is contemplated under Section 14 of the RPWD-2016.
- (iii) However, the power under Section 14 of RPWD-2016 is to be exercised by the District Court or the Designated Authority. Currently, under the RPWD (Delhi) Rules-2018, no Designated Authority has been appointed under Section 14.
- (iv) Under the proviso to Section 14(1) of RPWD, 2016, there is no guidance as to the factors to be considered for providing total support.
- (v) The various institutions and establishments contemplated under RPWD-2016 do not appear to be fully operational.
- (vi) There is a clear legal vacuum in respect of providing total support to a person with disability who requires such support. No precedent has been cited either under the RPWD-2016 or MHA-2017 in this regard.
- (vii) There are several gaps and concerns in the two legislations, i.e., RPWD-2016 and MHA-2017. All the required institutions under these statutes are not fully set up and functional.
- (viii) In the present case, the condition of Mr. DMP is such that the Court has to take a comprehensive view under both legislations on two aspects:
- (a) In respect of his medical care and treatment; and
 - (b) For management of his financial affairs, both movable and immovable assets which are valued at more than Rs. 3000 crores.
- (ix) Above all, this Court is exercising jurisdiction under Article

226/227 of the Constitution of India, which is a jurisdiction conferred by the Constitution of India and in various judgments of the Id. Supreme Court, the *parents patriae* jurisdiction is clearly vested in Constitutional Courts. The present case falls in the category of exceptional circumstances, as held in *Shafin Jahan (supra)*.

220. In any event, this Court is of the opinion that the solemn nature of the said jurisdiction having been repeatedly recognised by the Supreme Court, the question as to which Court has to exercise it and in what manner is one of mere procedure. So long as the “wills and preferences” of the mentally ill person and the other factors set out in the rules are borne in mind by the Court exercising *parens patriae* jurisdiction, it cannot be held that the High Court exercising power under Article 226 is denuded of power in view of the provisions of the RPWD-2016 Act or the Rules thereunder.

221. Thus, both, while exercising jurisdiction under Article 226 and even in terms of the *proviso* to Section 14(1) of the RPWD-2016 and under the MHA-2017, this Court has the power to entertain the present petition seeking appointment of a guardian.

(ii) Who can be the guardian/nominated representative? (Legal Position)

222. As discussed earlier, under Section 14(4) of the MHA-2017, the nominated representative can be any person who may have been chosen by an advance directive. In the absence of an advance directive, the nominated representative can be a relative. It is only if a relative is not available or is not willing to be the nominated representative, that in the order of preference, a care-giver or thereafter a suitable person can be appointed. A

relative as defined under the MHA-2017, as extracted above, as a person related to the person with mental illness by blood, marriage or adoption. On the other hand, the RPWD-2016 does not define who can be a guardian. While some institutional mechanisms are contemplated under the RPWD-2016, the existence and the viability of such institutions has not been addressed before this Court during the course of submissions by either party. Under the RPWD (Delhi) Rules-2018, the preference of merit for appointment as a limited guardian is contained in Rule 7(6). The preference therein is to blood relatives, adult children, siblings, spouse, and it is only thereafter that care givers or other personalities can be considered. There, the common principle seems to be preference to relatives over caregivers or other unrelated people.

223. In the opinion of this Court, the nominated representative or total support arrangement or guardian need not always be an individual. Guardianship could be exercised by even a guardianship committee, depending upon the facts, as long as such a committee would be an appropriate measure for enabling the person to exercise his legal capacity, as per his will and preferences. If the mentally ill person requires complex medical decisions to be taken, has an expanse of moveable/immovable assets, and requires management of complex financial affairs, and the Court is of the opinion that this entire function cannot be performed by one individual, a committee can be appointed.

224. Judicial precedent in India on the appointment of a guardian has usually related to cases where persons are in comatose condition or are minors. In the case of a person with mental illness, usually the Courts have been able to identify a single individual who could be appointed as a

guardian, and there have not been objections from other close relatives. For example:

- a) In *Ali Muntazir (supra)*, the Bombay High Court appointed the son of the mentally ill person as the guardian, which was also supported by the other sons. In the said case, the person concerned was suffering from advanced dementia, with probable diagnosis of FTD.
- b) In *Vandana Tyagi (supra)*, a single judge of this Court appointed the sons of a comatose lady as her guardians, to utilize her assets, including specifically her late husband's PPF account. The Court held that such a situation would not fall under the MHA-2017 or the RPWD-2016 and therefore, in absence of legislative guidance, relying upon the Kerala High Court's decision in *Shobha Gopalakrishnan vs. State of Kerala [W.P. (C). 37278 of 2018, decided on 20th February, 2019]*, the Court framed guidelines for appointment of guardians for comatose persons in NCTD.
- c) In *Uma Mittal (supra)*, the Allahabad High Court appointed the wife of a person in comatose state, as his guardian, and framed similar guidelines for the state of Uttar Pradesh, as the Kerala High Court in *Shobha Gopalakrishnan (supra)*.
- d) In *Vijay Ramachandra Salgaonkar (supra)*, the Bombay High Court appointed the husband of a woman with vascular dementia (with diabetes mellitus and hypertension), as her guardian. The Maharashtra State Legal Services Authority was

designated for monitoring the functioning of the guardian and the guardian would submit monthly reports to the authority.

