



2025:DHC:10145



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Judgment pronounced on: 18.11.2025***+ **W.P.(C) 11230/2025****KAVITA KHARBANDA AND OTHERS**PetitionersThrough: Mr. Rajat Aneja and Mr. Abhinav
Chauhan, Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND ANRRespondentsThrough: Ms. Nitika Bhutani, Advocate for
R-1and R-2.Mr. Ashish K. Dixit, CGSC,
Mr. Umar Hashmi, Mr. Harshit
Chitransh, Mr. Shivam Tiwari and
Ms. Iqra Sheikh, Advocates for UOI.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner no.1, wife of Mr. Surinder Kharbanda and the petitioner nos. 2 and 3 (Mr. Kartik Kharbanda and Mr. Kabir Kharbanda), being the children born out of their wedlock, invoking *parens partie* jurisdiction of this Court for appointment of the petitioner no.1 as the legal guardian of Mr. Surinder Kharbanda.

2. As per the disability certificate dated 28.10.2024 issued by the Atal Bihari Vajpayee Institute of Medical Sciences and Dr. Ram Manohar Lohia Hospital, New Delhi, Mr. Surinder Kharbanda (i) suffers from 90% permanent disability (ii) is a case of chronic neurological condition (iii) diagnosed with "Recurrent Intracranial Haemorrhage with Quadriplegia with Multiple Contractual".

3. It is stated that since the year 2023, Mr. Surinder Kharbanda is



bedridden/in vegetative state, and under constant care of the petitioners. All medical expenses are borne and managed by petitioner no.1. It is further stated that the petitioner no.1 has exhausted all savings and for meeting the mounting medical expenses and other essential expenditures, is required to sell the properties including moveable and immovable properties owned by Mr. Surinder Kharbanda. The details of moveable and immovable properties of Mr. Surinder Kharbanda are as under: -

“Immovable properties:

- i. B-1/14, Model Town-II, Delhi-110009*
- ii. House No. 389, Bhai Parmanand Colony, Delhi*

Movable properties:

- i. Public Provident Fund bearing Account No.0090/PPF 625, maintained with Model Town Branch, Bank of Baroda.*
- ii. Bank Account bearing No. 0247153000372 maintained with Gujranwala Town Branch, IDFC Bank.*
- iii. LIC Policy bearing No. 127440591*
- iv. Floating Rate Savings Bond bearing Account No. TBH51060278516”*

4. It is submitted the property bearing House no. B-1/14, Model Town-II, Delhi, was purchased jointly by Late Mr. Charanjit Lal (father of Mr. Surinder Kharbanda) and his brother Late Mr. Bansari Lal; and property bearing House no. 389, Bhai Parmanand Colony, Delhi was purchased by Late Mr. Charanjit Lal. Mr. Charanjit Lal and his wife passed away intestate leaving behind 4 legal heirs including Mr. Surinder Kharbanda, therefore, 1/8th share in the property bearing House no. B-1/14, Model Town-II, Delhi-110009 and 1/4th share in property bearing House no. 389, Bhai Parmanand Colony, Delhi, devolved upon him.

5. It is further submitted that as regards property bearing House no. B-1/14, Model Town-II, Delhi pursuant to an oral partition, ground floor of the said property was retained by Late Mr. Bansari Lal whereas Late Mr.



Charanjit Lal retained the possession of first floor along with terrace and barsati on the second floor. However, certain disputes have arisen between legal heirs of Late Mr. Charanjit Lal and Late Mr. Bansari Lal in relation to the said property and the said disputes are presently sub-judice before the Court of Additional District Judge-01 (East), Karkardooma Court, Delhi in a suit bearing CS No. 11560/16/10 for partition, mandatory and permanent injunction. Further, it is brought out that an order dated 21.03.2016, passed by the concerned court has been challenged by the defendants therein in C.M Main No. 1023/2016 before this Court. The same is also pending adjudication. It is stated in the aforementioned litigations, owing to the condition of Mr. Surinder Kharbanda, the petitioner no.1 has been acting as his representative.

