

**SIR SYED & SURANA & SURANA**

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**NATIONAL CRIMINAL LAW MOOT COURT COMPETITION, 2019**

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

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**SPECIAL LEAVE PETITION NO. \_\_\_/2019**

**IN THE MATTER OF**

**STATE OF WONDERLAND..... APPELLANT**

*VERSUS*

**ROMSAY BOLTON.....RESPONDENT**

*AND*

**PIL NO. \_\_\_/2019**

**IN THE MATTER OF**

**LGBT RAKSHAKS..... PETITIONER**

*VERSUS*

**STATE OF WONDERLAND..... RESPONDENT**

**MEMORIAL ON BEHALF OF THE RESPONDENT**

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**LIST OF ABBREVIATIONS**

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AIR	:	All India Reporter
Art	:	Article
DPSP	:	Directive Principles of State Policy
F.I.R	:	First Information Report
FSL	:	Forensic Science Laboratory
Hon'ble	:	Honourable
L.G.B.T	:	Lesbian, Gay, Bisexual, Transgender
MLC	:	Medico-Legal
S	:	Section/s
SCC	:	Supreme Court
SRS	:	Sex Reassignment Surgery
UDHR	:	Universal Declaration of Human Rights
V.	:	Versus

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**STATEMENT OF JURISDICTION**

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THE APPELLANT/ PETITIONER HAS INVOKED THE JURISDICTION OF THE HONOURABLE  
SUPREME COURT OF WONDERLAND.

UNDER ARTICLES 136 AND 32 OF THE CONSTITUTION .

THE RELEVANT EXCERPT OF ARTICLE 136 READS AS FOLLOWS:

*“136. 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 India.”*

THE RELEVANT EXCERPT OF ARTICLE 32 READS AS FOLLOWS:

*“32. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. 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.”*

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### STATEMENT OF FACTS

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- Alish Kumar is a resident of the State of Thunder Pradesh who ascertained in his childhood that he did not belong to the same gender. He moved to Tumbai, the hub of the fashion industry. On 23<sup>rd</sup> January 2009, he underwent a sex change surgery and adopted the name of Alice. She pursued a professional course in the same year and became an integral part of the fashion industry .
- On 25<sup>th</sup> December, 2014, Alice went to a party where she was allegedly raped by a leading producer and member of the ruling party Mr. Romsay Bolton. The medical examination report concluded that she was subjected to sexual intercourse
- On 2<sup>nd</sup> March, 2015, Alice committed suicide by hanging herself and posted a video of herself on social media. Post mortem report showed a little amount of alcohol in her blood and the cause of her death was concluded as suicide.
- The accused was charged under Sections 306 and 377 of the WPC, 1860. During the trial, 4 people gave testimonies. The trial court convicted the accused under the aforementioned sections. The matter went to the Hon'ble High Court of Thunder Pradesh and the accused was acquitted. As a part of the I-TOO movement, after the acquittal of the accused, two people alleged sexual harassment by the accused. An appeal was made against the acquittal of the accused in the Supreme Court of Wonderland.
- Two Acts, namely, The Transgender Persons (Protection of Rights) Act and The Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, came into force in 2019. The Hon'ble Court had also recently dismissed the writ petition challenging rape laws in the country. LGBT Rakshaks, an NGO filed a PIL before the Supreme Court challenging the constitutional validity of rape laws under WPC and the constitutional validity of the two acts passed.
- The appeal and PILs are listed on 16<sup>th</sup> March 2019 for final disposal.

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**STATEMENT OF ISSUES**

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**ISSUE 1:** WHETHER, ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE AND IN LAW, THE ACCUSED IS LIABLE UNDER SECTION 377 OF WPC, 1860?

**ISSUE 2:** WHETHER, ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE AND IN LAW, THE ACCUSED IS LIABLE UNDER SECTION 306 OF WPC, 1860?

**ISSUE 3:** WHETHER , ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE AND IN LAW, S. 375 & S. 376 IS ULTRA VIRES THE CONSTITUTION?

**ISSUE 4:** WHETHER, ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE AND IN LAW, THE WONDERLAND TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019 IS ULTRA VIRES THE CONSTITUTION?

**ISSUE 5:** WHETHER, ON THE FACTS AND IN THE CIRCUMSTANCES OF THE CASE AND IN LAW, THE WONDERLAND TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS ULTRA VIRES THE CONSTITUTION?

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## SUMMARY OF ARGUMENTS

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**CONTENTION 1: THAT THE ACCUSED IS NOT LIABLE UNDER 377 WPC, 1860.**

It is humbly submitted that the Accused in the present case cannot be held liable under 377 WPC, 1860. That there is an unexplainable delay in the filing of the FIR, which provides suspicion over the testimony of the Appellant. Further, the Medical Examination, is inconclusive in nature and gives rise to doubt in regards to its veracity. Furthermore, the case of the prosecution primarily lies upon the testimony of the Appellant with minimal corroboration from any other source.