- e) In *Rajni Hariom (supra)*, the Bombay High Court appointed the wife as the guardian of a man, who was in coma. It was held that this is not covered by the existing legislations concerning mentally or physically challenged persons.

225. Notably, in none of these cases there was any contest made before the Court as to who ought to be appointed as the guardian.

226. It is also the settled legal position that the conduct of the person being considered for appointment as the guardian would be extremely important and relevant. Persons with conflict or vested interest, naturally, ought not to be appointed. Persons who may have engaged in conduct that is detrimental to the mentally ill person or who have exercised undue influence, coercion, duress ought not to be appointed. These factors have been considered by Courts in various cases, especially under the MHA-1987. For instance:

- a) In *Minu Seth (supra)*, which was a case under MHA-1987, the wife had sought a judicial inquisition into the mental condition of her husband Sh. Binu Seth and sought to be appointed as his guardian. The mother and brother of the husband challenged the contention that the person was suffering from mental illness. The Trial Court's dismissal of the petition was upheld by the High Court. Basis a medical board review, it was held that the person concerned was capable of taking care of himself independently and it is only his property for which a manager may have been required. Even so, the wife would not be a

suitable guardian as she had filed divorce proceedings and had alleged cruelty against the husband, as also other civil proceedings. Further, it was noticed that the mentally ill person did not have any individual properties but only joint family properties. Thus, the appeal was dismissed.

- b) In *Avinash Chander Mookhy (supra)*, a family friend had sought to be appointed as the guardian of a lady who was alleged to be mentally ill. The question was whether the family friend or the brother of the lady, ought to be appointed as the guardian. In respect of one of the brothers who sought guardianship, the Court noted that he was resident abroad and only wanted legal guardianship, but not to discharge his moral obligations. The only other application for guardianship was made by the family friend, but the same could also not be accepted, as under the MHA-1987, a stranger could not be appointed as a guardian. Therefore, no one was fit enough to be appointed as a guardian.

227. In this light, this Court must now consider the Petitioners' submission that the wife is the most suitable person to be a guardian for her incapacitated husband. To further this submission, enormous reliance has been placed on the decisions in *Rajni Hariom Sharma (supra)*, *Uma Mittal (supra)* and *Vandana Tyagi (supra)*. Reliance is also placed on *U. Suvetha v. State, (2009) 6 SCC 757*, and *Indra Sarma (supra)*, to argue that the concubine or friend of the mentally ill person cannot be considered as a "relative". For instance:

228. In *Rajni Hariom Sharma (supra)*, the Bombay High Court made extremely important observations in respect of the status of a wife. The said paragraphs are set out below:

“37. Before moving to Article 226 of the Constitution of India, status of the petitioner who seeks to be the guardian of Mr. Hariom Sharma, her husband, needs to be elaborated upon and discussed a little more in detail. In the present case, evidently the parties are Hindus; parties not in any adversarial sense but in the context of petitioner's claim to represent her husband as his guardian, considering his medical condition. That brings us to the question of status of wife in the Indian social, philosophical, religious and legal context.

38. According to Hindu vedic philosophy, marriage is a sanskar or a sacrament. What is essentially contemplated is a union of two souls. The eternal being is composed of two halves i.e., the man and the woman. Both the halves are equal and one-half is incomplete without the other. As long as the wife survives, one half of the husband survives. Ancient Hindu tradition says that a man's life can never be complete without a wife i.e., his Ardhangini or his better half. They are considered to be equal partners. Wife is not only considered to be Ardhangini but is also referred to as ‘Sahadharmini’. Literal meaning of the concept of Ardhangini is that a Hindu woman is associated with her husband in the journey of life for fulfillment and for attainment of all goals. She is also referred to as Sahayogini co-operating with her husband in all his activities as well as a Sahakarmini which means having an equal share in the actions of her husband. Together they are referred as Dampati. In Manusmriti, Manu had declared the wife as not just Patni but Dharmapatni meaning thereby that under dharma she is under obligation to discharge and perform all duties of her husband.

39. In Kollam Chandra Sekhar v. Kollam Padma Latha,

(2014) 1 SCC 225, Supreme Court was deciding an appeal by the husband against the judgment of the High Court setting aside judgment and decree of divorce granted in favour of the appellant husband by the trial Court. High Court had not only set aside the judgment and decree of divorce but had also allowed the application of respondent wife against the appellant by granting restitution of conjugal rights. By the said decision, Supreme Court dismissed the appeal of the appellant husband and upheld the judgment of the High Court. In that context, Supreme Court observed that under Hindu Law, marriage is an institution and is highly revered in India. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. Partners in a marriage must weather these storms.

40. In such circumstances, there can be no manner of doubt that conceptually the wife can be said to be best-suited to be the guardian of her husband who is under a state of incapacity or disability on account of being in a comatose condition or vegetative state.”

229. In *Uma Mittal (supra)* again, the Allahabad High Court exercising *parens patriae* jurisdiction over a person in a comatose condition, appointed his wife as the guardian, as stated above.

230. In *U. Suvetha (supra)*, in the context of Section 498-A of the Indian Penal Code, 1860, the Supreme Court categorically holds that a girlfriend cannot be a relative. The relevant extract reads as under:

“18. By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a “relative”. The word “relative” brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.”

