

(2015) 01 AHC CK 0040

In the Allahabad High Court

Case No : Misc. Bench No. 9470 of 2014 Connected and Special Appeal (D) No. 32 of 2014, Writ Petition Nos. 2666 of 2013 and 299(H/C) of 2014

Chawali

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 3, 114, 151, 152
Constitution of India, 1950 — Article 13, 13(1), 13(3), 14, 15(1)
Criminal Procedure Code, 1973 (CrPC) — Section 164, 197, 362
Evidence Act, 1872 — Section 114, 114(e)
Government of India Act, 1915 — Section 108(2)
Government of India Act, 1935 — Section 223
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2015) 1 ADJ 387

Hon'ble Judges : Ajai Lamba, J.;Amreshwar Pratap Sahi, J.;Devi Prasad Singh, J.

Bench : Full Bench

Advocate : K.K. Tewari, Amrendra Kumar Singh, Anil Kumar Tripathi, Chandra Prakash Singh, Dinesh Kumar Ojha, Farhan Alam Osmany, Km. Vishwa Mohini, Rajesh Kumar Verma, Satyendra Nath Rai, Vimal Kumar and Vinod Kumar, for the Appellant; Atul Verma, Dharmendra Kumar M

Judgement

Devi Prasad Singh, J.—I have privilege to read the judgment, prepared by Justice A.P. Sahi and Justice Ajai Lamba. I am in respectful agreement with the judgment of Justice A.P. Sahi and the opinion expressed thereon with regard to all the questions framed by the Bench and finding recorded except the answer given to Issue (F) in regard to judgment pronounced in open Court on 19.9.2014 and the power of Hon'ble Chief Justice with regard to withdrawal of part-heard and tied up cases. With regard to finality of judgment, I am in respectful agreement with Brother Justice Ajai Lamba.

At the same time, I feel it proper to record my own reasoning on the issues dealing with live-in relationship which results into culmination of marriage

between the parties, public interest vis-?-vis Public Interest Litigation, part-heard and tied up matters and power of Hon"ble Chief Justice with regard to withdrawal of cases.

Brother Justice A.P. Sahi has elaborately dealt with the factual matrix on record while giving answers with regard to the questions agreed by me, hence need not be elaborated in detail. Since Hon"ble Chief Justice has referred the entire case to decide on merit, hence observation may be made and finding recorded on related issues also.

(I) MARRIAGE AND LIVE-IN RELATIONSHIP

It is admitted at Bar that a First Information Report was lodged against Tabrez Alam on 3.7.2013 under Sections 363/366 I.P.C under Crime No. 335 of 2013. The girl Shameeha Khatoon was recovered on 4.7.2013 and medically examined at Balrampur Hospital, Lucknow on 6.7.2013. According to medical report dated 10.7.2013, she was aged about 14-16 years. She was sent to Protection Home, Faizabad on 14.7.2013 by the Chief Judicial Magistrate. The Medical Board reexamined Shameeha Khatoon on 21.10.2013 assessing her age about 18 years. In pursuance to the order passed by a Division Bench of this Court, another Medical report was prepared on 17.9.2014 by a Board constituted by King George's Medical University, Lucknow giving opinion with regard to the age as about 18 years. Tabrez Alam was arrested on 17.7.2013. His bail was rejected on 25.7.2014. High Court granted bail to Tabrez Alam on 31.10.2013, in pursuance to which he was released from jail on 14.11.2013. On the same day, it is alleged that Nikah ceremony took place at the residence of Tabrez Alam. As a follow-up action, in the Voter List dated 31.1.2014 of village Vijai Nagar, name of Shameeha Khatoon was recorded as wife of Tabrez Alam at serial No. 994.

Thus, from 3.7.2013 to the date of Nikah, i.e. 14.11.2013, Shameeha Khatoon and Tabrez Alam lived together (except the period when Tabrez Alam was in jail) under the shadow of "live-in relationship". They are alleged to have become husband and wife only on 14.11.2013. Whatever crime under Penal Law Tabrez Alam has committed may be into two parts, firstly the period during which Tabrez Alam absconded alongwith Shameeha Khatoon and passed life under the garb of live-in relationship and secondly, subsequent to alleged Nikah ceremony having taken place on 14.11.2013. However, this aspect of the matter is to be looked into by the Investigating Agency in pursuance to the First Information Report lodged.

2. We have heard Mr. Z. Zilani, learned Additional Advocate General, assisted by Chaudhary Shatrughan, learned Additional Chief Standing Counsel on the question of marriage and according to him under the Muslim Personal Law marriage is based on "offer" and "acceptance" and since both have agreed before the Court that they have married together (supra), no doubt should be raised thereon. One good sign we have noticed is that the father Maseeuddin has proposed to solemnize formal marriage in accordance with Muslim rituals which

we left over to them on the basis of mutual agreement.

3. Legitimacy of pre- marriage relationship of Tabrez Alam is based on the judgment of Apex Court in Lata Singh Vs. State of U.P. and Another, , with submission that since both of them have attained majority, they have right to live together according to their own wish. On the other hand, father Maseeuddin submits that according to his own customs, usages and traditions, marriage is to be solemnised in accordance with Muslim Personal Law and unless the marriage is solemnised as such, he has right to take care of his child.

4. The Court is flooded with such cases where boys and girls from all castes, communities and religions are leaving their houses to live together claiming their constitutional right in view of the case of Lata Singh (supra) and the society is struggling to save its family culture, traditions, customs and usage having fear in mind that the girls of their family may be ill-treated or deserted by the boys or forcibly, converted to other religions or may be thrown into prostitution, oiled by money or sometime they may be sold to foreigners and deported outside country.

5. Lata Singh (supra) says, to quote :

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage." 6. The doubt in the mind of guardians is not based on unfounded facts. 150 lacs children are kidnapped every year in India. According to National Crime Record Bureau (2013), the total crime against women comes to 309546, out of which only 22.4% result into conviction. The National Crime Record contains the data of only reported cases. In case we add unreported cases, it may come to many fold.

7. The increase of sex related crime and desertion broadly by male during the course of live-in relationship or crime committed thereon resulting in loss of grace and dignity of life to a lady has been a matter of concern to sociologists as well as psychologists. Majority of research is based on living style in western society which depends on individualistic way of life. H.L. Kaila in his book, "Introduction to Psychology" referred the research work done with regard to certain women, involved in prostitution for variety of reason. To quote relevant portion :

"Numerous investigations agree that a great many young girls let themselves be deflowered by the first corner and thereafter find it quite natural to yield to anyone.

Dr. Bizard investigated one hundred prostitutes and obtained the following data : one had lost her virginity at the age of eleven, two at twelve, two at thirteen, six at fourteen, seven at fifteen, twenty-one at sixteen, nineteen at seventeen,

seventeen at eighteen, six at nineteen; the rest after the age of twenty-one. Thus five percent had been violated before puberty. More than half said they gave themselves for love, because they wanted to; the others had yielded through ignorance. The first seducer is often young. Usually it is a fellow worker in shop or office, or a childhood companion; next in frequency come soldiers, foremen, valets, and students.(page 110 from Introduction to Psychology by H.L. Kaila)."

While referring the research of Dr. Bizard, learned author (supra) further observed as under :

"These girls who have yielded passively have none the less undergone the trauma of defloration, we may be sure; it would be desirable to know what psychological influence this brutal experience has had on their futures; but it is not customary to psychoanalyze prostitutes, and they are not good at self-description, usually talking taking refuge in cliches. In certain cases the readiness to give themselves to the first corner is to be explained by the prostitution-fantasies for there are many very young girls who imitate prostitutes from resentment against their families, from horror of their dawning sexuality, or from a desire to act the grown-up. They use heavy make-up, associate with boys, act coquettishly and provocatively. Those who are still childish, non-sexual, cold, think they can play with fire in safety; one day some man takes them at their word, and they slip from dreams to acts.

When a door has once been broken open, it is hard to keep it shut, said a young prostitute of fourteen, quoted by Marro. A young girl, however, rarely decides to go on the town immediately after her defloration. Sometimes she remains attached to her first lover and goes on living with him; she takes a "regular" job; when her first lover abandons her, she consoles herself with another. Now that she no longer belongs to one man, she feels she can give herself to all; sometimes it is her lover the first or the second - who suggests this way of earning money. (page 110 and 111)"

8. Not only prostitution but sometime as a result of "live-in relationship", a woman faces deportation outside the country or involvement in commission of crimes. It is not that every live-in relationship may result with ill-consequences. There are instances of good family life but that depends up the facts and circumstances of each case. However, Courts have no parameter to find out the intent of boys and girls who are involving themselves in live-in relationship.

9. The psychologists feel that the community notification practices are better policy to check the recidivism of sex offences. To quote :

"Community notification is a very popular social policy, largely because of the belief that sex offenders have alarmingly high recidivism rates. In actuality, sex offense recidivism is lower than commonly believed. Studies by the U.S. Department of Justice and the Canadian Governments suggest that 5% to 14% of sex offenders are re-arrested for new sex crimes within a 3- to 6-year follow-

up period. Longer follow-up studies have found that after 15 years, the vast majority (about three quarters) of convicted sex offenders had not been re-arrested for a new sex crime. All these studies involved very large sample sizes ranging from about 4,700 to 29,000 subjects. (page 723-724, Encyclopedia of Psychology and Law by Brian L. Cutler, Vol. 2)" 10. It is not so that female and sometime male may face sexual abuse by person only once or twice but sex offenders may keep on committing the crime unless they are apprehended by the grip of law. Recidivism means repetition. Recidivism of sex offenders has been noted by learned author (supra) in the Encyclopedia of Psychology and Law (supra) as under :

"One study found that rates of sexual re-offense for incest offenders (those who offend against family members) ranged between 4% and 10%; rates of sexual recidivism for child molesters with female victims ranged between 10% and 29%; rates of sexual recidivism for child molesters with male victims ranged between 13% and 40%; rates of sexual recidivism for rapists ranged between 7% and 35%" and rates of sexual recidivism for exhibitionists (those who expose themselves in public) ranged between 41% and 71%."

Numerous studies have examined recidivism rates for rapists. Rates of sexual recidivism for rapists have ranged between 11% and 28% over 5 years. Researchers have postulated that these discrepancies in recidivism rates could be attributed to the fact that there are different types of rapists (such as those who are mentally disordered v. those on probation) and the differential length of follow-up.

It should be noted that there have been some contradictory findings regarding sex offender typologies and risk for re-offending in the recidivism literature. Many studies, including Hanson and Bussiere's meta-analysis, have found higher sexual recidivism rates for rapists compared with child molesters, with incest offenders having the lowest rate of re-offense of all categories of sex offenders. However, one study found that over a 25-year period, child molesters had a higher rate of re-offense than rapists (52% v. 39%). In this study, recidivism was recorded as any new re-arrest that could inflate recidivism statistics. Another factor that should be considered when examining sex offender typologies and recidivism is that there is some evidence that sex offenders may not be stable in their victim choice, and there could be crossover (e.g., a child molester with male victims, could offend against a female) in victim age and gender."

Learned author (supra) identified 14 circumstances of actuarial scale designed to predict violent, sexual recidivism among men who have committed at least one previous hands-on sexual offense. To quote :

"The Sex Offender Risk Appraisal Guide (SORAG) is a 14-item actuarial scale designed to predict violent, including hands-on, sexual recidivism among men who have committed at least one previous hands-on sexual offense.

The items on the scale are the following :

1. Lived with both biological parents until age 16
2. Elementary school maladjustment
3. History of alcohol problems
4. Never been married at time of index offense
5. Criminal history score for nonviolent offenses
6. Criminal history score for violent offenses
7. Number of convictions for previous sexual offenses
8. History of sexual offenses only against girls below 14 years of age (negatively scored)
9. Failure on prior conditional release
10. Age of index offense (negatively scored)
11. Diagnosis of any personality disorder
12. Diagnosis of schizophrenia (negatively scored)
13. Phallometric test results indicating deviant sexual interests
14. Psychopathy Checklist (Revised) score. (page 729 Encyclopedia of Psychology and Law, Vol. 2)"

11. Apart from above, male or female (boys or girl) may suffer from psychological disorder like autism, schizophrenia and other alike disease with immaturity to understand their own well being. Lata Singh's case (supra) does not lay down any guideline or condition to understand the intelligence quotient or mental status or level of maturity of male or female who wants to live together.

12. In such scenario, question cropped up is whether Lata Singh (supra) requires second look by the Hon"ble Supreme Court ? What safeguard should be provided and how the "individual right" and "right of family", "traditions", "customs" and "usage" should be balanced is a question which may require second look by the Supreme Court (supra). However, this does not fall within our domain.

13. The Court may take note of the fact that life style, social norms, tradition, customs and usage in the Indian Sub Continent are almost different than Western countries. In Western countries, the individual right is based on the development taken place under the historical background during last few hundred years of their civilization. On the other hand, in Indian Sub Continent, particularly in India, the right of family to nourish, educate, bring up and make children (boys and girls) good citizen as a member of family unit is based on thousand years of civilizational experience and the customs and traditions developed thereon.

14. Article 13 of the Constitution of India declares customs and usage as "laws in

force". For convenience, Article 13 is reproduced as under :

"13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void,

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

(3) In this article, unless the context otherwise requires,-"

(a) "law" includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.]"

15. On the other hand, Articles 14 and 21 extend equal protection of law, individual right of life and liberty, read with Article 19 which we shall deal with in the later part of present judgment. According to P Pramanatha Aiyar's The Major Law Lexicon, 4th Edition 2010, Volume 2 page 1698, custom has been defined as under:

"Custom.--A custom to be valid must not be contrary to justice, equity or good sense. It must not have been declared to be fold by any competent authority nor would contravene any express provision of the law. It must also be ancient, certain and invariable. A custom may either be general or special. It may be proved or disproved in any of the following ways :

(1) By the opinion of persons likely to know of its existence or having special means of knowledge thereof.

(2) By statements of persons who are ead or whose attendance cannot be procured without unreasonable delay or expenses, provided they were made before, any controversy as to such custom arose, and were made by persons who would have been or likely to have been aware of the existence of such custom if it existed.

(3) By any transaction by which the custom in question was claimed, modified, recognised, asserted, or denied or which was inconsistent with its existence.

(4) By particular instances by which the custom was claimed, recognised, or exercised, or knowledge of its exercise was disputed, asserted or departed from.

A custom is a particular rule which has existed either actually or presumptively

from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm. A custom to be valid must have four essential attributes. First, it must be immemorial; secondly, it must be reasonable; thirdly, it must have continued without interruption since its immemorial origin; and, fourthly, it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect."

16. Incidentally, in England, custom has been defined not as a source of law but it becomes law itself and English people are proud of their customs. Custom has been defined as under :

"Is a law not written, established by long usage, and the consent of our ancestors. No law can oblige a free people without their consent: so wherever they consent and use a certain rule or method as a law, such rule etc., gives it the power of a law, and if it is universal, then it is common law : if particular to this or that place, then it is custom. (3 Salk. 112; Tomlin). Custom is one of the most triangles of the laws of England; those laws being divided into Common Law, Statute Law, and Custom: (Page 1698, The Major Law Lexicon, 4th Edition 2010).:" 17. Supreme Court of India in a case in Thakur Gokalchand Vs. Parvin Kumari, , held that a custom in order to be binding must derive its force from the fact that by long usage it has obtained the force of law, but the English rule that "a custom in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary" should not be strictly applied to Indian conditions.

Again the Supreme Court in Bhimashya and Others Vs. Smt. Janabi @ Janawwa, , held that though "custom" has the effect of overriding law which is purely personal, it cannot prevail against a statutory law, unless it is thereby saved expressly or by necessary implication.

18. In Salekh Chand (Dead) by Lrs. Vs. Satya Gupta and Others, , their Lordships of Supreme Court held that "custom" is a rule which in a particular family or a particular class or community or in a particular district has from long use, obtained the force of law. Custom cannot be extended by analogy. One custom cannot be deduced from another. It cannot be a matter of theory but must always be a matter of fact. It cannot be enlarged by parity of reasoning.

19. According to Herbert W. Horwill, the Usages of the American Constitution 22(1925), "A "usage" is merely a customary or habitual practice; a "convention" is a practice that is established by general tacit consent. "Usage" denotes something that people are accustomed to do; "convention" indicates that they are accustomed to do it because of a general agreement that is the proper thing to do (Page 7027 from P. Ramanatha Aiyar's The Major Law Lexicon, 4th Edition 2010)

20. In Commissioner, Hindu Religious and Charitable Endowment (Admn.), Madras and Another Vs. Vedantha Sthapna Sabha, , Supreme Court held that

"The concept of long continuance and passage of time is inbuilt in the expression "usage".

21. In view of above, customs, usage have force of law subject to limitation of Fundamental Right (Part III of the Constitution) accruing to the citizens. Article 21 confers Fundamental Rights to citizens having different facets of life like right to live quality of life, dignity of life, right of human living, right of privacy etc vide *Kapila Hingorani Vs. State of Bihar*, . Right flowing from Article 19 confers different rights which relate to association, movement, trade, profession etc.

22. In *Keshavan Madhava Menon Vs. The State of Bombay*, , their Lordships of Hon"ble Supreme Court by majority (Bench of seven Hon"ble Judges) ruled that Article 13(1) is prospective in its operation. Hon"ble Justice Das in his leading judgment further ruled that Article 13(1) has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution.

However, Justice Mehr Chand Mahajan while reiterating the aforesaid proposition further added that rule of justice, equity and good conscience apply even if a provision becomes void, to quote:

"It is also unnecessary to examine the country the further argument of the learned Attorney-General that in any case since 1868 in this country the rule of construction of statutes is the one laid down by Section 6 of the General Clauses Act, 1868, and that though in express terms that statute may not be applicable to the construction of Article 13(1) of the Constitution, yet that rule is a rule of justice, equity and good conscience and has become a rule of common law in this country and should be applied even to cases where statutes become void by reason of their being repugnant to the Constitution." In *Bhau Ram Vs. B. Baijnath Singh*, , Hon"ble Supreme Court considered Article 13(3) with regard to importance of customs and usage.

23. In *Sant Ram and Others Vs. Labh Singh and Others*, a Constitution Bench of Hon"ble Supreme Court considered the words "custom and usage" as provided in Article 13 in the following words, to quote:

"There are two compelling reasons why custom and usage having in the territory of India the force of the law must be held to be contemplated by the expression "all laws in force". Firstly, to hold otherwise, would restrict the operation of the first clause in such ways that none of the things mentioned in the first definition would be affected by the fundamental rights. Secondly, it is to be seen that the second clause speaks of "laws" made by the State and custom or usage is not made by the State. If the first definition governs only clause (2) then the words "custom or usage", would apply neither to clause (1) nor to clause (2) and this could hardly have been intended. It is obvious that both the definitions control them meaning of the first clause of the Article. The argument cannot, therefore, be accepted. It follows that respondent No. 1 cannot now sustain the decree in

view of the prescriptions of the Constitution and the determination of this Court in Bhau Ram's case." 24. In Madhu Kishwar and others Vs. State of Bihar and others, , a three Judge Bench of Hon'ble Supreme Court has reiterated the aforesaid proposition of law but with different words. While reiterating the Fundamental Right of citizens with regard to justice to individual as one of the highest interest of democratic State, their Lordships held that the judiciary cannot protect the interests of common man unless it redefines the protections of the Constitution and the common law and it should adapt itself to the needs of the changing society and be flexible and adaptable. It has been held that the intent of Articles 38, 39, 46 and 15(1) and (3) and 14 is to accord social and economic democracy to women as assured in the Preamble of the Constitution. They constitute the core foundation for economic empowerment and social justice to women for stability of political democracy. Their Lordships held as under :

"Law is the manifestation of principles of justice, equity and good conscience. Rule of law should establish a uniform pattern for harmonious existence in a society where every individual would exercise his rights to his best advantage to achieve excellence, subject to protective discrimination. The best advantage of one person could be the worst disadvantage to another. Law steps in to iron out such creases and ensures equality of protection to individuals as well as group liberties. Man's status is a creature of substantive as well as procedural law to which legal incidents would attach. Justice, equality and fraternity are trinity for social and economic equality. Therefore, law is a foundation on which the potential of the society stands. In Sheikriyammada Nalla Koya v. Administrator, Union Territory of Laccadives, Minicoy and Amindivi Islands K.K. Mathew, J., as he then was, held that customs which are immoral are opposed to public policy, can neither be recognised nor be enforced. Its angulation and perspectives were stated by the learned Judge thus :

It is admitted that the custom must not be unreasonable or opposed to public policy. But the question is unreasonable to whom? Is a custom which appears unreasonable to the Judge be adjudged so or should he be guided by the prevailing public opinion of the community in the place where the custom prevails? It has been said that the Judge should not consult his own standards or predilections but those of the dominant opinion at the given moment, and that in arriving at the decision, the Judge should consider the social consequences of the custom especially in the light of the factual evidence available as to its probable consequences. A judge may not set himself in opposition to a custom which is fully accepted by the community.

But I think, that the Judge should not follow merely the mass opinion when it is clearly in error, but on the contrary he should direct it, not by laying down his own personal and isolated conceptions but by resting upon the opinion of the healthy elements of the population, whose guardians of an ancient tradition, which has proved itself, and which serves to inspire not only those of a

conservative spirit but also those who desire in a loyal and disinterested spirit to make radical alterations to the organisations of existing society. Thus, the judge is not bound to heed even to the clearly held opinion of the greater majority of the community if he is satisfied that opinion is abhorrent to right thinking people. In other words, the judge would consult not his personal inclinations but the sense and needs and the mores of the community in a spirit of impartiality."

25. Customs, usage and traditions developed in pursuance to thousand years of experience of mankind in a particular society have got its own importance. It should be normally not interfered unless it is against the Constitutional mandate or statutory provisions. A great American author Benjamin N. Cardozo while considering logic, history and custom of a given society in his famous treatise, *The Nature of the Judicial Process*", observed as under :

"The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence. "Ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws than one can exclude the vital air from his room and live. Logic and history and custom have their place. We will shape the law to conform to them when we may; but only within bounds. The end which the law serves will dominate them all. There is an old legend that on one occasion God prayed, and his prayer was "Be it my will that my justice be ruled by me mercy." That is a prayer which we all need to utter at times when the demon of formalism tempts the intellect with the lure of scientific order. (page 66)" Roscoe Pound, a great Jurist of his time in his book, *"an Introduction to the Philosophy of Law"* has reiterated the aforesaid proposition and further held that there are two requirements to determine the philosophical thinking about law. According to Roscoe Pound (*supra*), to quote :

"On the one hand, the paramount social interest in the general security, which as an interest in peace and order dictated the very beginnings of law, has led men to seek some fixed basis of a certain ordering of human action which should restrain magisterial as well as individual willfulness and assure a firm and stable social order. On the other hand, the pressure of less immediate social interests, and the need of reconciling them with the exigencies of the general security and of making continual new compromise because of continual changes in society have called ever for readjustment at least of the details of the social order. They have called continually for overhauling of legal precepts and for refitting them to unexpected situations. And this has led men to seek principles of legal development by which to escape from authoritative rules which they feared or did not know how to reject but could no longer apply to advantage. These principles of change and growth, however, might easily prove inimical to the general security, and it was important to reconcile or unify them with the idea of a fixed basis of the legal order." Learned author cited an exhortation addressed by Demosthenes to an Athenian jury as to why men obey the law. To quote :

"Men ought to obey the law, he said, for four reasons : because laws were

prescribed by God, because they were a tradition taught by wise men who knew the good old customs, because they were deductions from an eternal and immutable moral code, and because they were agreements of men with each other binding them because of a moral duty to keep their promises." 26. The report coming from different walks of life seems to show that there is diversion towards live-in relationship by a substantial section of men and women ignoring importance of the institution of marriage necessary for orderly society. This tendency seems to have increased after Lata Singh's case (supra).

27. Marriage and sonship constitute some of the unique chapters in the litera legis of ancient Hindu Law. As early as the time of Rig-Veda marriage had assumed the sacred character of sacrament, and sanction of religion had heightened the character and importance of the institution of marriage.

28. The Rig-Veda pronounces some impressive texts:

"After completing the seventh step (Saptpadi) the bridegroom said: "with seven steps we have become friends (sakha). May I attain to friendship with thee: May I not be separated from thy friendship." Satpatha Brahamna speaks of the wife as the half of one's self-Ardho ha va esha atmano." 29. The basal thought was that marriage was a prime necessity for that alone could enable a person to discharge properly his religious and secular obligations. The earliest records shows that rules of inheritance depended on the rules of marriage and it was obligatory on the father to give the daughter in marriage, as gifts are given. The Smritis deals with the subject of marriage with meticulous care and make fascinating study. Apastamba has stated that from time of marriage the husband and wife were united in religious ceremonies and likewise in rewards of acts of spiritual merit.

30. Marriage is necessarily the basis of social organization/order and foundation of some important legal rights and obligations. The importance and imperative character of the institution of marriage needs no comment. In Hindu Law marriage is treated as a "sanskara" or a sacrament. It is the last of ten sacraments, enjoyed by the Hindu religion for regeneration of men and obligatory in case of every Hindu who does not desire to adopt the life of sanyasi. From the very commencement of Rig-Vedic age, marriage was a well established institution, and the Aryan ideal of marriage was very high. Monogamy was the rule and the approved rule, though polygamy existed to some extent. In Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realized.