6. It is also averred in the petition, that for seeking the guardianship rights, prior to filing of the present petition, the petitioners had preferred petition bearing G.P No.3 of 2024 before the Court of District and Session Judge, North-West District, Rohini Court Complex, New Delhi. Although, the said petition is still pending adjudication, a preliminary question *qua* maintainability was raised by the concerned court and no effective order thereafter has been passed till date.

7. Simultaneously, the petitioners also filed an application before the concerned authorities for issuance of a Guardianship Certificate under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (hereinafter referred as 'National Trust Act, 1999').

8. In the interim, owing to the deteriorating health of Mr. Surinder Kharbanda, the petitioners preferred W.P(C) 11667/2024, seeking a



direction for appointing petitioner no.1 (herein) as legal guardian of Mr. Surinder Kharbanda. This Court *vide* order dated 28.10.2024 directed as under:-

“1. Mr. Kaushik, counsel for the Petitioner, states that in terms of order dated 12th September, 2024, Mr. Surinder Kharbanda was examined at RML Hospital and a Disability Certificate was issued on 28th October, 2024 which has been uploaded on Swabalaman portal.

2. In view of the above, Mr. Kaushik states that he will now take further steps for issuance of the Guardianship Certificate by applying before the SDM.

3. Accordingly, the present petition is disposed of with a direction to the concerned SDM to consider the Petitioner's request for appointment of guardianship in accordance with law, as expeditiously as possible.

4. With the aforesaid direction, the petition is disposed of along with pending application.”

9. In compliance of the aforesaid, a representation dated 26.11.2024 was submitted by the petitioners before District Magistrate, North District, Alipur, Delhi. *Vide* Minutes of Meeting dated 16.12.2024 of the Local Level Committee of ADM (North). The said representation was rejected by the Committee observing that the medical condition of Mr. Surinder Kharbanda is not covered under the National Trust Act, 1999 and concerned district court is the appropriate forum for issuance of the Guardianship Certificate. The relevant portion of the minutes of said meeting reads as under: -

9	Shri Surinder Kharbanda	Kavita Kharband	Offline mode vide Diary No. 14673 dated 26.11. 2024	The case of Brain Haemorrhage is not covered under the National Trust Act, 1999. Therefore, the case was rejected by the Committee. The appropriate forum is concerned District Court
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10. Thus, in the aforesaid circumstances, the present petition has been filed by the petitioners seeking for the petitioner no.1 to be appointed as the legal guardian of Mr. Surinder Kharbanda.

11. *Vide* an order dated 18.08.2025 passed in the present proceedings, it was directed as under: -

“1. At the outset, at the request of learned counsel for the petitioner, the Union of India (UOI), through Ministry of Health and Family Welfare, is impleaded as respondent no.3 in the present petition. Let an amended memo of parties be filed within a period of one week from today.

2. To ascertain the medical condition of the concerned person i.e. Mr. Surinder Kharbanda (in respect of whom guardian is sought to be appointed by way the present proceedings), it is suggested by Mr. Ashish Dixit, learned Central Government Standing Counsel (CGSC) that Mr. Surinder Kharbanda be examined by a Medical Board comprising a team of doctors, to ascertain his physical and medical condition inter-alia to verify the allegations of the petitioner that he is unable to recognize / comprehend or communicate.

3. After some hearing, it is directed that a team of doctors from Safdarjung Hospital shall be deputed to visit the concerned person at the premises, where the petitioner is residing to examine Mr. Surinder Kharbanda and submit a report on the aforesaid aspect.

4. Let the same be done within a period of three weeks from today.

5. Mr. Ashish Dixit, learned CGSC is directed to coordinate with the Medical Superintendent, Safdarjung Hospital, for doing the needful.

6. The expenditure for the aforesaid exercise shall be borne by the petitioner.

7. Let the report of the Medical Board be filed within a period of three weeks, thereafter.

8. List on 23.09.2025.”

12. In compliance of the aforesaid, *vide* a notice dated 04.09.2025, a four-member Medical Board was directed to be constituted by the respondent no.3/Ministry of Health and Family Welfare, Government of India. It was further directed that the meeting of the Medical Board shall be



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held on 09.09.2025 at the residence of Mr. Surinder Kharbanda. The said notice reads as under: -



भारत सरकार
Government of India
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
Ministry of Health & Family Welfare
वर्धमान महावीर मेडिकल कॉलेज एवं सफदरजंग अस्पताल, नई दिल्ली-110029
Vardhman Mahavir Medical College & Safdarjung Hospital, New Delhi-110029
MEDICAL BOARD, Room 5A GROUND FLOOR (OPP. DISPENSARY), NEW OPD BLOCK, SJH



By-HAND/ SPEED POST

File No.2-19/2025-MB-5A/113

Dated: 4 /09/2025

NOTICE FOR MEDICAL BOARD MEETING

Sub: Constitution of Medical Board for Physical & Medical assessment in r/o Mr. Surinder Kharbanda at his residence.