231. In *Indra Sarma (supra)*, again in the context of Protection of Women from Domestic Violence Act, 2005 (*hereinafter "PWDVA"*), a married person with two children had started living in a relationship with another lady. The said lady claimed that she was in a "relationship in the nature of a marriage" with the man and sought relief under the PWDVA. In the said context, the Supreme Court recognised the sanctity of marriage and marital relationships and observed as under:

"Marriage and marital relationship

24. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae' which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

25. Marriages in India take place either following the personal Law of the Religion to which a party belongs or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the

parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in *Dawood and Another v. Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) noted as follows:

“Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well. The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends....”

232. In the said judgment, the Supreme Court holds that the status of a person – in a live-in a relationship with a married person whose spouse was alive and who had children – would be that of concubine.

“57. The Appellant, admittedly, entered into a live-in-relationship with the respondent knowing that he was married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in Andrahennedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy, AIR 1927 PC 185, that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in Badri Prasad v. Director of Consolidation 1978 (3) SCC 527 and Tulsa v. Durghatiya.

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65. We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has

been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or endangered the health, safety, life, limb or well-being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.”

233. The Court expressed a hope, that such relationships would not constitutes marriage.

“67. Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in Pinakin Mahipatray Rawal case (supra), which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent..

68.. We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant’s and the respondent’s relationship is, therefore, not a “relationship in the nature of marriage” because it has no inherent or essential

characteristic of a marriage, but a relationship other than “in the nature of marriage” and the appellant’s status is lower than the status of a wife and that relationship would not fall within the definition of “domestic relationship” under Section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to “domestic violence” under Section 3 of the DV Act.”

234. The Supreme Court clearly concludes that if a person in a live-in relationship, is recognised as a wife, it would do injustice to the legally wedded wife and children.

235. From the above discussion on the statutory provisions under the RPWD (Delhi) Rules-2018, and the MHA-2017, as also through judicial precedents under different factual contexts, it is clear that in the case of mentally ill persons who are adults:

(i) primacy and preference is given while appointing guardians, to family and relatives, namely, parents, siblings, children, spouse and it is only in circumstances when such persons are not available or do not give consent to be appointed as guardians, other persons are to be considered;

(ii) Conflicts of interest and conduct of any proposed guardian, are relevant factors;

(iii) Even under Section 18 of MHA-2017, for the purposes of treatment, the manner has to be acceptable to the mentally ill persons as also their families and caregivers.

(iii) **Who can be the guardian/nominated representative? (Factual Position)**

236. Before answering the above question, some facts surrounding Mr. DMP need to be noticed. Mr. DMP is a 7th Term Member of Parliament who lives in the Lutyens Bungalow zone in Delhi. He is a man who has built an enormous empire and an entrepreneur who has set up an extremely successful business. He owns moveable and immovable assets, including immovable property in Delhi and Mumbai, bank deposits in various banks, shares/debentures in four companies forming part of the Aristo Pharmaceuticals Group etc.

237. A perusal of the record reveals that Mr. DMP was a family man. He hails from Bihar and has extended family in Bihar. However, his immediate family consists of the following persons:

- i) Wife – Mrs. SD
- ii) Son – Mr. RS and his wife
- iii) Son – Mr. RJS and his wife
- iv) Daughter-in-law from deceased son – Mrs. KR
- v) 6 Grandsons
- vi) Brother – Mr. US, who is currently the Managing Director of M/s Aristo Pharmaceutical Pvt. Ltd.

238. Apart from the above, Ms. UD i.e., Respondent No.5 claims that she is the wife of Mr. DMP on the basis of certain documents.

239. In the petition seeking guardianship filed by the wife of Mr. DMP, the two sons and their families have supported their mother. Ms. UD on the other hand, who also claims to be the wife of Mr. DMP is supported by the

wife of the deceased son of Mr. DMP - Mrs. KR and by the younger brother of Mr. DMP – Mr. US.

240. The vexed question before this Court is as to who ought to be appointed as the guardian of Mr. DMP, for taking decisions relating to his health care and his financial affairs/properties. All the persons who have appeared before this Court have consented to being appointed as guardians.

241. From the documents placed on record, certain facts would be required to be noticed. Mr. DMP was married to Mrs. SD in the year 1960, through whom he had three sons. One son passed away in 2011. There were indications of mental illness in Mr. DMP since 1997, as is clear from the report of Lilavati Hospital in Mumbai. Mr. DMP always lived with his wife and children in the company of Ms. UD in the same house. Mr. DMP did not divorce or legally separate himself from his wife – Mrs. SD. Photographs on record show Mr. DMP along with his children, grandchildren, daughters-in-law, Mrs. SD and Ms. UD all living in the same house. The photographs also show that the sons were involved in the business of Mr. DMP and were travelling for conferences etc. within India till 2013-2014. An apartment was taken on rent in 2018 for one of the sons – Mr. RS, which was paid for by Mr. DMP's company – M/s Aristo Pharmaceuticals Pvt. Ltd. Mrs. SD owned a large number of shares in the company which have, however, been transferred and now stand in the name of Mrs. KR. As on date, neither Mrs. SD nor Mr. DMP's children own any shareholding in any of Mr. DMP's companies.