31. The high value placed on marriage is shown by the long and striking hymn of Rig-Veda, X, 85; "Be, thou, mother of heroic children, devoted to the Gods, Be, thou, Queen in thy father-in-law's household. May all the Gods unite the hearts of us two into one". The wife on her marriage was at once given an honoured position in the house. She was mistress in her husband's home and where she was the wife of the eldest son of the family, she exercised authority over her

husband's brothers and his unmarried sisters. She was associated in all the religious offerings and rituals with her husband. As the old writers put it, "a woman is half her husband and completes him". Manu in impressive verses, exhorted men to honour and respect woman. Woman must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law who desire their own welfare. Where women are honoured, there gods are pleased; but where they are not honoured, no sacred rite yield rewards." The husband receives wife from gods, he must always support her while she is faithful". "Let mutual fidelity continue until death. This may be considered as the summary of the highest law for husband and wife."

32. According to Hinduism, marriage between two souls is a very sacred affair that stretches beyond one lifetime and may continue to at least seven lives. The relationship between the two does not necessarily have to begin only when they have attained birth as human beings. The gender of the two partners also does not have to be the same in all the births. As the stories in purans confirm, two individual souls may come together any time during their existence upon earth, even when they assume a lower life form, such as that of any animal or bird, and carry forward their relationship further into higher life forms such as that of human beings. Once married, a couple is expected to uphold their family names by remaining faithful and truthful to each other and by enacting their respective roles as laid out in the Hindu law books.

33. According to beliefs of Hinduism marriage is a sacred institution devised by gods for the welfare of human beings. Its primary purpose is procreation and continuation of life upon earth. Sexual union is intended solely for this purpose and should be used as such.

34. Its secondary purpose is upholding of the social order and the Hindu dharma, while its ultimate aim is spiritual union with the inmost self, which is possible when a couple perform their obligatory duties and earn the grace of god through their good karma. A man and woman are believed to come together as husband and wife primarily for spiritual reasons rather than sexual or material, although they may not be mentally aware of the fact. Once married, the couple is expected to carry out their respective traditional duties as house holders and upholders of family traditions and work of the material and spiritual welfare of each other the members of their family and also society.

35. The institution of marriage is also well recognised way of life in Christians and held to be a necessity for an orderly society. In marriage ceremony, the bride and groom conform that they want to marry each other and after the opportunity is given publicly for anyone present to prevent the marriage if there is a legal reason, the couple join hands and make promises. Ordinarily, marriage takes place in Church.

In a church service there are readings from the Bible which explain the nature and significance of marriage. The couple make promises to stay together "for

better, for worse; for richer, for poorer; in sickness and in health; to love and to cherish until death do us part". It is a commitment for life, and not just for the times which are easy. Prayers are said for the newly-weds, which recognises both the joys and difficulties ahead, and ask God's blessing on the couple.

Thus, the purpose of marriage seems to create an orderly society in civilizational inputs for generations to come

36. Marriage in Muslims also developed from the very inception of the religion and has been continuing for more than 1400 years of its history to regulate the social order. Islamic marriage is based on procreation and its matrimonial rules revolve around its axis. It provides exclusive attachment of the wife and husband, rules of divorce and iddah, legitimacy and parentage, custody of children and their upbringing, inheritance and other related matters. According to Islamic Law, marriage is the only legal and honourable way of satisfying sexual desire, and the husband and wife by their union ensure the survival of mankind. The word "Zawj" has been used in holy Quran which means a pair or a mate. The general purpose of marriage is that the sexes can provide company to one another, procreate legitimate children and live in peace and tranquility to the commandments of Allah. Marriage serves as a mean to emotional and sexual gratification. Islam proclaims that when a man marries he shall fulfill half of his religion, so let him fear Allah regarding the remaining half. Thus, marriage is necessary for an organised society as well as social order. It is meant to avoid evil deeds and purging one's soul of sins.

37. Hon'ble Supreme Court rightly had declined to grant benefit over the property to a lady having live-in relationship in a case in *Tulsa and Others Vs. Durghatiya and Others*, . However, Hon'ble Supreme Court granted share in the property of parents to the child born from live-in relationship vide *Bharatha Matha and Another Vs. R. Vijaya Renganathan and Others*, .

38. In *S.P.S. Balasubramanyam Vs. Suruttayan alias Andali Padayachi and others*, , Hon'ble Supreme Court held that man and woman continuously living together under the same roof and cohabiting for a number of years would raise presumption of living as husband and wife. Non-mentioning the name of the wife in the will and compromise deed under which share in the family properties devolved on her husband not relevant to destroy the presumption and cannot be held against legitimacy of the children of the spouse. Such children being legitimate is entitled to share in the properties devolving on their father by virtue of settlement thereof made by the father in their favour.

39. In *Rameshwari Devi Vs. State of Bihar and others*, , Hon'ble Supreme Court held that the children born out of second marriage are legitimate though the marriage itself is void. Minor children from second marriage shall be entitled to family pension but not the second widow during survival of first wife/widow.

40. In *Neelamma and others v. Sarojamma and others*, (2006)9 SCC 612, Hon'ble Supreme Court held that illegitimate child cannot acquire or claim as of

right any share in Joint Hindu family property but such child is entitled to share in self-acquired property of parents.

41. But there may be a situation where male and female, both may not have any property but the birth of a child has taken place on account of live-in relationship, then who shall take care of such boy or girl, borne from such relationship ? Result will be increase of foeticide. In such cases, the child will have no property to inherit and there shall be no one to provide shelter to grow up in a given society. This other side of coin has not been taken into account by any known judgment of Courts.

42. Live-in relationship is an exception to an orderly society. Law must be in tune with civilization and orderly society. Even animals follow some rules to discipline their community keeping in view their ability and understanding.

Restrictions imposed by law, customs or traditions, unless they suffer from some unholiness or immorality, are necessary for an orderly society. Ultimate object of law is social welfare, public interest as well as orderly society.

43. Thus, Fundamental rights securing individual right of the citizens should be looked into under Indian perspective where, in case a "grandpa" is sitting on a cot outside the house, no child will like to go outside without giving an information where he or she is going and for what purpose. The elder citizen has got right to ask question. Similarly, unsocial elements will not dare enter into premises of a boy or girl on account of elderly people who are guardians of their respective houses. Their advice, unless suffers from immorality or against statutory mandate, carries weight till a person resides with family.

44. In case we believe the newspaper's report, there appears to be no room for doubt that kidnapping and crime against women in different forms is rapidly increasing. In such situation, giving a go-bye to the rights of guardian of the family to keep the protective umbrella over the children or unemployed youth may result with disastrous consequences, more so when the law and order in majority of the States is not up to mark.

45. There is one other reason. India is a developing country and still suffering from rampant corruption and financial crunch. Unlike European countries or United States of America, it is not possible for the Government to provide financial aid, shelter and protection to the new born babies, girls or boys of tender age or unemployed member of a family. In such a situation, any law laid down or step taken by the judiciary or by the Government to remove the family shelter/protection may be visited with ill consequences.

46. Needless to say that pornographic sites on Internet being opened to all and other related material are making young minds sensitive to sexual desire from tender age. In such situation, decision may be ill-founded while choosing a friend for the purpose of marriage or live-in relationship or for alike reasons. Incorrect decisions may result to throw the girls for prostitution or indulge into flesh trade

with ill-consequences. Accordingly, Lata Singh (supra) may not be applicable to the minors and the primacy may be given to the wishes of guardians and family unit. Even for grown up children, boys or girls while applying Lata Singh (supra), Courts have to ascertain the mental maturity of the boys and girls as well as mitigating facts and circumstances and opinion of the police and intelligence to ascertain whether relationship has been developed with certain allurements or for oblique motive ? The antecedents of boys and girls should be verified from appropriate agency. In case the material on record establishes that the relationship has been developed with oblique motive and girls or boys are likely to suffer from ill-consequence, then wishes of the family and guardians may be taken into consideration, and the Courts' approach should be cautious.

It is necessary to secure and protect the boys and girls of tender age from mal relationship or oblique purposes to safeguard their dignity and quality of life which is part and partial of Article 21 of the Constitution.

(II) PUBLIC INTEREST AND PUBLIC INTEREST LITIGATION

47. Article 226 confers wide power to the High Court to deal with any subject under writ jurisdiction to secure public interest. Constitutional framers have consciously used the words "for any other purpose" while conferring power to issue writs.

Though extraordinary power conferred under writ jurisdiction should be exercised sparingly, cautiously and under exceptional situation but it does not mean that the Courts should be mute spectator to the commission and omission of the Government impairing public interest. That is why it is well-settled that the power conferred to the High Court under Article 226 of the Constitution of India is wider than that of the Supreme Court and is not confined to Fundamental Right but extend to all cases where breach of a right is alleged or brought to the notice of the Court vide *The State of Orissa Vs. Madan Gopal Rungta*, ; *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, ; *Bangalore Development Authority Vs. Vijaya Leasing Ltd. and Others*, ; *Mewa Singh and Others Vs. Shiromani Gurdwara Prabandhak Committee*, and *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, .

Power conferred to Court under Article 32 or 226 of the Constitution of India is both protective and remedial vide *S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others*, .

48. Subject to above, question cropped up that while dealing with private individual dispute whether the Court could have travelled beyond it to secure public interest ? The Division Bench converted the private litigation into PIL. Question cropped up whether every public interest should be dealt with under the guise of Public Interest Litigation or Courts have got power to secure public interest while deciding private dispute ? Needless to say that a Public Interest Litigation is a matter where the litigant approaches this Court fulfilling required

conditions to secure public interest, or the Court itself suo moto registers a petition under Rules of the Court to deal with public interest. Apart from these two situations, the third one is that while deciding a private dispute, the Court deals with public -interest and passes some order or issue some direction to secure public interest.

49. Whenever the Court itself takes suo moto action and register a case under the guise of PIL, then conditions laid down by Hon''ble Supreme Court with regard to PIL in the case in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , do not seem to be applicable. The conditions govern the filing of a petition by the litigants and not the Court itself where suo moto action is taken. Similarly, in a given case, in case the Court exercises its power to secure public interest on its own with the related matter before it, then there appears to be no hurdle in the way of the Court to decide the private dispute as well as deal with public interest while exercising jurisdiction conferred by Article 226 of the Constitution.

50. This question has been dealt with by a Division Bench of this Court in a case in Devendra Pratap Singh and Others Vs. Union of India, , while dealing with NRHM matter. The judgment was delivered by one of us (Justice Devi Prasad Singh) on behalf of the Bench after considering pronouncements of Hon''ble Supreme Court whereby their Lordships held that while dealing with private dispute, the Courts may secure public interest without converting the petition into Public Interest Litigation. SLP filed against the judgment has been dismissed by Hon''ble Supreme Court. Relevant portion from the judgment of Devendra Pratap Singh (supra) is reproduced as under :

"25. It shall be appropriate to deal with the argument advanced by the learned counsel for the State with regard to private dispute vis-?-vis public interest litigation. Submission is that since the public interest is involved, the writ petition shall be deemed to be Public Interest Litigation. The argument advanced by the learned State counsel seems to be misconceived.

Public interest is a new branch of law and it has acquired a significant degree of importance in the jurisprudence practised by higher judiciary in India. The strict meaning given to aggrieved party to English and American Court to get its jurisdiction has been considerably liberalized by the Hon''ble Supreme Court to secure public interest. The Discretionary meaning of word litigation is as under :

26. In Blacks Law Dictionary the word "Litigation" has been described as under:

"Litigation : The process of carrying on a lawsuit 2. A lawsuit itself litigate, vb- litigatory, litigation, adj.

Complex litigation. Litigation involving several parties who are separately represented, and usu. Involving multifarious factual and legal issues.

"What exactly is "complex litigation? The problem is that no one really knows-or, more accurately perhaps, various definitions do not agree. Complex civil litigation

has an "I know-it-when-I see-it" quality. Nearly everyone agrees that matters like the massive asbestos litigation, the AT and T antitrust suit, or the remedial phase of a school desegregation case are complex. But trying to find a common thread that both describes these cases and distinguishes them from the run of the mill car crash is difficult." Jay Tidmarsh and Roger H. Transgrud, *Complex Litigation*"

27. The Word and Phrases Permanent Edition 25 A contains definitions of "Litigation". Some of them as under :

"D. Mass. 1934. Proceeding in which referee set aside preferential mortgage securing claim filed more than six months after adjudication and allowed claim as unsecured claim held "litigation" so as to permit proving claim in bankruptcy, notwithstanding that trustee did not institute proceeding to set aside mortgage and creditor did not contend for its validity, since referee determined validity of mortgage which was good until adjudicated voidable (Bankr. Act 57n, 11 U.S.C.A. 93 (n). In re Leominster Steam Laundry Co., 7 F. Supp. 849- Bankr. 2897.1.

W.D. Wis. 1966. Proceeding by motor carrier before Wisconsin Public Service Commission did not constitute "litigation" within meaning of provision of Interstate Commerce Act that in case of any person who on October 15, 1962 was in operation solely within single state as common carrier by motor vehicle in interstate commerce, and who was also lawfully engaged in such operations in interstate or foreign commerce under certificate exemption provisions, or who would have been so lawfully engaged in such operations but for pendency of "litigation" to determine validity of intrastate operations to extend such "litigation" is resolved in favor of such person, Commission shall issue certificate of registration authorizing continuance of transportation in interstate and foreign commerce if application and proof of operations are submitted. Interstate Commerce Act, 206 (a)(1, 7 and (A), 49 U.S.C.A. 306 (a)(1, 7 and A)- Valley Exp., Inc. v. U.S. 264 F. Supp. 1006 Commerce 85.29 (2)"

Ga. App. 1914. The term "litigation" as employed in Section 5189 of the Civil Code 1895, Civ. Code 1910, 5776, in reference to admissions of defendants if fi. fa. is not confined merely to the determination of a possible issue which may arise after levy, between the plaintiff in fi. fa. And some possible claimant, but includes also the previous suit in which the fi. fa. Had its origin. A "levy" is nothing more than the special procedure or step in the suit by which the judgment may be made effective-Smith v. Johnson, 80 S.E. 1051, 13 Ga App. 837.

Tex. App. Corpus Christi 1994. To determine applicability of privilege for expert reports obtained in anticipation of litigation "litigation" is strictly interpreted to mean institution of lawsuit in Courts and does not include other aspects of claims negotiation and settlement outside context of filing of lawsuit. Vernon's Ann. Texas Rules Civ. Proc. Rule 166 b, subd. 3, par. b. Henry P. Robers Investments, Inc. v. Kelton, 881 S.W. 2 d 952- Pretrial Proc 379.

28. What are the public interest factors require to be considered by the Court, has been defined as under :

"N.D. Iowa 2005. Under doctrine of forum non conveniens, if there is adequate alternative forum, Court must balance number of factors in order to determine whether they outweigh deference ordinarily attended to plaintiff's choice of forum, the "public interest factors" are relative case of access to sources of proof, availability of compulsory process for attendance of unwilling, and cost of obtaining attendance of willing, witnesses possibility of view of premises, if view would be appropriate to action, and all other practical problems that make trial of case easy, expeditious and inexpensive, and "public interest factors" are administrative difficulties flowing from Court congestion, forum's interest in having localized controversies decided at home, interest in having trial of diversity case in forum that is at home with law that must govern action, avoidance of unnecessary problems in conflicts of laws or application of foreign law, and unfairness of burdening citizens in unrelated forum with jury duty.--Pro Edge, L.P. v. Gue, 374 F. Supp. 2d 711, motion denied 377 F. Supp. 2d 694, modified 411 F. Supp. 2d 1080- Fed Cts 45.

S.D.N.Y 1999. "Public Interest Factors" to be considered in determining whether to dismiss a case on forum non conveniens grounds, include (1) the interest in avoiding administrative difficulties arising from Court congestion, (2) the interest in avoiding the unfair imposition of jury duty on citizens of an unrelated forum, (3) the local interest in having localized controversies decided at home, (4) the interest in having a diversity case tried in a forum that is at home with the law governing the case, the interest in avoiding unnecessary problems with the conflict of law, or the application of foreign laws, (5) the interest in cases which touch the affairs of many persons in insuring that those individuals will have access to the trial. In re Air Crash Off Long Island, N. Y. on July, 1996, 65 F. Supp. 2d 207 Fed Cts 45."

29. The "Public Interest Litigant" has been defined as given in Word and Phrases Vol. 35 is reproduced as under :

"Alaska 2005 : For purpose of attorney fee award, a party is a "public interest litigant" if (1) the case was designed to effectuate strong public policies, (2) numerous people would benefit if the litigant succeeded, (3) only a private party could be expected to bring the suit, and (4) the litigant lacked sufficient economic incentive to bring suit-Halloran v. State, Div. Of Elections, 115 P. 3d 547 Costs 194.42.

Alaska 1995 : Party is "public interest litigant" not subject to award of attorney fees, if case is designed to effectuate strong public policies; if numerous people will receive benefits from lawsuit if plaintiff succeeds; if only private party can be expected to bring lawsuit; and if purported public interest litigant would have sufficient economic incentive to file suit even if action involved only narrow issues lacking general importance-Carr-Gottstein Properties v. State, 899 P. 2d

136-Costs 194.42.

Alaska 1984 : Homeowners association, which appealed from decision of zoning board of examiners and appeals finding that use of private airstrip did not violate zoning laws, was a "public interest litigant" where appeal was designed to vindicate strong public policy in effectuating zoning ordinances, numerous people in area would have benefited had it succeeded, only a private party could have been expected to bring appeal, and association emphasized health and safety to virtual exclusion of economic concerns, and thus, opposing parties were not entitled to attorney fees. Rules Civ. Proc. Rule 52 (a) Rules App. Proc., Rule 508 (e)-Ocean view Homeowners Ass'n, Inc. v. Quadrant Const. And Engineering, 680 P. 2d 793-Zoning 729.

The expression "public interest litigation" has not been defined either in the Constitution or in the General Clauses Act or in any other statute. It is evolved by the Court broadly in the case in S.P. Gupta Vs. President of India and Others, .

30. In Stroud's Law Dictionary 4th Edition Vol. 4, Public Interest is defined as under :

"Public interest- A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.

In Black's Law Dictionary, public interest has been defined as under :

"Public interest- Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or so the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national Government...." The Supreme Court in the case in Janata Dal Vs. H.S. Chowdhary and Others, , defined the Public Interest Litigation as under :

"Lexically the expression "PIL" means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected." Aforesaid definition has been reiterated by the Hon'ble Supreme Court in the case in Ashok Kumar Pandey Vs. The State of West Bengal and Others, ;

B. Dr. B. Singh Vs. Union of India (UOI) and Others, and BALCO Employees Union (Regd.) Vs. Union of India and Others, .

31. In a recent judgment in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, , Hon'ble Supreme Court after considering the ambit and scope of PIL and tracing out its history in the country, had summarized the ambit and scope of PIL in concluding para 181 of the judgment, which is re-produced as under :

"Para 181 : We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other Courts in a number of judgment. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL

(5) The Courts should fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by the busybodies for extraneous and ulterior motives must be encourage by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

A plain reading of aforesaid mandate of Hon"ble Supreme Court shows that to consider the case under the gist of "public interest" various conditions should be fulfilled out of which condition No. 7 provides that the Court before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. The condition laid down and the observation made by the Hon"ble Supreme Court distinguishing the PIL from other cases so that a case could be treated as PIL ordinarily only in case, the case is entertained by the Court to secure public interest and not to deal with private interest. The Courts are not debarred to look

into the public interest while dealing with the private interest matter. Merely because public interest is considered while deciding private interest, it shall not change the nature of the case. Things would have been different in case the Court itself feels that the public interest dominates the private respondent and the matter should be referred to PIL bench.

32. In the case of Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, , the Hon''ble Supreme Court observed as follows:

However, in an appropriate case, although the petitioner might have moved a Court in his private interest and for Redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil v. Dr. mahest Madhav Gosavi). 33. This view was further reiterated by the Hon''ble Supreme Court in Ashok Lanka and Another Vs. Rishi Dixit and Others, , relevant paragraph 42 of which is being quoted below:

"Furthermore it is well-settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice (see Guruvayur Devaswom Managing Committee v. C.K. Rajan, SCC para 50 and Prahlad Singh Vs. Col. Sukhdev Singh, ." The same view (supra) was again reiterated by Hon''ble Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, .

34. Again similar matter cropped up for consideration before this Court in *Suo Moto Action Taken by the Court v. I.C.I.C.I. Bank Ltd. Allahabad and others*, 2006 (4) ADJ 106 (All) (Full Bench). The Division Bench of this Court dealing with the habeas corpus petition framed certain issues of public importance involved in the case and referred the matter to Hon. The Chief Justice to register as P.I.L. to be decided by the appropriate Court. The Chief Justice, Allahabad High Court constituted a Full Bench considering the case of Ashok Lanka and another (Supra). The Full Bench opined that in a matter the Court; while exercising power conferred under Article 226 of the Constitution of India with regard to private dispute, has got ample power to take suo-moto decision with regard to public interest and it shall not change the nature of the writ petition.

The expression "Public Interest Litigation" means a legal action initiated in a Court for enforcement of public interest. It is on this principle, Hon''ble Supreme Court interfered in the matter of appointment of judges commonly called as Additional Judges cases, that case is in *S.P. Gupta Vs. President of India and Others*, . The Court ruled that if because of illegal State action, the independence of judiciary is impaired, the lawyers would certainly be interested in challenging the constitutionality or legality of such action. The Hon''ble Supreme Court observed as under :

Whenever there is public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such wrong or public injury (page 190). Their lordships further proceeded to observe as under :

"We would, therefore, hold that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such duty and observance of such constitutional or legal provision." While reiterating the necessity of PIL in India, Hon'ble Supreme Court observed as under :

"If public duties are to be enforced and social collective "diffused" rights and interests are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights." 35. Learned Chief Standing Counsel has relied upon the judgment in Smt. Maya Dixit and others v. State of U.P. and others, 2010 (8) ADJ 631 (FB) and State of U.P. and Others Vs. Neeraj Chaubey and Others, .

In the case of Maya Dixit, the dispute relates to pending matter where the division bench has framed the issue with regard to hazard and damage caused because of irregular and unsystematic mining. Hon'ble Single Judge (Justice Rakesh Sharma) passed an interim order staying the consequential order passed by the State Government in pursuance to interim order in a pending writ petition and referred the matter to larger bench. The issue was decided in the case of Maya Dixit (supra) and the full bench had rejected the reference and referred the matter back to the Division Bench with the observation that in case the dominant purpose of writ petition and nature of case is converted into public interest litigation, then keeping in view the roster assigned by the Chief Justice, the matter may be referred to PIL bench. The full bench reiterated the right of Hon'ble Chief Justice. As a matter of fact, no finding has been recorded by the full bench with regard to cases where public interest cropped up while adjudicating the private dispute and whether in every case such petition should be referred to PIL Bench. The full bench has not considered the various pronouncements of Hon'ble Supreme Court including the" case of Guruvayoor Devaswom Managing Committee and another (supra). Accordingly, broadly the issue before the full bench was the primacy of Hon'ble Chief Justice in regulating the roster and accordingly allocation of work and compliance thereof by the judges discharging their obligations. Accordingly, the full bench judgment does not seem to be applicable in the facts and circumstances of the case.

36. In the case of Neeraj Chaubey (supra) also broadly the issue was with regard to primacy of Hon'ble Chief Justice to provide roster being the master of roster. The Hon'ble Supreme Court observed that in case application is filed and the bench comes to the conclusion that it involves some issue relating to public

interest, the Court may in its discretion direct the Registry to place it before the Bench which has got jurisdiction to entertain PIL in accordance to rule and roaster. Thus, at the face of record it is for the Court to decide whether the nature of writ petition has been changed to public interest litigation and the matters may be relegated to PIL bench. Hon''ble Supreme Court had not held that while deciding the private interest public interest cannot be looked into.

37. The law laid down by the Hon''ble Supreme Court in the case of Guruvayoor Devaswom Managing Committee and another and Ashok Lanka (supra) and earlier full bench of this Court in the case of I.C.I.C.I. Bank Ltd. Allahabad and others and Ashok Lanka (supra) has not been considered.

In view of discussion made herein-above, there appears to be no good ground to treat the present writ petition as PIL as it relates to the continuance of service under the NRHM Scheme. While deciding the issue, the Court is not precluded to look into the public interest for the end of justice. Learned Chief Standing Counsel could not take into account earlier judgments of Hon''ble Supreme Court and other full bench while advancing the argument. Apart from above, the judgment of Guruvayoor Devaswom Managing Committee and another (supra) has been decided by a Bench consisting of Hon''ble Three Judges of Supreme Court which has been followed in the case of Ashok Lanka (supra) by the Hon''ble Supreme Court. Accordingly, submission of learned Chief Standing Counsel does not seem to be sustainable and the nature of writ petition is not substantially changed and the dominant purpose is to maintain the petitioners'' continuity in service and the Court is not precluded to look into public interest.

The judgment relied upon by the learned Chief Standing Counsel i.e. the case of Neeraj Chaubey (supra) has been delivered in a Bench of Hon''ble two judges, hence keeping in view the principle of stare decisis, larger bench judgment shall have binding effect, though as observed (supra) the case of Neeraj Chaubey (supra) also does not extend any help as the Hon''ble Supreme Court had left it for the Bench to exercise option to convert the writ petition into public interest litigation and then direct the Registry to place it before the Bench dealing with PIL matters."

51. In one other case in Indian Bank Vs. Godhara Nagrik Cooperative Credit Society Ltd. and Another, , Hon''ble Supreme Court has reiterated the aforesaid proposition of law and observed as under :

"40. We would accept the proposition of law as propounded by this Court in Guruvayoor Devaswom Managing Committee v. C.K. Rajan. In that case, it was, inter alia, observed that public interest litigation procedures may be adopted in a case where initially the writ petition was filed as a private interest litigation." 52. Power conferred on the Constitutional Courts to deal with public interest even while dealing with private dispute is based on power conferred to writ Courts by Common Law of England, followed by different pronouncements of Hon''ble Supreme Court while dealing with power flowing from Article 226 or Article 32 of

the Constitution of India.

