

TEAM CODE- TC-D

**SIR SYED & SURANA & SURANA NATIONAL CRIMINAL LAW MOOT COURT
COMPETITION, 2019**

BEFORE THE HON'BLE SUPREME COURT OF WONDERLAND

**SPECIAL LEAVE PETITION AND PUBLIC INTEREST LITIGATION
UNDER ARTICLE 142 READ WITH ARTICLE 136 AND ARTICLE 32 OF THE
CONSTITUTION OF WONDERLAND**

STATE OF THUNDER PRADESH.....APPELLANT

v.

ROMSAY BOLTAN.....DEFENDANT

&

LGBT RAKHSHAKHS.....PETITIONER

v.

UNION OF WONDERLAND..... DEFENDANT

ON SUBMISSION TO THE HONOURABLE SUPREME COURT OF WONDERLAND

MEMORIAL ON BEHALF OF THE DEFENDANT/ RESPONDENT



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STATEMENT OF JURISDICTION

The Hon'ble Supreme Court of Wonderland under Article 142 of Constitution of Wonderland taking the cognizance of the complexity of the matter; the Hon'ble Supreme Court has clubbed the petition of Special Leave under Article 136 and writ petition under Article 32 of Constitution of Wonderland. The present memorial sets forth the facts, contentions and arguments in the present case.

MEMORIAL ON BEHALF OF THE DEFENDANT/ RESPONDENT



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STATEMENT OF FACTS

Alosh born in thunder Pradesh and after that he shifted to Tumbai. On 23 January 2009, Alosh underwent a sex change surgery and adopted the name of Alice. On 25th Dec, 2014, Alice went to a Christmas party in Tumbai. Around 2 am, Alice came shouting and crying from upstairs of the beach house. She alleged that she was sexually assaulted and raped by Mr. Romsay Bolton. Alice was medically examined, there were slight marks of injuries and the medical examination concluded that she was subjected to a sexual intercourse. On the night of 2 March, 2015, Alice committed suicide by hanging herself at her Flat after making a video of her. In that video, Alice was seen crying and traumatized. Alice's postmortem report showed little amount of alcohol in her blood and cause of her death was concluded as a suicide. Soon, Mr. Romsay Bolton was arrested and he was brought to trial. Mr. Theon Greyjoy, director states Romsay and Alice were in a relationship. Mr. Han Solo, age about 77, a cataract patient, saw Mr. Bolton going downstairs from the same floor where alleged incident happened. Ms. Missendari closest friend said that Alice did not have any relationship. Mr. Grey Voram, who was the security in charge of the Christmas party, said Mr. Bolton left the party before Alice alleged rape by Romsay Bolton. Trial Court convicted the accused U/S 306 and 377 of WPC, 1860. The High Court acquitted the accused. Ms. Akea Stark, age 27 years, alleged harassment before 6 years at a party. Donald Singh, age 29, sexual assault by the alleged producer 5year ago. An appeal was made against the acquittal. LGBT Rakhshakhs, a NGO, filed a PIL before the Supreme Court in January, 2019 challenging the constitutionality of the Rape law under WPC and the constitutional validity of The Wonderland Transgender Persons (Protection of Rights) Act, 2019 and The Wonderland Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2019 were challenged.

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STATEMENT OF ISSUES

ISSUE- 1

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

ISSUE- 2

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

ISSUE- 3

**WHETHER LAW RELATED TO RAPE OF WOMAN IN WONDERLAND DISCRIMINATORY TO THE
TRANSGENDER COMMUNITY AND NOT BEING GENDER NEUTRAL?**

ISSUE- 4

**WHETHER THE HC IS JUSTIFIED IN ACQUITTING THE ACCUSED FOR THE OFFENCE U/S 306 AND
377 OF WPC, 1860?**

ISSUE- 5

WHETHER THE JUDGMENT OF ACQUITTAL IS LIABLE TO INTERFERED WITH?

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SUMMARY OF ARGUMENTS

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

The counsel for the respondent humbly submitted before the hon'ble court that the wonderland transgender persons (protection of rights) act, 2019 is constitutionally valid as it does not infringe Part III of Wonderland constitution which talks about Fundamental right. Chapter III (recognition of identity of transgender persons) of WTPA, 2019 is Constitutionally Valid. Also prohibition of discrimination against transgender persons is prohibited. Chapter VIII (offences and penalties) of WTPA, 2019 is constitutionally valid.

2. THE TRAFFICKING OF PERSON (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.

The counsel for the Respondent submits that the wonderland trafficking of persons (prevention, protection and rehabilitation) act, 2019 does infringes the fundamental rights enshrined under constitution of wonderland. The Act is reasonable, necessary and has a legitimate objective under Wonderland Constitution. Also prohibition of trafficking of human beings and forced labour is prohibited. The burden of proof on an owner of premises, protect the identity and confidentiality of survivors are protected under article 21, as the act does not criminalizes voluntary sex work protected under the same.



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3. WHETHER LAW OF RAPE IS DISCRIMINATORY TO TRANSGENDER COMMUNITY AND NOT BEING GENERAL NEUTRAL.

It is humbly submitted before this Hon'ble court that law of rape is not discriminatory to transgender community as it is reasonable to do make a valid classification under article 14 of Indian constitution, and Law of rape is affirmative to the protection of women.

4. WHETHER THE HIGH COURT IS JUSTIFIED IN ACQUITTING THE ACCUSED FOR THE OFFENCE U/S 306 AND 377 OF WPC.

The counsel for the appellant submits that there is a reasonable basis to believe that the charge under section 306 and 377 of WPC was a mere misunderstanding and Mr. Romsay Bolton is not liable for any of the offence alleged on him and hence, the HC judgment of acquittal of the accused was justified in each sense.

5. WHETHER THE JUDGMENT OF ACQUITTAAL IS LIABLE TO BE INTERFERED WITH.

The counsel for the defendant humbly submits that judgment of acquittal given by High Court should not be interfered as there is no infirmity established in regards to the same. As factual chain of circumstances is broken and the version of the prosecution has not been established as was required of it. Also, in the present case also there are two views are contradicting.