242. Respondent No.5 i.e., Ms. UD has placed on record a passport of Mr. DMP from the year 2000, wherein Ms. UD has been shown as his wife. However, in most of the election related documents, the Petitioner i.e., Mrs.

SD is clearly mentioned as Mr. DMP's wife.

243. Several criminal complaints have been filed by the parties against one another. It is Ms. UD's case that Mr. DMP has disowned both his sons. Affidavits dated 5th July, 2016 and 17th October, 2017 are relied upon. However, in response to these affidavits, it is argued that the language of these affidavits is identical and hence, not genuine. Secondly, the genuinity of the affidavit disowning Mr. RS is contested on the ground that the same was never placed before or mentioned in the Habeas Corpus proceedings before the Id. Division Bench. Thus, the disownment affidavits are disputed documents.

244. The case of the Petitioner and her sons is that Respondent No.5 prevented the family from meeting Mr. DMP, which led to the filing of the Habeas Corpus petition. The said petition was filed by Mr. RJS, seeking the production of his mother Mrs. SD. The proceedings and the status report filed in the said writ petition by the police show that Mrs. SD and Mr. US's wife – Mrs. RD were living under confinement. This led the Division Bench to take extremely serious note of the facts revealed in the status reports, which resulted in the Court directing a medical assessment of Mr. DMP. As recorded in the orders passed by the Id. Division Bench, the Court had met Mr. DMP, his wife and his son – Mr. RJS and noticed that Mr. DMP was incoherent and could not recognise his own family members. These facts had never been disclosed to the family of Mr. DMP i.e. his wife and children. The fact that Mr. DMP was suffering from FTD was revealed during the course of the proceedings in the Habeas Corpus petition. The Division Bench had directed investigation into the manner and for four weeks Respondent No.5 was directed to live outside the Bungalow.

However, after the expiry of four weeks, Respondent No.5 has moved back into the Bungalow.

245. The present petition has been filed by the wife of Mr. DMP i.e., Mrs. SD, who had, since being moved by the Id. Division Bench to the property in Vasant Vihar, not met her husband. During the pendency of this writ petition, Mrs. SD has met Mr. DMP on a few occasions for a limited time. The said meetings have been extremely cordial and there has been no breach of tranquillity or peace. Mr. DMP has enjoyed the company of Mrs. SD, as is evident from the Local Commissioner's Reports, though he does not remember her name. This Court has also interacted with Mr. DMP, Mrs. SD, the three daughters-in-law, the two sons and Ms. UD. Decisions relating to the medical treatment of Mr. DMP, during the period when Mr. DMP was estranged from his family members, are being taken by Ms. UD. The two secretaries of Mr. DMP i.e., Mr. T.R. Narayanan and Mr. Shrinath Banerjee, work under the directions of Ms. UD. The entire household is run by Ms. UD. There are various bank accounts in which Ms. UD is a joint account holder. All the shares which were in the name of Mrs. SD now stand in the name of Mrs. KR. Mrs. KR is also stated to have appointed her brother as a Director in M/s Mapra Labs.

246. Since 2016-2017, family's access to Mr. DMP has been completely blocked. A General Power of Attorney is stated to have been executed in January, 2020 in favour of Mrs. KR to manage three properties of Mr. DMP. A lease agreement has also been entered into by Mrs. KR as the GPA holder with M/s Aristo Pharmaceuticals Private Limited in January, 2020, renting out the property in Vasant Vihar, where, pursuant to the Id. Division Bench's order, Mrs. SD is presently living. The said lease has been executed

by Mrs. KR on behalf of Mr. DMP.

247. In the background of the above facts, the status of the various relatives of Mr. DMP is to be considered:

Mrs. SD (Wife of Mr. DMP)

248. Insofar as Mrs. SD is concerned, the only submission against her being appointed as the guardian is that she is illiterate and may not be capable of taking decisions for Mr. DMP. It is also alleged that she is under the control of her sons who have influenced her into filing various litigations against Ms. UD and Mrs. KR.

249. The status of Mrs. SD as the wife of Mr. DMP cannot be questioned as it has been repeatedly reflected in various public records, including a decision of the Patna High Court in *Civil Writ No. 22948/2011* where Mr. US was one of the Petitioners and where Mrs. SD has been described as the wife of Mr. DMP. Mrs. SD has borne children through Mr. DMP and has cordial relations with both her sons, daughters-in-law and grandchildren.

250. The Court has interacted with her and finds her to be a simple lady who is a housemaker who has lived in the company of Mr. DMP. She is visible in various photographs which have been placed on record, along with other family members. Even Mrs. KR, in her statement to the Court, has submitted that she respects Mrs. SD and refers to her as '*Maa-ji*' and has no dispute with Mrs. SD. The Court asked Mrs. SD some questions through the virtual platform which she was able to answer, though she did experience some issues hearing. Thus, in effect, there are no serious allegations against Mrs. SD.

Mr. RJS (youngest son of Mr. DMP)

251. In respect of this son, it is argued that he is of very aggressive behaviour and has publicly made statements against his father – Mr. DMP, who is stated to have been extremely hurt by his conduct and disowned him vide affidavit dated 6th July, 2016. The video of Mr. RJS speaking in public has been placed on record and has been viewed by the Court. There are certain allegations that he, in violation of the order of the Id. Division Bench, started to live with his mother in the Vasant Vihar property after she had moved there by virtue of the Id. Division Bench's order.