53. In a case in Prithipal Singh etc. Vs. State of Punjab and Another etc., , their Lordships of Supreme Court have reiterated the old phrase that extraordinary situations demand extraordinary remedy. This includes Constitutional right of Constitutional Court to secure public interest while dealing with private dispute. In Jaspal Singh's case (supra), Hon"ble Supreme Court reiterated that the Courts cannot be a silent spectator where sprinkling facts warrant interference in order to serve the interest of justice. Constitutional framers had consciously added the word, "for any other purpose" while conferring power to writ Court under Article 226 of the Constitution of India.

54. We reiterate the aforesaid proposition of law and hold that the Single Judge or the Division Bench or a Larger Bench of this Court has got the right to deal with public interest and secure the public interest without converting the petition into PIL. However, it shall depend on the facts and circumstances of each case.

55. But there is one rider. Stretch given to a petition of private dispute to secure public interest must be within the jurisdiction conferred by Hon"ble Chief Justice in terms of the roster. Since the jurisdiction relating to detention by State (in the present case), based on the order passed by the Chief Judicial Magistrate sending the detinue to Protective Home, has been conferred by Hon"ble Chief Justice to the Division Bench, power could not have been exercised by the learned Single Judge. However, learned Single Judge could have passed order to secure public interest with regard to private detention.

56. Kindness, magnanimity and the zeal to serve the detenues setting free to enjoy the life and liberty by learned Single Judge, undoubtedly is appreciable but such enthusiasm or interference should not have been made beyond the jurisdiction conferred by Hon"ble Chief Justice.

57. However, it is not so that there is no way out to the learned Single Judge to exercise power. Single Judge could have referred the matter to the Division Bench, seized with habeas corpus where detention is under State custody and the Division Bench could have exercised power in accordance with law.

58. Judges being constitutional functionaries are supposed to abide by the constitutional morality, i.e. within the jurisdictional parameter. While emphasising relevance of abiding by constitutional morality, Hon"ble Supreme Court in a recent judgment, in Manoj Narula Vs. Union of India (UOI), , observed as under :

"75. The principle of constitutional morality basically means to bow down to the norms of the Constitution and not to act in a manner which would become violative of the rule of law or reflectible of action in an arbitrary manner. It actually works at the fulcrum and guides as a laser beam in institution building. The traditions and conventions have to grow to sustain the value of such a morality. The democratic values survive and become successful where the people

at large and the persons-in-charge of the institution are strictly guided by the constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints. Commitment to the Constitution is a facet of constitutional morality. In this context, the following passage would be apt to be reproduced :

"If men were angels, no Government would be necessary. If angels were to govern men, neither external nor internal controls on Government would be necessary. In framing a Government which is to be administered by men over men, the great difficulty lies in this: you must first enable the Government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the Government; but experience has taught mankind the necessity of auxiliary precautions. [53]" 76. Regard being had to the aforesaid concept, it would not be out of place to state that institutional respectability and adoption of precautions for the sustenance of constitutional values would include reverence for the constitutional structure. It is always profitable to remember the famous line of Laurence H. Tribe that a Constitution is "written in blood, rather than ink".

Subject to above, effort made by learned Single Judge to secure public interest by releasing the persons languishing in Protective Home seems to be within power conferred by Article 226 but having travelled beyond the jurisdictional parameter conferred by Hon'ble Chief Justice while providing the roster does not seem to be sustainable."

PART-HEARD/TIED UP CASES

59. Ordinarily, a Bench may have part heard or tied up cases for two reasons viz firstly the Bench concerned has heard the case in terms of roster and posted it for further hearing and secondly, a petition or case has been nominated by Chief Justice or under delegated power by Senior Judge to a particular Bench or a Judge. According to century old practice of Allahabad High Court, part heard matters remain part-heard even after change of roster and Bench concerned decides the same to its logical end even after change of roster.

60. However, in recent past, some of the Hon'ble Chief Justices for the reason best known to their Lordships passed order with regard to release of all such cases with the change of roster. Interestingly, recent practice is not in its continuity. Some of the Chief Justices have preferred to continue with the century old practice of Allahabad High Court with regard to part-heard cases but others opted to release all such cases, like in the present one, with the change of regular roster.

61. It shall be appropriate to reproduce some of the orders passed by Hon'ble Chief Justices of Allahabad High Court :

"(i) ORDER

All part-heard and tied-up matters of the Division Bench, of which one of the members has been transferred permanently/retired and is no longer available at the place of sitting, shall be treated as released under the proviso to Rule 7 Chapter VI of the Rules of the Court, 1952.

Such matters shall be listed before the Division Bench, of which the other Hon''ble Judge hearing such matter is one of the members.

Sd/ (Justice Hemant Laxman Gokhle) Chief Justice 9.4.2007"

(ii) "ORDER

All part heard and tied up cases of the Hon''ble Judges, who have been transferred permanently or till further order/retired and are no longer available at the place of sitting, shall be treated as released under the proviso to Rule 7 of Chapter VI of the Rules of the Court, 1952 and may be listed for disposal before the appropriate Benches.

Sd/ (Justice Hemant Laxman Gokhle) Chief Justice 5.7.2007"

(iii) ORDER

In case it is mentioned in a judicial order that the case be listed before any particular Hon''ble Judge, the case be listed before that Hon''ble Judge whose name is mentioned in that judicial order and no nomination will be required by The Chief Justice.

Sd/ (Justice C.K. Prasad) Chief Justice 25.3.2009"

(iv) On 20.1.2011, Mr. Rajiv Sharma, Joint Registrar (Listing) of this Court at Allahabad has submitted a proposal to regulate the listing of the cases. The then Chief Justice Ferdino Inacio Rebello had approved the proposal as "A", "B" "C" and directed to implement at Allahabad and Lucknow from 1.2.2011. The proposal alongwith office note dated 20.1.2011 as well as the order dated 20.1.2011 passed by the then Chief Justice is reproduced as under:

Hon''ble the Chief Justice

My Lord,

It is most humbly submitted that Hon''ble the Chief Justice was pleased to pass the following order dated 5.12.2007:

"The application for restoration where the case has been dismissed in default will not be treated as Tied Up with the Bench which dismissed the case in default and shall be listed before the regular Bench having the jurisdiction." The photocopy of the above order of Hon''ble The Chief Justice dated 5.12.2007 is flagged at "A".

Thereafter, Hon''ble The Chief Justice was pleased to pass order dated 23.3.2009 directing that the cases dismissed in default were to be treated as Tied Up cases with the Hon''ble Judges or bench which dismissed the case in default and were

to be placed before the same Bench. The photocopy of the order of Hon''ble the Chief Justice dated 23.3.2009 is flagged at "B".

Further, in special Appeal No. 578 of 2010, Rajesh Chandra Gupta and others v. State of U.P and another, Hon''ble Court comprising Hon''ble Mt. Justice V.M. Sahai and Hon''ble Mr. Justice Raj Mani Chauhan held that Rules of the Court and order of Hon''ble the Chief Justice dated 23.3.2009 mandates that matters which have been dismissed in default are to be treated as tied up with Hon''ble Judges or bench which dismissed the case in default and were to be placed before the same bench which had dismissed the case.

However, in Civil Misc. Writ Petition No. 34170 of 2010 Smt. Maya Dixit and others v. The State of U.P and others, Hon''ble Full Bench of the Allahabad High Court vide judgment dated 13.9.2010 in para 12 has held as follows :

"we make it clear that Rule 12 of Chapter V confers the power of substantive review and not procedural review as the power of procedural review is inherent in every Court or tribunal, whereas substantive review has to be conferred (see Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others, ." Hon''ble full Bench of the Allahabad High Court in para 15 of its judgment has further held as follows :

"The judgment in Rajesh Chandra Gupta (supra), did not reflect the correct law, which has been properly stated in Awadh Naresh Sharma (supra) and Sanjay Mohan (supra). Apart from that, what the learned Bench in Rajesh Chandra Gupta (supra) was considering, was the dismissal of a restoration application for non-prosecution, in other words, procedural review. That was, therefore, not a case of substantive review....." It is most humbly submitted that at present the order of Hon''ble The Chief Justice dated 23.3.2009 is being followed whereby Hon''ble The Chief Justice was pleased to direct that the cases dismissed in default were to be treated as Tied Up cases with the Hon''ble Judges or bench which dismissed the case in default and were to be placed before the same Hon''ble bench.

Hon''ble Mr. Justice Yatindra Singh has been pleased to direct me that the following suggestions may be placed before Hon''ble The Chief Justice for his kind consideration as follows :

(A) The restoration application in the case, which has been dismissed in default by the Division Bench, may be listed before Hon''ble The Senior Judge of the Bench which dismissed the case in default when sitting in Division Bench, irrespective of the jurisdiction which subsequently may have been assigned to the Hon''ble Judge.

(B) In case, Hon''ble the Senior Judge of the Bench which dismissed the case in default has been transferred permanently or till further order/retired and is no longer available at the place of sitting, then application for restoration may be listed before the second Hon''ble Judge of the Hon''ble Bench which dismissed

the case in default, when sitting in Division Bench, irrespective of the jurisdiction which subsequently may have been assigned to the Hon''ble Judge.

(C) In case, neither of the Hon''ble Judge which dismissed the case in default are available on account of being transferred permanently or till further order/retired and no longer available at the place of sitting, the application for restoration may be listed before the regular Bench having jurisdiction to hear the matter.

The entire matter is most humbly placed before His Lordship for kind information and necessary orders. Submitted with regards.

(Rajiv Sharma) Joint Registrar (Listing) 20.1.2011

"Yes to A, B, C to be informed at Allahabad and Lucknow from 1.2.2011" sd/ Justice F.I Rebello 20.1.11"

62. From the order dated 20.1.2011, passed by the then Chief Justice, it is evident that the old practice was restored by His Lordship providing that in the event of availability of either of the Judge of part-heard cases, the petition shall be listed before a Bench of which such Hon''ble Judge is a Member. However, in the event of non-availability of Judge, even the part-heard matter shall be listed before the Regular Bench. This was done in tune with century old practice of Allahabad High Court as well as Hon''ble Supreme Court.

63. On 16.12.2013, Hon''ble Chief Justice Dr. D.Y. Chandrachud has passed order with regard to part-heard and tied up matter. For convenience, the order dated 16.12.2013 is reproduced as under :

"ORDER

No pending case, civil or criminal, shall be treated as part heard or tied up in a Court after the commencement of a new roster. All pending cases shall be listed before the appropriate Bench dealing with such matters in accordance with the fresh roster, unless so ordered by the Chief Justice in a specific case hereafter.

CHIEF JUSTICE 16.12.2013 Justice (Dr.) D.Y. Chandrachud"

64. A perusal of the aforesaid order reveals that all part-heard and tied up matters shall stand released automatically after change of roster. The order is comprehensive and inclusive of all cases whether part-heard or tied up because of nomination. Registry has been implementing the decision of Hon''ble Chief Justice since no judgment is available of Hon''ble Supreme Court or this Court with regard to mode and manner of the jurisdiction exercised by Chief Justice for the release of part-heard/tied up matter. Thus, the part-heard or nominated cases have been released without applying mind to individual cases. Uncertainty in law creates chaos in the society and disturbs the functioning of the Court and creates doubt in the mind of litigants as well as the Bar.

65. There is no room for doubt that the Chief Justice is the master of the roster and assignment of work is his sole prerogative. But in case the petition is heard

partly by a Bench during the course of regular roster or on account of nomination by Chief Justice, then whether such cases should also be deemed to be released with the change of roster in view of the order passed by the Chief Justice without applying mind to individual cases is a question which requires adjudication, that too without questioning the right of the Chief Justice to withdraw any case from any Bench at any stage, in case necessity so arises.

65-A. In *State of Madhya Pradesh and another v. Baldeo Prasad*, AIR 1961 SC 293, a Constitution Bench of Supreme Court held that where the statute or provision extends unfettered discretion, it constitutes serious infirmity in its scheme (Para 8). Their Lordships further held that the statute has to make express provision so that the authorities should satisfy themselves about the existence of what the statute regards as conditions precedent to the exercise of the said authority. To quote relevant portion :

"Where a statute empowers the specified authorities to take preventive action against the citizens it is essential that it should expressly make it a part of the duty of the said authorities to satisfy themselves about the existence of what the statute regards as conditions precedent to the exercise of the said authority. If the statute is silent in respect of one of such conditions precedent it undoubtedly constitutes a serious infirmity which would inevitably take it out of the provisions of Article 19(5). The result of this infirmity is that it has left to the unguided and unfettered discretion of the authority concerned to treat any citizen as a goonda. In other words, the restrictions which it allows to be imposed on the exercise of the fundamental right of a citizen guaranteed by Article 19(1)(d) and (e) must in the circumstances be held to be unreasonable. That is the view taken by the High Court and we see no reason to differ from it." 66. The case of *Baldeo Prasad* (supra) has been followed by the Supreme Court in the case in *Suresh Kumar Koushal and Another Vs. NAZ Foundation and Others*, . Their Lordships of Supreme Court held as under :

"47. The real rule is that if a law is vague or appears to be so, the Court must try to construe it, as far as may be, and language permitting, the construction sought to be placed on it, must be in accordance with the intention of the legislature. Thus if the law is open to diverse construction, that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the law must be held to offend the Constitution as was done in the case of the Goonda Act. This is not application of the doctrine of due process. The invalidity arises from the probability of the misuse of the law to the detriment of the individual. If possible, the Court instead of striking down the law may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases." 67. Chief Justice being master of roster has the right to provide roster to the Judges of the Court to deal with particular subject while

sitting in Bench, or Singly. Power of Chief Justice to regulate the work of puisne Judges seems to be well established on judicial side right from State Vs. Devi Dayal, , followed by catena of judgments of Hon''ble Supreme Court in Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, ; State of Rajasthan Vs. Prakash Chand and Others, ; Jasbir Singh Vs. State of Punjab, ; State of U.P. and Others Vs. Neeraj Chaubey and Others, ; State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., ; Kishore Samrite Vs. State of U.P. and Others, ; Sanjay Kumar Srivastava v. Acting Chief Justice, 2010(8) ADJ 631 (FB) : 2010(4) ESC 2933 (A11)(FB); Smt. Maya Dixit and Others Vs. The State of Uttar Pradesh and Others--> .

68. Apart from deciding roster to regulate the functioning of the High Court, Hon''ble Chief Justice has got ample power to withdraw any case from a particular Bench and refer it to another Bench having jurisdiction for the purpose in accordance with rules of the Court. Thus, power to provide roster to regulate the functioning of the Court followed by power to withdraw cases vests in the Chief Justice of respective High Courts. Power to decide roster falls within the power of general superintendence conferred to Chief Justice under Article 225 of the Constitution of India. Power to withdraw a case/petition or nominate a petition or case to a particular Judge is a power exercised by Chief Justice under special facts and circumstances of each case.

69. High Court''s power to hear specified class of cases is derived from the allocation of business by the Chief Justice. A case not covered by such allocation cannot be heard by a Judge sitting singly or in Division Bench. The power of the Chief Justice to allocate business is (a) not only derived from Section 108(2), Government of India Act, 1915 (which still subsists by virtue of Section 223, Government of India Act, 1935 and article 225 of the Constitution) but (b) is also inherent in the Chief Justice; Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar, and State Vs. Devi Dayal, ; Sohan Lal Baid Vs. State of West Bengal and others, .

HIGH COURT RULES

Thus, the Chief Justice under Article 225 of the Constitution of India can permit to frame the rules of business to administer the functioning of the High Court. However, neither Article 225 nor the High Court Rules deals with the manner and procedure with regard to exercise of power by Chief Justice for withdrawal or release of part-heard or tied up cases.

70. The High Court Rules do provide for listing of part-heard and tied up cases. For convenience, Chapter V Rule 14 of the High Court Rules is reproduced as under :

"14. Tied up cases.--(1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex-parte order shall not be deemed to be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard by the Bench admitting it."

A plain reading of the Rules of the Court reveals that the part-heard and tied up cases should normally be listed before the same Bench. In such situation, it appears that the part-heard and tied up cases should be listed before the same Bench unless after considering the record of individual case in special circumstances, the Chief Justice withdraws the same, followed by nomination to other Bench. Rules of the Court are binding and no decision or order may be passed in violation of the Rules of the Court. It appears that the Registry has not invited attention of Hon"ble the Chief Justice to the High Court Rules (supra).

71. Hon"ble Supreme Court in a case in *Monnet Ispat and Energy Limited Vs. Jan Chetna and Others*, , held that the High Court Rules have got mandatory force and are binding. Hon"ble Supreme Court held as under :

"12. Chapter 3 Part A of the Delhi High Court Rules contains rules relating to the practice of the High Court in the hearing of causes and other matters. Part B contains rules relating to the jurisdiction of a Single Judge and of Benches of the Court. The relevant clauses of Rule 1 of Part B read as under:

"Part B

JURISDICTION of A SINGLE JUDGE AND of BENCHES of THE COURT

1. Cases ordinarily to be heard by a single Judge-Subject to the provisos hereinafter set forth the following classes of cases shall ordinarily be heard and disposed of by a Judge setting alone:

(i) to (xvii) xxx xxx xxx

(xviii) (a) Application or petition Under Article 226 of the Constitution of India for the issue of any directions, orders or writs in the nature of Mandamus, prohibition, quo-warranto or certiorari for the enforcement of fundamental rights conferred by Part III of the Constitution of India or for any other purpose, except:

(i) Petitions where vires of Acts or statutory rules, Regulations, or bye-laws are challenged.

(ii) Petitions where personal liberty is involved.

(iii) Petitions pertaining to all Revenue/tax matters including entertainment taxes, except Municipal Tax.

(iv) Petitions arising from the orders of the Board for Industrial and Financial Reconstruction/Appellate Authority for Industrial and Financial Reconstruction or seeking directions to them; and

(v) Petitions pertaining to Public Interest litigation.

(vi) Petitions pertaining to the award to Tenders.

(vii) Petitions relating to Co-operative Societies.

(viii) Petitions being service matters of Armed Forces of the Union.

(ix) Petitions arising out of Land Acquisition.

(x) Petitions concerning orders passed by the High Court on the administrative side.

Provided that as regards pending cases, the learned single Judge may hear the part-heard matters.

Explanation: The preliminary hearing for admission and final disposal of applications and petitions pertaining to matters mentioned in Clause (i) to (x) of Sub-rule (xviii)(a) above shall however be before a Bench of two Judges and before a Single Bench when there is no sitting of Division Bench.

Rule 4, which relates to jurisdiction of a Bench of two Judges, also reads as under:

4. All cases to be disposed of by a Bench of two Judges save as provided by law or by these rules-Save as provided by law or by these rules or by special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges.

13. A bare reading of the above reproduced provisions makes it clear that the petition filed by Respondent No. 1 for quashing order dated 31.12.2008 could be heard only by Single Bench of the Delhi High Court. However, by disguising the petition as a Public Interest Litigation, Respondent No. 1 succeeded in getting the same listed before the Division Bench of the High Court. Unfortunately, the Division Bench did not deal with the objection raised by the Appellant to the maintainability of the petition filed by Respondent No. 1 and proceeded to decide the matter on merits which, in our considered view, was legally impermissible.

14. We are not suggesting that Respondent No. 1 had indulged in Bench hunting but it needs to be emphasised that every Bench of the High Court should scrupulously follow the relevant rules and should not violate statutory provisions specifying its jurisdiction, else the sanctity of the rules relating to distribution of causes between the Single, the Division Bench and larger Benches will be lost."

72. High Court Rules (supra) provide that ordinarily, part-heard and tied-up cases should be listed before the same Bench for disposal. The word, "ordinarily" does not mean solely. It means regularly and habitually, and not casually.

73. In a case in *Madhyamik Vidhyalaya Prabhandhan Samiti Vs. State of U.P. and Others*, , a Division Bench of this Court, presided by Hon"ble the Chief Justice Dr. Dhananjaya Yeshwant Chandrachud and Justice Sanjay Misra, relating to exercise of discretion by District Inspector of Schools in allotment of centres interpreted the word, "ordinarily" as under :

"4.....The expression "ordinarily" means that the ordinary consequence

can be disregarded for cogent and valid reasons. This does not amount to the conferment of an arbitrary or unguided power. In a given case, if the power is exercised arbitrarily, it would be open to an aggrieved institution to move the Court." 74. Hon"ble Supreme Court in a case in *Narumal Vs. State of Bombay*, , held that ordinarily means except where otherwise provided in the Code of Criminal Procedure.

Similar interpretation has been given to the word, "ordinarily" in other judgments providing that ordinarily means in the large majority of cases but not invariably vide *Kailash Chandra Vs. Union of India (UOI)*, , *Major Y.K. Bammi Vs. Jawaharlal Nehru University* and another, .

75. While interpreting the High Court Rules in a case in *Krishan Gopal Vs. Sri Prakashchandra and Others*, , Hon"ble Supreme Court held that the word, "ordinarily" qualifies the number of Judges who can exercise the jurisdiction which is vested in the High Court to try an election petition. The said word indicates that normally it would be a single Judge of the High Court who can exercise the jurisdiction which is vested in the High Court but in appropriate cases, such jurisdiction can also be exercised by two or more Judges.

76. In a case in *M/s. Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai*, , Hon"ble Supreme Court held that ordinarily does not include extraordinary or special circumstances.

77. In a case in *Shakeel Ahmed Fateh Mohd. Sundke Vs. Aziz Ahmed Khan*, , Bombay High Court while interpreting the word, "ordinarily" held that it indicates exceptional and extraordinary cases and the period within which Courts are required to pronounce judgment can be extended.

78. In view of above, part-heard and tied up cases should be listed before the same Bench for disposal. Listing of part-heard and tied-up cases to other Bench is an exception. Accordingly, in case Hon"ble Chief Justice is of the opinion that a particular case is to be listed before other Bench for fresh hearing, then necessarily, it implies that an order should be passed with regard to withdrawal of such cases by applying mind to individual case. Listing of part-heard and tied-up matter to other Bench is an exception which requires separate order.

Hence, by general (sweeping) order or circular while changing the roster, it is not permissible to release all part-heard cases by the Chief Justice, without applying mind to individual cases.

WITHDRAWAL OF CASE

79. Withdrawal of a case may be for variety of reasons which may be administrative or otherwise on complaint against the Judge concerned or for some other reasons. After withdrawing a petition/case, Chief Justice may refer to other Bench or nominate a particular Bench. Nomination of a petition/case to other Judge/Bench also depends upon a variety of factors keeping in view the ability, competency or knowledge of a particular Judge. Once a case is nominated

to a particular Judge, then it does not appear that it may be denominated or go to other regular Bench with the change of roster. Nominated case may be withdrawn or be listed to other Bench or regular Bench only in case Chief Justice passes some order withdrawing the same followed by nomination to other Bench competent to adjudicate the controversy in accordance with rules of the Court. In absence of fresh nomination, it shall not be open for the registry to withdraw and send it to other Bench with the change of roster.

Exercise of power with regard to allocation of work at regular interval for the purpose of change of roster stands on different footing than the power exercised by Chief Justice to withdraw a particular case from a particular Bench or nomination to other Bench.

80. In a case in High Court of A.P. Vs. Spl. Deputy Collector (LA), A.P. and Others, , Hon"ble Supreme Court held that where the matter is heard in part, normally, it should not be transferred to another Bench. Chief Justice of the High Court has power even to transfer part heard case from one Bench to another but this should be done in exceptional cases for special reasons. To quote relevant portion from the judgment (supra) :

"5. In view of the circular dated 6.1.2007 the confusion seems to have cleared. At this juncture, it is to be noted that where the matter is heard in part, normally it should not be transferred to another Bench or learned Single Judge. But it has come to notice in several instances that cases have been noted to be part-heard even when it was really not so. Such practice is to be discouraged. The Chief Justice of the High Court has power even to transfer a part-heard case from Bench to another or from one learned Single Judge to another. But this should be done in exceptional cases for special reasons." It means part-heard cases may be withdrawn and nominated to other Bench for special reason, by applying mind by Hon"ble chief Justice to the record of respective petition followed by an order for the purpose.

81. Case of High Court of Andhra Pradesh (supra) deals with the cases of part heard matters which includes exercise of power by the Bench in view of nomination done by Chief Justice. Word of caution seems to be that the part-heard cases should be withdrawn exceptionally only for special reasons by applying mind to the record of respective case. There may be instances when one Chief Justice exercises power consciously while nominating a particular Bench to decide a pending matter, the other Chief Justice takes a decision for withdrawal of the case, but in that event, a reason should be precisely assigned by the Chief Justice, keeping in view the facts and circumstances of each case, and not by a general order.

82. 21st Century is a century of transparency where every person holding constitutional office or other high office should ordinarily be transparent in his or her decision making process and the people have right to know the reason or grounds on which a decision has been taken by a constitutional authority. In case

reason is assigned, then the Judge concerned from whom a case is withdrawn shall know his inability or demerit and may correct himself. Using same yardstick while dealing with all Judges in the matter of withdrawal of nominated or other part-heard cases may discourage the upright Judges who have put in long labour and heard a petition for long period and intend to deliver the judgment keeping in view the Constitutional philosophy and statutory mandate. It shall always be better to withdraw a case in the event of a complaint by assigning reason instead of passing blanket order for withdrawal of all part-heard matters. People have right to know the quality and conduct of their Judges.

83. Judgment in the case of Special Deputy Collector (supra) is further strengthened by catena of judgments of Hon"ble Supreme Court.