Ref: Order sheet dated 18/08/2025 received in SJH on dated 21/08/2025. W.P.(C) 11230/2025 from the Hon'ble High Court of Justice Mr. Sachin Datta, case titled is Kavita Kharbanda & Ors. Vs. Govt. of NCT of Delhi and Anr.

After the approval of competent authority a medical board was constituted. Constituted board is as under :-

- | | | | |
|---|---|---|--------------|
| 1 | Dr. Vandana Chakravarty, Addl M.S | - | Chairperson. |
| 2 | HOD PMR/ Specialist nominated by HOD | - | Member. |
| 3 | HOD Neurology/ Specialist nominated by HOD | - | Member. |
| 4 | HOD Neurosurgery/ Specialist nominated by HOD | - | Member. |

Note: - One Official from Medical Record Department.

The meeting of the above constituted board shall be held on 09/09/2025 at 10.00 AM at the Residence of Mr. Surinder Kharbanda, H.No. 36, IInd Floor, West Mukherji Nagar, New Delhi-110009,

Concerned Head of the Department is requested to ensure that the doctor(s) nominated for above mentioned board members may attend the meeting positively on stipulated time and date to avoid inconvenience to other members of board.

Copy to :-

GIC/CMO (MRD&TC)

13. Pursuant thereto, a four-member medical board, chaired by Dr. Vandana Chakravarty, Senior CMO (SAG), VMMC and Safdarjung Hospital, Delhi has submitted an opinion/report dated 15.09.2025. The said reads as under: -



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SSub: Constitution of Medical Board for Physical & Medical assessment in r/o Mr. Surinder Kharbanda.

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Sir/Madam,

A duly conducted Medical Board held under the chairpersonship of Dr. Vandana Chakravarty at home of the patient Mr. Surinder Kharbanda on 09/09/2025 at H.No. 36, West Mukherji Nagar, Delhi.

On evaluation, patient is a case of Recurrent Hemorrhagic stroke with Chronic Liver Disease (CLD) with epilepsy (Post Stroke) with spastic quadriparesis with Tracheostomy in situ with Ryels Tube (RT) and Foleys Catheter in situ. After taking previous medical History (Informant wife and son) and on examination patient is conscious but not responding to any verbal commands and not oriented to time, Place and Person with GCS -E3 VTrM2. On Functional evaluation modified Rankin Scale (mRS) is 5. (That is severe disability requires constant Nursing care and attention, Bedridden, incontinent).


MEMBER
Dr. SANGHAMITRA LASKAR
MD MEDICINE ON NEUROLOGY
ASSOCIATE PROFESSOR
DEPT. OF NEUROLOGY
VMMC & SARDARJUNG HOSPITAL
NEW DELHI-110029


MEMBER
Dr. AMIT KUMAR SHARMA
MBBS, MS, MCh. Neurosurgery
Assistant Professor
Department of Neurosurgery
VMMC & SARDARJUNG HOSPITAL
NEW DELHI-110029


CHAIRPERSON
डॉ. वंदना चक्रवर्ती
वरिष्ठ मुख्य चिकित्सा अधिकारी
Senior CMO (SAG)
बी.एम.एस.सी. एवं सफदरजंग अस्पताल
VMMC & Sardarjung Hospital,
नई दिल्ली-110029 / New Delhi-110029


MEMBER
डॉ. सुशील कुमार / DR. SUSHIL KUMAR
एम.बी.बी.एस. एम.डी. (एन.टी.) / MBBS MD (NT)
निरीक्षक वरिष्ठ / Senior Consultant
एन.टी. अस्पताल एवं रजिस्ट्रार
Dept. of Physical Medicine & Rehabilitation
एन.टी. अस्पताल एवं रजिस्ट्रार, नई दिल्ली-110029
VMMC & Sardarjung Hospital, New Delhi-110029
(DMC/NT/16550)

14. Learned counsel on behalf of the petitioners submits that the aforementioned medical opinion/report submitted by the Medical Board unambiguously states that Mr. Surinder Kharbanda is neither in a state where he can respond or express his emotion to the petitioners, nor is he oriented to the time, place and persons.