252. Ld. Counsel for Mr. RJS has, however, placed on record documents to show that Mr. RJS's rent for the year 2018-19 and his car parking charges for the year 2017 were being paid by M/s Aristo Pharmaceuticals Pvt. Ltd. i.e., Mr. DMP's flagship company. It is submitted that Mr. RJS has travelled with Mr. DMP for conferences in 2013 and 2015 and unlike his brothers, who were only made Directors, he was made the Joint Managing Director of M/s Aristo Pharmaceuticals Pvt. Ltd. It has also been claimed that till about September, 2019, the employees of M/s Aristo Pharmaceuticals Pvt. Ltd. were reporting to Mr. RJS. It is submitted that the allegations against Mr. RJS are baseless and in response to him taking a stand against Ms. UD and others by filing the *habeas corpus* petition before the Id. Division Bench.

Mr. RS (oldest son of Mr. DMP)

253. In respect of this son, the only allegation is that he was also disowned by Mr. DMP in 2017. However, the said affidavit has been placed before the Court for the first time in this writ petition and was not even pleaded in the

Habeas Corpus petition which was heard by the Id. Division Bench in 2019. Apart from the affidavit of disownment, there is no other allegation raised against Mr. RS. As held in *Preeti Satija (supra)* disownment affidavits would not break all legally relevant family ties and would not have a dispositive legal effect. The Court held therein:

“The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out. He allegedly disappeared and was "disowned" by his mother. The appellant's mother-in law then instituted the suit, to dispossess the daughter in law and her grand-children, claiming that she no longer has any relationship with her son or her daughter in law. She based her claim to ownership of the suit property on a will. The daughter in law has not admitted the will. Nor has it been proved in RFA (OS) 24/2012 Page 23 probate proceedings. Often, sons move out, or transfer properties or ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases "disown" them after the son moves out from the common or "joint" premises owned by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs' daughter-in law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. In fact, the strategy of "disowning" sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all

legally relevant familial ties. Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband's family, on the basis of such tentative facts. To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly fleeting, discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act.”

254. There are no allegations made against the wives of Mr. RJS or Mr. RS or any of the grandchildren, except one son of Mr. RS – Mr. CS, who is stated to have produced a rap song criticising his grandfather. A viewing of the rap song shows that the said grandson of Mr. DMP is a well-known rapper who has expressed some sadness about how he was always treated as a rich boy born into a rich family but had to find his own way to earn money. In this process, he expresses displeasure in a very creative manner about how Mr. DMP, who was known as ‘Raja’, has sometimes not treated his family very well and has demeaned himself with his conduct. In the opinion of this Court, a rap song produced by a grandson would, at worst, be considered an act of naivety rather than one intended to cause any harm or injury.

Mr. US (brother of Mr. DMP)

255. Mr. US is the brother of Mr. DMP, who has been involved in the business of Mr. DMP, right from its inception. Not many details about the brother have been put forth before this Court. Allegations have been made

by the Petitioner and the supporting Respondents that he has supported Ms. UD and turned a blind eye to the ill-treatment of Mrs. SD and his own wife – Mrs. RD, at the hands of Ms. UD. It is further alleged that Mr. US has illegally become the Director of M/s Aristo Pharmaceuticals Pvt. Ltd. on 1st January, 2021 when Mr. DMP, who is the largest shareholder, was not in a position to appoint a Director of the Company. Reliance has been placed on order dated 20th September, 2019 of the Id. Division Bench in **W.P.(Crl.) 2255/2019**, to submit that both, Ms. UD and Mr. US concealed the medical condition of Mr. DMP from the Court. It is alleged that due to the concealment of Mr. DMP's mental condition from the Management of Apollo Hospital, Sarita Vihar, the condition of Mr. DMP deteriorated and he developed metabolic encephalopathy. Mr. US continues to deny that Mr. DMP is incapable of taking cogent decisions, as is evident from his reply to CM No. 24330/2021.

256. The manner in which the businesses and the companies are being run by him has not been placed before the Court. However, the fact that he has been involved in the business almost since inception shows that Mr. DMP trusted him immensely, especially while he himself was involved in political activities.

257. From the submissions made before this Court, it is clear that he supports Ms. UD. Insofar as this Court is concerned, some suspicion does arise *qua* the brother as he does not readily accept Mrs. SD as Mr. DMP's wife, though the same is part of public record. It is also unclear as to how he would have not objected to the condition in which Mrs. SD and his own wife – Mrs. RD were found when the Id. Division Bench intervened in this matter.

Mrs. KR (daughter-in-law of Mr. DMP)

258. Mrs. KR is the widow of the deceased son of Mr. DMP and Mrs. SD. She lives in the official Bungalow of Mr. DMP. It is her case that prior to 2019 she was partly living in Delhi and partly in Mumbai. She has two sons. She was directed to take care of Mr. DMP during the time when investigation against Ms. UD was directed by the Id. Division Bench. She is not highly educated, though she appears to know more than what she informed the Court during her interactions as she is continuously living with Mr. DMP.

