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**IN THE HON'BLE SUPREME COURT OF WONDERLAND**

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**SPECIAL LEAVE TO APPEAL UNDER ARTICLE 136 OF THE CONSTITUTION OF  
WONDERLAND**

STATE OF THUNDER PRADESH ..... PETITIONER

VERSUS

ROMSAY BOLTON .....RESPONDENT

ALONG WITH

**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF  
WONDERLAND**

LGBT RAKHSHAKHS ..... PETITIONER

VERSUS

UNION OF WONDERLAND .....RESPONDENT

**Most Respectfully Submitted before the Hon'ble Supreme Court of Wonderland**

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**MEMORANDUM ON BEHALF OF THE RESPONDENTS**

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2.	Akhilesh Kumar V. State of U.P.	2016 (95) ACC 170
3.	Anamika v Union of India & Ors.	W.P. (CrI.) No. 2537/2018.
4.	Anil Shamrao v. State of Maharashtra	2013 CrI.L.J. 2223
5.	Asharfi And Anr. v. The State	AIR 1961 All 153
6.	Bengal Chemical & Pharmaceutical Works Ltd., Calcutta v. Their Workmen	AIR 1959 SC 633
7.	Charan Lal Sahu v Union of India	AIR 1990 SC 1480
8.	Chunnihal Mehta v. Central Spinning and Manufacturing Co.	AIR 1962 SC 1314
9.	Collector of Central Excise v. Standard Motor Products	AIR 1989 SC 1298
10.	Dharam Dutt v. Union of India	AIR 2004 SC 1295
11.	Gangula Mohan Reddy V. State of Andhra Pradesh	(2010) 1 SCC 750
12.	Indian Oil Corporation Ltd. v. State of Bihar and Ors.	(1986) 4 SCC 146
13.	Jagannath Mondal v. State of W.B.	2013 Cri.L.J. 1994 (Cal)

14.	Jamshed Hormsuji Wadia v. Board of Trustees, Port of Mumbai	AIR 2004 SC 1815
15.	M. Mohan v. State, Represented by the Deputy Superintendent of Police	AIR 2011 SC 1238
16.	Mahendra Singh v. State of M.P.	1996 Cri.L.J. 894
17.	Maruti vs State Of NCT Of Delhi	CrI. A. No. 419/2001
18.	Mathai @ Joby v. George	(2010) 4 SCC 358
19.	Mohd. Arif @ Ashfaq v. State (NCT of Delhi)	(2012) 2 SCC 766
20.	Mutthu Kutty and another v. State by Inspector of Police, T.N.	(2005) 9 SCC 113
21.	N. Suryakala v. A Mohan and Ors.	(2007) 9 SCC 196
22.	National Legal Services Authority v Union of India & Ors.	W.P. (C) No. 400/2012
23.	P.S.R. Sadhanantham v. Arunachalm & Ors.	(1980) 3 SCC 141
24.	Partha Dey v. State of Tripura	2013 Cr.L.J. 2101 (Gau.)
25.	People's Union For Democratic Rights v. Union Of India & Others	AIR 1982 SC 1473
26.	Pritam Singh v. The State	AIR 1950 SC 169
27.	Queen v. Ahmed Ally	(1998) 3 SCC 309
28.	Ram Manorath v. State of U.P.	(1981) 2 SCC 654
29.	Ram Swaroop v. State Of Delhi	CrI.A. No. 930/2001
30.	Ramakrishna Dalmia v. Justice Tendolkar	AIR 1958 SC 538

31.	Santosh Hazari v. Purushottam Tiwari	(2001) 3 SCC 179
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33.	Shivanand Gaurishankar Baswanti v. Laxmi Vishnu Textile Mills	(2008) 13 SCC 223.
34.	State of Haryana v. Surender & Ors. Etc.	CrI.A. 618-620/2001.
35.	State of Rajasthan v. SohanLal	(2004) 5 SCC 57
36.	State of Rajasthan v. Wakteng	CrI.A. 677/2002
37.	Sudhakar & Anr vs State Of Maharashtra	AIR 2000 SC 2602
38.	Sujit Biswas v. State of Assam	2013 Cri.LJ. 3140
39.	Sultan Singh v. State of Haryana	2014 (8) Supreme 746
40.	Sushila Saw Mill v. State of Orissa	(1995) 3 SCC 615
41.	The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank Ltd., Delhi	AIR 1950 SCC 188
42.	The State of Bombay v. Rusy Mistry and Anr.	AIR 1960 SC 391
43.	Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar	AIR 2004 SC 2351
44.	Virendra Kumar Rai and Ors. v. Union of India and Ors.	(2004) 13 SCC 463

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S. No.	BOOKS
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1.	H.M Seervai, Constitutional Law of India (4th edition Vol 2 2010)
2.	Durga Das Basu, Introduction to Constitution of India (21 <sup>st</sup> edition)
3.	V.N. Shukla and M. P. Singh, Constitution of India (1990)
4.	Ratanlal Ranchhoddas, Ratanlal & Dhirajlal's Law of Crimes: a Commentary on the Indian Penal Code, 1860 (2007)
5.	M. Monir, The Law of Evidence (2012)
6.	Oxford Law Dictionary, 7th edition
7.	Black's Law Dictionary, Bryan A. Garner, 8th edition

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S. NO.	STATUTES
1.	Criminal Law (Amendment), 2013
2.	Criminal Tribes Act, 1871
3.	Immoral Traffic (Prevention) Act, 1956
4.	Information Technology Act, 2000
5.	Juvenile Justice (Care and Protection of Children) Act, 2015
6.	Prevention of Children against Sexual Offences Act, 2012
7.	Wonderland Evidence Act, 1872
8.	Wonderland Penal Code, 1860
9.	Wonderland Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2019



<b>10.</b>	Wonderland Transgender Persons (Protection of Rights) Act, 2019
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**TABLE OF ABBREVIATIONS AND ACRONYMS**


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<b>ABBREVIATION/ ACRONYM</b>	<b>DEFINITION</b>
AIR	All India Reporter
Anr.	Another
Art.	Article
Co.	Company
Corp.	Corporation
Cri.L.J.	Criminal Law Journal
CrI.A.	Criminal Appeal
Cr.P.C.	Criminal Procedural Code, 1973
DATC	District Anti Trafficking Committee
HC	High Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer
ITPA	Immoral Traffic (Prevention) Act, 1956
IT Act	Information Technology Act, 2000
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015