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ARGUMENTS ADVANCED

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

The counsel for the respondent humbly submitted before the hon'ble court that the wonderland transgender persons (protection of rights) act, 2019 is constitutionally valid as it does not infringe Part III of Wonderland constitution which talks about Fundamental right.

1.1. Chapter III (recognition of identity of transgender persons) of WTPA, 2019 is constitutionally valid.

The Supreme Court has held that the self determination of one's gender is part of the fundamental right to dignity, freedom and personal autonomy guaranteed under Article 21 of the Constitution.¹ Further, the Court upheld the right of transgender persons to determine their self-identified gender as a man, woman or as third gender.² This would protect their right to live with dignity and respect. In addition, the Court directed the central and state governments to provide reservations in educational institutions and public offices, and social welfare schemes for transgender persons. In this regard, there must be objective criteria to verify the eligibility of applicants to receive benefits targeted for transgender persons.³ Further the act does not violate article 21 of the Wonderland Constitution which states about the dignity of human life, one's

¹ National Legal Services Authority v. Union of India (2014) 5 SCC 438.

² *Ibid.*

³ The Transgender Persons (Protection of Rights) Bill, 2016, Ministry: Social Justice and Welfare, available at: <https://www.prsindia.org/billtrack/transgender-persons-protection-rights-bill-2016> (last visited: 27 February 2019).



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personal autonomy, and one's right to privacy. As the self-determination of one's gender identity to be the sole criterion to receive benefits, as it could be misused (threat of misuse) or others can fraudulently claim such benefits, hence, if individuals are able to decide their legal gender without safeguarding checks (e.g. diagnosis requirements, other medical oversights, etc.), there is a fear that cisgender⁴ persons will dishonestly use gender recognition procedures to obtain an improper benefit.⁵ Two commonly-raised concerns are cisgender men who alter their legal gender to gain access to women-only spaces and cisgender men and women who apply for a Gender Recognition Certificate to de-fraud social welfare services.⁶

The Act creates provisions under Chapter III which states the (Recognition of transgender Identity) to protect transgender persons from discrimination, and provide welfare schemes in relation to health, education and employment. In doing so, the act provides for both self-perceived⁷ gender identity, and a screening process⁸ to recognize the identity of transgender persons. Further, Scholars have also raised numerous objections to processes of fully de-

⁴ Merriam-webster dictionary defined Cisgender as of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth.

⁵ Dunne. Peter "Transgender Rights in the United Kingdom and Ireland: Reviewing Gender Recognition Rules" November 20, 2017 available at- <https://legalresearch.blogs.bris.ac.uk/2017/11/transgender-rights-in-the-united-kingdom-and-ireland-reviewing-gender-recognition-rules/> (last visited: 27 February, 2019).

⁶ Ibid.

⁷ Sec 4(2) of the Wonderland transgender (protection of rights) Act, 2019.

⁸ Under Chapter III (Sec 5-8) of the Wonderland transgender (protection of rights) Act, 2019.



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gendering the law. First, legal gender plays an important role in responding to discrimination.⁹ While law may facilitate certain prejudices, it is a primary instrument for remedying gender-based inequality.¹⁰ Second, gender unfairness is not solely a product of law. It is also a social phenomenon. De-gendering the law will not fully eradicate gender inequities. It simply reduces law's capacity to intervene.¹¹ Third, de-gendering diminishes the experiences of female-identified persons.¹² For many women, the legal category 'female' acknowledges the unique

⁹ Government of Australia, Australian Government Guidelines on the Recognition of Sex and Gender (Government of Australia 2015) 6

<https://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.PDF> accessed 10 April 2017; Anna James Neuman Wipfler, 'Identity Crisis: The Limitations of Expanding Government Recognition of Gender Identity and the Possibility of Genderless Identity Documents' (2016) 39(2) Harvard Journal of Law and Gender 491, 539. See also: Linda C McClain, 'Categorizing by Sex is a Remedy for Discrimination' (New York Times, 20 October 2014) <http://www.nytimes.com/roomfordebate/2014/10/19/is-checking-the-sex-box-necessary/categorizing-by-sex-is-a-remedy-for-discrimination> accessed 11 April 2017.

¹⁰ Judith Lorber, 'Using gender to undo gender A feminist degendering movement' (2000) 1(1) Feminist Theory 79, 90.

¹¹ Pauline Park, 'GenderPAC, the Transgender Rights Movement and the Perils of a Post-Identity Politics Paradigm' (2002) 4(2) the Georgetown Journal of Gender and the Law 747, 757-758.

¹² Marie Gustafsson Sendén, Emma Aurora Bäck and Anna Lindqvist, 'Introducing a gender-neutral pronoun in a natural gender language: the influence of time on attitudes and behavior' (2015) 6 Frontiers in Psychology <http://journal.frontiersin.org/article/10.3389/fpsyg.2015.00893/full> accessed 11 April 2017. According to Wade, "[i]f we act as if gender does not exist, then we act as if sexism and transphobia do not exist and so reinforce the privilege of...in particular, male genders", Dylan Wade, 'Expanding Gender and Expanding the Law: Toward a Social and



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biases that they face “as women”.¹³ It is a symbolic strategizing tool around which all female-identified individuals (including Tran’s women) can organize for collective rights.¹⁴ Finally, many Tran’s persons reject abolishing legal gender. While scholars have described Tran’s experiences as inherently challenging gender, Prosser criticizes failures to acknowledge the numerous trans-persons for whom gender, and the ability to reproduce standard gender norms, is a core desire.¹⁵ Many Tran’s people struggle for a significant proportion of their lives to be accepted and validated in their lived-identity. Legal gender recognition is a key step towards self-actualization. Therefore it does not infringe article 21, 19 of the Wonderland constitution but provide safeguard to the transgender person.

1.2. Prohibition of discrimination against transgender persons.

Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. The discrimination on the ground of

Legal Conceptualization of Gender that is more Inclusive of Transgender People’ (2005) 11(2) Michigan Journal of Gender and Law 253, 277-278.