15. Reliance is placed upon a judgment rendered by a coordinate Bench of this Court in **N.A. and Ors. vs Govt. of NCT of Delhi and Ors**, MANU/DE/0035/2023, wherein this Court, considering the facts and report submitted by the Medical Board in that case, took note of the lacuna in the legal position as regards appointment of a guardian for an individual who is in a vegetative state; the Court appointed petitioners therein as the legal



guardian of one Mr. K.A, who was in a ‘comatose state’.

16. It is further pointed out that the Kerela High Court in ***Shobha Gopalakrishnan and Ors. vs. State of Kerela and Ors.*** 2019 SCC OnLine Ker 739 while invoking *parens patriae* jurisdiction of the Court observed that no remedy is envisaged under any existing statutes in India as regards the appointment of a legal guardian for an individual in ‘comatose state’.

17. Learned counsel for the petitioners also submits that the petitioners are the only legal heirs of Mr. Surinder Kharbanda and petitioners nos. 2 and 3 (i.e. sons of Mr. Surinder Kharbanda) have no objection with appointment of petitioner no.1 (i.e. wife of Mr. Surinder Kharbanda), as the legal guardian of Mr. Surinder Kharbanda.

18. Learned counsel on behalf of the respondent no.3/ Ministry of Health and Family Welfare, Government of India submits that in ***Shafin Jahan vs. K.M Ashokan*** (2018) 16 SCC 368, the Supreme Court has expanded the horizon and applicability of the doctrine of *parens patriae* by recognising the power of Constitutional Court/s to invoke and exercise the said jurisdiction in exceptional circumstances.

19. In this regard, the learned counsel for respondent no.3 has also brought to the notice of this Court various precedents, wherein in similarly situated circumstances, legal guardianship of an individual in ‘comatose/vegetative state’ was granted to their spouse or legal heirs. The same are as follows: -

- i. The Madras High Court in ***Sairabanu Mohammed. Rafi vs. State of Tamil Nadu***, MANU/TN/0580/2016, permitted the wife of an individual lying in comatose state to manage and sell immovable properties belonging to her husband, subject to the same, if required,



being disputed by the legal heirs of her husband.

- ii. In ***Philomena Leo Lobo vs. Union of India***, 2017 SCC Bom 8836, the Bombay High Court, considering the medical reports permitted the wife to deal with the financial affairs of her husband, who was lying in a 'comatose state'.
- iii. The Kerala High Court in ***Shobha Gopalkrishnan*** (supra) observing that no remedy is available under any existing law in India as regards appointment of guardian for person lying in 'comatose state', invoked its *parens partie* jurisdiction and *inter-alia*, issued certain measures/guidelines under Article 226 of the Constitution of India in regards thereof.
- iv. This Court in ***Vandana Tyagi vs. Govt. of NCT of Delhi***, 2020: DHC:44 reiterated the aforesaid guidelines passed by the Kerala High Court in ***Shobha Gopalkrishnan*** (supra) and appointed the children of an individual in 'comatose state' as legal guardian to utilize assets thereof for her welfare and medical treatment.
- v. In ***Uma Mittal vs. Union of India***, 2020 SCC OnLine All 777, the Allahabad High Court *inter-alia* by placing substantial reliance upon law laid down by the Supreme Court in ***Shafin Jahan*** (supra) granted wife of an individual in 'comatose state' his guardianship for protecting his business interest.
- vi. The Bombay High Court in ***Vijay Ramchandra Salgaonkar vs. State of Maharashtra***, 2021 SCC OnLine Bom 14114 appointed husband of a woman with vascular dementia, as her Guardian, along with designating the Member Secretary of the Maharashtra State Legal Service Authority either himself or through a designated official to



monitor the functioning of the guardian and submit monthly report in regards thereof.

vii. This Court in ***Satula Devi vs. Govt. of NCT of Delhi*** 2021 SCC OnLine Del 4856 appointed a guardian committee consisting of wife, son and brother as nominated representatives under the Mental Healthcare Act, 2017. The said committee was allowed to manage all affairs of the patient, including medical treatment, healthcare decision etc. of the patient.