84. A Full Bench of this Court while considering the importance of reason in a case in Ms. Ranjana Agnihotri and Others Vs. Union of India and Others, , had considered various pronouncements of Hon"ble Supreme Court and held that the reason is the part and parcel of Article 14 of the Constitution of India. Relevant portion from the judgement of Ms. Ranjana Agnihotri (supra) is reproduced as under :

"190. Learned author (De Smith's Judicial Review, 6th Edition) has rightly held that failure to give adequate reasons may indicate that a decision is irrational. Learned author observed as under :

"The beneficial effects of a duty to give reasons are many. To have to provide an explanation of the basis for their decision is a salutary discipline for those who have to decide anything, that adversely affects others. The administration in that it encourages a careful examination of the relevant issues, the elimination of extraneous considerations, and consistency in decision-making. The giving of reasons increases public confidence in the decision-making process. The giving of reasons can also render it easier to determine if a decision is irrational or erroneous." 191. Sir W.W.R. Wade in his famous treatise "Administrative Law" (10th Edition) observed:

"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended." 192. Learned author (supra) referred a case in Breen v. Amalgamated Engineering Union, (1971)2 QB 175, where Lord Denning MR has relied upon the earlier judgment of House of Lords, Padfield v. Minister of Agriculture, Fisheries and Food and held as under:

"The importance of the House of Lords" decision was underlined by Lord Denning MR.

The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this : the statutory body

must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food*, which is a landmark in modern administrative law."

193. In *The United States*, the Courts from time to time insisted upon recording of reasons in the decision taken by administrative authority. In *Phleps Dodge Corporation v. National Labour Relations Board*, (1940) 85 Law Ed 1271 at p. 1284, it has been held that the authority should give clear indication that it has exercised the discretion with which it has been empowered because administrative process will best be vindicated by clarity in its exercise.

194. In *Securities and Exchange Commission v. Chenery Corporation*, (1942) Law Ed 626 at p. 636, it has been held that orderly functioning of the process of the administrative agency be clearly disclosed and adequately sustained.

195. The Federal Administrative Procedure Act, 1946 prescribes the basic procedural principles which are to govern formal administrative procedures and contained an express provision (Section 8(b)) to the effect that all decisions shall indicate a statement of findings and conclusions as well as reasons or basis therefore, upon all the material issues of fact, law or discretion presented on the record.

196. The Supreme Court in a case in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, , held as under :

"6.....If Courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of *audi alteram partem*, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law." 197. In one another case in *State of Orissa Vs. Dhaniram Luhar*, , their Lordships of Supreme Court held as under :

"8..... Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling

out reasons for the order made....." 198. In *Mc Dermott International Inco. v. Buru Standard Co. Limited and others*, (2006) SLT 345, their Lordships observed as under :

"... Reason" is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. It is in this sense that the award must state reasons for the amount awarded. The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in *Poyser and Mills' Arbitration In Re*, "proper, adequate reasons". Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons....." 199. A Division Bench of this Court in a case in *Vijai Shanker Tripathi v. Hon'ble High Court of Judicature at Allahabad*, 2007 LCD 1266, has considered the concept of exercise of discretionary power by the State or its authorities including the High Court held that every administrative order passed by authorities must fulfil the requirement of Article 14 of the constitution.

200. Supreme Court in a case in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, , held that a cryptic order shall deem to suffer from vice of arbitrariness. An order passed by quasi-judicial authority or even administrative authority must speak on its face.

In a case in *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers*, , their Lordships held that the reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases. Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. To quote relevant portion from the judgment (*supra*), to quote:

"Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principle are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements." 201. The aforesaid view with regard to reasoned order by authorities which include judicial and quasi-judicial authorities has been consistently reiterated by the Supreme Court in earlier judgments. Their Lordships of Hon'ble Supreme Court held that the authorities have to record reasons, otherwise it may become a tool for harassment vide *K.R. Deb Vs. The Collector of Central Excise, Shillong*, ; *State of Assam and Another Vs. J.N. Roy Biswas*, ; *State of Punjab and Another Vs. Kashmir Singh*, ; *Union of India and Others Vs. P. Thayagarajan*, ; and *Union of India v. K.D. Pandey and another*, (2002) 10 SCC 471.

In a recent judgment in *Union of India v. Ibrahimuddin*, AIR 2013 SCW 2752 (para 33), their Lordships of Hon"ble Supreme Court reiterated that every order passed by the administrative authority, judicial or quasi-judicial must be a reasoned order."

85. In a case in *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, , Hon"ble Supreme Court held as under :

"15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx." 86. In one other case in *Dipak Babaria and Another Vs. State of Gujarat and Others*, , Hon"ble Supreme Court held as under :

"64. That apart it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, , in the following words:

"9. Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting"s and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

This proposition has been quoted with approval in paragraph 8 by a Constitution Bench in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , wherein Krishna Iyer, J. has stated as follows:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out." 87. From the aforesaid proposition of law, there appears to be no room of doubt that even the administrative order requires some precise reason. Judges hold constitutional office. They apply mind to a particular petition assigned to them in terms of roster. In some cases, they may have heard at length and may be at the verge of finality while dealing with the subject-matter with their respective regular roster. In others, they may have exercised power in pursuance to nomination of the case by Chief Justice or predecessor Chief Justice. High Court Rules contain mandate to list before same Bench (*supra*). In such situation, in case by general order, the case stands released without applying mind to individual cases with the change of roster, it shall not

only be contrary to century old tradition of Allahabad High Court or even the Supreme Court's judgment (supra) but shall also affect the right of Judges to reach logical conclusion of a matter assigned to them at original stage and shall make Bench hunting easier for the Members of the Bar. It shall also be violative of High Court Rules (supra).

Release of part-heard matter, nominated or otherwise by the Chief Justice with the change of roster seems to be unreasonable, unjust, improper and undignified. The practice prevailing in the Supreme Court and majority of the High Courts to continue with part-heard matter with respective Benches seems to be based on sound principle of law and judicial propriety, subject to withdrawal of the individual case by the Chief Justice. In case there is some material against the Judge or there is some complaint based on substantial material or for administrative reason based on certain material, the Chief Justice wants to withdraw the case, then that may be done but that too by applying mind to individual cases and as far as possible, after assigning some reason, may be precisely.

88. However, keeping in view the peculiar and sensitive nature of functioning of judiciary as well as complexity which often arises, if Hon'ble Chief Justice feels, His Lordship may withdraw cases only indicating in the order that "withdrawal is done for administrative reasons" or "for better administration of justice."

89. Workload or complexity of situation overburdening the administration of justice does not mean that the peoples may be given a perception that our action is unjust, unfair and suffers from extraneous reasons. Court has no reason to existence if it merely reflects the pressures of the day. Our system is built on the faith that men set apart for this special function, freed from the influences of immediacy and from the deflections of worldly ambition, will become able to take a view of longer range than the period of responsibility entrusted to Congress and legislatures. (Page 158, The Literature of the Law by Brian Harris)

90. Nobel laureate Rabindra Nath Tagore in Gitanjali, while convasing for "reason" or "rationality" in life wrote, to quote a couplet:

".....where the clear stream of reason,
has not lost its way into the dreary desert sand, of dead habit;
where the mind is led forward by thee,
into ever-widening thought and action-
Into that heaven of freedom, my Father,
let my country awake."

91. A great American Judge, Oliver Wendell Holmes said, to quote :

"The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of

public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." 92. In view of above, particularly the Apex Court's judgment in High Court of A.P. Vs. Spl. Deputy Collector (LA), A.P. and Others, and Allahabad High Court Rules (supra), though the Chief Justice may provide roster to regulate the functioning of the Court and the roster provided by Chief Justice shall be binding on all Judges sitting singly or in the Bench but once a petition or case is nominated to a particular Judge or Bench sitting singly or in Division Bench or a Larger Bench and is a part-heard matter, then the only option open for the Chief Justice is to withdraw the case for further nomination to other Bench after assigning reason which may be precise or for administrative reasons (supra).

93. For the reasons, discussed hereinabove, while passing order or deciding a case with regard to a detainee claiming right on the basis of live-in-relationship subject to individual constitutional right in appropriate case keeping in view its facts and circumstances, the Courts may pass order after taking into account the customs, traditions and usages.

The part-heard and tied up matters shall remain part-heard and tied-up even after change of roster unless Hon"ble Chief Justice passes an order individually for withdrawal of cases from respective Bench, followed by nomination of other Bench. Depending upon the facts and circumstances of each case, a judgment delivered by the other Bench of High Court shall become judgment of the Court the moment it is signed by respective Judges.

Subject to above, the observation made and the finding recorded shall be applicable prospectively.

A.P. Sahi, J.

94. Constitutionality, legality and more particularly propriety of orders passed in proceedings relating to release of female detainees from protective homes in habeas corpus proceedings is the subject-matter of this reference laid before us under orders of Hon"ble the Chief Justice dated 25.9.2014 in peculiar and complex circumstances that arose on account of passing of such orders either by the learned Single Judge or by the Division Benches that have been mentioned in the order of reference and detailed in our order dated 14.10.2014.

95. Taking stock of the situation and realising the gravity of the issues relating to procedural propriety and exercise of jurisdiction by the respective benches, that travel up to the issues of allocation of work under the Allahabad High Court Rules, 1952 as also the roster assigned by Hon"ble the Chief Justice, we have delved into the issues that have been raised as also the consequences arising therefrom. This has taken us to consider the jurisdictional authority and the powers exercised on the administrative side by Hon"ble the Chief Justice or the Hon"ble Senior Judge at Lucknow having its genesis in Article 225 of the Constitution of India distinguishing it from the judicial powers and exercise

thereof under Article 226 of the Constitution of India.

96. The consequences that have ensued on account of the orders passed that are under scrutiny before us have further raised issues of an assessment of the status of such orders, their finality and exercise of powers by this bench *ex debito justitiae* to correct and review the orders or issue necessary directions for restoring the correct procedure to be followed whenever this situation arises.

97. On having assessed the entire gamut of facts and on having perused the records and weighed the submissions of the learned counsel for the parties we had by our order dated 14.10.2014 framed 13 questions to be answered that was followed by further probe and investigation that resulted in framing of question No. 14 vide order dated 25.11.2014 and questions No. 15 to 18 vide order dated 26.11.2014. The said orders have to be necessarily read to appreciate the facts giving rise to this reference as the same incorporate and quote all the orders that are under scrutiny herein.

98. Additionally, apart from the said issues, we had invited and entertained arguments, that were extensively advanced by the learned *amicus curiae* on the question of the remedy that can be possibly explored by the exercise of powers of review *ex debito justitiae*. On the procedure relating to the listing of the cases we had called upon the report of the Joint Registrar (Listing) vide our order dated 27.11.2014 and we reserved judgment on the same date after having heard all the counsel for the parties. The said report dated 27.11.2014 has been tendered before us.

99. In order to provide a bird's eye view of the controversy, I may attempt a short narration that would be sufficient to display the controversy as it arose on the facts that have been brought on record. Writ Petition (H/C) No. 594 of 2012 was filed for the release of Smt. Chawali who claimed that she was being wrongly detained under orders of the Magistrate in the Women's Protection Home. This habeas corpus petition was filed through one Raj Kamal Awasthi claiming himself to be the husband of the said lady. A subsisting marriage was the foundation of this petition alleging that the girl was major. This detention was at the Women's Protection Home, Prayag Narain Road Hazratganj District Lucknow. The detention came about after an FIR was lodged on 23.7.2012 by the mother of Smt. Chawali naming the aforesaid Raj Kamal Awasthi of having committed an offence punishable under Section 363/366 IPC. It was also stated therein that the girl was only 16 years of age and the police after investigation also got the statement of the prosecutrix recorded under Section 164 Cr.P.C. She was also medically examined. The claim of the prosecutrix was that she was 19 years of age and the medical report/opinion also indicated that her age was about 18 years.

100. The Investigating Officer moved an application before the concerned Magistrate that according to the educational qualification certificate of Class VIII the date of birth of the girl was 23.9.1996 and as such in 2012 when the FIR was

lodged she was still a minor. Consequently, the Magistrate passed orders on 10.12.2012 whereby the said Smt. Chawali was sent to the Women's Protection Home where she was detained and it is in this background that the habeas corpus petition No. 594 of 2012 under Article 226 of the Constitution was filed.

101. The petition as drafted on perusal admits of no other fact or relief claimed except for the production of Smt. Chawali and her release on the ground of her alleged unlawful detention in the protection home on the allegation that she had already attained the age of majority.

102. The learned Single Judge who entertained the said petition passed orders on 21.12.2012 to produce Smt. Chawali on 4.1.2013 with a further direction that the Superintendent of the Protection Home will furnish the list of all major inmates confined in the protection home alongwith reasons thereof. A direction was issued to the Secretary, Arya Samaj Temple, Aliganj, Lucknow to also appear before the Court alongwith relevant record of marriage certificates that were being issued by the said Institution including that relating to Smt. Chawali.

103. The petition was directed to come up for "further orders". The petition came up for consideration before another learned Single Judge where the detainee Smt. Chawali was produced. The learned Single Judge noted the dispute about the age of the detainee and the variation reflected in the school certificate, the physical appearance and the medical report. The Court did not find it proper to hand over custody of the prosecutrix, but in view of her denial about the genuineness of the school certificate, the learned Single Judge directed the Magistrate to verify the genuineness of the said document and accordingly remitted the matter back to the Magistrate to give an opportunity to the prosecutrix to establish her age and the genuineness of the document on which the prosecution had relied on. The learned Magistrate was also required to summon the original record of the concerned school in order to ascertain the veracity of the document indicating the date of birth of the detainee. The matter was allowed to remain pending and was directed to come up on 15.1.2013.

104. The Women's Protection Home through its Superintendent provided the necessary information with regard to other detainees as well and the matter came up on 15.1.2013 before the same learned Judge who had initially heard the petition. A detailed order was passed on the said date and the learned Single Judge posted the matter for another date. However, by the said order the learned Single Judge after taking notice of large number of female inmates being detained who were allegedly major proceeded to appoint a Committee consisting of four members out of whom three were Legal Aid Counsel of the High Court alongwith the Director of Child Line to act pro bono publico and submit a report after visiting the Government Protection Home, Lucknow. The report was called for so that suitable orders could be passed in each case.

105. After examining the details of the report the same learned Single Judge took up the matter on 21.2.2013 whereupon, the original detainee, for whom the

petition had been filed, namely, Smt. Chawali was directed to be set free holding that her custody and detention in the Protection Home was illegal and uncalled for.

106. Simultaneously the case of other detenues were also taken up and orders were passed in relation to some of them. It is thus clear from the said order that not only the original detinue Smt. Chawali was released, but directions in respect of other detenues were issued and the matter was kept pending for further orders in relation thereto. There were neither any separate petitions nor any separate proceedings or applications for or on behalf of the other detenues. The learned Single Judge had entirely on his own proceeded in the matter.

107. Thus, the relief in so far as the main detinue is concerned already stood granted and exhausted, yet the learned Single Judge retained the writ petition for monitoring the release and detention of other detenues. Orders were passed on different dates but on 3.7.2013, 8.7.2013 and 27.9.2013 the learned Judge directed the matter to come up for further hearing and on 23.10.2013 passed an order to place the matter before that very Court.

108. The case took a different turn with the release of one Sameeha Khatoon who was under detention in the Government Protection Home at Faizabad. She had been kept in custody under the orders of the Chief Judicial Magistrate dated 15.7.2013, but was released by the learned Single Judge in these suo motu proceedings in favour of one Mohd. Idrish who filed an application claiming himself to be the father-in-law of the said Sameeha Khatoon. It may be noticed that Sameeha Khatoon or any other person had not filed any writ petition either in the nature of habeas corpus or otherwise seeking her custody or release nor were the parents of Sameeha Khatoon made parties to the proceedings. On 28.10.2013 a release order was passed setting Sameeha Khatoon free to go with her alleged father-in-law Mohd. Idrish.

109. The petition continued to be heard and orders were again passed on 6.11.2013, 20.11.2013, 4.12.2013 and 18.12.2013 in respect of other detenues as well.

110. One Masihuddin, father of Sameeha Khatoon, at this stage filed Special Appeal (Defective) No. 32 of 2014 questioning the correctness and legality of the release order in relation to Sameeha Khatoon and the proceedings before the learned Single Judge. A Division Bench of this Court on 20.1.2014 granted a week's time to the learned counsel for the State to seek instructions. This special appeal ultimately came up before a Division Bench on 4.9.2014 when the matter was heard and on 8.9.2014 the Division Bench having the roster assigned for hearing special appeals passed a detailed order deferring all proceedings before the learned Single Judge. This order is already extracted in our order dated 14.10.2014. The special appeal was directed to come up on 12.9.2014 alongwith the records of the habeas corpus writ petition.

111. One of the grounds taken before the Division Bench in the special appeal

was the jurisdiction of the learned Single Judge to hear the writ petition as a Single Judge matter without any notice to the appellant-father.

112. On 12.9.2014 a report had also been called for from the Registrar (Listing) and directions were issued to the effect that Sameeha Khatoon shall be handed over to the Superintendent, Government Shelter Home, Faizabad whereby she was sent back again to the Government Protection Home.

113. A Medical Board was also constituted by the division bench with directions to the Registrar, King George's Medical University, Lucknow for examining Sameeha Khatoon and submission of a report before the date fixed. The matter was directed to come up on 19.9.2014.

114. At this juncture Sameeha Khatoon through her alleged husband Tabrej Alam filed a fresh Habeas corpus Petition No. 299 of 2014 and the following order was passed on 18.9.2014 by another division bench having the roster of division bench habeas corpus petitions :

"Hon"ble Amar Saran, J.

Hon"ble Shri Narayan Shukla, J.

Learned counsel for the petitioner points out that in Special Appeal (Defective) No. 32 of 2014 the opposite party No. 3 has been summoned to appear alongwith the petitioner on 19.9.2014.

We also find that the Registrar of the King Georg's Medical University and the Superintendent, Gandhi Memorial and Associated Hospital, Lucknow were directed to send a report after examination of Shameeha Khatoon in regard to her age by today and the report was positively to be sent to the Senior Registrar of this Court in a sealed envelop.

As we also find that in Habeas corpus petition No. 594 of 2012 orders have been passed relating to the petitioner and a number of similarly placed persons we are of the opinion that the said Habeas corpus Petition appears to be in the nature of a Public Interest Litigation. Accordingly we direct that the petition be treated and numbered as a Public Interest Litigation and be placed alongwith the present petition, Special Appeal (Defective) No. 32 of 2014 and the aforementioned report of the King Georg's Medical University before the Bench hearing the Public Interest Litigation matters.

Put up tomorrow i. e. 19.9.2014.

Order Date : 18.9.2014."

115. It is this order which further complicated the matter. Undoubtedly on the said date Hon"ble Mr. Justice Amar Saran was the Senior Judge at Lucknow and was also heading the Division Bench relating to PILs and Division Bench Habeas corpus petitions, but he had no roster assigned to him in relation to special appeals.

116. The special appeal No. 32 of 2014 was listed before the regular division bench of special appeal roster presided over by Hon"ble Rajiv Sharma, J. where orders were passed in the morning session of 19.9.2014 calling for an explanation from the registry as to why the records of the case were not sent to the Court inspite of the fact that the roster was with the same Court and the matter had neither been released or withdrawn or nominated to any other bench. The said order was transcribed on separate sheets as the records had not been made available inspite of the case placed in the cause list of that Court.

117. On the same day Special Appeal (Defective) No. 32 of 2014 was taken up by the bench comprising of Hon"ble Amar Saran, J. and Hon"ble S.N. Shukla, J. as per their order dated 18.9.2014 quoted above, and the matter was heard and decided, rendering the special appeal infructuous and disposing of writ petition No. 299 of 2014 (habeas corpus) matter finally.

118. The Single Judge proceedings in the case of Smt. Chawali being Writ Petition (Habeas corpus) No. 594 of 2012 stood converted to a Public Interest petition PIL No. 9470 of 2014 and was allowed to proceed. in terms of the directions issued therein. This proceeding therefore was kept alive and survived.

119. The said judgment dated 19.9.2014 was brought to the notice of the Division Bench of Special Appeals presided over by Hon"ble Rajiv Sharma, J. after the midday recess on the same day as per the directions passed on separate sheets in the forenoon mentioned above, and their Lordships then passed an order in the afternoon of 19.9.2014 placing the matter before Hon"ble the Chief Justice in the aforesaid peculiar circumstances for orders.

120. There is yet another dimension which deserves mention, namely, that the judgment dated 19.9.2014 delivered by the bench of which Hon"ble Amar Saran, J. was a member, was not signed by Hon"ble S.N. Shukla, J., the other member of the bench. The file was held up when ultimately Hon"ble Justice S.N. Shukla passed a separate order by himself on 24.9.2014 sending the matter to the Hon"ble Chief Justice. All these orders have been quoted in seriatim in our order dated 14.10.2014 and consequently we are not repeating the same by re quoting the same.

121. It is faced with these orders that the reference was made by Hon"ble the Chief Justice on 25.9.2014 whereupon our bench proceeded to frame 13 questions after having recorded the entire facts in a 54 page order dated 14.10.2014. The hearing proceeded and upon further submissions raised by the learned counsel for the parties we framed additional question No. 14 on 25.11.2014 and question Nos. 15 to 18 on 26.11.2014. The hearing concluded on 27.11.2014 and judgment was reserved by us providing time to the learned counsel to submit their written submissions and compilation of their cases. We also called upon the Joint Registrar (Listing) to submit a report explaining that once Writ Petition No. 594 of 2012 had been listed before the appropriate Division Bench on 2.8.2014, then how was it again relisted before the same

learned Single Judge thereafter. The order of the division bench indicating the same is reproduced below:

"Court No. - 7

Case : HABEAS CORPUS No. - 594 of 2012

Petitioner : Smt. Chawali

Respondent: State of U.P. And others

Counsel for Petitioner : K.K. Tewari, Amrendra Kumar Singh, Anil Kumar Tripathi, Km. Vishwa Mohini, Rajesh Kumar Verma, Satyendra Nath Rai, Vimal Kumar

Counsel for Respondent: G.A., Atul Verma, Dharmendra Kumar Mishra, Mohd. Ifran Siddiqui, Shishir Pradhan, Sunita Jaiswal

Hon"ble Ravindra Singh, J.

Hon"ble Vishnu Chandra Gupta, J.

As prayed, list in the next cause list.

Order Date: 2.8.2014."

122. The Joint Registrar (Listing) has submitted his report indicating that the matter was initially incorrectly reported and then wrongly listed before the learned Single Judge. The report dated 27.11.2014 has been placed before us for perusal and the same is extracted hereunder :

"Hon"ble Court No. 2 (Hon"ble the Larger Bench)

May it please your Lordships.

My Lords,

It is most humbly and respectfully submitted that today your Lordship's during the hearing of Larger Bench matter has made specific query from the undersigned as to how W.P. No. 594 (HABC)- 2012 when connected with W.P. No. 149 (HABC)-2014 by order dated 02-05-2014 passed by the Bench comprised of Hon"ble Mr. Justice Imtiyaz Murtaza and Hon"ble Mr. Justice Ashok Pal Singh was detached from connection and listed before Hon"ble the Single Judge on later dates and seek written explanation in the course of the day.

The undersigned called for explanation from Assistant Registrar (cause list) and Section Officer (MS II) by letter dated 27-11-2014 [Flagged A], reiterated below :

"Today, Hon"ble Court No. 2, during the hearing of Larger Bench matter listed before their Lordships, has specifically inquired as to how W.P. No. 594 (HABC)- 2012 when connected with W.P. No. 149 (HABC) - 2014 by order dated 02-05-2014 passed by Hon"ble Bench comprised of Hon"ble Mr. Justice Imtiyaz Murtaza and Hon"ble Mr. Justice Ashok Pal Singh was detached from connection and listed before Hon"ble the Single Judge on later dates.

You are required to give explanation as to why the same has been listed before Hon''ble the Single Judge after order dated 02-05-2014 and why the matter has not been placed before the undersigned.

Reply the same immediately as the undersigned has to furnish the report before the Hon''ble Court within the course of the day."

The report of Section Officer (MS-II) is called whereon Sri R.K. Raman, Group Incharge MS II has submitted his report alongwith photocopies of register [Flagged B] that in pursuance to order dated 02-05-2014 passed in W.P. No. 149 (HC)-2014 by the Bench comprised of Hon''ble Mr. Justice Imtiyaz Murtaza and Hon''ble Mr. Justice Ashok Pal Singh, the case was directed to be listed alongwith W.P. No. 594 (HC)-2012. Thereafter, the same has been listed on 23-05-2014 before the Bench of Hon''ble Mr. Justice Ravindra Singh but prior to the said date the same was listed before Hon''ble the Single Judge on 12-05-2014 and he sent the case drafts to the computer section for getting W.P. No. 594 (HC)-2012 to be listed before Hon''ble Mr. Justice Sudhir Kumar Saxena considering that the case is to be listed before the same Bench for recall of the orders passed by the Court on merit. No sufficient reason has been furnished by him as to why he has detached the connected file W.P. No. 594 (HC)-2012 in connection with W.P. No. 149 (HC)-2014 and got the same listed separately before Hon''ble the Single Judge and he has not replied as to why he has not placed the record before the undersigned.

The Assistant Registrar (cause list) was also called for report whereon he submitted a report [Flagged C] alongwith a photocopy of two case draft dated 06-08-2014 and 04-09-2014 respectively. In the report he has submitted that the Computer section only receive case draft and not the files from the Judicial sections and on the basis of which the entry in the computer is made, two such case drafts clearly reveals only one connected case that is Criminal Misc. Case No. 2666-2013 (A482) signed by the officials of MS-II section and sent to the computer section with the noting that the case is tied up to the Bench of Hon''ble Mr. Justice Sudhir Kumar Saxena sitting singly.