**CONTENTION 2: THAT THE ACCUSED IS NOT LIABLE UNDER 306, WPC 1860.**

It is humbly submitted that the Accused in the present case cannot be held liable under S. 306, WPC, 1860. There is absence of any just reason to believe that the Accused had in any manner instigated the Appellant to commit suicide. That there was no continuous course of conduct on the part of the accused towards the Appellant. Furthermore, the Dying Declaration cannot be admissible in the court of law, due to the unfit state of mind of the Appellant at the time of making of such Dying Declaration. Furthermore, The Dying Declaration is vague towards the circumstances leading to the death of the Appellant.

**CONTENTION 3: THAT S.375& S. 376, WPC, 1860 ARE CONSTITUTIONALLY VALID.**

It is humbly submitted that S.375 &S.376, WPC, 1860 are in consonance with the Constitution. That the objective behind such sections were to provide protection to the women of the wonderland. Furthermore, Art. 15 provides the State the right to make special laws for the protection of women and children. It is submitted that there is in existence, provisions for sexual abuse of Transgenders which provides them with a remedy in the

circumstance of the violation of their 'Right to life'. It is further submitted that obliteration of rape laws would cause grave injustice the women of Wonderland.

**CONTENTION 4: THAT THE TRANSGENDERS PERSONS (PROTECTION OF RIGHTS) ACT, 2019 IS CONSTITUTIONALLY VALID.**

It is humbly submitted that the Transgender Persons Protection of Rights Act, 2018 holds good in the eyes of as firstly, it is in consonance with the fundamental rights, namely, Articles 14,15, 21 and 27, secondly, there is overwhelming importance of this Act in terms of protection of vulnerable sections of society and lastly, it ought to grown and developed by this Hon'ble Court to remove even a question of infirmity for the furtherance of fundamental rights and the growth of law itself, by exercising its power of interpretation. Therefore, the law in view of such parameters is valid and will only further the cause of justice and fundamental rights enshrined under part III of the Constitution of Wonderland.

**CONTENTION 5: THAT THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.**

It is humbly submitted that the Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2019 holds good in the eyes of law. That the act furthers the objectives instilled in Art. 23 and punishes for aggravated forms of trafficking. Furthermore, the Act upholds the principles of Equality under Art. 14 and 15 of the constitution by disavowing from any kind of discrimination. That the act finds ground on the various facets of Art.21 and thusis complete in essence and consonance with Art. 19 of the constitution.

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**ARGUMENTS ADVANCED**

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**CONTENTION 1: THAT THE ACCUSED IS NOT LIABLE UNDER SECTION 377,  
OF THE WONDERLAND PENAL CODE, 1860**

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1. It is submitted before this Hon'ble Court that the Accused in the present impugned case is not liable under Section 377 of the Wonderland Penal Code, 1860.
2. That on the night of 25<sup>th</sup> of December, 2014 Alice was alleged of being imperilled to sexual assault by the Accused. That during the whole occurrence, Alice was under the influence of Alcohol. Further, after such public allegation, Alice was medical examined whereby it was concluded that Alice had been subjected to Sexual Intercourse<sup>1</sup>.

**1.1. THAT THERE WAS AN UNEXPLAINABLE DELAY IN THE FILING OF THE FIR**

3. It is submitted that under *S. 154(1) of the Code of Criminal Procedure*, in cases of cognizable offences, every information relating to the commission has to be provided to an officer in charge. The report made on the basis of such information, is to be called an FIR. Further, the commencement of an investigation is after the filing of an FIR in cognizable offences.
4. In the case of *Sahib Singh V State of Haryana*<sup>2</sup>, the Supreme Court articulated that prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding its true version. In cases of delay in filing the FIR, the complainant must give explanation for the same. However, deliberate delay in lodging the complaint may prove to be fatal.
5. It is humbly submitted that, Alice, while expressing her concerns divulged, on the night of the Christmas party regarding the alleged 'Sexual Assault' she was subjected to. She

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<sup>1</sup> Para 9 and 10 of moot proposition

<sup>2</sup> Sahib Singh v. State of Haryana, (1997) 7 SCC 231

further proclaimed in a press conference before 'Wonderland Samachar' about the same issue and correlatively stated that she would continue to fight for herself. That despite such claims and owning the reputation of a strong and successful woman, Alice failed to file an FIR regarding her sexual assault.