¹³ Catherine MacKinnon, ‘From Practice to Theory, or what is a White Woman Anyway?’ (1991) 4(1) Yale Journal of Law and Feminism 13, 15; Geraldine Christmas, ‘Research note: intersexuality, feminism and the case for gender binaries’ (2010) 24(1) Women’s Studies Journal 60, 60.

¹⁴ Surya Munro, ‘Beyond Male and Female: Poststructuralism and the Spectrum of Gender’ (2005) 8(1) International Journal of Transgenderism 3, 16.

¹⁵ Jay Prosser, *Second Skins: The Body Narratives of Transsexuality* (Columbia University Press 1998). See also: Viviane Namaste, *Invisible lives: The erasure of transsexual and transgendered people* (University of Chicago Press 2000); Henry Rubin, ‘Phenomenology as method in trans studies’ (1998) 4(2) GLQ: A Journal of Lesbian and Gay Studies 263.



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‘sex’ under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity ,The expression ‘sex’ used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male or female.¹⁶

A person is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity and equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms.¹⁷ Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

Further Article 15 of wonderland Constitution states that the State shall not discriminate against any citizen, inter alia, on the ground of sex¹⁸ whereas Article 16 of the wonderland Constitution

¹⁶ National Legal Ser.Auth v. Union of India & Ors, Writ petition (civil) no.400 of 2012.

¹⁷ Yogyakarta Principle, available at: <http://yogyakartaprinciples.org/principle-2/> (last Visited: 1 March 2019).

¹⁸ Article 15 of Indian Constitution which states that the State shall not discriminate against any citizen, inter alia, on the ground of sex, with regard to (a) access to shops, public restaurants, hotels and places of public entertainment; or



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states that equality of opportunity in matters of public employment.¹⁹ Article 16 not only prohibits discrimination on the ground of sex in public employment, but also imposes a duty on the State to ensure that all citizens are treated equally in matters relating to employment and appointment by the State. United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment specifically deals with protection of individuals and groups made vulnerable by discrimination or marginalization.²⁰ Para 21 of the Convention states that States are obliged to protect from torture or ill-treatment all persons regardless of sexual orientation or transgender identity and to prohibit, prevent and provide redress for torture and ill-treatment in all contexts of State custody or control,²¹ CESCR Report of 2009 speaks of gender orientation and gender identity as follows “Sexual orientation and gender identity ‘Other status’ as recognized in article 2, paragraph 2, includes sexual orientation.²² States parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination, for example, persons who are transgender, transsexual or

(b) use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

¹⁹ Article 16 (2) of the Constitution of India reads as follows: “16(2). No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.”

²⁰ United Nations Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (dated 24th January, 2008).

²¹ Ibid at ¶21.

²² United Nations Committee on Economic, Social and Cultural Rights in its Report of 2009.

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intersex, often face serious human rights violations, such as harassment in schools or in the workplace.”²³

Further, The WTPA act under chapter II (Section 3) prohibits discrimination against a transgender person, including **unfair treatment** or **denial of service** in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to public goods and facilities; (v) right to movement; (vi) right to rent or own property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment which has custody of a transgender person.²⁴

All public and private establishments are prohibited from discriminating against a transgender person in employment matters, including recruitment and promotion also should not be discriminated in education institution on the basis of sex. If an establishment has more than 100 persons, a designated person will deal with complaints in relation to the act. Further in the case of *Rajeshwari Devi v. State of U.P*²⁵, the High Court declared the provision discriminatory on the basis of sex and in violation of Article 15 of the Constitution.²⁶

In the case of *Sarita Samvedi v. Union of India*²⁷, the Supreme Court held a provision of the Railway Board Circular dated December 27, 1982 invalid which restricted the eligibility of a married daughter of a retiring official for out-of-turn allotment of a house, to situations where

²³ National Legal Services Authority Versus Union of India and others , writ petition (civil) NO.604 OF 2013.

²⁴ THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2018.

²⁵ 1954 All. 608.

²⁶ Rajeshwari Devi v. State of U.P, 1954 All. 608.

²⁷ 1996) 2 SCC 380.



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such a retiring official had no son or where the daughter was the only person prepared to maintain the parents and the sons were not in a position to do so. This was held to be discriminatory on the ground of sex.²⁸ In the Case of *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.*²⁹ The Supreme Court held that ban on temple entry for women was discriminatory on the basis of sex and is the violation of Article 15 of the Constitution.³⁰

1.3. Chapter VIII (offences and penalties) of WTPA, 2019 is constitutionally valid.

The Wonderland transgender Person (Protection of Rights) Act, 2019 under section 19(a) states that ,Whoever **compels** or **entices** a transgender person to indulge in the act of begging or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government.³¹

Here in present section talks about two basic ingredients i.e. compels or entices which states that to urge forcefully³² or to persuade³³ a transgender in the act of begging or similar form of forced labour is an offence. Further this clause does not prohibit but restrict the begging. Therefore this Act has a proportionate impact on transgender persons. A clause in this act criminalizes begging done by coercion ,Further the criminalization of begging in the act will work for the ‘protection’

²⁸ Sarita Samvedi v. Union of India, 1996) 2 SCC 380.

²⁹ Writ petition (CIVIL) NO. 373 OF 2006.

³⁰ Young Lawyers Association & Ors. v. The State of Kerala & Ors, Writ petition (CIVIL) NO. 373 OF 2006.

³¹ The transgender persons (protection of rights) bill, 2018 under Section 19.

³² Merriam Webster Dictionary.

³³ Black Law Dictionary.



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of human rights of transgender person.³⁴ Earlier it can be considered begging an occupation for transgender. The intolerance of society to anyone it perceives as different manifests in several ways ranging from discrimination in employment, education, housing, social security, healthcare etc. to blatant abuse, slurs, physical violence, rapes, threats, harassment, assault, lynching and murder.³⁵ But now begging is not only the option for transgender for their livelihood as under section 3 of WTPA act Prohibit the discrimination against transgender in education and occupation which clearly open the larger scope for transgender livelihood.³⁶

Further Under section 13 of WTPA, Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation center.³⁷ The act grant legal recognition of adoption by transgender persons is a welcome move in a long battle for legal recognition of chosen families and alternative families by queer/LGBT communities. The act is cognizant of the lived reality of transgender persons who find care and support at a young age in Hijra/Aravani, gharanas, as they run away from homes to escape gender-based violence.³⁸ Therefore section 19 does not violate

³⁴ tandon.tripti, “Analysis:The transgender person (protection of rights) ,2016:Standing Committee, available at- <https://theleaflet.in/analysis-the-transgender-persons-protection-of-rights-bill-2016-standing-committee-report/> (last visited: 1 march 2019).