20. This Court has taken note of the various precedents cited by the parties, wherein, the *parens patriae* jurisdiction has been invoked, and a legal heir/spouse of the individual lying in “comatose/vegetative state” has been appointed as a legal guardian for management of the assets.

21. In ***N.A and Ors. vs Govt. of NCT of Delhi and Ors*** (supra), a coordinate Bench of this Court addressed the issue at length by observing as under: -

13. This Court notices that such persons who are in a vegetative state are unable to take decisions for themselves, however, there is no mechanism provided in law under the RPWD Act, 2016 or the Mental Healthcare Act, 2017 for appointment of guardians to take care of such persons and their assets. This legal vacuum was considered in detail by this Court in the judgment dated 29th October, 2021 passed in W.P. (C) 1271/2020 titled S.D. vs. GNCTD & Ors. where this Court had exercised parens patriae jurisdiction while constituting a guardianship committee. The relevant part of the said judgment is as under:

“215. 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.

216. 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.

217. 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.

218. 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)*.

219. 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.

220. 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)

221. 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.

222. 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.”

14. Subsequent to the decision in *S.D. v. GNCTD (Supra)* the Bombay High Court in *W.P. (C) 1266/2021* titled *Lubina Mohamed Agarwal & Ors. v. Union of India & Ors.* decided on 13th December, 2021 has also considered the same issue and has observed as under:

“12. Mr Khambata, learned Senior Counsel for the Petitioners, has placed before us a note on the various statutes in question including the Mental Healthcare Act 2017, The Rights of Persons with Disabilities Act 2016 and what we will refer to as the National Welfare Trust Act of 1999.

13. Overriding all these is the doctrine of *parens patriae*, one that was discussed by the Supreme Court in *Aruna Ramchandra Shanbaug v Union of India and Ors.* and more recently in *Shafin Jahan v Asokan KM & Ors.* The Supreme Court has said that the *parens patriae* doctrine may be invoked in a Constitutional Court in exercise of its jurisdiction wherever the welfare of the person, be it a child or a person who is mentally ill, needs protection. The doctrine is invoked to meet the ends of justice. It is not to be applied blindly in every case, but in exceptional cases where the subject of the petition is not mentally or physically capable (or is of a very young age) and where there is no other parent or legal guardian. This is perhaps a reversal of the usual guardian-and-ward doctrine. There, a birth parent is the natural guardian of the person and property of the minor child. But reverse situations have often come to court, where it is the parent who needs care from the child. The law does not explicitly or automatically recognise the child as the legal guardian of the parent, and it is for this purpose that the *parens patriae* principle is invoked to provide precisely such relief. In *Rajni Hariom Sharma V Union of India & Anr.*, a Division Bench of this Court had before it the claim of a wife to be appointed the guardian of her husband, said to be in a



vegetative state. In paragraph 17, the Division Bench said:

“17. Learned counsel for the petitioner submits that by virtue of being the wife of Mr Hariom Sharma, petitioner is in the best position to act as his guardian considering his comatose condition and vegetative state for the last more than two years with no sign or prospect of revival. She can certainly be construed as the next friend and appointed as the guardian. On a query by the Court on what basis she was invoking writ jurisdiction of the Court, learned counsel for the petitioner submits that there is no statutory provision relating to appointment of guardian of a person who is in a state of coma or lying in a vegetative state. Therefore, a writ court exercising jurisdiction under Article 226 of the Constitution of India would be in the best position to grant relief to the petitioner....