As such, apparently in absence of any order of Hon''ble the Chief Justice or Hon''ble the Senior Judge there is not even an iota of doubt that W.P. No. 594 (HC)-2012 has been incorrectly listed before the Hon''ble Single Judge once the case has been directed to be listed alongwith connected case cognizable by the Division Bench.

As such, the report is submitted.

(Avnish Saxena) Joint Registrar (J)(Listing) 27-11-2014."

123. Having perused the record and having noticed the various orders passed by the respective benches, 18 questions in all were framed after deliberations and upon suggestions made by the learned counsel for the parties.

124. The question of a review Ex Debito Justitiae being undertaken by this bench

of the orders under scrutiny was also considered by us in detail on the strength of the decisions cited at the bar.

125. We have heard Sri N.P. Ojha, Sri M.G. Tripathi on behalf of the petitioners, Sri Jaideep Narain Mathur, learned senior counsel for the Legal Services Authority appointed by us as amicus curiae to assist the Court, Sri Z. Zilani, learned Additional Advocate General assisted by Sri Shatrughan Chaudhary, Additional Chief Standing Counsel, and Sri Anu Pratap Singh, Advocate who also assisted the Court with a copy of the order dated 2.8.2014 and his oral submissions as we had invited any member of the Bar to assist us in this reference.

126. The questions that have been framed by us can be compartmentalised into the issues which are required to be answered and we have accordingly rearranged them as follows :

"Issues

(A) The jurisdiction of the learned Single Judge to entertain and hear a habeas corpus petition relating to State detention. This issue would be answered while dealing with question No. 1 and question No. 3 simultaneously.

(B) The authority of the learned Single Judge to proceed in the matter further which had already been finally decided on 21.2.2013 vis-?-vis the original petitioner Smt. Chawali and to monitor the same as a public interest litigation. This issue would be answered while dealing with questions No. 2 and 4 simultaneously.

(C) The maintainability of a special appeal against a habeas corpus petition which is criminal in nature. This issue would be answered while deciding question No. 5.

(D) The jurisdiction and authority of a co-ordinate bench to entertain a fresh writ petition for the same cause of action for which a writ petition had already been filed and a special appeal was pending and summoning and connecting the records of all other petitions by the same bench. This issue would be answered while dealing with questions No. 6 and 10.

(E) The power and authority of the Division Bench on the judicial side to summon the record in a special appeal for which it had no roster without any orders on the administrative side or assignment by Hon''ble the Chief Justice. This issue would be answered while dealing with questions No. 7 and 8.

(F) The status of a final judgment unsigned by one of the Judges of the Bench and the conflict of opinion and its reference by Hon''ble the Chief Justice. This issue would be dealt with while dealing with questions No. 9, 11, 14, 16, 17 and 18 simultaneously.

(G) Whether in the larger interest of the detenues the orders for release that have been passed by the learned Single Judge being without jurisdiction is lawful?

Whether on merits the release orders of the detenues passed from time to time

can be legally sustained on merits on the basis of the principles applicable to such detention ?

(H) The powers exercisable in this reference by this bench to review and correct the orders under scrutiny or issue necessary directions *Ex Debito Justitiae*."

127. I now proceed to deal with the issues as enumerated hereinabove.

Issue No. A

"Question No. 1- Whether the learned Single Judge could have entertained a Habeas corpus writ petition against a detention in a Women Protection Home which was essentially a State detention under orders of the Magistrate and was not a private detention, keeping in view the provisions of Rule 1 of Chapter XXI of the Allahabad High Court Rules, 1952?

Question No. 3- Whether the learned Single Judge inspite of the change of roster and the standing orders of Hon'ble the Chief Justice on the administrative side could have continued to assume jurisdiction of Writ Petition No. 594 of 2012?"

128. There is practically no dispute or difference of. opinion between the learned counsel on these two questions in as much as firstly the Joint Registrar (Listing) in his report dated 18.9.2014 has accepted that the status of Writ Petition No. 594 of 2012 (Smt. Chawali v. State) was wrongly reported to be cognizable by a learned Single Judge. The explanation was also noted by us referring to the Stamp report dated 11.9.2014 and the report of the Joint Registrar (Listing) dated 18.9.2014 in our order dated 14.10.2014. This is further fortified by the second report of the Joint Registrar Listing dated 27.11.2014.

129. Then comes the applicability of the rules. The Allahabad High Court Rules, 1952 have been framed in exercise of the powers conferred under Article 225 of the Constitution of India. Article 225 of the Constitution of India is reproduced hereinunder:

"225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction." 130. A perusal thereof leaves no room for doubt that the jurisdiction of Courts is to be regulated according to the aforesaid

provision under which the 1952 Rules have been framed.

131. Under Chapter V, the jurisdiction of Judges has been defined as to how they will sit alone or in Benches. The word "Bench" has been defined under the Rules in Chapter I Rule 3 (1) to mean that it includes a judge sitting alone. Rule 2(vii) (f) of Chapter V further specifies the jurisdiction of a learned single Judge to include an application to which Chapter XXI of Part IV applies. Simultaneously, we have to read Rule 8 of Chapter V that defines cases to be heard by two Judges.

131-A. Chapter XXI Rule 1 of Part IV of the Rules is a specific rule relating to the entertaining of writs in the nature of habeas corpus. Sub-rule(2) of Rule 1 is hedged by a proviso which indicates that a habeas corpus petition directed against private custody shall be entertainable by a learned Single Judge. Sub-rule (1) provides that a habeas corpus petition under Article 226, except against private custody, shall be made to the Division Bench. The aforesaid rule admits of no ambiguity and, therefore, Writ Petition No. 594 of 2012 was obviously wrongly reported to be a matter cognizable by a learned Single Judge as it arose out of state detention and not private custody, and could have only been placed before a Division Bench. The rule aforementioned was, therefore, clearly violated by the registry and omitted to be noted by the learned single judge.

132. Apart from this the 1952 Rules empowers Hon"ble the Chief Justice to prepare the roster or assign cases to different benches.

133. The Chief Justice, under proviso (a) that appears after Chapter V Rule 2 (ix), can allocate any matter assigned to a single Judge to be heard by a Division Bench or vice-a-versa. This empowers the Chief Justice also to exercise his power of roster in relation to cases that are also governed by Rules 13 and 14 of Chapter V in relation to any subsequent application on the same subject or tied-up or part-heard cases. Apart from this, the Chief Justice has the powers under Rule 6 of Chapter V to constitute a Bench of two or more Judges to decide a case or any question of law formulated by a Bench hearing a case by way of a reference and it is in the exercise of such powers that the present reference has been made to be answered by us.

134. This matter of supremacy of the powers of the Chief Justice of assigning the roster is no longer res-integra and has been subject-matter of several pronouncements by this Court as well as by the Apex Court. The decisions that have been cited by Sri Zilani, learned Additional Advocate General, in support of this proposition and a couple of decisions that we have come across are mentioned hereinunder :

- "1. Kishore Samrite Vs. State of U.P. and Others,
2. State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc.,
3. State of U.P. and Others Vs. Neeraj Chaubey and Others,

4. Smt. Maya Dixit v. State, 2010 (8) ADJ 631(FB): 2010 (4) ESC 2933 (FB).
5. Pandit Jagdish Narain Mishra v. State of U.P., 2008 (1) ADJ 469
6. Jasbir Singh Vs. State of Punjab,
7. A.H. Ansari and Others Vs. High Court of Judicature at Allahabad,
8. Y.C. Simhadri, Vice Chancellor, B.H.U. and Others Vs. Deen Bandhu Pathak,
9. State of Rajasthan Vs. Prakash Chand and Others,
10. Sanjay Kumar Srivastava Vs. Acting Chief Justice and Others-->
11. Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar,
12. State Vs. Devi Dayal,

The ratio of the said decisions could not be disputed or contradicted by any of the learned counsel assisting us."

135. This has also been admitted in the written submissions tendered by Sri Mathur, learned amicus curiae, even though his submissions have been qualified by the arguments relating to the consequences of the orders passed by the learned Single Judge. It is urged by him that the orders of release are not invalid even though the learned Single Judge did not have the jurisdiction or the roster assigned for dealing with such a subject-matter. Sri Mathur, therefore, qualified his arguments to the extent that the orders passed by the learned Single Judge would not be inherently lacking in jurisdiction with which we shall deal with later on.

136. In my opinion, the rules clearly indicate the bifurcation of the jurisdiction of a learned Single Judge and a Division Bench while hearing a habeas corpus petition in a matter of private detention or detention by the state authorities. The matter was unequivocally and unquestionably cognizable only by a Division Bench. On facts, in the present case, Writ Petition No. 594 of 2012 clearly arose out of an order passed by the Magistrate on 10.12.2012 whereby the petitioner therein Smt. Chawali had been sent to the Womens Protection Home under the aforesaid order and kept in detention. This was not a case of either the petitioner or any of the detenues that arose out of private detention. Thus, neither the rules nor the roster permitted the learned Single Judge to entertain the said petition before him and pass orders thereon.

137. Not only this, the roster of the learned Single Judge had itself been altering in subject-matter between the period during which he had been passing orders continuously as noted in our order dated 14.10.2014. The roster as we could gather and which has been provided to us by the office indicates broadly the following roster details of the learned Single Judge who continued to hear the matter either before the final order was passed in the matter of Smt. Chawali on 21.2.2013 or even thereafter. A birds eye view of the roster is extracted hereinunder:

Roster of Hon''ble Sudhir Kumar Saxena, J. (Single except item No. 8)

Between 2.1.2013 to 1.7.2014

138. A perusal thereof would not leave any room for doubt that His Lordship was sitting in different jurisdictions as per the roster details assigned, yet habeas corpus petition No. 594 of 2012 continued to be heard and orders had been passed for listing the matter for further hearing, for further orders and before the same bench time and again that have been noted in our order dated 14.10.2014. The learned single judge had no roster of a division bench habeas corpus petition.

139. The said facts are undisputed, and not only this, the matter could not remain tied-up or part heard at least after the administrative orders of Hon''ble the Chief Justice dated 16.12.2013 as continued vide order dated 1.4.2014 and 29.5.2014 that are to the following effect :

ORDER

"No pending case, civil or criminal, shall be treated as part heard or tied up in a Court after the commencement of a new roster. All pending cases shall be listed before the appropriate Bench dealing with such matters in accordance with the fresh roster, unless so ordered by the Chief Justice in a specific case hereinafter.

CHIEF JUSTICE 16.12.2013.

ORDER

The administrative order dated 16.12.2013 regarding part heard and tied up cases will continue in operation.

CHIEF JUSTICE 1.4.2014.

ORDER

The administrative order dated 16.12.2013 regarding part heard and tied up cases will continue in operation with the commencement of new roster.

CHIEF JUSTICE 29.5.2014."

140. Thus, the assignment of new rosters and the aforesaid administrative orders of Hon''ble the Chief Justice releasing all tied-up and part heard matters were in existence when the learned Single Judge continued to hear the proceedings of Writ Petition No. 594 of 2012 without any assignment. The hearing continued before the same Judge inspite of the aforesaid orders of Hon''ble the Chief Justice which was a clear violation of the roster prescribed by Hon''ble the Chief Justice. The whole proceedings before the learned single judge are unsustainable in view of the decisions that have been cited at the bar and noted hereinabove.

141. Consequently, the learned single judge could not have assumed jurisdiction contrary to the 1952 Rules or the roster to pass any orders in respect of

individual detainees after the matter of the original petitioner Smt. Chawali had already been decided by him, or even before that as noted hereinabove. Thus, questions No. 1 and 3 are answered in the negative.

142. It is here that the learned Additional Advocate General Sri Zilani and Sri Mathur contend that once the learned Single Judge has passed the orders, and if the same are held to be a nullity or treated to be void, the same would require the consideration of the issue as to whether the learned Single Judge was inherently lacking in jurisdiction to deal with the matter which was so patent so as to invalidate the proceeding, or whether the jurisdiction exercised was lacking latently and not patently, as a result whereof the action taken and orders passed can be saved. It is thus the legal sustainability of the orders which are sought to be canvassed at the bar to be protected in the larger interest of the detainees instead of treating them to be void and without authority in law.

143. Sri Zilani has submitted that there is a distinction between a total and complete lack of jurisdiction and a lack of authority on account of procedural violation. He has relied on the following five decisions to substantiate his submissions :

- "1. State of Punjab Vs. Salil Sabhlok and Others,
Kishore Samrite Vs. State of U.P. and Others,
State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc.,
2. Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others,
3. Harshad Chiman Lal Modi Vs. DLF Universal and Another,
4. Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs.,
5. Gokaraju Rangaraju Vs. State of Andhra Pradesh, "

144. According to him there may be orders that may be void but in the instant case he contends that the orders passed by the learned Single Judge should not be treated as such or else the detainees may have to face the consequences of being again placed behind bars which can be prevented, as the High Court has powers to reach wherever injustice is found. He then relies on the following three decisions :

- "1. Bangalore Development Authority Vs. Vijaya Leasing Ltd. and Others,
2. Mewa Singh and Others Vs. Shiromani Gurdwara Prabandhak Committee,
3. Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, "

145. He further contends that extraordinary situations demand extraordinary remedies for which he relies on the decision of the Apex Court in the case of Prithipal Singh etc. Vs. State of Punjab and Another etc., . He further contends

that technical objections cannot impede the entertaining of a habeas corpus petition which involves the life and liberty of the citizens and he relies on the following four decisions to that effect :

"1. Cherukuri Mani Vs. The Chief Secretary, Government of Andhra Pradesh and Others,

2. Ummu Sabeena Vs. State of Kerala and Others,

3. Union of India (UOI) and Another Vs. Shrimati Chaya Ghoshal and Another,

4. Mohinuddin alias Moin Master Vs. District Magistrate, Beed and Others, "

146. Sri Jaideep Narain Mathur, learned amicus curiae has dedicated his written submission to this effect and paragraphs 6 to 36 of the same narrate that, even though the jurisdiction as per the High Court Rules and roster was not with the learned Single Judge, yet the learned Single Judge was a Judge of the High Court and the High Court has authority to pass orders in a habeas corpus petition. Hence the orders passed should be saved by taking recourse to the doctrine of De-facto. He has however tried to distinguish one of the judgments in this regard, namely, that of Pandurang and Others Vs. State of Maharashtra, , on the ground that the case was not dealing with a habeas corpus matter under Article 226 and arose out of a criminal appeal that had been filed under the Code of Criminal Procedure read with the Bombay High Court Rules. He contends that the Apex Court in the said decision found that there was inherent lack of jurisdiction as the rights of persons to the dispute were being adversely affected and, therefore, the said authority in the case of Pandurang (supra) was not an authority on the issue of an order lacking in patent jurisdiction or latent lack of jurisdiction. He submits that all rules or procedure are the handmaid of justice and procedural law cannot in any way take away the power of the Court to exercise authority, and accordingly in the absence of a patent lack of jurisdiction, the orders passed by the learned Single Judge should be upheld.

147. I am unable to subscribe to the aforesaid proposition for the simple reason that if such an interpretation is given with regard to the jurisdiction of a learned Single Judge to entertain a petition, the entire foundation of the High Court would run haywire and make the proceedings of the High Court inchoate. The judicial discipline of Judges exercising powers within their prescribed jurisdiction cannot be allowed to be digressed or else a High Court, particularly a big High Court having a strength of 160 Judges, would fall in utter confusion which would ultimately be lacking in faith, that would be against public interest.

148. The learned single judge, not having the authority to entertain and neither having the roster, was inherently incompetent to pass the orders on the petition. It is here that the principle "Form becomes substance" is attracted. The Court of the learned single judge for a division bench matter was improperly constituted and thus suffered from an inherent incompetence to hear and decide the case. This was an error arising out of absence of jurisdiction and not any error in the

orders passed within the jurisdiction of the learned single judge. The dispute is not of an error in the application of law or in the orders passed, but of the jurisdiction of the learned single judge to enter upon adjudication in the matter.

149. There is a higher forum of a division bench created by the 1952 Rules to hear and decide a state detention habeas corpus petition. The learned single judge presides over a Court that only enjoys the jurisdiction of a private detention habeas corpus matter. Thus the forum of a larger bench of two judges as against a learned single judge is not a minor difference and leads to a major defect of want of coram that alters jurisdiction altogether if the assigned function of a division bench is casually allowed to be taken over by a learned single judge. The division bench has exclusive authority and not partial jurisdiction in state detention matters. The exercise of authority in excess by the learned single judge is an outcome of lack of jurisdiction.

150. There was no extraordinary situation for an action to be taken without authority nor did it require any innovation. The case was erroneously reported by the office as a single judge matter and wrongly placed by the registry before a learned single judge. An error so admitted on record does create an embarrassing situation and has thus created this extraordinary reference which requires a remedy but even if the cause was one that required an immediate attention, then too the matter could have been placed before the appropriate division bench. It is not the case that a division bench was not available to entertain the matter. Thus no extraordinary remedy was required to be administered even if the detentions were ultimately unlawful. The only requirement was to place the matter before the appropriate bench and nothing more, where the case could have been taken care of, and injustice if any could have been remedied.

151. The ratio of the decision of the division bench of this Court in the case of Pandit Jagdish Narain Mishra (*supra*) is clearly attracted where para 12 to 14 state the legal position as under :

"12. In this paragraph the Apex Court has clearly held that no Judge or Bench can assume jurisdiction in a case pending in the High Court unless the case is allotted to him or them by the Chief Justice. Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from it can be permitted.

13. Recently, in another judgment the Apex Court has held in para 19 of *Jasbir Singh Vs. State of Punjab*, , that it is not within the competence of any Single or Division Bench of the High Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. The judgment (Per Balakrishnan, J. Prior to His Lordship becoming C.J.I.) specifically referred to the earlier judgment in *State of Rajasthan v. Prakash Chandra* (*supra*) and reiterated the legal position.

14. The law laid down in these judgments clearly establishes that the learned

Single Judge could not have directed the Registry to continue the matter to be placed before him as the roster had been changed. Even if he was to say that the matter was part heard, in view of the law laid down by the Full Bench which is affirmed by the Apex Court : such a direction or order would be in violation of the Rules of Court and, therefore, nullity. Any case at pre admission stage cannot be treated as part heard or tied up and such a direction contrary to the roster is not within the competence of any Single or Division Bench of the High Court as has also been held in the case of Jasbir Singh (supra)."

152. The learned single judge also transgressed propriety as he could not acquire a larger jurisdiction than what he was possessed of. We are not anxious to discover any imaginary wrong but we find it necessary to quote "It is good to be adventurous but it is advisable to practice the art of the possible." Judicial discipline is one of the tenets of our system on which hinges the faith of people. The maxim "The king can do no wrong" is a presumption that has to be respected for which the sovereign in return has to infuse confidence to ensure a secure feeling amongst the governed. Likewise members of the higher judiciary have to exercise abstinence and restraint to infuse the same level of confidence and security while dispensing justice.

153. It may be re-emphasised that the jurisdiction to exercise a power, and the exercise of power are two different concepts. It is true that a Judge of the High Court derives his authority to issue a writ under Article 226 or 227 of the Constitution of India, but the jurisdiction to sit and decide a particular subject-matter is governed by the provisions of Article 225 of the Constitution of India and rules framed thereunder. This distinction has to be noted in mind or else there would be an overlapping and an inconsistency resulting in confusion and chaos. It is in order to discipline and rather regulate proceedings that exclusive powers have been conferred on Hon"ble the Chief Justice and rules have been framed to that effect.

154. Needless to say that there are statutory rules conferring jurisdiction on a Single Judge and Division Benches under the Code of Criminal Procedure and the Civil Procedure Code as well as in other statutes relating to the power of the High Court to decide issues and references. Can all this be negated and an interpretation given in the garb of saving an order which is entirely without authority?

155. The obvious answer on a logical reason and on applying the golden rules of interpretation would be in the negative, inasmuch as, no direction can be issued to disobey the mandate of law. If the law and the procedure prescribed require the performance of a particular exercise in a particular manner then, in our opinion, such prescription has to be followed and violation thereof is clearly prohibited. To allow something to be done in the name of justice may be a principle which has to be followed, but the same cannot be a principle that can be followed by an authority not empowered to do so.

156. The word "latent" means though existing but not yet manifest or developed. It is something which is capable of development or other activity and is dormant until excited. It is hidden and invisible but is potential. The word "patent" means that which is evident and obvious plainly and clearly. The word "inherent" means in the nature of things as a necessary part. It means belonging to as an attribute or quality that is vested. In the instant case the learned single judge was not capable of exercising the jurisdiction at all nor could it be conferred on him as it would be against rules. Even assuming that it was a cause which required the remedy of an injustice, the same could have been done by the competent Court having jurisdiction.

157. The lack of authority, therefore, is not latent but clearly established for the reasons that have been given hereinabove. The answers to the other questions also lead to the conclusion that the orders passed by the learned Single Judge would be completely without authority and could not be saved on the ground of the High Court having jurisdiction in the matter. The assumption of authority to decide a division bench matter by a learned single judge also suffers from gross impropriety as well.

158. I may also point out that a presumption can be raised with regard to a regular judicial act being performed and its validity in terms of Section 114(e) of the Indian Evidence Act, 1872. This argument in a similar matter had been raised before a learned single judge of this Court contending that the learned judge who had entertained the matter had authority to decide a bail application. The said argument was repelled in the said decision of C.B.I., New Delhi v. Dinesh Kumar Singh, CrI. Misc. Bail Cancellation No. 216 of 2014, decided on 15.7.2014 in the following manner :

"It is at this juncture that the argument advanced by Sri Chaturvedi for drawing a presumption of a regular judicial act as per provisions of Section 114 illustrations (e) has to be considered. To my mind, the argument which has been advanced by Sri Chaturvedi misses the point that the presumption has to be about the regular performance of the act of the Judge. His argument that it is just a matter of procedure and therefore the said illustration is attracted cannot be applied on the facts of the present case the reason being it was not a mere matter of procedure but a matter of conferring the jurisdiction on the learned Single Judge to hear the bail.

To my mind, the presumption is to be drawn in matters of procedure and not actual performing of the act where the issue goes to the root of validity of the order. It is not a routine performance that is under question. It is the very competence or the authority of the learned Judge performing that act which is in question. It is for this reason that the aforesaid illustration presumes the performance of a regular exercise of power. If the regularity itself is in question then the presumption of the said act touching the irregularity is not covered by the said illustration. There cannot be any presumption in law about an official act being regularly performed when the act itself on the face of it was unauthorised.

The said illustration, therefore, does not come to the aid of the accused where there is an inherent lack of authority to proceed with a matter. In the light of the aforesaid conclusion, the observations of the division bench extracted hereinabove squarely apply on the facts of the present case as the Chief Justice had been pleased to nominate only one case and not the other two bail applications.

It would be appropriate to refer to the explanation added to the aforesaid illustrations under Section 114 which begins with the sentence "but the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it -..... as to illustration (e) - a judicial act, the regularity of which is in question, was performed under exceptional circumstance."

There is no material placed on behalf of the accused to indicate that such act was performed in an exceptional circumstance. Sri Chaturvedi could not point out as to what was that exceptional circumstance under which the learned Judge had no option but to entertain and grant bail in the other two applications which were not nominated to her.

To the contrary, the presumption is of the facts as exist when the order was passed in respect of nomination, which was admittedly and undoubtedly only in one bail application, that is bail application No. 4314 of 2013. The other two bail applications 4310 of 2013 and 8237 of 2013 were not nominated to the learned Judge at all.

Sri Chaturvedi submits that when there was a judicial order connecting all the three bail applications by the regular Court earlier, then there is every reason to believe that when the nomination order was passed in one bail application, the learned Single Judge was obviously proceeding regularly to hear all three matters to which no objections had been raised by the learned counsel for the CBI at that stage. So far as the issue of objection by the CBI counsel is concerned, it is by now settled that jurisdiction to hear a matter cannot be conferred either by tacit or by implicit consent or by omission to raise an objection to the jurisdictional issue.

Sri Khanna is right that an issue of jurisdiction can be raised if it goes to the root of the matter and in the instant case as per the law extracted hereinabove, to my mind, it was the duty of the Court itself to have determined as to whether the other two bail applications were competent before the Court or not. In the event of any doubt or confusion, clarifications could be had from Hon'ble the Chief Justice who alone had the authority to nominate the other two cases. Once the nomination was only in one case, then propriety demanded that the learned counsel as well as the Court ought to have taken notice of this fact and made a request to the Hon'ble Chief Justice for passing appropriate orders. There cannot be a facilitating argument accepted that the Registry was conscious of such nomination and had rightly listed the case before the learned Judge. It would be

appropriate to opine that the Registry or the office does not perform a delegated function of the Chief Justice for sending matters to a Court except under the orders of the Chief Justice. Not only this, when an order nominating a particular case is passed then the Registry is obliged only to list and place such a case with a report to that effect. Any lack of clarity should therefore be noticed and brought to the notice of Hon"ble the Chief Justice for exercise of powers under Chapter V of the Allahabad High Court Rules, 1952. Neither the Registry nor the parties to the litigation can take any advantage of any such confusion."

159. The said judgment became subject-matter of challenge in Special Leave Petition No. 6036 of 2014 before the Apex Court, Dinesh Kumar Singh v. C.B.I. The appellant withdrew the said special leave petition with liberty to file a fresh bail application before the High Court which was permitted observing that the fresh bail shall be decided on merits for which orders were passed finally on 15.10.2014. The reasoning of the High Court as quoted hereinabove while canceling the bail was not interfered with.

160. The distinction which is sought to be drawn on the basis of the decisions that have been cited at the bar cannot be accepted inasmuch as the said arguments do not appeal to reason and the ratio of the said decisions do not directly touch upon the issue raised in the present matter.