OHCHR	Office of the United Nations High Commissioner for Human Rights
PIL	Public Interest Litigation
POCSO	Prevention of Children against Sexual Offences Act, 2012
Ors.	Others
TGP Act	Transgender Persons (Protection of Rights) Act, 2019
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases
u/s.	Under Section
U.N.	United Nations
UDHR	Universal Declaration of Human Rights
V.	Versus
W.P.	Writ Petition
W.P.C.	Wonderland Penal Code, 1860
W.P.E.	Wonderland Evidence Act, 1872

### **STATEMENT OF JURISDICTION**

THE HON'BLE SUPREME COURT OF WONDERLAND EXERCISES JURISDICTION TO HEAR AND ADJUDICATE OVER THE MATTER(S) UNDER ARTICLE 136 AND ARTICLE 32 OF THE CONSTITUTION OF WONDERLAND.

THE PROVISION UNDER WHICH THE PETITIONERS HAVE APPROACHED THIS HON'BLE COURT AND TO WHICH THE RESPONDENTS HUMBLY SUBMITS IS READ HEREUNDER:

**Article 136** of the Constitution of Wonderland, states that

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*“(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of Wonderland*

*(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.”*

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**Article 32** of the Constitution of Wonderland, states that

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*“32. Remedies for enforcement of rights conferred by this Part*

*(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 clause (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.”*

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## **STATEMENT OF FACTS**

**Factual Backdrop**— Alish Kumar, a young boy, living in the State of Thunder Pradesh, Wonderland realised that he identified himself with the opposite gender. After facing a lot of hardships, he moved to Tumbai to fulfil his dreams. On acquaintance with a member of the LGBT community, he underwent a sex reassignment surgery on **23.01.2009** and thereafter adopted the name of Alice. Soon she became a successful LGBT icon of the fashion industry.

**Alleged incident and its aftermath**— On **25.12.2014** Alice claimed to have been sexually assaulted and raped by Mr. Romsay Bolton, a leading Producer (and a member of the ruling party) at a Christmas Party. On **02.03.2015**, Alice committed suicide after uploading a video in which she blamed Mr. Romsay Bolton for her death. Subsequently, Romsay was charged under ss. 306 and 377 of W.P.C. The trial court convicted him and on appeal, HC acquitted him of all charges.

**Upheaval in the society**— In 2017, an I-TOO movement began where sexually abused victims recounted their pain. Soon, the entire nation was divided into two sections, one favouring the recognition of LGBTQ community's rights and the other against it.

**New Legislations**— The Transgender Persons (Protection of Rights) Bill, 2018 and The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 were passed by the Parliament and came into force on **15.01.2019**. LGBT community challenged these laws through a writ petition, alleging that they took away the sole means of their livelihood as some of them heavily relied on begging and as sex workers, along with challenging the law of rape discriminatory to the Transgenders and not being gender neutral.

**Present**— The Hon'ble Supreme Court has decided to hear the appeal against Romsay and has admitted the PIL for their Final disposal together on **16.03.2019**.

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**STATEMENT OF ISSUES**

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**ISSUE I**

**WHETHER THE PRESENT MATTERS BEFORE THE HON'BLE SUPREME COURT ARE MAINTAINABLE.**

**ISSUE II**

**WHETHER THE ACQUITTAL OF THE RESPONDENT IS BAD IN THE EYES OF LAW.**

**ISSUE III**

**WHETHER THE WONDERLAND TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.**

**ISSUE IV**

**WHETHER THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 IS CONSTITUTIONALLY VALID.**

**ISSUE V**

**WHETHER THE EXISTENT RAPE LAWS ARE CONSTITUTIONALLY VALID.**

## **SUMMARY OF ARGUMENTS**

### **ISSUE 1 WHETHER THE PRESENT MATTERS BEFORE THE HON'BLE SUPREME COURT ARE NOT MAINTAINABLE.**

It is humbly submitted that the present petitions are not maintainable under Art. 136 and Art. 32 of the Constitution of Wonderland. Art. 136 is the discretionary power granted to the SC to do justice where the court is satisfied injustice has been caused; when a substantive question of law of general public importance arises, and therefore cannot be granted for the instant criminal appeal. Art. 32 is the remedial provision in the Constitution of Wonderland which provides right to seek remedy from the Hon'ble Supreme Court when any of the Fundamental Rights get infringed, which has not happened in the instant case.

### **ISSUE 2 WHETHER THE ACQUITTAL OF THE RESPONDENT IS BAD IN THE EYES OF LAW.**

It is submitted that the acquittal is correct in the eyes of law as the impugned judgement is doing justice to the Respondent. That the dying declaration of the deceased suffers from infirmity and no direct act of the Respondent has led the deceased to commit suicide. That there is no substantiable evidence that the Respondent committed a sexual offence against the deceased when she was under the influence of alcohol along and the circumstantial evidence is in favour of the Respondent. Therefore, the Respondent is not liable u/s. 306 and 377 of W.P.C.

### **ISSUE 3 WHETHER THE WONDERLAND TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.**



The Anti Trafficking Act, 2019, through its comprehensive provisions, targets the rampant issue of human trafficking in the State of Wonderland. It protects the victims of trafficking and punishes the offenders by enforcing Art. 23 via its dedicated institutional mechanism and the elaborate penal provisions for the various offences. That the Act does not infringe any of the Fundamental rights of the citizens of Wonderland. It follows the procedure established by law and aims at protection and rehabilitation of the victims.

**ISSUE 4 WHETHER THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 IS CONSTITUTIONALLY VALID.**

It is most respectfully submitted that the Wonderland TGP Act, 2019 does not violate Art. 14, 19 & 21 of the Constitution. The provisions related to self-perceived gender identity fall within the limits of Reasonable Classification and thus, do not violate Art. 14 and consequently Art. 19. The Respondent is under an obligation to provide rehabilitation to transgender persons neglected by their families, to work to prevent their exploitation and abuse by others as well as to take welfare measures for their upliftment.

**ISSUE 5 WHETHER THE EXISTENT RAPE LAWS ARE CONSTITUTIONALLY VALID.**

It is humbly submitted that the existing rape laws are constitutionally valid. Art. 15(3) of the Constitution permits the respondent to make special provisions for women. Women being a vulnerable section of the society, there is reasonable classification and the test of Art. 14 is satisfied. It is further submitted that in case of any sexual harassment, the transgenders do have a remedy in the form of s. 354A of W.P.C.