14. This and other decisions were considered in *Vijay Ramchandra Salgaonkar v the State*, a judgment of 17th July 2021 by a Bench of which one of us (Madhav J Jamdar J) was a member. The Petitioner sought an order appointing himself as the guardian of his wife. She too had dementia (apart from other ailments). The Bench reviewed some of the case law on the subject and in paragraphs 15 to 16 held:

“15. Writ Petition No.9712 of 2017 was filed before this Court by Santosh Rohidas Deshmukh seeking a direction to appoint him as a guardian of his father Rohidas Deshmukh who was not in a position physically and mentally, to take care of himself and managing his property. After referring to the decision of Madras High Court in the case of *Sairabanu Mohammed Rafi Vs. State of Tamil Nadu*, Writ Petition No.28435 of 2016 decided on 06.01.2016, this Court appointed the petitioner as guardian of his father including for the purpose of operating bank accounts.

15.1 Likewise in Writ Petition (L) No.28269 of 2017, *Philomena Leo Lobo Vs. Union of India* decided on 13.10.2017, a Division Bench of this Court allowed the prayer of the petitioner Philomena Leo Lobo for declaring her as guardian of her husband Leo Lobo who was in a comatose condition.

16. In *Sikha Arjit Bhattacharya Vs. Union of India*, Writ Petition No.11757 of 2018 decided on 27.10.2020, a Division Bench of this Court accepted the prayer of the petitioner Sikha Arjit Bhattacharya and declared her as the guardian of her husband Dr Arjit Bhattacharya who was in a vegetative state.

16.1 Very recently, a Division Bench of this Court in *Smt Reshma Salam Kondkari Vs. Union of India*, Writ Petition (L) No.11394 of 2021 decided on 17.06.2021, declared the petitioner Reshma Salam Kondkari as the guardian of her husband Abdul Salam Ismail Kondkari who is in a vegetative state, for managing the bank accounts and immovable property of the husband including selling



of flat.”

15. We also chose to reproduce paragraphs 17.1 to 17.3 of the decision in Salgaonkar below:

“17.1 In that case it was held that when a person is in coma or in a comatose condition or in a vegetative state, it cannot be construed that such a person is a physically challenged person or a mentally challenged person as is understood under the relevant statutes. Nor such a person can be construed to be a minor for the purpose of appointment of guardian. In the circumstances it was held that statutes like the Guardians and Wards Act, 1890, Mental Healthcare Act, 2017 etc. would not be applicable to persons in a comatose condition or in a vegetative state. It was also held that there is no legislation in India relating to appointment of guardians to patients lying in comatose or vegetative state.

17.2 On the crucial issue as to relief that may be granted to the petitioner by invoking writ jurisdiction under Article 226 of the Constitution of India, it was noticed that there is no statutory provision governing the field relating to appointment of guardian of a person lying in a comatose condition or in a vegetative state. This Court referred to and deliberated upon the doctrine of *parens patriae* whereafter it was held that in a case like this it is the court alone as the *parens patriae* which must take the ultimate decision though views of the near relatives, next friend and doctors must be given due weightage. After referring to decisions of various High Courts including our High Court, this Court examined the width and plenitude of the power of the High Courts under Article 226 of the Constitution of India and also relied upon the decision of the Supreme Court in *Aruna Ramchandra Shanbaug Vs. Union of India*, (2011) 4 SCC 454, and held that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. It was held as under:

“38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge *ex debito justitiae* is the *raison d’être* of the courts. The Latin expression *ex debito justitiae* literally means a debt of justice; on account of justice; a claim the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of *ex debito justitiae* is well established and requires no further elaboration. In addition to Article 226 of the Constitution, such power of the High Court is traceable to section 151 of the Civil Procedure Code, 1908 and section 482 of the Code of Criminal Procedure, 1973.”



17.3 While acceding to the prayer of the petitioner in that case, this Court also sounded a note of caution that there should be some kind of monitoring of the functioning of the petitioner as guardian to ensure that guardianship was being used for the benefit of the person who was in a vegetative state observing that such monitoring may be carried out through the forum of Maharashtra State Legal Services Authority constituted under the Legal Services Authorities Act, 1987.”