259. The fact that all the shareholdings belonging to Mrs. SD are now in the name of Mrs. KR leads to some suspicion. Further, the execution of the GPA in her favour and her exercising rights on behalf of Mr. DMP as the GPA holder casts some doubt as to her *bonafide*. There is also an allegation that when Mr. RS was removed from the Directorship of the company, her brother was made the Director. There is also no explanation as to why she did not object to the treatment meted out to Mrs. SD and Mrs. RD, while she was living in the official Bungalow.

260. Moreover, in 2019, when it was noticed that Mr. DMP's mental condition has considerably deteriorated, she appears to have not taken any steps to provide proper medical care or treatment to Mr. DMP, or reveal this condition to other family members, until the intervention of the Id. Division Bench.

Ms. UD – Mr. DMP's companion

261. The documents placed on record point to the fact that Ms. UD has

been in the company of Mr. DMP and his family for more than 40 years. The photographs as also the other documents placed on record go to show that while Mr. DMP lived in her company, he continued to live with his family members, including his wife - Mrs. SD. In that sense, Mr. DMP had not separated himself from his wife, children and grandchildren. It is evident from the photographs on record that he attended all social occasions, including marriages, birthdays and anniversaries. It is only since 2016/2017, when Mr. DMP's medical condition, especially his mental condition deteriorated, that his family members appear to have been completely alienated from him. With the progressive mental disorder of Mr. DMP, Ms. UD has clearly taken over the running of the household as also the businesses of Mr. DMP.

262. Ms. UD's companionship with Mr. DMP may not have been objected to by Mrs. SD. Considering the educational qualifications of Mrs. SD, as also the social context of the family, neither Mrs. SD nor the family members may have had a say in the companionship of Mr. DMP with Ms. UD. Ms. UD is not merely in charge of the household and Mr. DMP's businesses but also controls all the assets of Mr. DMP, which is evident from the fact that both the secretaries of Mr. DMP operate from the official residence and work under her directions. Ms. UD also became the joint account holder of the bank accounts of Mr. DMP after Mr. DMP was diagnosed with FTD during the proceedings before the Id. Division Bench. The manner in which the Banks may have permitted her to become a joint account holder after Mr. DMP's diagnosis would require to be enquired into in appropriate proceedings as it is not clear as to what documentation was supplied to the Banks to make her a joint account holder in this manner.

263. Even in respect of the medical treatment of Mr. DMP, it was only per chance that Mr. DMP was diagnosed with FTD during the proceedings before the Id. Division Bench. Until then, it seems that none of the family members were informed of his mental condition and no care or treatment in respect of FTD was provided to him. This may have been due to various apprehensions in respect of his official position as a Member of Parliament. However, since Ms. UD and Mrs. KR were exclusively living with Mr. DMP since 2016-2017, the non-disclosure of his mental condition and non-administration of required medicines shows that Mr. DMP was clearly deprived of proper medical treatment for his mental condition, until his FTD diagnosis in 2019.

264. The blame for not providing proper and timely medical treatment to Mr. DMP prior to 2019 clearly lies on Ms. UD and Mrs. KR. The filing of the habeas corpus and the deplorable condition in which Mrs. SD and Mrs. RD were found in the residence of Mr. DMP also shows that Ms. UD had over-powered Mrs. SD and the others in the family, while taking control of the household affairs of Mr. DMP.

265. The continued exclusive control of Ms. UD over Mr. DMP is clearly not in the interest of Mr. DMP. The photographs on record prior to his mental illness i.e., prior to 2016-2017, reveal a person who is extremely happy with his family members. Disputes between the father and children, brothers or other family members are natural, and cannot by themselves result in permanent deprivation of each other's company. Such disputes are usually resolved within the family. However, in the present case, such an opportunity does not appear to have arisen, at least in the last four or five years, owing to the exclusive control exercised by Ms. UD over Mr. DMP,

in the backdrop of his deteriorating mental condition.

266. In conclusion, qua the various persons belonging to the family of Mr. DMP, Mrs.SD, being the wife of Mr. DMP is related to him by marriage. There are no allegations against her except the fact that she may not be fully qualified to act as Mr. DMP's guardian, owing to her educational qualification and lack of exposure. This Court is of the opinion that the role of the wife/spouse is of prime importance. Merely because the spouse is illiterate does not mean that she cannot take care of her husband who is mentally ill. Her visits to meet Mr. DMP have been very amicable and congenial. She speaks to Mr. DMP in her own native language and enjoys the confidence of both her sons, daughters-in-law, and grandchildren. She is also involved in the preparations for the marriage of one of the grandsons. These facts show that the position of Mrs. SD, as the wife of Mr. DMP and the primary caregiver deserves to be recognised.

267. Secondly, there is an allegation against Mr. RJS, i.e., the youngest son of Mr. DMP. In so far as Mr. RS i.e., Mr. DMP's oldest son is concerned, except the disownment affidavit of 2017, there are no major allegations against him. Even the said disownment affidavit is under a serious cloud as the same was neither mentioned in the proceedings before the Id. Division Bench or by Mr. DMP to the police when the Id. Division Bench sought a status report. Further, Mr.RS was active in Mr. DMP's business for an extremely long time, even as late as September, 2018. Ms. UD is also stated to have approached Mr.RS to explore the possibility of a resolution of disputes after the proceedings before the Id. Division Bench.