6. It is further submitted that, in the usual course of nature, the delay in filing the FIR in cases of sexual assault is not fatal to the case of the prosecution as such cases are in common occurrence accompanied by a shame on the part of the victim. That there is presence of hesitation on their part due to embarrassment in society and tarnishing of reputation as has been discussed in *Md. Ali Guddu v. State of UP*<sup>3</sup>
7. However, in present circumstances, such feelings of the societal pressure and their magnitude cannot be taken into consideration in light of the fact that Alice had been unreserved and outspoken regarding her sexual assault from the very inception of the purported incident. Thus, postulation for the such delay in the FIR by trivial reasons of shame in the society cannot be taken into consideration
8. Furthermore, the prosecution has not bestowed any rational elucidation for such delay which is of paramount importance in the cases of delay in the FIR. That the prosecution has forthrightly ignored the aspect that there is an unwarranted delay.
9. That in *Mrinal Kanti Roy Barnman V State of Tripura*<sup>4</sup> the Guwahati High Court, stated that in the case of an inordinate delay the court has to see whether the delay was intentional and due to such delay there was any concoction in the prosecution story.
10. It is humbly submitted that in the present case, such delay was premeditated as inferences can be drawn on account of Alice of a fabricated and erroneous narrative made by Alice.

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<sup>3</sup> Md. Ali Guddu v. State of UP, (2015) 7 SCC 272

<sup>4</sup> Mrinal Kanti Roy Barnman v. State of Tripura, 2010 Cri LJ 1679 (Gau)



That Alice being well aware of the fact that such story would not hold ground in the court of law, falsely incriminated the accused and thus, the delay in the lodging of F.I.R.

11. In the light of cases and facts mentioned above, it can be deduced that the failure on part of Alice to file an FIR taints the credibility of Alice's claims of such sexual assault as has been held by the Apex Court in *Anne Nageswara Rao V. Public Prosecutor*<sup>5</sup>. Additionally, such incompetence on part of Alice should be considered to be fatal and catastrophic to the case of the prosecution. Further, any other view in the present circumstances would create prejudice to the interest of accused as has been computed by the Guwahati High Court in *Nazimul Hussain V. State of Assam*<sup>6</sup>.

## **1.2 THAT THE MEDICAL REPORTS ARE INCONCLUSIVE**

12. It is humbly submitted that the Medical Examiner had concluded that the Appellant had been subjected to 'Sexual Assault'. Further, sexual assault has been outlined as "*Sexual Intercourse with another person who did not consent*"<sup>7</sup> and such sexual assault has also been defined as rape.<sup>8</sup>

13. That Rape is a crime and not a medical diagnosis to be made by the medical officer treating the victim. It is a charge made by an investigating officer, on a complaint by the victim. The only statement that can be made by the medical officer is whether there is evidence of recent sexual activity. Further, whether rape has occurred or not is legal conclusion, not a medical one.<sup>9</sup>

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<sup>5</sup>Anne Nageswar Rao v. Public Prosecutor (1975) 4 SCC 106

<sup>6</sup>Nazimul Hussain v. State of Assam, ( 2017) 2 Gau LR 494

<sup>7</sup> Black's Law Dictionary at 123 (ed.8 2004)

<sup>8</sup> Black's law dictionary at 1406 (ed. 8, 2004)

<sup>9</sup>Jaising P. Modi, Modi's Medical Jurisprudence and Toxicology at 895 (ed.23, 2005)

14. It is submitted that such conclusion on part of the Medical Examiner is an overreach of his powers. That a Medical Examiner cannot simulate the role of a ‘Judge’ or an ‘Investigating Officer’ and function beyond the scope of his own capacity. Therefore, any conclusion derived by the Medical Examiner cannot be taken at its face value without substantial scrutiny.
15. Furthermore, in accordance with the Guidelines<sup>10</sup> specified by the Ministry of Health and Family Welfare Government of India, a medical examiner is to formulate a formal opinion after the receiving reports from the FSL. In the present case, the Medical examiner in clear violation of such guidelines, without giving any weightage to the FSL reports or waiting for the same, concluded on decisive final opinion.
16. Moreover, the Guidelines also mention that, “If a person has come on his/her own without FIR, she/he may or may not want to lodge a Complaint but requires a medical examination and treatment. Even in such cases the doctor is bound to inform the police as per law. In case the survivor does not want to pursue a police case, a MLC must be made”.<sup>11</sup>
17. In the present case, there is no documentary evidence that manifests the steps taken by Medical Examiner to inform the police concerning such incident. Furthermore, no MLC was fabricated which provides further suspicion regarding the medical report and its procedure.
18. It is humbly submitted that the injuries, as insinuated in the medical examination report, have been explained in the manner denoting signs of a physical scuffle. That there is no conjunction between the injuries and the body parts on which they were inflicted.