³⁵ Dr Karpagam. Sylvia, “Why Transgender Persons Bill 2018 is a healthcare nightmare for the community”, Sunday, December 30, 2018 - 14:46 available at - <https://www.thenewsminute.com/article/why-transgender-persons-bill-2018-public-health-nightmare-community-94206> (last visited: 1 March 2019).

³⁶ The transgender persons (protection of rights) bill, 2018 under Section 3.

³⁷ *Ibid* at section 13.

³⁸ *Supra* note 34.



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Right to livelihood and right to residence guaranteed under Wonderland constitution .It actually safeguard the livelihood of transgender by providing protection by enacting the laws i.e. Prohibition of begging by coercion or undue influence further it also safeguard right to residence by sending transgender to rehabilitation center so that they can be care and support at young age. Further this Act is constitutionally valid and helps to safeguard the transgender constitutional rights.

2. THE TRAFFICKING OF PERSON (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.

The counsel for the Respondent submits that the wonderland trafficking of persons (prevention, protection and rehabilitation) act, 2019 does infringes the fundamental rights enshrined under constitution of wonderland.

2.1. The Act is reasonable, necessary and has a legitimate objective under Wonderland Constitution.

Trafficking is a criminal offense and requires strict measures to combat unscrupulous persons who exploit the vulnerability of workers.³⁹ Unfortunately, all measures to deal with trafficking focus on the victims rather than the perpetrators of the crime. While a large section of civil society welcomed the move for a comprehensive and stringent law to combat trafficking of persons, especially of women and children, there were some who raised concerns on its approach

³⁹ Trafficking in Persons Report 2017: Enhancing Criminal Accountability and Addressing Challenges in Prosecution Efforts. Available at :<https://www.state.gov/j/tip/rls/tiprpt/2017/271108.htm>.



and implications. A thorough understanding of the proposed provisions of the Bill and its spirit will help address the concerns.⁴⁰

The act after amendment creates new provision as it creates economic deterrence by attachment and forfeiture of property and freezing of bank accounts used for trafficking ,It directs surveys, awareness generation and community-based rehabilitation and the creation of a special action plan for prevention of trafficking, International cooperation to tackle cross-border trafficking, It provides a right to rehabilitation to survivors through (i) Special rehabilitation agencies at all levels (ii) a dedicated rehabilitation fund for survivors for assistance in the form of psychological, social and economic rehabilitation, which is not contingent upon conviction. (iii) It provides capital, infrastructure and skill development to survivors to become self-dependent; it creates designated courts and special prosecutors for time-bound prosecution of offenders.⁴¹

2.2. Prohibition of trafficking of human beings and forced labour.

Article 23 of the wonderland Constitution which read as traffic in human beings and beggar and other similar forms of forced labour is prohibited and any contravention of this provision shall be an offence punishable in accordance with law.⁴² Under section 2(w)⁴³ of the act define the trafficking of person as per as section 370 of the Wonderland Penal Code 1860 ,The act uses and extends the existing definition of trafficking as provided for in Section 370 and also define the

⁴⁰ Pai .Aarthi, “Coalition for an Inclusive Approach on the Trafficking Bill” ,available at : <http://altlawforum.org/wp-content/uploads/2018/08/Collated-Comments-TOP-2018-200618-Wrking-Draft.pdf>

⁴¹ *Supra* note 58.

⁴² Article 23 of Indian Constitution.

⁴³ THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018.



exploitation as “any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organ and other existing laws like the Bonded Labour System (Abolition) Act 1976 and the Immoral Trafficking (Prevention) Act 1956 define and criminalize trafficking and related offences.⁴⁴ These laws address specific matters pertaining to bonded labour or prostitution. Trafficking is closely linked to these issues, but is distinctively independent from them. If one tries to discern the legislative intent behind the Trafficking of Persons act 2019, the statement of objects and reasons references Section 370 of the IPC and The Immoral Traffic (Prevention) Act 1956. This indicates that the act aims to supplement existing criminal law provisions on trafficking. The act is meant to fulfill the noble purpose of Article 23 of protecting persons from forms of exploitation such as forced labour. Further the provision does not infringe the fundamental right.

2.3. The burden of proof on an owner of premises, protect the identity and confidentiality of survivors are protected under article 21.

⁴⁴ Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—using threats, or using force, or any other form of coercion, or by abduction, or by practicing fraud, or deception, or by abuse of power, or by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanations-1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.



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The Under section 34⁴⁵ of the act punishes an owner if he knowingly allows the offence of trafficking to be carried out on his premise, it is presumed that the owner had knowledge of the commission of the offence on his premise and the burden is placed on him to prove that he did not have such knowledge.⁴⁶ In criminal cases, usually the prosecution has the onus to prove the guilt of an accused beyond all reasonable doubt. The act reverses this burden of proof.⁴⁷ There are other laws, where the burden of proof on the owner is reversed. Further in the case **Noor Aga vs. State of Punjab**⁴⁸ The question arise that reversed burden Bill violates Article 21 because it places the burden of proof on the accused without safeguards found in other similar laws. Further The Supreme Court held these clauses to be constitutional even where they impose legal burdens⁴⁹. Article 21 states that no person can be deprived of their right to life or personal

⁴⁵ *Supra* note 41.

⁴⁶ *Supra* note 41 under sec 34 (1) Whoever keeps or manages, or acts or assists in the keeping or management of a premises to be used as a place for trafficking of any person shall be punished with rigorous imprisonment for a term which may extend to five years and also with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with rigorous imprisonment for a term which shall not be less than seven years and with fine which may extend to two lakh rupees.