161. The arguments of Sri Mathur, learned amicus curiae relying on the observations made by the Apex Court in the case of Kishore Samrite (paragraphs 29 and 30 thereof) has urged that the orders passed by the learned single judge did not suffer from patent lack of jurisdiction and a violation of procedure does not always result in validation of a judicial action. He further submits that the assumption of such an authority to pass an order may not necessarily result in lack of inherent jurisdiction. We have carefully gone through paragraphs 29 and 30 of the said decision and we find that the observations of the Supreme Court were made in relation to a transfer of a petition by a division bench before itself that was necessarily cognizable by a single judge. It is here that the Apex Court made an observation that a transfer by itself may not necessarily result in lack of inherent jurisdiction as it may be an administrative lapse, and would therefore not render the writ petition or Court of competent jurisdiction as lacking inherent jurisdiction. We are also of the opinion that the High Court does not lack inherent jurisdiction so as to render any order being invalid ab initio in a habeas corpus writ petition. However, in the instant case the order passed in the case of Sameeha Khatoon setting her free was in violation of principles of natural justice without putting her father to notice on the assumption that she was major. Thus one of the necessary parties had not participated and had not been given any opportunity to object or protest. This fact by itself distinguishes the case of Kishore Samrite where the parties had voluntarily participated without any objection or protest. Secondly, here the order of the learned single judge has been challenged by way of a special appeal by Masihuddin, father of Sameeha Khatoon. Thirdly, the High Court Rules of 1952 have been clearly violated and

the learned single judge was coram non iudice as he could not have heard a division bench matter. Thus this was not a case of mere transfer to a bench, rather a totally unauthorised and wrong assumption of authority by the learned single judge to decide the matter which was contrary to the 1952 Rules, in violation of the roster prescribed by the Chief Justice and additionally suffered from impropriety. Consequently, the observations made by the Apex Court in paragraphs 29 and 30 of Kishore Samrite's case does not apply squarely on the facts of the present case. It is for this reason that the Apex Court in para 30 of the aforesaid judgment has observed that the observations made therein were subject to and dependent upon the facts and circumstances of a given case. In our opinion, the facts and circumstances of the present case clearly indicate complete lack of authority in the learned single judge to hear the matter.

162. The latest decision of the Apex Court in the case of Kishore Samrite Vs. State of U.P. and Others, , was a case, filed by an Ex-MLA of Madhya Pradesh alleging that he was a next friend of three persons arrayed in the writ petition, with a prayer to produce the corpus of three persons and set them free. The allegations were of private detention against the private respondent, one of whom was Mr. Rahul Gandhi. The allegation was of commission of an offence against one of the females having been illegally detained in private custody.

163. The Allahabad High Court Rules, as presently involved, was also in question in the said case which provides that a matter of private detention in a habeas corpus petition would be cognizable by a learned Single Judge. In that case a division bench had summoned the records of a private detention habeas corpus petition and had proceeded to decide the matter, and having found the allegations to be incorrect had dismissed the petition with costs. The question that arose was that if the matter was of private detention, could the division bench have heard the matter in view of the express bar and categorization assigning the jurisdiction to a bench of a learned Single Judge under the rules. While answering the said issue raised, the Apex Court held as under :

"23. From the above narrated facts it is clear that a petition for habeas corpus (Writ Petition No. 111/2011) had been filed by the present appellant while referring to the news on the website in relation to the incident dated 3rd December, 2006 (in paragraphs 3 and 4) to the effect that since the petitioners, because of their illegal detention by private opposite party No. 6 are incapacitated to file the instant writ petition and also that those petitioners were in illegal detention of the private opposite party No. 6 and they have not been seen since 4th January, 2007. This writ petition was treated as private habeas corpus and was listed before a Single Judge of the Allahabad High Court.

24. Rule 1 of Chapter XXI of the Allahabad High Court Rules provided that an application under Article 226 of the Constitution for a writ in the nature of habeas corpus, except against private custody, if not sent by post or telegram, shall be made to the Division Bench appointed to receive applications or on any day on which no such Bench is sitting, to the Judge appointed to receive

applications in civil matters. In the latter case, the Judge shall direct that the application be laid before a Division Bench for orders. In terms of proviso to this Rule, it is provided that an application under Article 226 of the Constitution in the nature of habeas corpus directed against private custody shall be made to the Single Judge appointed by the Chief Justice to receive such an application. The clear analysis of the above Rule shows that habeas corpus against a private custody has to be placed before a Single Judge while in the case of custody other than private custody, the matter has to be placed before a Division Bench. It appears that on the strength of this Rule, Writ Petition No. 111/2011 was listed before the Single Judge of Allahabad High Court."

164. A perusal thereof leaves no room for doubt that a habeas corpus petition against a private custody was to be placed before a Single Judge and not before the division bench while in the case of custody other than a private custody a habeas corpus petition has to be placed before the division bench.

165. In the present case the aforesaid rule has been violated as held hereinabove and the conclusions drawn are clearly supported by the aforesaid dictum of the Apex Court.

Issue No. B

166. The issue raised herein involves the answer of two questions reproduced hereinunder:

"Question No. 2- Whether the learned Single Judge after the orders were passed on 21.2.2013 releasing Smt. Chawali, the sole petitioner in the writ petition, could have still kept the matter pending before, him for monitoring and further consideration of the release of other detainees as has been ordered by the learned Single Judge in Writ Petition No. 594 of 2012?

Question No. 4- Whether the orders passed by the learned Single Judge after the final disposal of the case of the sole petitioner are legally sustainable and whether the learned Single Judge could have proceeded with the matter like a public interest litigation?"

167. Answer to the aforesaid two questions would rest on the answer already given by us to questions No. 1 and 3 hereinabove. It is undisputed that the release order of Smt. Chawali was finally passed on 21.2.2013. Thus, no further matter remained pending before the learned Single Judge except for the informations that had been called for in relation to other detainees. The question is whether such detainees in the protection home that were also State detentions, could have been the subject-matter of suo motu monitoring followed by an order of release by the learned Single Judge in Writ Petition No. 594 of 2012.

168. To me it appears that the learned Single Judge after having called for the information in the background as noted in our order dated 14.10.2014 proceeded to release one detainee after the other as if the matter was proceeding in larger public interest. The learned single judge in my opinion had become functus

officio even otherwise after the final relief had been granted to Smt. Chawli and no other relief survived to be considered. Any further action undertaken was clearly beyond the petition, purportedly in public interest, even though there was nothing in the petition to assume such authority. This inference drawn by me is confirmed as I find that when the matter was taken up in Writ Petition No. 299 of 2014 on 18.9.2014, the Division Bench has expressed a clear opinion that the said Habeas corpus (594 of 2012) appears to be in the nature of a public interest litigation. The Division Bench then directed the office to convert the same and renumber it as a PIL and place it before the said bench.

169. It is here that it would be appropriate to put on record that a public interest litigation, even if is brought to the notice of the learned Single Judge, he does not have the jurisdiction to entertain the same or pass any orders thereon, inasmuch as, all public interest litigations are to be dealt by a bench presided over by Hon"ble the Chief Justice or by any other bench to be nominated in this regard. The learned Single Judge who took upon himself the responsibility of ameliorating conditions of detenues, which according to him were unlawful could not have done so and the only course open to the learned Single Judge was to have placed the matter before Hon"ble the Chief Justice or before the Hon"ble Senior Judge at Lucknow for passing orders on the administrative side for nomination for being dealt with by the appropriate division bench. Instead the learned Single Judge in violation of the roster proceeded with the matter himself and monitored the entire case, passing orders of release of detenues.

170. It may also observe that a public interest litigation has to be entertained on the guidelines that have been framed by the Supreme Court in the case of State of Uttarakhand v. Balwant Singh Chaufal and others, 2010 AIR SCW 1029, in order to avoid any criticism of a proxy or a motivated litigation and drafted in accordance with Rule 3A of Chapter 22 of the High Court Rules, 1952. I do not wish to say that this matter may not have been an issue of public interest, but at the same time I do not find any pleading by any party or any ingredients available in the writ petition filed by Smt. Chawali, namely, the record of Writ Petition No. 594 of 2014, to gather any element that would impel the Court to treat the petition as it stood drafted as a public interest litigation. To the contrary, it is by virtue of the" reports received under the orders of the learned Single Judge that the whole process appears to have been converted into a permanent counter of release of detenues, may be in the name of public interest. This platform that was generated and the assumption of jurisdiction was on account of the passing of the orders by the learned Single Judge and not on account of any matter being placed before the appropriate bench arising out of public interest.

171. Then arises the question of a private dispute being converted into a public interest. Here the learned counsel for the State as well as Sri Mathur have urged that the power is there with the Court to do so and they have relied on the following five decisions to that effect :

"1. Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, .

2. Ashok Lanka and Another Vs. Rishi Dixit and Others, .

3. Rajendra v. Additional Commissioner Devi Patan Mandal and others, 2007 (25) LCD 565.

4. Chandrika Prasad Nishad v. State of U.P. and others, 2007 (25) LCD 646.

5. Indian Bank Vs. Godhara Nagrik Cooperative Credit Society Ltd. and Another, ."

172. There is no dispute that the power of the Court is wide enough to exercise such jurisdiction provided the Bench dealing with such a matter has been assigned the roster to do so. It is not the question of the exercise of the power but it is the issue of the learned Single Judge having jurisdiction to exercise such power. Once the writ petition itself had been disposed of releasing the detinue Smt. Chawali, and if the learned Single Judge felt that certain matters of larger public interest did require attention, then the learned Single Judge could have or ought to have sent the matter before Hon"ble the Chief Justice/Senior Judge at Lucknow for dealing with the said matter appropriately by the concerned bench. The learned Single Judge, in my considered opinion, after having finally disposed of the matter, which itself was an exercise without jurisdiction, could not have assumed the mantle of PIL jurisdiction to undertake a public interest exercise himself. The roster of public interest litigation was not with the learned Single Judge and to the contrary was assigned to a division bench.

Issue No. C

This issue raises the following question :

"Question No. 5- Whether such a Habeas corpus petition can be stated to be criminal in nature, and if so, then whether a special appeal would be maintainable against an order passed by a learned Single Judge in such a petition in terms of Chapter VIII Rule 5 ?" 173. The aforesaid question need not detain the Court inasmuch as the answer to the arguments advanced by Sri Tripathi and Sri Anu Pratap Singh and Sri Ojha lies in the decisions that have already been cited before this Court and are supported by other decisions which are to the following effect that have been relied upon by Sri Zilani :

"33. Riya Singh (In Re 288 Habc 2011) Vs. State of U.P. and Others, .

34. Union of India v. Inderjeet Baruva, 1980 (Suppl) SCC 696.

35. S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, ."

174. Sri Mathur also in his written submissions in paragraph Nos. 37 to 47 has explained the said position and I entirely agree with the same except in relation to a state detention matter which would itself be entertainable by a division bench. A special appeal would be maintainable against the order of a learned

single judge in a matter of private detention habeas corpus petition under Chapter XXI of the 1952 Rules. The order of the learned Single Judge deciding a habeas corpus petition cannot be said to be in the exercise of a criminal jurisdiction. The said question is, therefore, partly answered in the negative and while approving the ratio of Riya Singh's (supra) I hold that a special appeal is maintainable against the order of the learned Single Judge deciding a private detention habeas corpus petition under Article 226 of the Constitution of India.

Issue No. D

175. The following two questions on this issue relate to essentially a multiplicity of the proceedings and maintainability of Writ Petition No. 299 of 2014.

"Question No. 6- Whether a co-ordinate bench could have entertained a fresh writ petition for the same cause of action inspite of an order having been passed by a learned Single Judge in the same matter and a special appeal was pending ?

Question No. 10- Whether fresh Writ Petition No. 299 of 2014 was maintainable and could have been made the basis for summoning the records of all other petitions for consideration by Hon"ble Co-ordinate Bench ?"

The facts as disclosed indicate that Writ Petition No. 594 of 2014 was being monitored in which a detenue Shameeha Khatoon came to be released. Her father Masihuddin filed a special appeal being Special Appeal (Defective) No. 32 of 2014 against the order of such release alleging that no petition had been filed and he being the father was not even apprised of any such proceedings and without putting him to notice ex parte orders were passed to release Sameeha Khatoon that too even in favour of her alleged father-in-law, as the boy whom she alleged to have married, was already behind bars at that time. The learned Single Judge had already released Sameeha Khatoon and she was not in custody. To the contrary, when the special appeal was heard on 12.9.2014 an order was passed sending her back in custody. In this background Sameeha Khatoon was again sent back to the Protection Home and, therefore, she was not under unlawful custody thereafter.

176. It appears that on account of such issues having been raised Sameeha Khatoon was advised to get a fresh writ petition filed before the Division Bench which is Writ Petition No. 299 of 2014. This was clearly done in apprehension that if the Division Bench in the special appeal comes to the conclusion that the proceedings before the learned Single Judge were without jurisdiction, and the order passed was invalid, then she would require an order of release from this very Court and the remedy under Chapter XXI Rule 1 of the 1952 Rules was to file a fresh petition before the Division Bench.

177. The question is if the special appeal arising out of the order of the learned Single Judge was pending before the Division Bench, was it necessary that a separate petition should have been filed and the Division Bench on 18.9.2014 ought to have entertained the same and summoned the records of Writ Petition

(H/C) No. 594 of 2012 for converting it into a PR, and also Special Appeal (Defective) No. 32 of 2014. The argument advanced is that such a course was the only course available for release as the appeal filed was against the release.

178. I am of the opinion that this step should have been taken only after the decision in the appeal and not prior to that. Writ Petition No. 299 of 2014 was a petition filed in apprehension. If the order of the learned Single Judge releasing Sameeha Khatoon does not lack in jurisdiction or authority then the special appeal might be maintainable as that could be a possible statutory remedy under the Rules. The issue of her release or custody was subject-matter of consideration by the Division Bench hearing the special appeal. In the background the aforesaid filing of an apprehensive writ petition, when the matter was being heard by a co-ordinate division bench in appeal arising out of the same subject-matter of release, was therefore, not an appropriate process adopted, and as a matter of fact was a clear device to seek a relief collaterally on the presumption that the release order passed by the learned Single Judge may not be sustainable in law.

179. There is yet another peculiarity, namely, Sameeha Khatoon had been sent back to the Protection Home under the orders dated 12.9.2014 of the Division Bench hearing the special appeal. A separate writ petition for release against the order of detention passed by a Division Bench of this Court would obviously not be maintainable, as a writ petition would not lie before a co-ordinate bench to quash the order of another Division Bench in the same case and on the same subject-matter. The passing of any order in the subsequent Writ Petition No. 299 of 2014 would obviously be for release that would run counter to the order passed on 12.9.2014 by the Special Appellate Bench even though at an interim stage. A writ petition, therefore, for this purpose would not be maintainable. The Division Bench, therefore, ought not to have entertained a fresh writ petition at this stage and should have allowed the matter to await orders in the special appeal. The coordinate division bench neither had the roster of special appeals nor it could have sat over the proceedings of another division bench without proper assignment.

180. It may also be observed that if a state detention matter was not entertainable by a learned single judge then in that event a special appeal arising out of the same would also not be maintainable inasmuch as a special appeal would be maintainable only when it is a matter of a habeas corpus petition arising out of private detention. However, the question as to whether the special appeal would be maintainable or not could have been decided by the bench that had the roster of special appeals. This jurisdiction to decide the special appeal itself by another division bench was absent as the other division bench did not have that roster. Apart from this if the special appeal was not maintainable as this was clearly a matter of state detention, then in that event, the special appeal could not have been declared to be infructuous and ought to have been adjudicated one way or the other. The bench which declared the special appeal to

be infructuous vide order dated 19.9.2014 appears to have completely overlooked this aspect of the matter and by one stroke of an order issued directions that has resulted in this mayhem. I am reminded of the approach to exercise of powers by a Court and judges in such a situation referred to in paras 33 to 41 of a division bench pronouncement in the case of Sri Ghisai Ram Krishak Vidyalaya Samiti Vs. State of U.P., . In my opinion it is only after any declaration about the maintainability of the proceedings that a fresh division bench writ petition could have been entertained after recording findings to that effect.

181. The division bench which finally disposed of the matter did not make any such attempt presumably on account of the assumption that all the matters were maintainable before it. The division bench entertained the fresh writ petition No. 299 of 2014 on 18.9.2014 and finally disposed it of on the very next day i.e. 19.9.2014 without adopting any procedure of issuance of notice either to the state or to the proper private parties including the father of the detainee whose Special Appeal was summarily dismissed as infructuous and passed an order of release clearly in violation of principles of natural justice and by the exercise of an authority in peculiar circumstances already noted above. All forums of judicial review for the father of the detainee Samecha were blocked and finally shut out in this unique manner on the very next day of the filing of fresh Writ Petition No. 299 of 2014. This procedure cannot have our approval for the reasons given hereinabove and hereinafter. The questions are answered accordingly.

Issue No. E

"Question No. 7-Whether the bench entertaining fresh Habeas corpus petition for the same cause of action could have suo motu summoned the records of the special appeal, and the previous petition No. 594 of 2012, and ordered for conversion of the same into a public interest litigation, without placing the same before either the Hon"ble Chief Justice or the Senior Judge at Lucknow ?

Question No. 8- Whether the co-ordinate bench could without having the roster of special appeals proceeded to summon the records of the said appeal and pass orders thereon without any. specific assignment of roster by Hon"ble the Chief Justice ?"

182. The Division Bench that was hearing Writ Petition 299 of 2014, by a judicial order dated 18.9.2014 had summoned the records of the special appeal as well, and that of the learned Single Judge, without any roster having assigned to the said bench of either a special appeal or a learned Single Judge matter. There could have been a judicial order to connect the matters together, but for placing it before one particular bench there ought to have been an administrative order passed by Hon"ble the Chief Justice or by the Senior Judge, Lucknow, exercising such powers on the administrative side on that date under the 1952 Rules as extracted above.

183. On this issue Sri Mathur has vehemently urged that Hon"ble the Senior

Judge was the same Judge who was presiding over the Division Bench of habeas corpus matter, and therefore sitting on the judicial side and being the Senior Judge on that date, the order dated 18.9.2014 is justified. He contends that what can be done on the administrative side by Hon"ble the Chief Justice or the Hon"ble Senior Judge can also be done on the judicial side as has been done in the present case. Assuming for the sake of arguments that the order connecting all the cases could have been passed, the issue is as to whether the administrative powers of Hon"ble the Chief Justice/Senior Judge could have been exercised by a Division Bench on the judicial side under Article 226 of the Constitution of India.

184. It is here that the constitutional authority under Article 225 and 226 has again to be understood distinctly. The administrative powers are exercised by the Hon"ble Chief Justice under the Rules for allocating jurisdictions to judges that clearly relate to Article 225 of the Constitution of India. The judicial powers to be exercised in a writ jurisdiction are conferred either under Article 226 or 227 of the Constitution of India. If the presumption as suggested by the learned counsel is accepted then the entire scheme of the constitution would be jeopardised and violated.

185. In the instant case the learned Judge presiding over the Division Bench was coincidentally the Hon"ble Senior Judge at Lucknow that had passed the order on 18.9.2014. The question is can such an order be said to be an administrative order of only the Chief Justice or the Senior Judge? The answer would be obviously no, inasmuch as, the order is a judicial order and not an administrative order. Any other judge apart from the Chief Justice or Hon"ble the Senior Judge cannot exercise this administrative power on the judicial side. Had it been an administrative order only signed by Hon"ble the Chief Justice or Hon"ble the Senior Judge, the same would have been in the exercise of the powers conferred under the 1952 Rules on the administrative side. It is not the place of sitting or the timing of the order but it is the actual order being passed and executed as per the Constitution and the 1952 Rules. It appears that the learned Senior Judge instead of passing an administrative order, pronounced a judicial order on the bench alongwith another Hon"ble Judge and signed by both Judges. In my opinion, this course cannot be supported in law. The Division Bench had no authority to pass an administrative order that can only be passed by the Chief Justice or Hon"ble the Senior Judge alone. At the best a request could have been made on the judicial side for nominating and connecting of the matters together which is usually done in the routine course of business and, thereafter, the matter is placed on the administrative side for passing on an appropriate order. In my opinion, these two foundations cannot be mixed up in a manner in which it has been done in the present case. Consequently, we are of the opinion that the Division Bench even though could have issued directions for connecting of the matters together but ought to have stopped there and should have allowed the Hon"ble Chief Justice or Hon"ble the Senior Judge to have passed orders on the administrative side thereafter. We do not accept the contention of Sri Mathur as

suggested and urged before us.

186. Needless to re-emphasise that the aforesaid view finds clear support from the dictum of the Apex Court in the case of *State of Rajasthan v. Prakash Chand* (supra) where it has been clearly held in no uncertain terms that it is the Chief Justice alone who has the authority to pass orders for assigning cases and fixing the rosters. In the instant case no such powers were exercised either by the Hon"ble Chief Justice or by the Hon"ble Senior Judge on the administrative side. The file was never placed for any such orders nor was it obtained as required under the rules. It may be pointed out that Hon"ble the Senior Judge at Lucknow on the administrative side exercises the powers of Hon"ble the Chief Justice in his absence as per Rule 9 of Chapter V of the 1952 Rules which is obviously subject to any general or special orders of Hon"ble the Chief Justice. The same is the position with regard to the senior most judge sitting during vacations either at Allahabad or Lucknow as provided for under Rule 10 (2) of the said Rules.

187. It is further to be noted that the roster of the special appeal even on 19.9.2014 continued to be with a different bench. The roster had neither been altered nor was there any administrative order withdrawing Special Appeal 32 of 2014, as such it was not appropriate on the part of the office to have not sent the file to the Bench that had the roster assigned to it. This was a lapse on the part of the office and which aspect was not even taken note of by the Division Bench which passed final orders on the special appeal, the roster whereof was not assigned to the said bench.

188. Coming to the issue of roster in the same case of *Kishore Samrite* (supra) the Apex Court has opined as under :

"25. The roster and placing of cases before different Benches of the High Court is unquestionably the prerogative of the Chief Justice of that Court. In the High Courts, which have Principal and other Benches, there is a practice and as per rules, if framed, that the senior-most Judge at the Benches, other than the Principal Bench, is normally permitted to exercise powers of the Chief Justice, as may be delegated to the senior most Judge. In absence of the Chief Justice, the senior most Judge would pass directions in regard to the roster of Judges and listing of cases. Primarily, it is the exclusive prerogative of the Chief Justice and does not admit any ambiguity or doubt in this regard.

26. Usefully we can refer to some judgments of this Court where such position has been clearly stated by this Court. In the case of *State of Rajasthan Vs. Prakash Chand and Others*, , a three- Judge Bench of this Court was dealing with the requirement of constitution of Benches, issuance of daily cause list and the powers of the Chief Justice in terms of the Rajasthan High Court Ordinance, 1949 read with Article 225 of the Constitution of India. The Court held as under :

"10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (supra) shows that the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute

business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the "first amongst the equals", on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73, which reads thus:

"73. Daily Cause List.- The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may be heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List." 24.....The correctness of the order of the Chief Justice could only be tested in judicial proceedings in a manner known to law. No Single Judge was competent to find fault with it."

27. In view of the above discussion, the Court amongst others, stated the following conclusions :

"(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the Court and allocate cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by

the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice."

189. The aforesaid ratio which also follows the decision in the case of Prakash Chand (supra) clearly holds that it is the Chief Justice alone on the administrative side who has the power and competence to give any direction to the Registry for placing a matter within the domain of a Single Judge or a division bench. A judicial order of a division bench cannot be a substitute of compliance of the aforesaid rule. The reason is simple, inasmuch as, if such a power is acknowledged on the judicial side then the same would be traced to Article 226 of the Constitution of India and would be a transgression on the administrative powers of the Chief Justice which flows from Article 225 of the Constitution of India and is regulated by the rules framed thereunder. This, therefore, also answers the argument advanced by Sri Mathur about orders that cannot be passed on the judicial side which have to be only done administratively that includes fixing of roster and nominations by the Chief Justice alone. In my considered opinion, the division bench presided over by the Senior Judge could not have passed orders on 18.9.2014 which was a judicial order signed by two Judges on the judicial side, may be presided over by the Senior Judge. This act of passing a judicial order cannot be equated with the passing of an administrative order by the Chief Justice alone on the administrative side in exercise of his exclusive powers conferred under the rules framed under Article 225 of the Constitution of India for defining the jurisdiction and sitting of Judges in the High Court.

190. The ratio of the decision quoted hereinabove also indicates that judicial discipline demands that in the event a Single Judge or a division bench considers that a particular case requires to be listed before it for valid reasons, it should direct the registry to obtain appropriate orders from the Chief Justice or as in the present case from the Senior Judge. Thus, the proper course could have been for the division bench that the matter ought to have been directed to be placed before the Senior Judge or the Chief Justice for obtaining appropriate orders and the Senior Judge himself while sitting in the division bench on the judicial side could not have passed a judicial order alongwith another Judge in the division bench to change the roster. This is necessary as the Chief Justice or the Senior Judge himself is required to act in his own administrative capacity alone, and not pass orders while sitting on the judicial side for assigning a bench. This is also necessary in order to protect the powers of the Chief Justice on the administrative side inasmuch as if the interpretation as suggested by Sri Mathur is given, then in that event the powers exercisable by any division bench on the judicial side under Article 226 of the Constitution cannot in any way be less than by the powers exercisable by a division bench presided over by Hon''ble the Chief Justice, inasmuch as all Judges on the judicial side are equal, and Hon''ble the Chief Justice is only the first amongst equals. Thus, the powers of a division bench, merely because it is presided over by Hon''ble the Chief Justice or the

Senior Judge, cannot by virtue of the administrative authority vested, be superior on the judicial side while exercising powers under Article 226 of the Constitution. This in our opinion, is the only interpretation that should be given namely, that if a bench even if presided over by Hon"ble the Chief Justice or Senior Judge comes to the conclusion that a case should be assigned a particular roster, then in that event the matter has to be placed before Hon"ble the Chief Justice/Senior Judge for an administrative order to assign a roster if the bench otherwise does not have the jurisdiction to hear the matter.