16. Sitting singly one of us (GS Patel J) had a similar application though in a suit on the Original Side in Nitin Thakker and Another v State of Maharashtra and Ors. By an order dated 13th August 2020, the Court appointed a Senior Advocate of this Court as the guardian of solicitor who had no family at all but was himself suffering from dementia. In paragraph 20, the decision said:

“20. The present case falls only partly within the provisions of Order 32-A(2)(c) [of the Code of Civil Procedure, 1908]. But as this *Plaint* points out, the state of the law in India simply does not make any sort of provision for a situation such as the present one. Mr. Damania is neither mentally challenged, nor of unsound mind nor a minor. He has no family. He is incapacitated by an illness and the current laws of guardianship do not provide any recourse in as situation like this. This is, therefore, something of a vacuum in law. That, however, does not mean that Courts are helpless or that situations such as these should go unattended and unaddressed. I can draw support from the provisions of Order 32-A of the CPC, Kathawalla J’s previous order of 6th March 2017 and also in a properly brought Suit make reference to the omnibus provision for doing substantial justice that we find in Section 151 of the CPC. This says that nothing in the CPC limits or otherwise affects the inherent power of the Court to make such orders as may be necessarily for the ends of justice or to prevent the abuse of the process of the Court.”

17. This was also considered in *Rajni Hariom Sharma*.

18. By a previous order dated 12th August 2021, Kamar was to be examined by specialist at the JJ Group of Hospitals. That has been done. We have the reports before us today. She was examined on 18th August 2021. She was found to be conscious but minimally cooperative and communicative. She was bed-ridden. Her attention was minimal. She had a forward attention of span of two and a nil backward attention span. She was hard of hearing and could follow only very simple commands, not complex instructions. Her speech was incoherent and reduced in tone and output. Her concepts and judgments were impaired, as was her memory. The conclusion was that she suffers from advanced dementia, needs



assistance in her day-to-day activities and will require further investigation and monitoring. The reports states that the Indian Disability Assessment Scale Score was 20, suggestive of profound disability.

19. In these circumstances, we are inclined to grant the relief Mr Khambata seeks, but subject to certain safeguards. To begin with, we make it clear that we are not disposing of this Petition. It is also not our intention that the directions that follow are either rigid or constitute a precedent of any kind. Given the state of the law, which we have briefly set out above, each case will need to be addressed on its own merits. Indeed, we would suggest that in matters like these, no two cases will be exactly alike ever. Each case will require a differently calibrated response from the Court. We also intend to monitor Kumar's condition and will list the matter periodically for updates. The present order may then continued or modified as Required."

22. While reiterating the aforesaid view, a Division Bench of the Kerala High Court in **Shobha Gopalkrishnan** (supra), taking note of the vacuum in the extant legal regime as regards appointment of legal guardian for an individual in comatose/vegetative, laid down certain norms/procedures to address the said issue. The relevant portion of the said judgment reads as under:-

"42. Considering the role of this Court, jurisdiction under Article 226 of the Constitution of India springs up, when no remedy is provided under any Statute to persons like patients in 'comatose state'. It is something like 'parens patriae' jurisdiction. A reference to the verdict in *Nothman v. Barnet London Borough Council*, [1978 (1) WLR 220] (at 228) is also relevant. In such cases, it is often said, Courts have to do what the Parliament would have done. A reference to the verdict in *Surjit Singh Karla v. Union of India* [1991 (2) SCC 87 explaining the principle of 'causes omissus' is also brought to the notice of this Court; to the effect that if it is an accidental omission, court can supply/fill up the gap. This Court however does not find it appropriate to "re-write" the provision, as it is within the exclusive domain of the Parliament. This is more so, when the relevant statutes like Mental Health Act, 1987 and PWD Act, 1995 came to be repealed, on introducing the new legislations, such as **the Mental Healthcare Act 2017** and **The Rights of persons with Disabilities Act, 2016** in conformity with the mandate of U.N. Convention, 2006. This Court does not say anything whether any amendment is necessary, also in respect of the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and



Multiple Disabilities Act, 1999 (**National Trust Act, 1999**) with reference to the U.N. Convention 2006. It is for the Government to consider and take appropriate steps in this regard, as it is never for the Court to encroach into the forbidden field. This Court would only like to make it clear that, in so far as the case of a patient lying in 'comatose state' is not covered by any of the statutes, (as discussed above), for appointment of a Guardian, the petitioners are justified in approaching this court seeking to invoke the power under Article 226 of the Constitution of India. It is declared accordingly.