**ARGUMENTS ADVANCED****ISSUE 1. WHETHER THE PRESENT MATTERS BEFORE THE HON'BLE SUPREME COURT ARE MAINTAINABLE.****1.1. THAT THE SPECIAL LEAVE PETITION FILED BY THE PETITIONER IS NOT MAINTAINABLE.**

The SLP filed under Art. 136 of Constitution of Wonderland, against the impugned judgment of the High Court is not maintainable. The powers of the Supreme Court under Art. 136 are of a residual nature under which the court exercises in its discretion.<sup>1</sup> The exercise of jurisdiction conferred under Art. 136 to this Court is purely discretionary which is conditioned by the existence of self-imposed conditions: Special circumstances<sup>2</sup>; miscarriage of Justice<sup>3</sup>; violation of Principles of Natural Justice<sup>4</sup>; disregard of legal principles<sup>5</sup>; existence of substantial question of law<sup>6</sup>; existence of question of general public importance.<sup>7</sup> The High Court has already considered the relevant facts of the case and only after that, acquitted the Respondent. Special Leave cannot be

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<sup>1</sup> N. Suryakala v. A Mohan and Ors., (2007) 9 SCC 196.

<sup>2</sup> Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai, AIR 2004 SC 1815.

<sup>3</sup> State of Rajasthan v. SohanLal, (2004) 5 SCC 57.

<sup>4</sup> Bengal Chemical & Pharmaceutical Works Ltd., Calcutta v. Their Workmen, AIR 1959 SC 633; Sanwant Singh v. State of Rajasthan, (1961) 3 SCR 120.

<sup>5</sup> The State of Bombay v. Rusy Mistry and Anr., AIR 1960 SC 391.

<sup>6</sup> Indian Oil Corporation Ltd. v. State of Bihar and Ors., (1986) 4 SCC 146.

<sup>7</sup> Collector of Central Excise v. Standard Motor Products, AIR 1989 SC 1298.

granted where substantial justice has been done and where no exceptional or special circumstances exist for case to be maintainable.<sup>8</sup>

The Respondent humbly submits that it is purely on the discretion of this Court whether to grant the Special Leave to Appeal or not, but since the justice has already been delivered by the High Court, the SLP should not be granted.

#### **I. THAT NO SPECIAL OR EXCEPTIONAL CIRCUMSTANCES EXIST.**

It is submitted by the Respondent that the Petitioner must show that exceptional<sup>9</sup> and special circumstances exist. Art. 136 does not give a right to a party to appeal to the Supreme Court rather it confers a wide discretionary power on the SC to interfere in suitable cases.<sup>10</sup>

The court has emphasized in *Pritam Singh v. The State*<sup>11</sup> that, “*The only uniform standard which in our opinion can be laid down in the circumstances in that Court should grant special leave to appeal in those cases where special circumstances are shown to exist*”.

In *Jamshed Hornsuji Wadia v. Board of Trustees, Port of Mumbai*<sup>12</sup> the court emphasized that: “*The very conferment of the discretionary power defies any attempt at exhaustive definition of power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as when a question of law of general public importance arises or a decision sought to be impugned before the Supreme Court shocks the conscience. This overriding and exceptional*

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<sup>8</sup> Virendra Kumar Rai and Ors. v. Union of India and Ors., (2004) 13 SCC 463.

<sup>9</sup> The Bharat Bank Ltd., Delhi v. The Employees of Bharat Bank Ltd., Delhi, AIR 1950 SCC 188.

<sup>10</sup> P.S.R. Sadhanantham v. Arunachalm & Ors., (1980) 3 SCC 141.

<sup>11</sup> AIR 1950 SC 169.

<sup>12</sup> *Id.* at 2.

*power has been vested in the Supreme Court to be exercised sparingly and only in the furtherance of cause of justice in the Supreme Court in exceptional cases only when special circumstances are shown to exist”.*

It is further submitted that if there is no interference by the Hon’ble court, substantial and grave injustice<sup>13</sup> will result in warrant review of the judgment appealed against on merits, only then the court would exercise its overriding powers under Art. 136. In the instant case, no exceptional and special circumstances have been shown by the Petitioner and therefore the petition is not maintainable.

## **II. THAT THERE IS NO SUBSTANTIVE QUESTION OF LAW.**

It is submitted that no substantial question of law is involved in the present petition and is entitled to be dismissed. It is further submitted that this court had laid down the test which says; if the general principles to be applied in determining the question of those principles the question would not be a substantial question of law.

**[ARGUENDO] Even if it is assumed that the matter involves ‘question of law’, no ‘substantial question of law is involved’.** The present case might involve question of law but not ‘substantial’ question of law. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. *To be ‘substantial’ a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned.*<sup>14</sup>

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<sup>13</sup> Tirupati Balaji Developers Pvt. Ltd. v. State of Bihar, AIR 2004 SC 2351.

<sup>14</sup> Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179.

### **III. THAT SUBSTANTIAL JUSTICE HAS ALREADY BEEN DONE BY THE HIGH COURT.**

It is submitted that there was no miscarriage of justice by the impugned judgment of the High Court as claimed by the petitioner. It is further submitted that the conclusion of the High Court is not perverse and therefore, there is no need for the court to interfere with the findings of the High Court. Article 136 of the Constitution, does not confer a right of appeal on a party, it only confers a discretionary power on the Supreme Court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence. The Supreme Court has lament<sup>15</sup> the abuse of Art. 136 of the Constitution wherein unscrupulous litigants approach the Supreme Court at the drop of a hat, thereby clogging up the justice delivery system. The court shall interfere with the decision under challenge only if the extraordinary flaws or grave injustice or other recognized grounds are made out.<sup>16</sup>

In lieu of the aforesaid observation of the Hon'ble Supreme Court, after examining the case on the touchstone of the afore-noted legal principles, the Respondent humbly submits that there is no need for the Hon'ble court to interfere with the decision of the High Court by way of its impugned judgment under Art. 136 and that the present Petition is not maintainable and is therefore, liable to be dismissed with costs.