268. Thirdly, Mr. US, i.e., the younger brother of Mr. DMP has been actively involved in the running of his businesses since inception i.e., for

more than 45 years. Though doubts have been expressed as to his credibility, including an allegation that he concealed the mental health condition of Mr. DMP, considering his long association with the businesses of Mr. DMP and the fact that the businesses are still extremely successful, Mr. US is being considered by this Court for the purposes of being appointed to a Guardianship Committee. Moreover, in the order of preference, both under the MHA-2017, as also the RPWD (Delhi) Rules-2018, relatives by blood and marriage get precedence over others, in the absence of an advance directive.

269. In the present case, admittedly, there is no advance directive by Mr. DMP. The will and preference of Mr. DMP has been deciphered on the basis of the documents that have been placed on record, including photographs etc., as also the interaction of the Court with Mr. DMP and other parties, including the Local Commissioner.

270. Thus, this Court is of the opinion that there is a clear need to change the *status quo* as it exists today. Mr. DMP ought to be permitted to live in a happy and congenial atmosphere with his wife, children and grandchildren. He should also be allowed to enjoy the company of his siblings and extended family, without pressure from any quarter. Ms. UD can continue to live in the residence of Mr. DMP, however, she cannot be given exclusive control of Mr. DMP, as is the position currently. There is an imminent and urgent need for the family to start living together as a family, while maintaining peace and tranquillity in the residence and providing a happy atmosphere for Mr. DMP. A person suffering from ‘*Fronto-Temporal Dementia*’ also requires a comfortable, vibrant and congenial atmosphere, which does not necessarily mean the company of a limited number of

persons. Mr. DMP, having been a family man all along, a public figure, as also an entrepreneur, is used to living in an expanded social network, of which he has been deprived of in the last four to five years. Thus, this Court is of the opinion that the exclusive control and association of Mr. DMP cannot be continued – to the exclusion of the wife, children, siblings and other family members – solely with Ms. UD/Mrs. KR.

271. In the above legal and factual background, this Court holds that the present case is one which reveals exceptional circumstances for exercise of *parens patriae* jurisdiction as also jurisdiction under the RPWD-2016 and MHA-2017. Under Section 14(1) *proviso* of the RPWD-2016, total support would have to be provided considering that Mr. DMP is unable to take any decisions for his own welfare whatsoever. Under the MHA-2017, nominated representative has to also be appointed for taking decisions for medical care and treatment of Mr. DMP.

272. Moreover, the nominated representative or the guardian need not always be a single individual. Especially in the present case, the movable and immovable assets and financial affairs of Mr. DMP are vast; it would be physically impossible for any particular individual to be able to exercise control and judgment, or to take proper decisions in respect of Mr. DMP's healthcare. Accordingly, this Court is of the opinion that a Guardianship Committee would deserve to be appointed for the purpose of taking care of Mr. DMP and his financial affairs. In the above circumstances, the following directions are issued:

- a) A Guardianship Committee of Mrs. SD, Mr. RS and Mr. US, i.e. the wife, son and brother, related by blood and marriage (as given in the order of precedence under both the MHA-2017 and

RPWD-2016), is constituted for the purposes for acting both as a nominated representative committee under the MHA-2017 and for providing total support under the RPWD-2016. The said Committee shall take unanimous decisions in respect of all affairs of Mr. DMP including medical treatment, healthcare decisions *qua* daily living, financial affairs dealing with movable and immovable assets, decisions *qua* the shareholding of Mr. DMP etc. The said Guardianship Committee shall consult with Mr. DMP to the extent possible. The said Guardianship Committee shall also be entitled to operate the bank accounts and deal with the investments of Mr. DMP. However, all decisions of the Guardianship Committee have to be unanimous.

- b) If a unanimous decision is not possible on any aspect and there is disagreement among members of the Guardianship Committee, such aspects shall be referred to Justice Rajiv Sahai Endlaw (Retd.), who was already appointed as the interim guardian vide order of this Court dated 8th September, 2021, who shall now act as the '*Supervising Guardian*'. On such aspects, where there is divergence or disagreement, the decisions of the Supervising Guardian, shall be final and binding on all parties.
- c) All banks, financial institutions, companies, hospitals, doctors, etc. shall be bound by and shall give effect to the directions issued in paragraphs (a) and (b) above.

- d) Insofar as medical treatment and daily living is concerned, Ms. UD and Mrs. KR can give their suggestions and recommendations to the Guardianship Committee. However, it would be for the Committee to take the final decision.
- e) Mr. DMP shall continue to reside in his official residence. Mrs. SD and any one female family member i.e., Mr. DMP's daughter-in-law, are entitled to and are accordingly, permitted to reside in the official residence of Mr. DMP, if they choose to. The residence of Mr. DMP, shall be an 'open house' for free ingress and egress of all close family members including both his sons, daughters-in-law, grandchildren and their families, brothers and his family and any other close relatives, as may be permitted by the Committee.
- f) Ms. UD can continue to live in the official residence, if she so chooses, but shall not prevent any family member, as directed above, from visiting or residing in the said residence of Mr. DMP.
- g) It is also directed that the DCP (Crime Branch), Mr. Joy Tirkey, who had earlier conducted the investigation pursuant to orders of the Ld. Division Bench in the Habeas Corpus petition, shall pay periodic visits at least once a week, to ensure Mr. DMP is comfortable at the residence, in the company of his family members. Any family member who causes any breach of peace and tranquillity can be barred, by the Committee by unanimous decision from visiting the residence of Mr. DMP. If the Supervising Guardian receives any complaint from any family

member or Ms. UD or Mrs. KR regarding any commotion or breach of peace, at the residence, he would also be empowered to pass orders barring entry of any individual into the official residence.