43. Coming to the incidental aspects; since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state', it is necessary to stipulate some 'Guidelines', based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

- i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.
- ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.
- iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.
- iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.
- v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian.
- vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed



shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/interference of this Court.

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person



lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise.”

23. A perusal of the medical opinion dated 15.09.2025 reveals that Mr. Surinder Kharbanda suffers from “Recurrent Hemorrhagic stroke with Chronic Liver Disease (CLD) with epilepsy (Post Stroke) with spastic quadriparesis with Tracheostomy in situ with Ryels Tube (RT) and Foleys Catheter in situ”. The Medical Board has opined that although Mr. Surinder Kharbanda is conscious, he is unable to respond to any verbal command and lacks orientation of the time, place or person. The said opinion unequivocally establishes that unfortunately Mr. Surinder Kharbanda is in no state to function independently or make decisions on his own. Thus, for welfare of Mr. Surinder Kharbanda appointment of a legal guardian is inevitably warranted.

24. It is also an admitted position that Mr. Surinder Kharbanda is survived by his wife i.e. petitioner no.1 and two sons i.e., petitioner nos. 2 and 3. It is stated, on instructions that there are no legal heirs besides the petitioners. Further, the petitioner nos.2 and 3 have no objection in appointment of petitioner no.1 as the legal guardian of Mr. Surinder Kharbanda.¹

¹ 5. That it may be pointed that in the aforesaid decision of N.A. (supra), the Guardianship Committee mentioned therein comprised of only the close family members of Ms. K.A., whereas in the present case, it is the Petitioners only who are seeking appointment of Petitioner No.1 as the legal guardian, and allow her to deal with all the moveable and immoveable properties of Shri Surinder Kharbanda. **It is pertinent to mention here that Petitioners are the only legal heirs of Shri Surinder Kharbanda, hence, there is no objection on behalf of Petitioners No.2 and 3 (who are sons of Petitioner No.1) for appointment or their mother, i.e. Petitioner No.1 as the legal guardian of Shri Surinder Kharbanda.** The present case completely falls under the *parens patriae* jurisdiction vested in this Hon’ble Court, and the same is evident from the Medical Report dated 09.09.2025, which reflects that Shri Surinder Kharbanda is in a vegetative state. The details of the movable and immovable properties of Shri Surinder Kharbanda are provided below:....(Short note on behalf of the petitioners dated 07.10.2025)



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25. In the aforesaid circumstances, considering the aforesaid judicial precedents and taking into account the medical opinion dated 15.09.2025, the following directions are issued: -

- i. Mrs. Kavita Kharbanda/petitioner no.1 (wife of Mr. Surinder Kharbanda) is appointed as the legal guardian of Mr. Surinder Kharbanda.
- ii. Mrs. Kavita Kharbanda shall have the right to take decisions in regard to, but not limited to, the medical treatment, caretaking, daily expenditures, finances, management / dealing with assets of Mr. Surinder Kharbanda.
- iii. Mrs. Kavita Kharbanda shall be a liberty to deal with any moveable and immovable assets of Mr. Surinder Kharbanda towards his medical and daily expenditures. Specifically, the petitioner no.1 is permitted to handle the affairs as regards the following assets: -
 - a. 1/8th share of Mr. Surinder Kharbanda in property bearing no. B-1/14, Model Town-II, Delhi-110009;
 - b. 1/4th share of Mr. Surinder Kharbanda in House No. 389, Bhai Parmanand Colony, Delhi;
 - c. Public Provident Fund bearing Account No.0090/PPF 625, maintained with Model Town Branch, Bank of Baroda;
 - d. Bank Account bearing No. 0247153000372 maintained with Gujranwala Town Branch, IDFC Bank;
 - e. LIC Policy bearing No. 127440591; and
 - f. Floating Rate Savings Bond bearing Account No. TBH51060278516.
- iv. Mrs. Kavita Kharbanda shall continue to act as a representative of



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Mr. Surinder Kharbanda in pending litigation, *inter-alia*, proceedings concerning suit bearing CS No. 11560/16/10 for partition, mandatory and permanent injunction; and any other proceedings/litigation involving the rights of Mr. Surinder Kharbanda.

26. The present petition is disposed of in the above terms.

SACHIN DATTA, J

NOVEMBER 18, 2025

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