### **1.2. THAT THE WRIT PETITION FILED UNDER ARTICLE 32 OF THE CONSTITUTION IS NOT MAINTAINABLE.**

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<sup>15</sup> Mathai @ Joby v. George, (2010) 4 SCC 358.

<sup>16</sup> Shivanand Gaurishankar Baswanti v. Laxmi Vishnu Textile Mills, (2008) 13 SCC 223.

That the petition is maintainable under Art. 32 of the Constitution, since it is filed in public interest by the LGBT Rakshakhs, an NGO and the Wonderland Trafficking of Persons (Prevention, Protection And Rehabilitation) Act, 2019 and the Wonderland Transgender Persons (Protection of Rights) Act, 2019 are violative of the Fundamental Rights of various citizens and groups, guaranteed under Part III of the Constitution of Wonderland.

**I. THAT THE PETITIONER DOES NOT HAVE A *LOCUS STANDI*.**

'*locus standi*' is the right of a party to appear and be heard on the question before any Tribunal<sup>17</sup>. It means the legal capacity to invoke the jurisdiction of the court. It is most humbly submitted that the Petitioner does not have a *locus standi* in the present Writ Petition as they don't have sufficient interest in the matter. That the scope and nature of the Writ Petition has been decisively laid down by this Hon'ble Court in the *Asiad Workers'* case<sup>18</sup> whereby under Art. 32, only a person having sufficient interest and acting *bona fide* in public interest can file a petition if there has been any infringement of Fundamental Rights. As none of the Fundamental Rights are being violated by the present Act, therefore, the Petitioner do not have a *locus standi*.

**II. THAT THERE IS NO VIOLATION OF FUNDAMENTAL RIGHTS OF THE PETITIONER.**

That Art. 32 of the Constitution is invoked when there is a violation of Fundamental Rights. That the said Act, however, does not violate any of the Fundamental Rights mentioned under Part III of

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<sup>17</sup> People's Union For Democratic Rights v. Union Of India & Others, AIR 1982 SC 1473.

<sup>18</sup> *Id.*

the Constitution of Wonderland. Therefore, the Petitioner cannot invoke Art. 32 of the Constitution, and hence, the case is not maintainable.

### **III. THAT THERE EXISTS NO SUBSTANTIVE QUESTION OF LAW.**

It is humbly submitted that in the instant case there exists no substantial question of law as to the interpretation of the constitutional validity of the two Acts and the existing rape laws. That this Hon'ble Court in *Chunnilal Mehta v. Central Spinning and Manufacturing Co.*<sup>19</sup> has held that, *"the proper test in determining whether a question of law raised in the case is substantial would be whether it is of general public importance, or whether it directly and substantially affects the rights of the parties and so whether it is an open question in the sense that it is not finally settled by this court"*.

As this case doesn't require any interpretation as to the substantive question of a law, thus, it is not maintainable in the Hon'ble High Court.

### **2. WHETHER THE ACQUITTAL OF THE RESPONDENT IS CORRECT IN THE EYES OF LAW.**

It is submitted that the Respondent is not liable for abetting the suicide of the deceased as well as for committing the offence u/s. 377 of the W.P.C. against the deceased. Therefore, the judgement acquitting the Respondent by the Hon'ble High Court is doing justice and therefore correct in the eyes of law.

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<sup>19</sup> AIR 1962 SC 1314.

**2.1. THAT THE RESPONDENT IS NOT LIABLE FOR ABETTING THE SUICIDE OF THE DECEASED.**

It is evident that the Respondent is not liable for abetting the suicide of the deceased. This argument is twofold: *firstly*, the dying declaration of the deceased is not acceptable against the Respondent; *secondly*, no act(s) of the Respondent did abet the deceased to commit suicide.

**I. THAT THE DYING DECLARATION OF THE DECEASED IS NOT ACCEPTABLE.**

While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell a lie or to concoct a case so as to implicate an innocent person but the Court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the Court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancor.<sup>20</sup>

Further, in the case of *Mutthu Kutty and another v. State by Inspector of Police, T.N.*<sup>21</sup>, this court held:

*“—16. Though a dying declaration is entitled to great weight it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The Court*

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<sup>20</sup> State of Rajasthan v. Wakteng, CrI.A. 677/2002.

<sup>21</sup> (2005) 9 SCC 113.



*has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailant.”*

Though conviction can be raised solely on the dying declaration without any corroboration, the same should not be suffering from any infirmity.<sup>22</sup> It is submitted that the dying declaration of the deceased suffers from great infirmity as the deceased was not in a fit state of mind while making that dying declaration. That some quantity of alcohol was found in her blood when she committed suicide. That she was upset from her past life experiences of losing her parents at an early age, ruining her career due to her own lies while making the dying declaration and thereafter named the Respondent while she was not in a fit state of mind. A dying declaration which suffers from infirmity cannot form the basis of conviction.<sup>23</sup> Therefore, her dying declaration is not a substantial evidence and is liable to be dismissed on the outset.

## **II. THAT THE RESPONDENT DID NOT ABET THE DECEASED TO COMMIT SUICIDE.**

That the Respondent is not responsible for the death of the deceased as none of his direct act(s) made the deceased to take such a step of ending her life. S. 107 of W.P.C. defines abetment of a thing wherein instigating any person to do a thing. It is submitted that the direct involvement by the Respondent (accused) in such abetment or instigation is necessary.<sup>24</sup> Whereas, there is no sign of direct instigation by the Respondent, thereby negating the claim of the deceased.

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<sup>22</sup> *Id.*

<sup>23</sup> Ram Manorath v. State of U.P., (1981) 2 SCC 654.

<sup>24</sup> Jagannath Mondal v. State of W.B., 2013 Cri.L.J. 1994 (Cal).

This Hon'ble Court in the case of *Gangula Mohan Reddy V. State of Andhra Pradesh*<sup>25</sup> has laid down that- "*Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 I.P.C. there has to be a clear mens rea to commit the offence.*" It is stated that the present case is squarely covered by the above decision as even if the case of the prosecution is taken to be true, there are no elements of *mens rea* on the part of the Respondent to instigate/abet the suicide of the deceased. There should be some live link, or a proximate link between the act of the accused and the act of committing suicide<sup>26</sup>, which is missing in the present case.