⁴⁷ *Supra* Note 44 Explanation- For the purposes of sub-section (2), it shall be presumed until the contrary is proved that any person referred to in clause (i) or clause (ii) of that sub-section has not exercised due diligence in allowing to use or letting out the premises or in allowing the premises or any part thereof to be used as a place of exploitation or, as the case may be, and has knowledge that the premises or any part thereof was being used as a place of exploitation of the victim.

⁴⁸ (2008) 16 SCC 417.

⁴⁹ *Noor Aga v. State of Punjab*, (2008) 16 SCC 417.



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liberty, except by law. Courts have interpreted this to say that any law or procedure established should be fair and reasonable.⁵⁰

The Immoral Traffic (Prevention) Act, 1956 provides an example where the burden of proof on the owner is reversed; it punishes an owner if he knowingly permits his premise to be used as a brothel.⁵¹ The Act has some safeguards. That is, it presumes knowledge on the part of the owner only if: (i) a newspaper report is published to report that the premises have been found to be used for prostitution, or (ii) a copy of all things found during the search of the premise are given to the person.⁵² Similarly, the Narcotics and Psychotropic Substances Act, 1985 punishes an owner for knowingly permitting the premise to be used for committing an offence under the Act.⁵³ Again, knowledge is presumed only if the prosecution can prove that the accused was connected with the circumstances of the case. Using this rationale, Courts have held that owners of trucks (used for transporting drugs) cannot be presumed to know that an offence is being committed only on the basis of their ownership of the truck.⁵⁴ Knowledge may be presumed where, for instance, the prosecution was able to also prove that the owner was driving the vehicle in which the drugs were transported.⁵⁵ Further it does not violate the article 21 of the Constitution of Wonderland.

⁵⁰ Maneka Gandhi vs. Union of India, 1978 AIR 597.

⁵¹ Sec 3(2) of The Immoral Traffic (Prevention) Act, 1956.

⁵² *Ibid* at 3 (2-A).

⁵³ Sec 25 of the Narcotics and Psychotropic Substances Act, 1985.

⁵⁴ Bholu Singh v. State of Punjab (2011) 11 SCC 653.

⁵⁵ Sushant Gupta v. Union of India, 2014 (308) ELT 661 (All.).



Further, the act protects the identity and confidentiality of survivors at all stages and criminalizes its violation. Section 42⁵⁶ of the act states that “No report or newspaper or magazine or news-sheet or audio-visual media or any other form of communication regarding any inquiry or investigation or judicial proceedings at any stage shall disclose the name, address or any other particulars, which may lead to the identification of a victim or witness of trafficking of person under this Act shall be published”, Even a court will only be able to share the identity of a victim to a relevant agency after providing their reasons in writing, if it is in the best interest of the victim.⁵⁷ This will include tracing a child victim or his/her parents/guardians or granting police protection. The court will issue directions for securing that the identity and address of the witnesses. Moreover, the act provides for in-camera trial and trial by video conferencing for the victim.⁵⁸ Further it protects the right to privacy of victim enshrined under article 21 of Wonderland Constitution.

2.3.1. The act does not criminalizes voluntary sex work protected under right to privacy under article 21 of wonderland constitution

The act does not criminalize voluntary sex work. It aims at criminalization of trafficking in line with the already existing definition of trafficking under Section 370 of the Indian Penal Code 1860.⁵⁹ The list of offences under Chapter XII of the Bill only criminalizes a person who

⁵⁶ *Supra* note 41.

⁵⁷ *Supra* note 41, section 42(1).

⁵⁸ Chopra Niharika, “Anti trafficking Bill - A good move, which needs myths separated from its realities” available at: <https://www.dailyo.in/user/14633/niharikachopra> (last visited: 3 march, 2019).

⁵⁹ *Ibid.*



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buys and sells other persons for the purpose of exploitation. At no point is the victim held as a criminal, or detained against his/her will. In fact, it also guarantees immunity to victims who may also be offenders, in certain situations. The act under section 45 provides immunity to a victim who commits an offence punishable with death, life imprisonment or imprisonment for 10 years. Further, such an offence must have been committed under: (i) coercion, intimidation, or undue influence, and (ii) where there is a reasonable apprehension of death or grievous injury.⁶⁰ This raises two issues. Immunity may be desirable to ensure that trafficked persons are not prosecuted for their involvement in crimes which are a direct consequence of them being trafficked.⁶¹ However, the Bill provides immunity only for serious crimes. For instance, trafficked victim who commits under coercion of his traffickers may be able to claim immunity being tried for murder.⁶² However, if a trafficked victim commits petty theft (e.g. pickpocketing) under coercion of his traffickers, he will not be able to claim immunity.

Second, the immunity is only available when the victim can show that the offence was committed under coercion, threat, intimidation or undue influence, *and* there was a reasonable apprehension of death or injury, at the time of committing the offence.⁶³

⁶⁰ *Supra* note 41 at article 45.

⁶¹ Guideline 7, 'Recommended Principles and Guidelines on Human Rights and Human Trafficking', OHCHR, <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

⁶² Human Trafficking, Smuggling and Slavery | The Crown Prosecution Service, available at: <https://www.cps.gov.uk/legal-guidance/human-trafficking-smuggling-and-slavery>.

⁶³ Removal of Governors: What does the law say? ,Available at:<https://prsindia.org/theprsblog/removal-governors-what-does-law-say>,(last visited: 3 March,2019).



2.4. Right to residence

Section 17 of the act empowers a magistrate to place a victim in a rehabilitation home and section 17(4) of the act allows for an adult victim to make an application, along with an affidavit, to the magistrate declining rehabilitative services.⁶⁴ After due assessment of the immediate threat, coercion and duress the victim may be under, the application will be accepted by the magistrate.⁶⁵ However, the same proviso states that if the magistrate were to find that such application has not been made voluntarily, it may be rejected. It should also be noted that other acts that permit institutionalization, for example, the Juvenile Justice Act, also mention that institutionalization should be of last resort.⁶⁶ In fact, the JJ Act repeatedly stresses upon the importance of family and familiar surroundings.