191. To keep the rules straight and free from any capability of being misunderstood or misinterpreted, I would make it clear that an order which has to be passed by Hon"ble the Chief Justice/Senior Judge on the administrative side alone should not take the shape of a judicial order by a division bench under Article 226 of the Constitution or else the same would trench upon the administrative powers which have to be exercised by Hon"ble the Chief Justice/Senior Judge alone in his administrative capacity, the foundation whereof rests exclusively on Article 225 of the Constitution of India.

192. The same judgment in Kishore Samrite's case in paragraph 29 and 30 has explained the situation further which is extracted hereinunder :

"29. Judicial discipline and propriety are the two significant facets of administration of justice. Every Court is obliged to adhere to these principles to ensure hierarchical discipline on the one hand and proper dispensation of justice on the other. Settled canons of law prescribe adherence to the rule of law with due regard to the prescribed procedures. Violation thereof may not always result in invalidation of the judicial action but normally it may cast a shadow of improper exercise of judicial discretion. Where extraordinary jurisdiction, like the writ jurisdiction, is very vast in its scope and magnitude, there it imposes a greater obligation upon the Courts to observe due caution while exercising such powers. This is to ensure that the principles of natural justice are not violated and there is no occasion of impertinent exercise of judicial discretion.

30. In the present case there is no dispute to the fact that no order was passed by the Chief Justice of Allahabad High Court or even the senior-most Judge, administratively Incharge of the Lucknow Bench, transferring Writ Petition No. 111/2011 for hearing from a Single Judge before which it was pending, to the Division Bench of that Court. On basis of the allegations made in the Writ Petition No. 111/2011, that matter had been listed before the Single Judge. If this writ petition was improperly instituted before the Single Judge of the High Court then it was for the Registry of that Court or any of the contesting parties to that petition, to raise an objection in that behalf. The objection could relate to the maintainability and/or jurisdiction on the facts pleaded. If the Writ Petition No. 125 of 2011 was filed with a prayer for transfer of Writ Petition No. 111/2011 on the ground stated in the petition, this power fell within the exclusive domain of the Chief Justice or the Senior Judge Incharge for that purpose. It does not appear to be apt exercise of jurisdiction by the Division Bench to suo moto direct

transfer of Writ Petition No. 111/2011 without leave of the Chief Justice of that Court as such action would ex facie amount to dealing with matters relating to constitution and roster of Benches. We have already cited various judgments of this Court where matters relating to the roster and constitution of the Benches fall within the exclusive domain of the Chief Justice of the concerned High Courts. Transfer of a petition may not necessarily result in lack of inherent jurisdiction. It may be an administrative lapse but normally would not render the Division Bench or Court of competent jurisdiction as lacking inherent jurisdiction and its orders being invalid ab initio. Such an order may necessarily not be vitiated in law, particularly when the parties participate in the proceedings without any objection and protest. This, however, always will depend on the facts and circumstances of a given case. In the present case, suffices it to note that transfer of Writ Petition No. 111/2011 by the Division Bench to its own Board was an order lacking administrative judicial propriety and from the record it also appears that adequate hearing had not been provided to the writ petitioners before dismissal of the Writ Petition No. 111 of 2011 by the Division Bench."

193. It has been held that the exercise of transfer of a petition has to be observed with due caution and the bench having suo motu issued directions without there being an administrative order of the Chief Justice/Senior Judge would be clearly in violation of the roster of benches. The transfer of such a petition according to the aforesaid judgment may not necessarily result in lack of inherent jurisdiction and may be an administrative lapse. The judgment or the order passed by such a bench may not be necessarily invalid ab initio or vitiated in law, but the Apex Court has said that this will depend on the facts and circumstances of a given case. In that case the Supreme Court clearly held that the order transferring the writ petition was an order lacking administrative judicial propriety. In paragraph 60 of the judgment while quoting another decision the Apex Court has again held that the transfer of the writ petition was not in consonance with the accepted canons of judicial and administrative propriety. Accordingly, the judgment of the High Court was found to be unsustainable on that count and the judgment was modified accordingly even though the exemplary cost which had been imposed by the High Court was substituted by a sum of Rs. 5 lac only. The crux of the judgment, therefore, clearly was that the consequences of an order so passed may be scrutinised depending on the facts and circumstances of a given case, but on the issue of propriety and exercise of administrative power, the Apex Court clearly came to the conclusion that it is not within the competence of any single or division bench on the judicial side to direct the registry list a case before it contrary to the directions of Hon"ble the Chief Justice/Senior Judge fixing a roster.

194. In the instant case it is admitted that there is no administrative order passed by either the Senior Judge or Hon"ble the Chief Justice appropriating and assigning either the Special Appeal No. 32 of 2014 or the Single Judge Habeas corpus Petition No. 594 of 2012 to the bench that finally disposed of the said matter alongwith Writ Petition No. 299 on 19.9.2014.

195. Coming to the issue of conversion of the case into a PIL and hearing the same alongwith the Special Appeal and Writ Petition 299 of 2014 is concerned, the same judgment in the case of Kishore Samrite (supra) has ruled as under :

"28. Similarly, in the case of State of U.P. and Others Vs. Neeraj Chaubey and Others, , the Court had directed appearance of certain persons in the matter of selection to the post of Assistant Professor and treated the matter as a writ petition in the nature of Public Interest Litigation. The Court, while passing widespread orders, in paragraph 10 of the judgment held as under :

"10. In case an application is filed and the Bench comes to the conclusion that it involves some issues relating to public interest, the Bench may not entertain it as a public interest litigation but the Court has its option to convert it into a public interest litigation and ask the Registry to place it before a Bench which has jurisdiction to entertain the PIL as per the Rules, guidelines or by the roster fixed by the Chief Justice but the Bench cannot convert itself into a PIL and proceed with the matter itself." 196. It is thus clear that if the bench found the matter to be of public interest then such orders had to be obtained by the registry passed on the administrative side. If the argument of Sri Mathur is accepted then in that event all powers on the administrative side under Article 225 of the Constitution of India would become necessarily and impliedly available to the Chief Justice or the Senior Judge even while passing judicial orders under Article 226 or 227 of the Constitution of India. This, in my opinion, is not within the scheme of the Constitution nor is it acceptable in view of the reasons given by us hereinabove. The powers under Article 225 to decide the jurisdiction of the sitting of Judges is a different exercise of power then that of judicial power conferred under Article 226 of the Constitution on the judicial side.

197. At the same time, the judgment in the case of Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, , cannot be overlooked.

198. There is yet another factor which deserves notice, namely, whenever there is a matter of private detention then the judgment of a learned Single Judge in a habeas corpus petition is subject to a special appeal under Chapter VIII Rule 5 and if this jurisdiction is usurped by a division bench, then a person would be loosing his right of appeal which is statutorily available under the High Court Rules. Sri Mathur has invited the attention of the Court to a division bench judgment of the Punjab High Court, in Shyam Krishen Vs. The State of Punjab and Others, . Paragraphs 2 and 3 of the said judgment are extracted hereinunder :

"2. At the outset a point raised by the learned Advocate-General, which arises in all the cases regarding the Jurisdiction of this Court to entertain petitions for the writs mentioned in Article 226, requires to be dealt with. The objection of the learned Advocate-General is an ingenious one and, as will be seen, has found some support in a decided case, but in spite of this it appears to me to be

without any force, and to be quite opposed to what appears to be the quite clear and unambiguous wording of Article 226, Clause (1) of which reads:

"Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to Issue to any person or authority, including in appropriate cases any Government, within these territories directions, orders or writs including writs in the nature of "habeas corpus" "mandamus," prohibition, "quo warranto" and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and or any other purpose." Article 32 reads:

Part III--Fundamental Rights) "(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of "habeas corpus," "mandamus", prohibition, "quo warranto, and "certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by Clauses (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its Jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).

(4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution."

The argument of the learned Advocate-General was based on the supposition that with regard to the High Court, or any other Courts, there exists a rigid line of distinction between "power" and "Jurisdiction" and that in fact the two are in separate watertight compartments, and in order to reinforce his argument he relied on the provisions of Article 225, which, according to the marginal insertion, relates to the Jurisdiction of existing High Courts. This Article reads:

"Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the Jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution." The Article also contains a proviso removing certain restrictions with which we are not concerned in the present argument. It was contended that although Article 226 gives all the High Courts the power to issue directions, orders, and writs, no High Court has jurisdiction to do so unless it is also given the necessary jurisdiction by legislation either under Clause (3) of Article 32 or otherwise. It is argued that

Articles 225 and 226 are to be read together and that under Article 225 the jurisdiction of existing High Courts is confined to the jurisdiction enjoyed by them before the Constitution came into force, except as laid down in the proviso. This jurisdiction did not include the issue of writs, which therefore has to be otherwise provided. There is no doubt that contentions similar to those advanced by the learned Advocate General were accepted by a majority of three Judges of the Madhya Bharat High Court in the case of Anant Bhaskar Lagu Vs. State, . In that case it was held by Kaul, C.J., and Shinde, J., who accepted the existence of a rigid distinction between power and Jurisdiction, that, unlike Article 32 of the Constitution, Article 226 does not provide for any remedy which apart from the existing law could be available to a person for the enforcement of any of the rights dealt with in Part III of Constitution, and that Article 226 must be read subject to Article 32(3), and Article 226 only mentions some of the powers which, if law made by Parliament or other appropriate Legislature so provides may be exercised by the High Courts under circumstances and conditions prescribed by such law, but, so long as this is not done, the powers conferred by Article 226 must remain ineffective except in so far as they can be exercised under the existing law. I am glad to say, however that Mehta, J, dissented from this view and held that Article 226 is self-contained, providing for the extent of Jurisdiction to be exercised by High Courts, and also indicating the relief which can be granted by the issue of appropriate writs.

3. In repelling the contention of the learned Advocate-General the first point I would make is that in my opinion there is no warrant whatsoever for the argument that Article 226 is to be read with, and subject to, Article 225. This section of the Constitution, Chapter V of Part VI, deals with the High Courts in the states and deals with many miscellaneous matters in connection herewith. The subject-matter of most of these Articles is clearly quite self-contained, as can be seen from the subject dealt with in the Articles immediately preceding Nos. 225 and 226. Article 220 deals with the prohibition of practising in Courts or before any authority by Judges. Article 221 deals with salaries etc., of Judges. Article 222 deals with the transfer on a Judge from one High Court to another. Article 223 deals with appointment of acting Chief Justices. Article 224 deals with the attendance of retired Judges at sittings of High Courts. As I have already mentioned, the subject of Article 225 is jurisdiction of existing High Courts, and that of Article 226 powers of the High Courts to issue certain writs. One indication that two entirely separate matters are dealt with in these Articles is that Article 225 relates only to existing High Courts, whereas the most important words in Article 226 are "Notwithstanding anything in Article 32 every High Court shall have power." These words alone are quite conclusive on the point that the power of High Courts to issue writs is not in any way governed by the provisions of Article 32(3), which, in any case, does not even refer specifically to High Court, but seems to indicate that Parliament may give powers to issue writs, orders and directions even to subordinate Courts. When this fact was pointed out to learned Advocate-General and he was asked to say under which of the law-

making powers contained in Second Schedule Parliament could give jurisdiction to High Courts to deal with writs and kindred matters under Article 226 all he was able to do was to refer to Item No. 95 in the Union List which reads:

"Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List." He was not, however, able to point out in the rest of the List any item in which writs and such matters were included. It would in fact appear that on the face of it the power to Issue writs and orders of alike nature was vested in the Supreme Court and all the High Courts by the Constitution itself, and it was only left to Parliament to extend any of these powers to subordinate Courts if considered desirable."

199. The said judgment and the ratio therein was not an issue arising out of any rule relating to the assignment of cases or exercise of administrative powers of the Chief Justice under Article 225 of the Constitution of India. It was a comparative study of the two articles to hold that the word "power" used under Article 226 would also seem to include jurisdiction and that the power under Article 226 of the Constitution does not get diluted on a comparison that the Article 225 which only provides for mentioning the jurisdiction. The discussion in the judgment nowhere in the judgment quoted parawise is a debate on the distinction of the exercise of power of the Chief Justice on the administrative side and that of the powers exercised on the judicial side. The said decision, therefore, in no way comes to the aid of the argument advanced by Sri Mathur as discussed hereinabove.

200. He has then invited the attention of the Court to a division bench judgment in the case of Paras Nath Tiwari v. Bhaiya Lal, 1970 ALJ 328 and contends that the said division bench judgment clearly rules as follows in paragraphs 11 and 12:

"11. The Supreme Court has referred to this case in Pannalal Binjraj Vs. Union of India (UOI), . These decisions support the view we are taking. We are of the opinion that the, regulation of the sittings of the Judges of the Court is not a judicial function that the Chief Justice performs. It is only an administrative power discharged to facilitate the performance of the judicial function of the Court by the various Judges who constitute it. Once the case is before a Bench, it has full jurisdiction to decide it and is not only fully seized of it but has complete dominion, over it to fix dates and decide it in accordance with its views and the law on the subject. The administrative powers of the Chief Justice do not destroy this inherent jurisdiction possessed by the Bench receiving a case and must be read subject to it.

12. In the present case, the objection seems to be to, the Method of exercise of jurisdiction by this Bench. Admittedly, the Bench had the jurisdiction to decide the case as any other in the Court. What in substance is contended is that the, jurisdiction will remain unexercisable (as if it were latent) without an order by the Chief Justice assigning the case to the Bench and that once that order is there, the jurisdiction to decide the case becomes patent. It was observed in

Rajwant Prasad Pande v. Ram Ratan Gil, AIR 1915 PC 99ENDLAWFINDER follows.

"Their Lordships think it is very trite and very familiar that a challenge of the method of the exercise of the jurisdiction of a Court can never in law justify a denial of the existence of such jurisdiction" 201. Having perused the same I find that in that case the matter had been listed in the cause list of that bench which cause list was prepared under orders of Hon"ble the Chief Justice, It was also ruled that assignment of cases is made by showing them in the cause list and specific orders are not passed by the Chief Justice. It was, therefore, inferred that allotment of cases in the daily cause list have the authority of the Chief Justice as it has been listed before the bench as such no substance was found in the argument of assignment.

202. The instant case is clearly decipherable on facts as well and the aforesaid ratio would not apply inasmuch as here neither the Special Appeal No. 32 of 2014 nor the Single Judge Habeas corpus Petition No. 594 of 2012 was listed before the division bench having jurisdiction of habeas corpus matters and was not even listed under the orders of the Chief Justice/Senior Judge before the bench which finally decided the matter. The cases were summoned by the bench before it on 19.9.2014 by a judicial order dated 18.9.2014 alongwith fresh W.P. No. 299 of 2014. No roster or list had been formulated by any administrative order of the Chief Justice or the Senior Judge to list the matter before the said bench. To the contrary, the bench vide a judicial order dated 18.9.2014 assigned to itself the said cases which were listed before a different co-ordinate bench that had jurisdiction over the matter arising out of special appeals. As a matter of fact Special Appeal No. 32 of 2014 was shown on board in the cause list before the Special Appellate bench presided over by Hon"ble Rajiv Sharma, J. in a different Court. The case also had not been withdrawn or assigned to any other bench as already indicated above. Therefore, on facts the ratio of the decision in the case of Paras Nath Tiwari (supra) is not at all attracted as it is clearly distinguishable as explained above.

203. The matter requires to be clarified to the extent that in the event any Court or judge presiding over a Court finds it necessary to peruse the records of any other case of any other jurisdiction for the purpose of deciding a case listed before the Court then such records are ordinarily summoned from the office and perused, but such a case is not decided nor does the judge of the Court assume jurisdiction to decide a case which has been summoned for perusal of the record.

204. It would not be inappropriate to mention that the powers on the judicial side of a division bench is not co-centric with that of the powers of the Chief Justice on the administrative side. On the other hand, the power of Hon"ble the Chief Justice/Senior Judge in his administrative capacity is not Dicentric in the sense that it cannot be a power which can be exercised judicially under Article 226 and 227 of the Constitution. This would be contrary to the constitutional scheme and such an interpretation has to be necessarily avoided.

205. Having answered the question that the summoning of the file without any administrative order was without authority, the answer to the question of entertaining and deciding the special appeal by a different bench has also to be made in the negative could not be converted into PIL.

Issue No. F

"Question No. 9- Whether the order dated 19.9.2014 passed by one of the Judges of the division bench in Writ Petition No. 9470 of 2014, and not signed by the other Judge, amounts to a valid order or judgment ?

Question No. 11- Whether there is a conflict of opinions in the orders between the two division benches and if so then its resolve ?

Question No. 14- Whether, the learned Single Judge (Hon''ble S.N. Shukla, J.) who was a Member of the Division Bench and heard Writ Petition No. 299 (H/C) of 2014, could have alone passed Order dated 24.9.2014, in case the Judgement and Order dated 19.9.2014 pronounced by the bench presided over by Hon''ble Amar Saran, J., is deemed to be a judgement delivered in open Court and had attained finality?

Question No. 16- Whether the order dated 19.9.2014, delivered by Division Bench comprising Hon''ble Amar Saran, J. and Hon''ble Shri Narayan Shukla, J. shall be deemed to be final judgment of the pending petition?

Question No. 17- Whether reference made by Hon''ble the Chief Justice was permissible and required in view of the arguments advanced that a Habeas corpus Petition No. 299 of 2014 and Special Appeal No. 32 of 2014 stood finally decided on 19.9.2014 and no matter of conflict remains pending to be resolved by reference?

Question No. 18- Whether the order of learned Single Judge (Shri Narayan Shukla, J.) dated 24.9.2014 is an order on judicial side or administrative side, capable of raising valid reference?"

206. To answer these issues one will have, to refer to the orders passed on 18.9.2014, the three orders of the respective division benches passed on 19.9.2014 and the order passed by one of the learned Judges on 24.9.2014 alone. It is admitted that orders were passed by the Bench of Hon''ble Amar Saran and Shri Narayan Shukla, JJ. on 18.9.2014 connecting all three matters together and simultaneously converting Writ Petition 5094 of 2012 into a public interest litigation. There is no doubt that the said order dated 18.9.2014 was passed and signed by both the Judges and this is how all the three matters came up before the same bench on the next day i.e. on 19.9.2014. On 19.9.2014 this bench pronounced a detailed judgment in open Court in the presence of the other member of the bench who did not propose any different opinion. Special Appeal No. 32 of 2014 was dismissed as infructuous and Writ Petition No. 299 of 2014 was allowed. Simultaneously Writ Petition No. 5094 of 2014 which was given a new number as a Public Interest Litigation No. 9470 of 2014 was allowed

to continue as such. This fact that the judgment was pronounced by the Senior member of the bench without any contrary view having been expressed by the other member has been admitted by all the learned counsel for the parties at the bar. This also appears to be so from a perusal of the records.

207. It appears that Hon"ble Shri Narayan Shukla, J. had not signed the judgment that was pronounced in open Court by the bench. The question is whether non-signing of the judgment invalidates it altogether. The answer clearly lies in the ratio expressed in the decisions cited namely that of Surendra Singh and Others Vs. The State of Uttar Pradesh, , Kushalbhai Ratanbhai Rohit and Others Vs. The State of Gujarat, , and Review Petition No. 794 of 2014 in Special Appeal No. 599 of 2006 (SB) which relies on the Apex Court decision in the case of Vinod Kumar Singh Vs. Banaras Hindu University and Others, . A couple of other decisions have also been referred to Sangam Lal Vs. Rent Control and Eviction Officer and Others, and Yadlapati Venkateswarlu v. State of Andra Pradesh and another, 1995 Suppl (2) SCC 590. A perusal of the ratio of the aforesaid decisions leaves no room for doubt that if the judgment has been pronounced in open Court, then non-signing of the same would not invalidate it as it will be a valid judgment unless reviewed in accordance with law. The learned Judge and member of the division bench who did not sign the order, passed an order alone on 24.9.2014 that has already been extracted by us in our order dated 14.10.2014. The question is if the matter had been finally decided on 19.9.2014, did one of the learned Judges who had not signed the judgment could have passed such an order alone? In my opinion, if the pronouncement was final, and which also appears from the order dated 24.9.2014 passed by the learned Judge himself, and there was no contrary view taken by him separately, then the judgment dated 19.9.2014 had become final. The learned Judge had become functus officio thereafter and could not have expressed a different opinion on 24.9.2014 which was neither in the shape of a judicial order nor it could be said to be a valid administrative order. At the best it was an opinion expressed by him in the peculiar situation created by his non-signing of the judgment. The question also is if the special appeal had been dismissed as infructuous then could the other division bench have sent a reference in the same special appeal and had an authority to pass such an order. It may be observed that the learned Single Judge ought not to have undertaken this exercise and should have either signed the judgment or expressed a different opinion, if at all he had any difference with the same and ought not to have indicated a point of reference after five days of the passing of the judgment. This was an absolutely unusual judicial act and is unknown to any such regular practice of this Court. It is also unsupported in law. I, therefore, hold that the learned Judge having exercised an abstention from signature had no authority to make any reference or point out any such conflict of opinion, which otherwise was a matter of debate between the two division benches, and should not have been subject-matter of any expression of opinion independent of these proceedings.

208. As a matter of fact the opinion expressed by the learned Single Judge may

have been his own opinion but the same is judicially not tenable inasmuch as he could not have rendered an opinion in a matter which had already been disposed of finally on 19.9.2014 by a bench of which he himself was a member on the assumption that he had not signed it. As already held hereinabove, the non-signing by the learned Single Judge was of no consequence and the open pronouncement in Court had already become final on 19.9.2014 that crystallized into a judgment. Thus, the learned Single Judge did not have the option to make a reference that too even without forming a different opinion himself or indicating that he had a different opinion when the judgment was pronounced on 19.9.2014. To clarify it further I may point out that there cannot be a difference of opinion unless there is an opinion expressed. Even otherwise a member of the same bench cannot carve out a reference after having finally disposed of the matter to point out a possible conflict. There is no procedure or power that could be invoked by Hon''ble Justice Shri Narayan Shukla to record his individual views about an alleged conflict, which otherwise also did not exist on 24.9.2014.

209. The division bench which was having the roster of special appeal had not expressed any final opinion or judgment in the matter, and before it could do so, the division bench which was being presided over by Hon''ble Mr. Justice Amar Saran disposed of the matter finally in between on the same day. Consequently there was no matter pending, and as indicated above, the division bench presided over by Hon''ble Rajiv Sharma, J. could not render a different opinion of conflict after the disposal of the appeal and pass an order making reference. The said order was only an intimation to Hon''ble the Chief Justice about the issue of impropriety and the matter being taken up in violation of the roster. In the circumstances the reference for deciding an issue in the case itself did not arise in this matter at all.

210. However, the saving grace is that Hon''ble the Chief Justice while passing the order of reference on 25.9.2014 has taken care to refer the case to this bench leaving it open to the full bench to formulate its own question. The question is, did anything survive for the purpose of reference? Here fortunately the Division Bench which passed the final judgment on 19.9.2014 converted the Single Judge Writ Petition No. 594 of 2012 into a public interest litigation with a new number Writ Petition (PIL) No. 9470 of 2014 and directed the same to be placed for monitoring in future. This, therefore, survives and it is on this that Hon''ble the Chief Justice was pleased to make a reference. In such peculiar circumstances, the reference, therefore, survives for being answered as it is in a pending PIL which has been kept alive by the division bench itself by way of conversion of the Single Judge petition into a PIL. The Chief Justice, therefore, had referred the said case and as such this bench continues to possess the authority to answer a peculiar reference, in a surviving and pending case.

211. Having said so there was also no issue of conflict of opinion and rather it was a clear absence of jurisdiction as observed by us hereinabove. Consequently, I hold that the order pronounced on 19.9.2014 by the bench presided over by

Hon"ble Amar Saran, J. was a final judgment and the learned Single Judge who had not signed the same was under an obligation to sign it and had obviously no authority to pass a separate order in the manner in which it has been done in the present case. Thus, the reference on a conflict of opinion may not be maintainable but since the ongoing public interest litigation was also referred to us, the reference still survives to be answered by this Bench.

Issue Nos. G and H

"Question No. 12- Whether in the larger interest of the detenues the orders for release that have been passed by the learned Single Judge being without jurisdiction is lawful?

Question No. 13- Whether on merits the release orders of the detenues passed from time to time can be legally sustained on merits on the basis of the principles applicable to such detention?

Question No. 15- Whether the legal impact of judgment and order under scrutiny, upon reference to this Full Bench can be reviewed in this proceeding, if otherwise found to be suffering from some error on the face of record, both on facts and law as also being without jurisdiction?"

212. The question of exercise of powers of review *ex-debito justitiae* has been explained by the Constitution Bench in the case of *A.R. Antulay Vs. R.S. Nayak and Another*, . The question is, can such a power be exercised in these proceedings arising out of a reference and whether any such matter is pending before this Court or not.

213. The position that has been explained hereinabove and facts that have emerged indicate that the division bench which finally passed order on 19.9.2014 has kept the matter alive as a public interest litigation. Thus the Chief Justice had rightly made a reference in a surviving matter and if the proceedings were surviving, the question is, can a review be undertaken even in respect of final orders that have already been passed in the same proceedings.

214. Sri Mathur contends that this Court may not be able to exercise this power of review as it is not sitting to hear a review matter and is rather hearing a matter arising out of a reference on the alleged conflict as indicated in the order of reference.