In the case of *Sudhakar & Anr vs State Of Maharashtra*<sup>27</sup>, this Hon'ble Court had already examined the possibility of such an abetment by rape, but there was no punishment because the alleged incident of rape itself could not be proved- "*We are, therefore, of the opinion that prosecution has failed to prove, beyond reasonable doubt, that the appellants had committed forcible sexual intercourse with Ms.Rakhi on 9.7.1994 under the circumstances as narrated in Exhibit P-59 and relied upon by the courts below. The appellants cannot be convicted and sentenced merely on suspicion. In the absence of the charge being proved under Section 376 IPC, the prosecution could not have asked for conviction of the appellants under Section 306 of the IPC as according to the prosecution it was the commission of the rape on her person which resulted in the suicide of Ms.Rakhi, allegedly on the abetment of the appellants.*"

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<sup>25</sup> (2010) 1 SCC 750.

<sup>26</sup> M. Mohan v. State, Represented by the Deputy Superintendent of Police, AIR 2011 SC 1238.

<sup>27</sup> AIR 2000 SC 2602; Partha Dey v. State of Tripura, 2013 Cr.L.J. 2101 (Gau.).

In *Mahendra Singh v. State of M.P.*<sup>28</sup>, the appellant was charged for an offence u/s. 306 I.P.C basically based upon the dying declaration of the deceased. This Court, considering the definition of 'abetment' u/s. 107 I.P.C., found that the charge and conviction of the appellant for an offence u/s. 306 is not sustainable merely on the allegation of harassment to the deceased. This Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

The Hon'ble Delhi High Court has also observed that- "*11. Analyzing the facts in the present case on the touchstone of the law laid down by the Hon'ble Supreme Court in Sudhakar & Anr. (supra) and the Division Bench of this Court in Sandy @ Ved Prakash (supra), it can safely be held that there was no abetment/instigation by the appellant, even if the allegation of rape is accepted to be true, soon before the death of the deceased, forcing/persuading her to commit suicide. There was no proximate or live link between the commission of alleged offence of rape and the suicide committed. Hence the conviction of Ram Swaroop for offence punishable under Section 306 IPC cannot be sustained.*"<sup>29</sup>

That the decisions in aforesaid cases vehemently negate the allegation of the deceased that the Respondent is responsible for her death, thereby proving the innocence of the latter.

## **2.2. THAT THE RESPONDENT HAD COMMITTED NO SEXUAL OFFENCE AGAINST THE DECEASED.**

It is submitted that the Respondent is innocent and hasn't committed any sexual offence, whatsoever against the deceased. This argument is again twofold: *firstly*, there exists no

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<sup>28</sup> 1996 Cri.L.J. 894.

<sup>29</sup> Ram Swaroop v. State Of Delhi, CrI.A. No. 930/2001.

substantive evidence against the Respondent; *secondly*, the circumstantial evidence is in the favour of the Respondent.

**I. THAT THERE EXISTS NO SUBSTANTIVE EVIDENCE AGAINST THE RESPONDENT.**

That the medical evidence of the deceased that sexual assault was committed on her and there were slight marks of injuries which point towards a scuffle, is not a substantive evidence against the Respondent. That the medical evidence is an expert evidence u/s. 45 of the W.E.A. and the court for the purpose of arriving at a decision on the basis of the opinions of experts must take into consideration difference between an expert witness and an ordinary witness. Opinion must be based on a person having special skill or knowledge in medical science. It could be admitted or denied. Whether such evidence could be admitted or how much weight should be given thereto, lies within domain of court. Evidence of an expert should be interpreted like any other evidence.

In the case of in *Queen v. Ahmed Ally*<sup>30</sup>, Nariman, J. while expressing his view on medical evidence has observed as follows:

*“The evidence of medical man or other skilled witnesses, however, eminent, as to what he thinks may or may not have taken place under particular combination of circumstances, however, confidently, he may speak, is ordinarily a matter of mere opinion.”*

It is pertinent to note that on the basis of aforesaid decision, medical evidence cannot be a substantive, conclusive proof of an incident and it is an opinion of an expert which shall be only advisory in nature. [ARGUENDO] Even if the medical evidence is accepted to be true, it nowhere

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<sup>30</sup> (1998) 3 SCC 309; Sultan Singh v. State of Haryana, 2014 (8) Supreme 746.

points towards the guilt of the Respondent. It only proves that the sexual assault was committed against the deceased, but who committed it, still remains a question unanswered.

Further, it is submitted that the statement/allegation of the deceased that the Respondent committed sexual assault against her will is subject to infirmity as she was under the influence of alcohol when the alleged incident happened.

In the case of *Maruti vs State Of NCT Of Delhi*<sup>31</sup>, the Delhi High Court has held that- “*Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease - whether of mind, or any other cause of the same kind. It has been held in the case of Siddhapal Kamala Yadav v. State of Maharashtra reported at (2009) 1 SCC 124 that, —there are four kinds of persons who may be said to be non-compos mentis (not of sound mind), i.e., (1) an idiot; (2) one made non compos by illness (3) a lunatic or a mad man and (4) one who is drunk.*”

It may be observed that what amount of agony a person faces after charge of rape cannot be imagined nor expressed in words. He virtually loses everything in the society. He suffers a great stroke in his reputation and status in the society and amongst his family members and friends. The mere allegation of the deceased who was under the influence of alcohol has led the Respondent to lose reputation in the society and more frivolous complaints have come up against him in order to harass/extort him in the film industry.

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<sup>31</sup> CrI. A. No. 419/2001.

## **II. THAT THE CIRCUMSTANTIAL EVIDENCE IS IN THE FAVOUR OF THE RESPONDENT.**

Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that may be proved, and something that will be proved. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.<sup>32</sup> There can be no dispute that in a case entirely dependent on the circumstantial evidence, the responsibility of the prosecution is more as compared to the case where the ocular testimony or the direct evidence, as the case may be, is available. The Court, before relying on the circumstantial evidence and convicting the accused thereby has to satisfy itself completely that there is no other inference consistent with the innocence of the accused possible nor is there any plausible explanation. The Court must, therefore, make up its mind about the inferences to be drawn from each proved circumstance and should also consider the cumulative effect thereof. In doing this, the court has to satisfy its conscience that it is not proceeding on the imaginary inferences or its prejudices and that there could be no other inference possible excepting the guilt on the part of the accused<sup>33</sup>. Keeping in mind the aforesaid principle of criminal justice system, the Hon'ble High Court had acquitted the Respondent from all the charges frivolously made against him.