Further the Supreme Court held in case *Buddhad Karmaskar v Union of India*, which states that women should not be compelled to be institutionalized in order to avail of rehabilitation.⁶⁷ Further it does not violate article 19 (1) (e) of Indian constitution.

6. WHETHER LAW OF RAPE IS DISCRIMINATORY TO TRANSGENDER COMMUNITY AND NOT BEING GENERAL NEUTRAL.

⁶⁴ *Supra* note 41.

⁶⁵ Victims Of Human Trafficking Have The Right To Shelter And Safety available at: [https://thelogicalindian.com/opinion/human-trafficking-victims/\(last](https://thelogicalindian.com/opinion/human-trafficking-victims/(last) visited: 3March,2019).

⁶⁶ Section 3(xii) of Juvenile Justice Act.

⁶⁷ *Buddhadev Karmaskar v Union of India*, CRIMINAL APPEAL NO. 135 OF 2010.



It is humbly submitted before this Hon'ble court that law of rape is not discriminatory to transgender community as [A]. It is reasonable to do make a valid classification under article 14 of Indian constitution, and [B]. Law of rape is affirmative to the protection of women.

3.1. It is not ultra vires to article 14 as there is reasonable classification.

The counsel for the appellant submits that article 14 does not imply that all laws must be general in character or that the same laws should apply to all persons or that every law must have universal application, for, all persons are not, by nature, attainment or circumstances, in the same positions. The State can treat different persons differently if circumstances justify such treatment. In fact, identical treatment in unequal circumstances would amount to inequality.⁶⁸

In the case of *Re Special Courts Bill, 1978*, they held that by the process of classification, the State had the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. Classification meant segregation in classes which had a systematic relation, usually found in common properties and characteristics. It postulated a rational basis and did not mean herding together of certain persons and classes arbitrarily.⁶⁹

The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades article 14 like a brooding omnipresence.⁷⁰ Again, in the case of *R.D. Shetty v. International Airport Authority*⁷¹, The principle of reasonableness and

⁶⁸ ChiranjitLal v. Union of India, AIR 1951 SC 41.

⁶⁹ AIR 1979 SC 478.

⁷⁰ Maneka Gandhi v. Union of India (1978) 1 SCC 248.

⁷¹ (1979) 3 SCC 489.



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rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterize every State action, whether it is under authority of law or in exercise of executive power without making of law.

In the case of *Sharma Transport v. Government of A.P.*⁷², the court has observed that the expression ‘arbitrarily’ means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.

3.1.1. Test of reasonable classification.

According to Dicey, rule of law, in article 14, classification has to be reasonable and it shall fulfill two conditions, firstly there should be an intelligible differentia and secondly differentia should be rationally related to the object sought to be achieved. In the present petition, the law of rape in Wonderland is indeed women centric. But this law is not at all violative of part III of Wonderland Constitution. As, Article 15(3) of the constitution that empowers the state to make special provisions for women and hence allows special classification of laws for women without violating article 14 and article 15(1) and (2) of constitution. Also, women empowerment has always been an important topic of upliftment of the suppressed section of society and women being one of them. The main objective sought by art 15(3) is to empower women and encourage them for the equal participation along with the mainstream. Here, the classification made is reasonable and rational and hence fulfilling both the essential of test of reasonable classification. Hence not at all arbitrary rather it is heedful and necessary.

⁷² 2002) 2 SCC 188.



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3.2. Law of rape is affirmative provision for the protection of women.

In the case of *Bodhistava v. Ms Subhadra Chakroborty*⁷³ the court observed that “Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis Rapes is therefore the most hated crime. It is a crime against basic human rights and is violation of the victims most cherished rights, namely right of life which includes right to live with human dignity contained in Article 21. Rape for a woman is deathless shame and must be dealt with as a gravest against human dignity; it is violation with violence on the private person of a woman.”

There is always a need of extensive use a mix of 'top-down' and 'bottom-up' approach to ensure protection of such rights of women against such grave crimes like rape etc.

Referring to the pitiable condition of women in society Mr. Justice S. Ahmad observed that “unfortunately, a woman in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution “enjoy, equal status”.⁷⁴

“Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honor and dignity cannot be touched or violated. They also have the right to lead an honorable and peaceful life”⁷⁵.

⁷³ (1996) 1 SCC 490.

⁷⁴ <http://www.legalindia.in/rape-laws-in-india/> retrieved 23rd July 2014.

⁷⁵ Rape Laws in India, June 7, 2011, available at : <https://www.legalindia.com/rape-laws-in-india> (last visited : 2 march , 2019)



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In the case of *Rafiq v State of UP*⁷⁶, "Justice Krishna Iyer has observed, "A murderer kills the body but a rapist kills the soul", in the same case court opined that when a woman is ravished in rape, what is inflicted is not merely physical injury, but "the deep sense of some deathless shame".

In the case of *Tulshidas Kanolkar v. State of Goa*⁷⁷, Justice Arjit Pasayat observed," While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.

As per the scholars like *Sacco and Kennedy* argue, about understanding crime requires consideration of offenders, victims and the social context within which the criminal activity occurs.⁷⁸This implies that the criminal act of rape needs to be understood especially in countries like India in the context of an intrinsically patriarchal and gendered society where sexual violence evidently acts as a medium to exercise power over the female/non-male body.

In the case of *Bharwada Hirji bhai v State of Gujarat*⁷⁹, stating that when a woman is raped, she is likely to be ostracized by society, her own family, relatives, and friends, and that she would be overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo, amongst other social consequences evidencing of a loss of respect in society.

⁷⁶ (1980) 4 SCC 262.

⁷⁷ Appeal (crl.) 298 of 2003.

⁷⁸ Pg. 800, Sacco, Vincent F. & Leslie W. Kennedy. (2010). The Criminal Event Perspective. In Francis T. Cullen and Pamela Wilcox (Eds.), Encyclopedia of Criminological Theory, Volume 1 (799-934). California: SAGE.

⁷⁹ (1983) 3 SCC 21.