215. Sri Mathur in my opinion is correct in his submission that if a judgment has attained finality then the remedy to get it reversed is to either approach the higher forum of appeal or to file a review petition before the same Court if the ingredients of review are available.

216. The instant is a case where a very peculiar situation has arisen as is evident from the answers given by us to the questions framed touching the issue of propriety. This therefore is a case where an extraordinary situation has arisen and which requires in our opinion a remedy on the facts that have emerged out

of the orders passed. It is evident from our findings recorded that there was a violation of principles of natural justice, both at the stage of learned Single Judge and also when the matter was finally disposed of by the division bench on 19.9.2014. This is evident from the facts of the case of Sameeha Khatoon who was released by the learned Single Judge without putting her father to notice that resulted in the filing of the special appeal by the father of the detainee. The division bench dismissed the special appeal as infructuous without allowing any reasonable time to the father to contest the division bench writ petition which was allowed on 19.9.2014 on the very next day of its filing. Thus it is clear that the father of the detainee, Masihuddin did not get any opportunity to contest the proceedings and therefore the disposal of the matter in the manner aforesaid clearly resulted in violation of principles of natural justice.

217. It is here that the judgment in the case of A.R. Antulay (supra) has to be carefully read and applied. The aforesaid constitution bench by a majority has held that a review would lie if any fundamental rights have been violated or an order has been passed in violation of principles of natural justice. It has further been emphasised therein that no one should suffer for the wrong of the Court. This has been indicated in Paragraph 55 of the said reported judgment and the case was also treated to be peculiar that demonstrated such action by recording a clear finding to that effect in Paragraph 57 of the said judgment. The same view has been again indicated in Paragraph 76.

218. The Court further in paragraph 83 ruled as under :

"This passage was quoted in the Gujarat High Court by D.A. Desai, J. speaking for the Gujarat High Court in Soni Vrajilal v. Soni Jadavji, as mentioned before. It appears that in giving directions on February 16, 1984, this Court acted per incuriam inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in Anwar Ali Sarkar case which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis." 219. The words "Ex-debito justitiae" means "what is owed by justice". It is spoken of as a remedy in which the Court has no discretion to refuse.

220. The Court also went on to explain the meaning of the word jurisdiction in Paragraph 91, and then it was held that to rectify a mistake it was open to the Court to proceed with the matter.

221. The Court in the same judgment has in paragraph 85 held that one wrong cannot be remedied by committing another wrong and therefore in paragraph

102 of the same judgment the Supreme Court held that the Court has inherent powers to exercise to remedy the mistake and it is its duty to correct the same. In our opinion, also there is no discretion with a Court to disobey the law.

222. The judgment in Paragraph 107 however indicated that the decision may be not used as precedent to challenge judicial orders and if this position so arrives the Court which is asked to use the same as an instrument, would be alive to the peculiar facts and circumstances of the case in which the said judgment was being delivered.

223. This Court is aware of the legal limitations but at the same time I find it necessary to observe that this is a fit case where an exceptional circumstance has arisen to point out that a review would be desirable to rectify the gross mistake of procedure as recorded by us hereinabove. Neither the learned Single Judge had any authority to entertain the petitions nor the division bench which passed the final judgment on 19.9.2014 could have done so for all the reasons that have been enumerated by us while recording the findings on the issues mentioned above. All the orders passed by the learned Single Judge and the division bench under scrutiny are thus legally unsustainable. This was therefore a clear case where the mistake deserved to be corrected yet it was perpetuated. It is also to be remembered that howsoever laudable the object of the proceedings may have been to set at liberty detainees, who in the opinion of the Court were unlawfully detained, yet the same has to be done lawfully and in accordance with law. For this reference may be had to paragraph 41 of the judgment in the case of A.R. Antulay (supra) where reference was made to the judgment in the case of The State of West Bengal Vs. Anwar Ali Sarkar, .

224. I am therefore of the opinion that the judgment and orders under scrutiny do require a review but at the same time I would observe that instead of doing so in this reference, I find it appropriate that this exercise is attempted and concluded by the division bench competent to hear a State Detention Habeas corpus Petition, that would also have the jurisdiction to hear a review in writ petition No. 299 of 2014. The power of review can be exercised by the Court itself. The mistake is manifest as has been recorded by us but in order to rectify the said mistake I find it necessary to send the matter back to the division bench for an appropriate order suo motu in this regard. I therefore answer questions No. 12, 13 and 15 holding that a review would be permissible in this matter in the light of the observations made hereinabove as the orders of the learned single judge for release were without jurisdiction even if they could be otherwise sustained on merits.

225. We therefore request Hon''ble the Chief Justice that this reference having been answered by us be placed before the appropriate bench alongwith the records of the proceedings for exercise of such power in the light of the observations made by us.

226. This takes us to the issues of any relief that may be necessary in respect of

the release orders already passed and which according to us have not been found to be legally sustainable. In the facts and circumstances of the present case, it may be observed that the division bench that would be now hearing the matter independently shall be at liberty to pass appropriate orders in relation to each individual case which would be dependent on the facts of the individual detainees, provided appropriate proceedings are instituted in accordance with law or the matter is allowed to be proceeded with as a public interest litigation on an appropriate order to be passed by Hon"ble the Chief Justice or Hon"ble the Senior Judge as the case may be. The questions on this issue therefore stand answered accordingly.

227. As a measure of precaution we may further observe that the release orders passed in respect of the detainees involved in the present proceedings either by way of final relief or interim arrangement shall continue unless ordered otherwise by the concerned bench which may hear the matter.

228. Let the papers of this reference be now placed before the Hon"ble Chief Justice for placing it before the appropriate bench to deal with the matter in accordance with the observations made hereinabove.

Ajai Lamba, J.

229. I had the privilege of going through the judgment prepared by Hon"ble Justice Devi Prasad Singh and Hon"ble Justice A.P. Sahi.

230. I fully agree with the answers given by my brother Justice A.P. Sahi to issues (A), (B), (C), (D), (E), (G) and (H), as encased in the judgment.

231. With all humility, however, I differ on the answer recorded in context of Issue (F). I would like to record my separate reasons and findings on the issue.

232. For ready reference, Issue (F) reads as under:

"The status of final judgment unsigned by one of the Judges of the Bench and the conflict of opinion and its reference by Hon"ble the Chief Justice." 233. The issue has been framed in context of Questions 9, 11, 14, 16, 17 and 18, as they are related. Before making an endeavour to address the issue, the sequence of events is required to be reiterated in brief.

234. The relevant facts to be noted in this context are that the Bench constituted of Hon"ble Justice Amar Saran and Hon"ble Justice Shri Narayan Shukla pronounced judgment" dated 19.9.2014 in open Court. The Presiding Judge viz. Hon"ble Justice Amar Saran signed the judgment and sent it to Hon"ble Justice Shri Narayan Shukla for affixing signatures.

235. In the interregnum period before Hon"ble Justice Shukla could affix signatures, order dated 22.9.2014 was rendered by the Division Bench headed by Hon"ble Justice Rajiv Sharma. Apparently, the order was brought to the notice of Hon"ble Justice Shri Narayan Shukla.

236. The order rendered by the Bench headed by Hon"ble Justice Rajiv Sharma reflects the intricate developments in the connected cases and while referring to them, the Registry was directed to place the entire record before Hon"ble the Chief Justice. By implication, issue of jurisdiction of Bench headed by Hon"ble Justice Amar Saran was raised by Hon"ble Justice Rajiv Sharma in the order of the Bench dated 22.9.2014. In these peculiar facts and circumstances of the case, a separate order dated 24.9.2014 appears to have been passed by Hon"ble Justice Shri Narayan Shukla. The original draft judgment pronounced in Court by the Bench consisting of Hon"ble Justice Amar Saran and Hon"ble Justice Shri Narayan Shukla dated 19.9.2014 was accordingly not signed by Hon"ble Justice Shri Narayan Shukla, rather order dated 24.9.2014 was passed.

237. Before considering the case law on the issue, in context of the above noted facts, the relevant Rule from The Allahabad High Court Rules, 1952 (for short "the Rules") needs to be noted. Chap-VII Rule 1 to 4 are extracted herebelow:

"1. Pronouncing of judgment: (1) After a case has been heard judgment may be pronounced either at once or on some future date, of which notice shall be given to the Advocates of the parties : Provided that notification in the Cause List shall be deemed to be sufficient notice.

2. Where a case is heard by two or more Judges and judgment is reserved, their judgment or judgments, may be pronounced by any one of them. If no such Judge be present such judgment or judgments may be pronounced by any other Judge.

(3) Where a case is heard by a Judge sitting alone and judgment is reserved, his judgment may, in his absence, be pronounced by any other Judge.

2. Judgment or order to be recorded: Every judgment or order delivered by the Court shall be recorded. Where a written judgment or order is delivered, such judgment or order shall form part of the record. Where the judgment or order is delivered orally in open Court it shall be taken down by a judgment clerk and a transcript thereof shall form part of record.

3. Transcript of judgment or order prepared by a judgment clerk: The transcript of the judgment or order prepared by the judgment clerk shall be filed by him with the paper- book of the case to which it relates not later than on week from the date on which such judgment or order was delivered. He shall initial the transcript and enter at the foot thereof the date on which the judgment or order was delivered and the date on which the transcript was filed with the paperbook of the case.

4. Judgment or order to be sealed with the seal of the Court: (1) When the transcript of the judgment or order prepared by the judgment clerk has been filed with the paperbook of the case, the Bench Reader shall submit it to the Judge or Judges who delivered it. It shall then be signed or initialed by such Judge or Judges after such corrections as may be considered necessary.

Thereafter it shall be sealed with the seal of the Court by the Bench Reader.

(2) Where the Judge or any one of the Judges by whom the judgment or order was delivered is not available on account of death, illness, retirement or any other cause, the transcript shall be submitted to the Chief Justice and it may be sealed under his orders without the signature of such" Judge, an endorsement to that effect being made on such judgment or order under the signature of the Registrar General.

3. Where a written judgment or order is delivered it shall, after it has been signed or initialled by the Judge or Judges delivering it, be sealed with the seal of the Court by the Bench Reader."

(emphasis supplied by me)

238. It is trite in law that rules framed by the High Court have binding effect. In *Monnet Ispat and Energy Limited Vs. Jan Chetna and Others*, , the Hon"ble Supreme Court of India has emphasized that every Bench of the High Court should scrupulously follow the relevant rules.

239. The Hon"ble Supreme Court of India in *Surendra Singh and Others Vs. The State of Uttar Pradesh*, (3 JJ), dealt with a judgment delivered by Allahabad High Court in criminal appellate jurisdiction. One of the Judges dictated a judgment" purporting to do so on behalf of himself and his brother Judge, i.e. to say that it was a joint judgment as pronoun "We" was used. The Judge signed every page of the judgment as well as at the end, however, did not put a date on it. The "Judgment" was sent to the brother Judge. The Judge who authored the judgment" died on 24.12.1952 before it could be delivered. After the death, on 5.1.1953, the other Judge purported to deliver the "Judgment" of the Court after signing it and putting a date on it viz; 5.1.1953. Since the signature of the author Judge were still there, anyone reading the judgment and not knowing the above noted facts would conclude that the author Judge was a party to the delivery of the "Judgment" on 5.1.1953. It is in these circumstances the matter was carried to the Hon"ble Supreme Court of India. The Hon"ble Supreme Court of India, in context of the Allahabad High Court Rules, held as follows :

"10. In our opinion, a judgment within the meaning of these sections is the final decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small regularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there : that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest - the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter - can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the judgment is delivered orally or read out, in some

only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

11. An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But however it is done it must be an expression of the mind of the Court at the time of delivery. We say this because that is the first judicial act touching the judgment which the Court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

12. Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of *locus paenitentiae*, and indeed last minute alterations sometimes do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivered so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in Court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessary indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to

embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light dawn upon him before the delivery of judgment."

(emphasis supplied by me)

240. In *Kushalbhai Ratanbhai Rohit and Others Vs. The State of Gujarat*, (3 JJ), a criminal appeal was finally heard on 11.12.2013 and the Court took a view that sanction of the State Government under Section 197 of the Criminal Procedure Code, 1973, was necessarily required. In view thereof the order was dictated in open Court allowing the appeal on technical issue. However, the order dictated in open Court acquitting the petitioners vide order dated 11.12.2013 was recalled by the Court suo motu vide order dated 27.12.2013 and directed the appeal to be reheard. The order had been recalled on the ground that the Court wanted to examine the issue further as to whether in the facts and circumstances of the case where the accused had been police constables, the offence could not be attributed to have been committed under the commission of their duty where sanction under Section 197 Cr.P.C. would be attracted. It is in these circumstances the Hon"ble Supreme Court was approached by the accused.

241. The contention of learned counsel for the petitioners was that once the order had been dictated in open Court, the order to review or recall is not permissible in view of the provisions of Section 362 Cr.P.C. It was contended that once the judgment had been pronounced, the judgment could not have been recalled in review jurisdiction. The contention has been rejected by the Hon"ble Supreme Court of India. In the said case, admittedly the order was dictated in open Court but had not been signed.

242. The Court held in following terms in paras 10, 11 and 12 of the judgment:

"10. In *Sangam Lal Vs. Rent Control and Eviction Officer and Others*, , while dealing with the rent control matter, the Court came to the conclusion that until a judgment is signed and sealed after delivering in Court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed.

11. This Court has also dealt with the issue in *Surendra Singh v. State of U.P.*, observing as under: (AIR pp. 196-97, para 12) :

"12. Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort Of locus paenitentiae" and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallize into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in Court but he must be in existence as a member of the Court and be in

a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light dawn upon him before the delivery of judgment."

12. Thus, from the above, it is evident that a Judge's responsibility is very heavy, particularly, in a case where a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture. Therefore, one cannot assume, that the Judge would not have changed his mind before the judgment become final."

(emphasis supplied by me)

243. In *Vinod Kumar Singh Vs. Banaras Hindu University and Others*, (2 JJ), the Hon'ble Supreme Court was dealing with a case from this Court wherein a Division Bench heard a writ petition, concluded the proceedings and judgment was dictated in open Court allowing the writ petition. The appellant applied for certified copy of the judgment, but was told that the matter was again in the hearing list and would be heard afresh. In these circumstances the matter was carried to the Hon'ble Supreme Court.

244. It was contended by learned counsel for the petitioner that once judgment was delivered in open Court, it became operative and could not be changed.

245. There was no dispute that the Division Bench had heard the writ petition and had disposed it of. The Hon'ble Supreme Court after referring to *Surendra Singh's* case (*supra*) held in the following in terms in paras 6 to 9 :

"6. The above observations were made, as already mentioned, in a case where the judgment had been signed but not pronounced in the open Court. In the present case, we are concerned with a judgment that had been pronounced but not signed. The provision in O. 20, R. 3 of the Civil P. C. indicates the position in such cases. It permits alterations or additions to a judgment so long as it is not signed. This is also apparently what has been referred to in the last paragraph of

the extract from the judgment of Bose, J. quoted above) where it has been pointed out that a judgment which has been delivered "can be freely altered or amended or even changed completely without further formality, except notice to the parties and re-hearing on the point of change, should that be necessary, provided it has not been signed." It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except under the provisions of S. 152 or S. 114 of the Civil P.C. or, in very exceptional cases, under S. 151 of the Civil P. C.

7. But, while the Court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open Court, parties act on the basis that it is the judgment of the Court and that the signing is formality to follow.

8. We have extensively extracted from what Bose J. spoke in this judgment to impress upon everyone that pronouncement of a judgment in Court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the Court with reference to the case. Bose J. emphasised the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the Court. That would mean that the judgment to be operative does not await signing thereof by the Court. There may be exceptions to the rule, for instance, soon after the judgment is dictated in open Court, a feature which had not been placed for consideration of the Court is brought to its notice by counsel of any of the parties or the Court discovers some new facts from the record. In such a case the Court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be cases-though their number would be few and far between- where when the judgment is placed for signature the Court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given.

9. Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the Court in regard to the conclusion. Once that stage is reached and the Court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced, parties present in the Court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in Court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open Court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case, in the instant matter, we find that there is no

material at all to show as to what led the Division Bench which had pronounced the judgment in open Court not to authenticate the same by signing it. In such a situation the judgment delivered has to be taken as final and the writ petition should not have been placed for fresh hearing. The subsequent order dismissing the writ petition was not available to be made once it is held that the writ petition stood disposed of by the judgment of the Division Bench on 28.7.1986."

(emphasis supplied by me)

246. In *Sangam Lal Vs. Rent Control and Eviction Officer and Others*, this Court dealt with the issue as to whether a judgment orally dictated in open Court, but before it is signed and sealed, it can be completely changed ? After referring to *Surendra Singh's* case (*supra*) and other cases in context of the High Court Rules the following has been held:

"These rules provide for four different situations: (1) for judgments which are pronounced at once as soon as the case has been heard; (2) for those which are pronounced on some future date; (3) for judgments which are oral, and (4) for those which are written. These rules use the word "pronounced" in some places and "delivered" in others. Counsel tried to make capital out of this and said that a judgment had to be both "pronounced" and "delivered" and that they were two different things.

We do not intend to construe these rules too technically because they are designed, as indeed are all rules, to further the ends of justice and must not be viewed too narrowly; nor do we desire to curtail the jurisdiction which the Privy Council point out is inherent in Courts to make good inherent defects caused by accidents such as death."

A perusal of this decision of the Supreme Court shows that their Lordships considered three different contingencies: (1) a case in which arguments have been heard and judgment has been reserved and is pronounced at a later date; (2) a case in which Judgment is delivered in open Court after arguments have been heard but it has not been signed; and (3) a case in which judgment has not only been delivered after hearing arguments but has also been transcribed and signed. As regards the first of the three contingencies mentioned above their Lordships observed as follows:--

"Now, upto the moment the judgment is delivered Judges have the right to change their mind. There is a sort of "locus paenitentiae" and indeed, last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand; it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallize into a full fledged judgment and become operative." With regard to the second and the third contingencies mentioned above, their Lordships observed as follows:--

"After the judgment has been delivered provision is made for review. One provision is that it can be freely altered or amended or even changed completely

without further formality, except notice to the parties and a rehearing on the point of change should that be necessary, provided it has not been signed. Another is that after signature a review properly so-called would lie in civil cases but none in criminal: but the review, when it lies, is only permitted on very narrow grounds. But in this case the mere fact that a Judge is dead and so cannot review his judgment does not affect the validity of the judgment which has already been delivered and has become effective. For this reason, there is a distinction between judgments which have not been delivered and so have not become operative and those which have. In the former case, the alteration is out of Court. It is not a judicial act. It is only part of a process of reaching a final conclusion; also there is no formal public declaration of the Judges mind in open Court and consequently there is no "judgment" which can be acted upon. But after delivery the alteration cannot be made without notice to the parties and the proceedings must take place in open Court, and if there is no alteration there is something which is final and conclusive and which can at once be acted upon. The difference is this. In the one case one cannot know, and it would be against public policy to enquire, whether the draft of a judgment is the final conclusion of the Judge or is only a tentative opinion subject to alteration and change. In the second case, the Judge has publicly declared his mind and cannot therefore change it without notice to the parties and without hearing them afresh when that is necessary; and if there is no change the judgment continues in force. By change we mean an alteration of the decision and not merely the addition or subtraction of part of the reasoning." In our view, this decision of the Supreme Court furnishes a complete answer to the question referred to us. It makes it clear that there is power of "review" both in cases where judgment has been delivered but not signed and cases in which judgment has been delivered, signed and sealed; in the former case the power to alter or amend or even to change completely is unlimited provided notice is given to the parties and they are heard before the proposed change is made, while in the latter case the power is limited and review is permitted only on very narrow grounds. We are therefore, of the view that *Faulad and Another Vs. State*, ; AIR 1961 All 326), ("supra) was rightly decided and our answer to the question referred to us is as follows:

"A judgment which has been orally dictated in open Court can be completely changed before it is signed and sealed provided notice is given to all parties concerned and they are heard before the change is made." (emphasis supplied by me)

247. Perusal of the above extracted portion from the judgment rendered in *Surendra Singh's case* (supra) indicates that by way of pronouncement in open Court, declaration of mind of the Court is made known to the litigants and public. It has further been held that upto the moment the judgment is "delivered", the Judges have a right to change their mind. There is scope for last minute alterations. It becomes a judgment only after its formal deliverance. Only thereafter it crystallizes into a full-fledged judgment and becomes operative. The emphasized portion from the judgment also indicates that the Judge at the time

of formal delivery of the judgment must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration, should there be any last minute change of mind on his part.

248. Likewise from the above extracted portion from the case of Kushalbhai Ratanbhai Rohit (supra), it transpires that a judgment was pronounced by way of dictation in open Court, acquitting the petitioners vide order dated 11.12.2013. The order had not been signed by the Judges. vide order dated 27.12.2013, however, order dated 11.12.2013 was recalled and appeal was directed to be reheard, on given reasons.

249. While dealing with said issue, Hon''ble Supreme Court of India has approved what has been said in the case of Sangam Lal Vs. Rent Control and Eviction Officer and Others, .

250. In Sangam Lal's case (supra) it was held that until a judgment is signed and sealed after delivering in Court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed. In the said judgment, law laid down in Surendra Kumar's case (supra) has been followed.

251. In the case of Kushalbhai Ratanbhai Rohit (supra) it has also been held that it cannot be assumed that the Judge would not have changed his mind before judgment becomes final. Even this judgment inheres that judgment assumes finality only after signatures are affixed on the judgment and the judgment is sealed.

252. In Vinod Kumar Singh's case (supra) it has been specifically noticed that a judgment which has been delivered can be freely altered or amended or even changed completely without further formality, except notice to the parties and rehearing on the point of change, should that be necessary, provided it has not been signed.

253. It is only after the judgment is both pronounced and signed that alterations or additions are not permissible, except in very exceptional circumstances or under the provisions of Section 152 of the Code of Civil Procedure. It has been clarified that while the Court has undoubted power to alter or modify a judgment, delivered, but not signed, such power should be exercised judicially, sparingly and for adequate reasons. It has been held that a judgment pronounced in open Court should be acted upon, unless there be some exceptional feature and if there be any such, the same should appear from the record of the case.

254. In Sangam Lal's case (supra) Full Bench of this Court while referring to Surendra Singh's case (supra) has also clarified the issue. It has been said that there is power of "review", both in cases where judgment has been delivered, but not signed, and cases in which judgment has been delivered, signed and sealed. It has further been made explicit that in the former case the power to alter or amend or even to change completely is unlimited, provided notice is

given to parties and they are heard before the proposed change is made. In my humble opinion, this aspect of the matter would specifically apply to the facts and circumstances of the present case.

255. Considering the law as laid down and explained by the Hon''ble Supreme Court of India and in the earlier Full Bench judgment of this Court, when applied to the facts of the present case, it becomes apparent that before signatures had been affixed by Hon''ble Justice Shri Narayan Shukla on draft judgment dated 19.9.2014 pronounced in Court by the Bench, headed by Hon''ble Justice Amar Saran, intervening developments had been brought to the notice of Hon''ble Justice Shri Narayan Shukla. It is in view of these circumstances which, in my opinion, are indeed exceptional, order dated 24.9.2014 was passed by Hon''ble Justice Shri Narayan Shukla. Resultantly before signing of the draft "judgment" dated 19.9.2014 and its formal delivery, Hon''ble Justice Shri Narayan Shukla had not become functus officio. The matter had not been finally decided by formal delivery of judgment on 19.9.2014. Before its formal delivery, order dated 24.9.2014 had been passed by Hon''ble Justice Shri Narayan Shukla. The draft judgment dated 19.9.2014 had not acquired the character of a final judgment.

256. What is relevant and important for a Court to consider is, that propriety must be maintained on judicial and administrative side. If an infraction comes to the notice of a Bench or a Member of the Bench which would give a controversial hue, surely it becomes the duty of the Judge to take appropriate action by way of passing required orders.

257. Judging should not allow fluidity. There should be no doubt in the minds of the consumers of justice or public as regards the judgment delivered by a Court of law. If the proposition that a judgment pronounced in Court orally is the final verdict, even without affixing signatures on the written/draft judgment by a Judge, members of a Bench or one of the Judges, is accepted, the relevant consumer of justice would not be able to decipher as to what facts have been considered in the judgment and what exact operative portion has been recorded in the judgment, to enable him to follow it, or challenge it.

258. It need not be impressed that a judgment is required to be interpreted, with all its commas and full stops. In an oral pronouncement, exact interpretation of the judgment is not possible. In case, a case is heard by a Bench consisting of more than one Judge, obviously law requires the judgment to be signed by all the members of the Bench so as to crystallize the document into a formal pronounced and delivered judgment. The relevant Rule in this regard from Chapter VII of the Rules, as extracted above, also provides in same terms.

259. In the case in hand, circumstances were recorded by the Bench headed by Hon''ble Justice Rajiv Sharma in order dated 22.9.2014 of which cognizance was taken by Junior Member of the Bench presided over by Hon''ble Justice Amar Saran and before the judgment had been formally signed and sealed, order dated 24.9.2014 had been passed. I see no error in adopting the said mode and

accordingly hold that the order dated 24.9.2014 is valid.

260. In view of the above, in my opinion, order pronounced on 19.9.2014 by the Bench presided over by Hon"ble Justice Amar Saran was not a final judgment. Hon"ble Justice Shri Narayan Shukla was not under obligation to sign it. The case was heard by a Bench of two Judges, one of whom, though available, had not signed it. I agree with the opinion of my brother Hon"ble Justice Devi Prasad Singh expressed in separate judgment with regard to different facts of social issues; exercise of power by the Court under writ jurisdiction to secure public interest, vis-?-vis Public Interest Litigation, and the power of Hon"ble Chief Justice to withdraw part-heard and tied-up matters.