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<sup>32</sup> Sujit Biswas v. State of Assam, 2013 Cri.LJ. 3140; Akhilesh Kumar v. State of U.P., 2016 (95) ACC 170

<sup>33</sup> Mohd. Arif @ Ashfaq v. State (NCT of Delhi); (2012) 2 SCC 766.

The witness testimonies of Mr. Theon Greyjoy and Mr. Grey Voram prove the innocence of the Respondent without a doubt. The Respondent was not present at the place of incident when the alleged incident took place and was calm and composed rather than apprehensive while leaving the party, as testified by Mr. Grey. The allegation put forth by the deceased is therefore, frivolous and fails any credibility.

It is submitted that the witness testimony of Mr. Hans Solo is unreliable as he was a 77-year-old cataract patient at the time, he stated that he saw the Respondent going downstairs from the same floor where the alleged incident took place. According to s. 118 of W.E.A., a person with extreme old age and that too with a disease may not credibly testify. Allahabad High Court in the case of *Asharfi And Anr. v. The State*<sup>34</sup> has provided for the lack of dependability of a witness who is suffering from cataract in the following manner:

*“Court can rely on the evidence of an identifier, it must satisfy itself as to the condition of his eyesight. There is no difficulty at all if it is found to be normal. But complications arise if it is not so.... Luckily, with the exception of night-blindness, these are matters which, if occasion arises, the trial Court can verify for itself, by testing the witness in the Court-room. Cataract is a widespread ailment among elderly people in the countryside and must be guarded against, though what the Court should consider is not the state of the cataract at the time the witness appears in the witness-box but at the time of the crime, for cataract usually gets aggravated with passage of time.”*

It is to be noted that the witness testimony of Ms. Missendari is also unreliable as she is not a witness to the incident but only providing conjectures about the relationship status of the deceased.

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<sup>34</sup> AIR 1961 All 153.

Therefore, the testimonies of Mr. Hans Solo as well as Ms. Missendari on which the prosecution case is based, stand failed, keeping in mind that clear and unimpeachable evidence is necessary to convict a person.<sup>35</sup>

**[ARGUENDO]** This Court has laid down that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.<sup>36</sup>

It is most humbly submitted that the above-mentioned issues and the arguments put thereunder substantiate the case of the Respondent, thereby proving his innocence.

**ISSUE 3. WHETHER THE WONDERLAND TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.**

Trafficking is one of the fastest growing organized crimes in Wonderland. That the current legislative framework fails to address the complex nature of trafficking or the challenges faced by its victims, and while focusing on the prosecution of some forms of trafficking, fails to provide for a comprehensive framework of law that not only protects victims by prohibiting all forms of trafficking but also provides for an institutional framework for prevention, protection and rehabilitation. For harmonizing all the existing laws on trafficking and rehabilitation, The

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<sup>35</sup> Anil Shamrao v. State of Maharashtra, 2013 CrI.L.J. 2223.

<sup>36</sup> State of Haryana v. Surender & Ors. Etc., CrI.A. 618-620/2001.



Wonderland Trafficking Of Persons (Prevention, Protection And Rehabilitation) Act, 2019 (hereinafter mentioned as the Anti Trafficking Act) was brought into force.

**3.1. THAT THIS ACT SAFEGUARDS THE RIGHTS ENVISAGED UNDER ARTICLE 23 OF THE CONSTITUTION OF WONDERLAND.**

Art. 23 of the Constitution of Wonderland reads—

“Prohibition of traffic in human beings and forced labour: (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law.”

That the Anti Trafficking Act supplements the current legislations such as ITPA, JJ ACT, Child Labour Act, POCSO Act, s. 370 of W.P.C. *et al* and aims to target the organized nature of human trafficking by creating an equally organized and holistic response to prevent trafficking, protection of victim and witnesses, rehabilitation and repatriation of victims. The passing of the Act along with ensuring its implementation is thus, integral to tackle the multi-dimensional nature of the crime. That the purpose of the Anti-Trafficking Act is to create a conducive legal, economic and social environment for the victims. It caters to the needs of victims of various forms of trafficking besides sexual exploitation.

It is to be noted that for its implementation, the Act provides for dedicated institutional mechanism at District, State and National level for prevention, protection, investigation and rehabilitation aspects relating to trafficking—the Central Government shall, by a notification establish a National Anti-Trafficking Bureau which shall have police officers and other officers of such appropriate

ranks, as may be necessary, for the discharge of its functions<sup>37</sup>. The Act provides the extensive functions to be carried out by the Bureau<sup>38</sup>. The State Government shall appoint a State Nodal Officer, not below the rank of Director in the State Government. The major task of the State Nodal Officer shall be responsible for follow up action, relief and rehabilitation services through District Anti-Trafficking Unit and other Government agencies as well as civil society organisations under this Act<sup>39</sup>. The State Government shall designate for each District such number of Anti-Trafficking Police Officers for implementation of functions.<sup>40</sup>

The Central and State Government shall also establish a National Relief and Rehabilitation and State and District Anti-Trafficking Committee<sup>41</sup>, respectively, by notification, for providing relief and rehabilitation services to the victims.

That in order to ensure that there is no infringement of a person's right under s. 23, it provides for new offences with stringent punishments and fine, which are aggravated in nature and not addressed in existing laws. Further, it provides for timely disposal of cases by establishing Designated Courts<sup>42</sup>.

### **3.2. THAT THE ACT DOES NOT VIOLATE ANY FUNDAMENTAL RIGHTS OF THE CITIZENS.**

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<sup>37</sup> S. 3 of the Anti- Trafficking Act.

<sup>38</sup> S. 4, *id.*

<sup>39</sup> S. 6, *id.* at 37.

<sup>40</sup> S. 9, *id.* at 37.

<sup>41</sup> Chapter IV, *id.* at 37.

<sup>42</sup> S. 46, 48, *id.* at 37.

It is humbly submitted that the Act does not violate any of the Fundamental Rights provided in the Constitution of Wonderland. The purpose of the Anti-Trafficking Act is the prevention of trafficking, protection and rehabilitation of victim and prosecution of offenders. It caters to the needs of victims of various forms of trafficking besides sexual exploitation. It does not single out or make exceptions for any particular group.