- h) The Guardianship Committee shall have access to all documents and records relating to the finances, properties, shareholding, investments, etc., of Mr. DMP to enable the Committee to take decisions, keeping in mind the will and preferences of Mr. DMP. To this end, access shall be provided by both Mr. T.R. Narayanan and Mr. Shrinath Banerjee—Secretaries of Mr. DMP, to the accounts and all records of Mr. DMP.
- i) The Medical Board constituted by this Court consisting of following three members:
- i. Dr. M.V. Padma, Professor & HOD, Neurology, Chief – Neuroscience Centre, AIIMS, New Delhi. Email: vasanthapadma123@gmail.com (9810819167);
 - ii. Dr. Achal Srivastava, Professor Department of Neurology, AIIMS, New Delhi. Email: achalsrivastava@hotmail.com (9811178784); and
 - iii. Dr. Nitish Naik, Professor, Department of Cardiology, AIIMS, New Delhi. Email: nitishnaik@yahoo.co.in (9810416170);

would examine Mr. DMP every month at least once a month, which shall be facilitated by the Guardianship Committee. The chair of this Medical Board shall continue to be Dr. M.V. Padma. The monthly reports, after examination, shall be

submitted to the Supervising Guardian. If any emergency medical decision is to be taken and all members of the Committee are not available, any one of the members of the Guardianship Committee would be entitled to take the decision of hospitalization, in consultation with the above doctor, which shall then be telephonically communicated to the other two members of the Committee.

- j) The Committee would also be empowered to delegate everyday chores in the household to a person whom the Committee trusts, for a specific purpose, but who shall be accountable to the Guardianship Committee. The decisions taken by the Guardianship Committee shall be continuously informed to the Supervising Guardian - Justice Rajiv Sahai Endlaw (Retd.), on a fortnightly basis. The above arrangement at this stage, shall continue at least, for a period of three years, which is also the time period contemplated under the RPWD (Delhi) Rules-2018, for limited guardianship. A status report shall be submitted at the end of every six months, by the Supervising Guardian to the Court, to review the present arrangement of guardianship, if required. If there is any improvement of Mr. DMP's health condition, including his mental condition, modification of the above arrangement can be sought by moving an application in the present petition.
- k) There are various videos and photographs etc., filed by the parties and by the Local Commissioner. All this electronic data shall be preserved and saved, along with the electronic record

of this petition with a #hash value so that it is not tampered with, in any manner and is available for future reference. The IT Department, High Court of Delhi shall take requisite steps in this regard.

273. During the course of these hearings, in order to avoid further multiplicity of proceedings, in addition to the already pending over 50 proceedings, ld. Senior counsels had agreed to not proceed with the various criminal complaints and other cases pending before Courts and other authorities. The pendency of these cases amongst the family members is not in the interest of Mr. DMP. While exercising *parens patriae* jurisdiction, this Court has to be conscious of the fact that resolution of the disputes amongst the family members would be required for maintenance of peace and harmony within the family which would be as per the will and preferences of Mr. DMP. Under these circumstances the following directions are issued:

- a) The District and Sessions Judge in the Patiala House Courts shall consolidate all the criminal cases in one Court so as to avoid multiplicity of proceedings, as also wastage of judicial time. The list of cases shall be forwarded by the Registrar (Writs) of this Court to the Principal District and Sessions Judge, Patiala House Courts.
- b) Insofar as the complaints which have been filed before various police stations are concerned, the parties are permitted to approach Supervising Guardian, if they wish to seek mediation amongst themselves. If such a request is made, the Supervising

Guardian is permitted to mediate the disputes which form the subject matter of these complaints.

274. Remuneration of the Supervising Guardian - Justice Rajiv Sahai Endlaw (Retd.) is fixed in terms of order dated 8th September, 2021 in the following terms:

“iii) The interim guardian shall be paid an honorarium of Rs.3 lakhs per month exclusive of secretarial, travelling and other expenses which shall be borne from the DMP’s accounts.

iv) The interim guardian may appoint a Manager to assist him in carrying out his functions and also fix a reasonable remuneration of the said Manager.”

275. The petition is disposed of in the above terms along with all pending applications. In view of direction (h) above, no further orders are called for in CM APPL. 36031/2021. List for receiving and consideration of the status report of the Supervising Guardian - Justice Rajiv Sahai Endlaw (Retd.) on 5th May, 2022.

276. The digitally signed copy of this judgment, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the judgment for the purpose of ensuring compliance. No physical copy of the judgment shall be insisted upon by any authority/entity or litigant.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 29, 2021
T/MS/DJ/Rahul/MR