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In the case of *State of MP v Madanlal*⁸⁰, the Supreme Court of India, while laudably dismissing the idea of a compromise in cases of rape or an attempt thereof, went on to reason that rapes are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasize, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure” is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honor which matters the most. It is sacrosanct.

7. WHETHER THE HIGH COURT IS JUSTIFIED IN ACQUITTING THE ACCUSED FOR THE OFFENCE U/S 306 AND 377 OF WPC.

The counsel for the appellant submits that there is a reasonable basis to believe that the charge under section 306 and 377 of WPC was a mere misunderstanding and Mr. Romsay Bolton is not liable for any of the offence alleged on him and hence, the HC judgment of acquittal of the accused was justified in each sense. [A]. Acquittal u/s 306 of Romsay Bolton by HC was justified. [B]. Acquittal u/s 377 Romsay Bolton by HC was justified.

4.1. Acquittal u/s 306 of Romsay Bolton by High Court was justified.

The learned Counsel for the appellant seriously contended in this Court that the appreciation of evidence by the High Court is wholly prudent and diligent, therefore, the order of acquittal shall

⁸⁰ CRIMINAL APPEAL NO. 231 OF 2015.



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sustain⁸¹. So far as the order of acquittal under Section 306 W.P.C. is concerned, we do find force in the aforesaid contention. The learned trial judge considered the entire evidence at length and recorded the conclusion that the necessary ingredients to attract the provisions of Section 306 W.P.C. have been established and ordered conviction. The High Court also again re-appreciated the evidence and reversed the said conclusion of the learned trial judge due to lack of evidence and reasonable doubt.

In the case of *State of W.B. v Ori lal Jaiswal*⁸², The Supreme Court in the case observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide.

In the case of *Manikandan v. State*⁸³, court held that the person who commits suicide used to like to leave a suicide note naming certain person as responsible for his committing suicide. Merely because a person has been so named in the suicide note we are not to immediately jump to the conclusion that he is an offender under section 306 IPC the contents of the suicide note and other attending circumstances have to be examined to find out whether it is abetment within the meaning of section 306 IPC read with section 107 IPC, there may be a case where in the suicide note victim had named a person, who is responsible for his committing suicide, but, on proper analysis, section 306 IPC may not be attracted to him”.

⁸¹ State Of Haryana v. Jasvinder Singh and Ors, JT 2000 (9) SC 163.

⁸² (1994) 1 SCC 73.

⁸³ CrI.A. (MD) No.142 of 2016.



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In the present matter the deceased committed suicide after making a video stating the reasons of suicide and alleging the accused for the same which was not sufficient to establish the direct connection for abetment of suicide by Mr. Romsay Bolton and hence, not fulfilling the very essentials of Section 306 WPC.

In the case of *A.R. Madhav Rao and Ors v. State Of Haryana and Anr*⁸⁴ the court held that another person cannot be blamed for wrong decision of a "Coward". In the present matter the witnesses weighed by trial court has also affirmed that the suicidal act of Alice is due to weak state of mind and past life experiences.

In case of *S.S. Chheena v. Vijay Kumar Mahajanand anr*⁸⁵ abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

In the case of *Amalendu Pal v. State of West Bengal*⁸⁶, it was opined that if it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such

⁸⁴ CRM M-2068 of 2012 (O&M).

⁸⁵ CRIMINAL APPEAL NO 1503 OF 2010.

⁸⁶ (2010) 1 SCC 707.



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petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

In present hand matter, there is no nexus between the suicide and any of the alleged acts on the part of the appellant. Inasmuch as there is not an iota of evidence to establish the case of instigation or abetment on the part of the accused person to commit suicide. In view of the order of acquittal passed by the learned High Court judge, we hardly see any justification for interference with the same.

4.2. Acquittal u/s 377 Romsay Bolton by High Court was justified.

Section 377 makes unnatural offences punishable under the Code. It says that whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with simple or rigorous imprisonment for a term extending up to ten years, and shall also be liable to fine.⁸⁷

The carnal intercourse on the part of the offender under this section must be voluntary and with a man, woman or animal, and it must be against the order of nature.⁸⁸ Like the offence of rape, penetration is sufficient to convict an offender under this section. In other words, carnal

⁸⁷ Section 377 of IPC,1860.

⁸⁸ Sarkar.pinki, “Section 377 of Indian Penal Code, 1860 – Explained!”, Available at: <http://www.shareyouressays.com/knowledge/section-377-of-indian-penal-code-1860-explained/118693> (last visited: 2 March,2019).



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intercourse by a man with man, or by a woman with woman, or by a man or woman with animal is punishable under this section as such intercourse is against the order of nature.⁸⁹

In present matter, Alice pursued a professional course in the same year.⁹⁰ She obtained instant success in the fashion industry;⁹¹ further Alice became associated with various movies and fashion show ventures and came in association with various people of the industry.⁹² Alice became an integral part of the movie industry and was witnessed in all events and parties. Mr. Romsay Bolton is a leading producer who makes movies of women empowerment and patriotism whereas Alice was working as a designer of the costumes of the movie.⁹³

On 25th Dec, 2014, Alice went to a Christmas party of one of the major stars of the film industry at his beach house of Tumbai, Thunder Pradesh.⁹⁴ Alice was under the influence of alcohol during the whole night.⁹⁵ Around 2 am, Alice came shouting and crying from upstairs of the beach house as she alleged that she was sexually assaulted and raped by Mr. Romsay Bolton.⁹⁶ Alice was medically examined, there were slight marks of injuries and the medical examination concluded that she was subjected to a sexual assault.

⁸⁹ *Ibid.*

⁹⁰ ¶5, pg 1 of the Moot proposition.

⁹¹ *Ibid.*

⁹² ¶ 7, pg 2 of the moot proposition.

⁹³ ¶9, pg 2 of the moot proposition.

⁹⁴ *Ibid*, line no. 1.

⁹⁵ ¶10, pg 2 of the moot proposition.

⁹⁶ *Supra* note 4.