That the present Act follows the procedure established by law. U/s. 16 and 17, this Act follows the provisions of Cr.P.C. *mutatis mutandis* in relation to a search and seizure in respect of an offence, and the provisions of Cr.P.C. and the POCSO Act in relation to medical examination of any person. Further, the victims who aren't children are not forced into rehabilitation without their consent. This is evident from s. 17(4) of the Act where the following phrases have been used: *the Magistrate may, and he voluntarily makes an application supported by an affidavit for his release.*

That even for the repatriation purposes, the consent of the victims is taken, as mentioned under ss. 26(2) and (3) of this Act. Not only the victims are placed in the safe environment of a rehabilitation home voluntarily, but they are also provided with physical, psychological and social support, including access to education, skill development, physical and mental healthcare. Legal aid, etc. Rehabilitation is provided to the victim, which is not contingent upon the conviction of the offender.

The right to livelihood under Art. 21 of the Constitution is not infringed by the said Act. S. 370 of the W.P.C. gives the definition of "trafficking". Explanation 1 of the Section defines the word "exploitation" under it as— *any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.*

Thus, voluntary begging or sex work, etc. by a person and not pursuant to any inducement or coercion is not covered under the Act as there is no third-party exploitation.

That the rights under Art. 19 are also not violated by this Act as it falls under the reasonable restrictions provided under Art. 19(2) of the Constitution. It is humbly pleaded before the Hon'ble Supreme Court that the Legislature was justified in making of s. 36 and s. 39(2) as it falls under the ambit of one of the restrictions of freedom of speech and expression. It has been observed by the Hon'ble Justice Patanjali Shastri<sup>43</sup> that, "*Man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated....*"

It is humbly pleaded before the Court of law that the restrictions imposed by means of the Act of the House falls under the ambit of one of the restrictions present under Art. 19(2) i.e., incitement to an offence. This ground was added to Art. 19(2) by the Constitution (First Amendment) Act, 1951. Apparently, freedom of speech and expression cannot confer a right to incite people to commit offence. The word 'offence' is defined as any act or omission made punishable by law for the time being in force. This restriction is reasonable as it is concerned with the interests of the society. In case of striking a balance between rights of an individual and the right of citizens, the former becomes insignificant<sup>44</sup> and therefore, has to give way to public good. Since there is no fixed standard for reasonableness, each case must be decided on its own merits<sup>45</sup>, and thus, it is pleaded that these merits should be taken into consideration.

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<sup>43</sup> A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

<sup>44</sup> Sushila Saw Mill v. State of Orissa, (1995) 3 SCC 615.

<sup>45</sup> Dharam Dutt v. Union of India, AIR 2004 SC 1295.

**ISSUE 4. WHETHER THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 IS CONSTITUTIONALLY VALID.**

From time immemorial, transgenders have been an oppressed section of the society. Several landmark judgements in the recent years have hailed them as an integral part whose rights need to be protected. In order to be effectively able to do so, the respondent has brought into force the Wonderland Transgender Persons (Protection of Rights) Act, 2019. The Respondent's objective with respect to this Act is 'to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto.'

**4.1. THAT IT DOES NOT VIOLATE ARTICLES 14, 19 AND 21 OF THE CONSTITUTION OF WONDERLAND.**

It is most respectfully submitted that the said Act does not violate any of the Fundamental Rights of the transgenders. Instead it is an effort from the Respondent's side to alleviate their position in the society. Art. 14 of the Constitution of Wonderland grants equality to all persons, without any arbitrary or unreasonable classification. However, certain permissible classifications are permitted by the Constitution. In order to pass the test for permissible classification, two conditions must be satisfied:

- i) Classification must be founded on an intelligible differentia which distinguishes persons or things grouped together from those left out of the group.
- ii) Differentia must have a rational relation to the objective sought to be achieved by the statute in question.

Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. This test is used to decide whether ‘differentiation’ in a particular case, amounts to ‘discrimination’ or not.<sup>46</sup> It is submitted that in the present case, the differentiation lies within the limits of reasonable classification. According to the directive of this Hon’ble Court in the case of *National Legal Services Authority v. Union of India & Ors.*<sup>47</sup>, each transgender person is entitled to the right of self-perceived gender identity. In line with the direction, the same right has been provided under s. 4(2) of this Act. The objective of the respondent, through this Act, is to confer rights upon and provide benefits to people falling under the transgender category. This is clear from the provisions of the Act which talk about introducing welfare schemes in relation to health, education and employment for the transgenders.

That in order to achieve this objective, it is important for the State to have a mechanism in place which can regulate the entire procedure. For this purpose, the Respondent has set up a District Screening Committee<sup>48</sup> which has been tasked with issuing certificate of identity to the transgender persons. In view of the benefits being conferred, there must be objective criteria to verify the eligibility of applicants to receive benefits targeted for transgender persons. If self-determination of one’s gender identity becomes the sole criterion to receive benefits, it can easily be misused by others to claim such benefits. Through these provisions, the respondent wants to sieve away the false claimants so that the benefit can actually reach the targeted class, i.e., the transgender persons.

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<sup>46</sup> Ramakrishna Dalmia v. Justice Tendolkar, AIR 1958 SC 538.

<sup>47</sup> W.P. (C) No. 400/2012.

<sup>48</sup> S.6 of The Transgender Persons (Protection of Rights) Act, 2019.

That s. 13 of the Act states that no child is to be separated from his parents on the ground of being a transgender. This has been done to ensure that the child is forcibly taken away from his family and subjected to exploitation by people claiming to be his 'well-wishers'. As far as the fear of the child being abused at home is considered, there are provisions already there in place in the form of s. 75 of the Juvenile Justice Act, 2015 which specify the punishment for cruelty of and sexual assault on the child caused by person in charge of the child. That as far as the third clause of this Section is considered, it is the concept of '*parens patriae*' which is being adopted by the Respondent. According to this concept, the State itself acts as the parent of any individual who is in need of protection and has no rightful protector. This doctrine originated by the British was adopted by the Respondent in the case of *Charan Lal Sahu v Union of India*<sup>49</sup>, famously known as the Bhopal Gas Disaster case. Explaining the application of the doctrine, this Hon'ble Court had said- "*The parens patriae theory is the obligation of the State to protect and take into custody the rights and the privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens.*" Thus, the Respondent is justified in taking steps for rehabilitation for the welfare of transgender persons.

That under the chapter of 'Offences and Penalties'<sup>50</sup>, the respondent has made begging and other forms of bonded and forced labour an offence in order to protect transgenders from exploitation. Through its policy, the respondent aims to address new forms of bondage such as organized

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<sup>49</sup> AIR 1990 SC 1480.

<sup>50</sup> Chapter 3 of The Transgender Persons (Protection of Rights) Act, 2019.

begging etc. for which transgenders are mercilessly used. It seeks to punish those who compel and entice this helpless and marginalized section of the society to indulge in such labour.

It is submitted that with regard to the last clause of s. 19, this Act has a general provision for 'sexual abuse'. Specific provisions for the same are available in other statutes like the W.P.C. *et al.* The maxim, *lex specialis*, i.e. when there is an option between general and specific provisions, it is the specific one which prevails is applicable. As a result, there is no injustice being done with the transgenders.

It is submitted that the Act doesn't in any manner infringe any Fundamental Rights of the LGBTQ community and even the s. 22 of the Act in no manner is unconstitutional. That if it is any policy decision, if the procedure established by law is followed, any incidental substantive infringement of rights does not warrant the interference of the courts.<sup>51</sup>

In the light of all the above arguments, it is humbly submitted that the golden triangle of Fundamental Rights is not affected and thus, the Act is valid.

#### **4.2. THAT IT DOES NOT VIOLATE ARTICLES 15 AND 16 OF THE CONSTITUTION OF WONDERLAND.**

That pursuant to this Hon'ble Court's judgement in the NALSA case<sup>52</sup>, the transgenders are to be treated as 'Socially and Educationally Backward Classes'. The Court had also directed the Central and the State governments to make reservations for them in educational institutions and public appointments. However, it is not that easy to implement this. *Firstly*, in order to take any

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<sup>51</sup> *Id.* at 43.

<sup>52</sup> *Id.* at 47.



affirmative action, it is important to understand what all groups come under the term 'transgender'. *Secondly*, the move to place 'transgenders' in 'socially and educationally backward classes' will simply mean substituting the axis of gender in place of caste, without giving any thought to the fact that transgenders may span a range of class and caste positions.

That these concerns were voiced by the State in their Clarification Application in 2014 to this Hon'ble Court wherein it sought to understand whether to follow the direction of the Court as it is or go according to the procedure of National Commission of Backward Classes. If the latter is chosen, then the Commission will first hear complaints regarding the over-inclusion or under-inclusion of any backward class(s). In the present case, this is very much a possibility, as all transgenders may not have left their caste/class identities.

That through the above-mentioned Application of 2014, the State had also submitted that the recommendations given in the Expert Committee Report of the Ministry of Social Justice and Empowerment can only be carried out in phases which will take time. Therefore, the Respondent has implemented the aforesaid Act without a violation of Art. 15 and 16 of the Constitution of Wonderland.

**ISSUE 5. WHETHER THE EXISTENT RAPE LAWS ARE CONSTITUTIONALLY VALID.**

Women, in the present times, are subjected to various heinous sexual offences. Looked down upon as the 'weaker sex', they are subjected to secondary victimization by the society. Thus, it becomes the duty of the Respondent to ensure that women are given a very high degree of protection and safety under the law.

**5.1. THAT THEY ARE IN CONSONANCE WITH ARTICLE 15(3) OF THE CONSTITUTION OF WONDERLAND.**

It is most respectfully submitted that the Constitution of Wonderland is characterized by gender equality. Nevertheless, by virtue of Art. 15(3), the Respondent is permitted to make any special provision for women. The existence of this provision is testimony to the fact that women, in Wonderland, have been socially and economically oppressed for the past several decades. The objective of this provision is to strengthen and improve the status of women as well as to eliminate the socio-economic backwardness of women.

The scope of this Art. is wide enough to cover the entire range of State activity, be it in the field of employment, succession or any other law. A good example of gender specific laws is Sec 498A of W.P.C. which provides for prosecution of a husband or a relative of the husband of a woman subjecting her to cruelty. Such laws are crucial to ensure the safety of the woman in this male dominated society.

Further, such steps taken by the Respondent fall within the limits of reasonable classification. It cannot be denied that women constitute a vulnerable section of the society and it is equally true that the Respondent is under an obligation to protect them. Since any steps taken for this purpose have a rational nexus with the object sought to be achieved, the present rape laws qualify the test of Art. 14 of the Constitution of Wonderland.

In the present case, the State seeks to protect the women from sexual violence and abuse which is meted out to them on a regular basis. A result of that are the rape laws of the nation of Wonderland. In recent times, there has been a lot of demand for gender neutral rape laws. If the rape laws are made gender neutral, they will cease to have the deterrence value and also make it more

complicated for the judges in courts. It will open up avenues for inflicting greater trauma and humiliation to an already marginalized section. In such a scenario, the female victims would be pressurized to withdraw their cases as the offender would be in a position to file a counter complaint against her. Rather than promoting gender equality, such a move will actually discourage women from speaking out about rape in public.

That such a change has also been opposed by women groups across the nation. It has been observed that gender neutrality will shift the focus away from female victimization.

That as far as the lack of remedy with the transgenders regarding rape is concerned, it cannot be said that they do not have any solution whatsoever. In the case of *Anamika v Union of India & Ors.*<sup>53</sup>, the Delhi High Court affirmed the application of s. 354A of the W.P.C. to the cases of sexual harassment of transgender community. In this way, the Respondent is also complying with the directions given by this Hon'ble Court in the NALSA case of addressing the issues related to transgenders and working for their upliftment in the society.

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<sup>53</sup> W.P. (CrI.) No. 2537/2018.

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**PRAYER**

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WHEREFORE, in light of the facts used, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully prayed that this Hon'ble Court may be pleased to adjudge and declare that: -

- A. The acquittal of the Respondent was correct in law and uphold the judgement of the High Court;
- B. The Wonderland Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2019 is *intra vires* the Constitution and therefore valid;
- C. The Wonderland Transgender Persons (Protection of Rights) Act, 2019 is *intra vires* the Constitution and therefore valid;
- D. The existing rape laws under W.P.C. are *intra vires* the Constitution.

Or grant such other relief as the court may deem fit in the light of justice, equity and good  
conscience.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL DUTY BOUND EVER  
PRAY.

All of which is most humbly prayed  
Counsel(s) for the *Respondents*