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Further, forensic medical examination is done to provide evidence that can: (1) verify the type of sexual assault that occurred. (2) Support your explanation of what took place (3) help identify the person who sexually assaulted you.⁹⁷ Further in the case of *State of Orissa v. Dibakar Naik*⁹⁸ it was held that injuries show the type of sexual assault but in the present case, medical examination does not show the type of sexual assault done and hence not fulfilling the very specifics of criteria of providing evidence for sexual assault. As the medical examination of the accused states that, accused should be firstly identified by the person who brought him and should be medically examined so that the corroboration should be established with the report of medical examination of the victim and accused both. And here in the present case, the medical examination report has no corroboration with Mr. Romsay Bolton. There is no direct or indirect connection on the wrongful act between the accused and the victim. Also, there was no medical examination of Romsay Bolton as in the case of *Sarman & Anr v State of M.P.*⁹⁹ it was stated that if the accused after the arrest is not sent for medical examination so the court is justified in drawing adverse inference against the prosecution.

In the case of *B.C. Deva @ Dyava v. state of karnataka*¹⁰⁰ it was held that the oral evidence of the witness if found to be cogent ,reliable and trustworthy has to accepted even though the

⁹⁷ Government of South Australia, “Forensic medical examination”, available at : <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/health+topics/health+condition+s+prevention+and+treatment/rape+and+sexual+assault/forensic+medical+examination+after+a+sexual+assault>.

⁹⁸ (2002) 5 SCC 323

⁹⁹ 1985 Cr LJ 19(MP)

¹⁰⁰ JT 2007 (9) SC 588.



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medical examination of prosecutrix disclose any evidence of sexual assault. Section 280 of CrPC states that outward behavior of a witness should be taken into consideration by the court to determine his demeanour¹⁰¹.

In the present case Mr. Grey Voram, who was the security in charge of the Christmas party, said Mr. Bolton left the party before Alice alleged rape by Romsay Bolton. Mr. Romsay Bolton was very calm and composed.¹⁰² He was on the phone while he left the party but he stopped for a second and gave me a tip of 2,000 Rupees.¹⁰³ Here Romsay Bolton's calm and composed behaviour clearly shows that he was very normal and if he has committed sexual assault with Alice his behaviour would be terrified or unstable. Further Mr. Theon Greyjoy, director of the movie which was produced by the Accused, he stated that Alice was working as a designer of the costumes of the movie. Romsay and Alice were in a relationship. They were seen laughing and talking on the sets all the time.¹⁰⁴

Further Alice was under the influence of voluntary intoxication. As in the case of *Jacob m. v. paul*¹⁰⁵ revere life ins. co It's especially difficult to prove charges of rape of an intoxicated victim or one in which the defense argues that the sex was consensual — without the victim's testimony, the prosecutor said. But in cases like Skorniak's, in which there was plenty of circumstantial evidence to support the charges, it can be done.

¹⁰¹ Section 280 of Cr.P.C., 1973.

¹⁰² ¶19, pg.3 of Moot Proposition.

¹⁰³ *Ibid*,line 2-4.

¹⁰⁴ ¶16, pg 3 of moot proposition.

¹⁰⁵ 05-189 ORNDORF.



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Therefore, High Court acquittal of the accused on all the charges on the ground of reasonable doubt and lack of evidence was justified and accused is not liable under sections 306 and 377 of WPC, 1860.

5. WHETHER THE JUDGMENT OF ACQUITTAL IS LIABLE TO BE INTERFERED WITH.

The counsel for the defendant humbly submits that judgment of acquittal given by High Court should not be interfered as there is no infirmity established in regards to the same. As in the case of *State v. Mithilesh Kumar Kushwaha*¹⁰⁶, Hon'ble High Court held that factual chain of circumstances is broken and the version of the prosecution has not been established as was required of it. In the absence of complete chain, the guilt of the accused cannot be inferred and suspicion howsoever grave it may be, cannot take place of proof as that would be miscarriage of justice, which must be avoided by us. The facts and circumstances, lead us to conclude that the prosecution has failed to prove its case beyond reasonable doubt against the appellant and the appellant should be given benefit of doubt.

Similarly, in the case *Sujit Biswas v. State of Assam*¹⁰⁷, Hon'ble court held that 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.

¹⁰⁶ CrI.A.No.249/2011.

¹⁰⁷ (2013) 12 SCC 406.



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While in the present case also there is factual chain of circumstances which are broken. Facts and circumstances of this case demands that the benefit of doubt must be given to the accused as from fact it is inferred that Mr. Grey Voram who was security in charge of Christmas party said Mr. Romsay Bolton left the party before Alice alleged rape by Romsay Bolton while Mr. Hans solo, age about 77, who happens to be a cataract patient, said that he was positive that he saw Mr. Bolton going downstairs from the same floor where alleged incident happened.

In the case of *State of Haryana v. Surender & Ors.*¹⁰⁸, the court held 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 favorable 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.

In the present also there are two views as Mr. Hans solo, age about 77, who happens to be a cataract patient, said that he was positive that he saw Mr. Bolton going downstairs from the same floor where alleged incident happened while Mr. Grey Voram who was security in charge of Christmas party said Mr. Romsay Bolton left the party before Alice alleged Romsay Bolton for rape, both views are contradicting each other as one shows his presence at the incident place at the time of incident while other shows that he was not present at the time of incident as he left the party earlier before said incident.

¹⁰⁸ Appeal (Crl.) 618-620 of 2001.

PRAYER

In light of the issues raised, arguments advanced and authorities cited, the counsel for the defendant/ respondent humbly prays that the Hon'ble Court be pleased to adjudge, hold and declare:

- *Hon'ble court should dismiss the writ petition.*
- *The wonderland transgender persons (protection of rights) act, 2019 is constitutional.*
- *The wonderland trafficking of persons (prevention, protection and rehabilitation) act, 2019 is constitutional.*
- *Law related to rape of woman in wonderland is not violative of any of the provision of part III of Constitution.*
- *Decision of High Court should be reserved.*

And

Pass any other order that may deem fit in the interest of justice, equity and in a good conscious.

All of which is most respectfully submitted

(Counsel for the Defendant/ Respondent)