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<sup>10</sup> GUIDELINES & PROTOCOLS Medico-legal care for survivors/victims of Sexual Violence, Ministry of Health and Family Welfare, Government of India.

<sup>11</sup> Ibid

19. That Medical evidence is valuable for proving the presence or absence of marks of struggle. The presence of marks of struggle on the body and clothes, and marks of injury on the person, particularly the private parts would be evidence supporting the allegation of such sexual activity.<sup>12</sup>
20. Hence, it is submitted that the ambiguous nature of such injuries can be taken into consideration as an attempt on the part of the prosecution to strengthen their own case. That the prosecution had full knowledge that an accurate description of the injuries would provide the respondents with an opportunity to break down the false and frivolous case of the Appellant.

### **1.3. THAT THE APPELLANT'S CASE LIES UPON UNSATISFACTORY EVIDENCE.**

21. It is submitted before this Hon'ble court that the Supreme court in the case of *Somawanti V State of Punjab*<sup>13</sup> has enunciated that "Evidence means and includes all statements which the court permits or requires to be made"
22. *In the present case*, the case of the prosecution lies upon the testimony of Mr. Han Solo, an eye-witness in the impugned matter. It is submitted that even though, Mr. Han Solo has asserted that he had seen the Accused coming down the same floor where the alleged incident had taken place, he has failed to mention the time at which he had seen the Accused.
23. Furthermore, Mr. Han Solo is a cataract patient<sup>14</sup>. That according to the World Health Organization, Cataract is clouding of the lens of the eye which prevents clear vision.<sup>15</sup>

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<sup>12</sup>Dola @ Dolagobinda Pradhan & ANR. Vs. State of Odisha, , CRIMINAL APPEAL NO.1095 OF 2018

<sup>13</sup>Somawanti v. State of Punjab, AIR 1963 SC 151:

<sup>14</sup> Para 17 of moot proposition

<sup>15</sup>*Blindness and Vision impairment prevention*, <https://www.who.int/blindness/causes/priority/en/> (27<sup>th</sup> February 2019, 3:55 pm)

Hence, his testimony fails to be admissible on the grounds of Section 118 of the Evidence Act, 1872, and thus he is not competent to testify. That due to the non-admissible nature of the direct evidence provided by the Appellant, the case falls upon circumstantial evidence.

24. That the *Supreme Court*<sup>16</sup> has held that “The following conditions must be fulfilled before a case against an accused can be said to be fully established with the help of circumstantial evidence: the circumstances from which the conclusion of guilt is to be drawn should be fully established; the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; the circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”
25. In the present case, the chain of events suffers from extensive discrepancies in the form of the testimonies. Further, the testimony of Mr. Grey Voram, is to be of paramount importance as it provides that the Accused had left the party before the alleged rape had taken place.
26. In the lights of the aforesaid pronouncements and facts of the impugned case, it can be reasonably comprehended that essentials of circumstantial evidence do not seek to be satisfied.
27. In the process of analysing criminal trials, the *Supreme court*<sup>17</sup> has apprehended that , a golden thread which runs through the web of the administration of justice in criminal

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<sup>16</sup>SharadBirdhichandSarda v. State of Maharashtra, (1984) 4 SCC 116

<sup>17</sup>Chandrappa& Ors. Vs. State of Karnataka, (2007) 4 SCC 415

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 same has been upheld in *Upendra Pradhan Vs. State of Orissa*<sup>18</sup>, and *Golbar Hussain & Ors. Vs. State of Assam and Anr*<sup>19</sup>.

28. Therefore, the essence of a criminal trial is to be taken into account, if in the case there exists a reasonable doubt, the Accused should be given the benefit of such reasonable doubt. In the present case, there exists reasonable doubt in the form of an inconclusive nature of the Medical examination, testimonies and delay in the FIR. The benefit of such reasonable doubt should be provided to the Accused and hence the accused should be acquitted under 377 of the WPC.

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**CONTENTION 2: THAT THE ACCUSED IS NOT LIABLE UNDER S.306 OF  
WONDERLAND PENAL CODE, 1860.**

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**2.1. THAT THERE WAS NO ABETMENT ON THE PART OF THE ACCUSED**

29. It is humbly submitted that the accused is not guilty of Abetment of Suicide under Section 306r/w section 107 of the Wonderland Penal code, 1860 as the accused did not participate in any instigation to commit offence, engage in conspiracy or aided the commission of offence. That a person abets the doing of a thing when he or she, inter alia, instigates any person to do a thing.<sup>20</sup>

30. The *Supreme court*<sup>21</sup> has held that “in order to prove that the accused abetted commission of suicide by a person, it has to be established that the accused kept on

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<sup>18</sup>Upendra Pradhan v. State of Orissa, (2015) 11 SCC 124

<sup>19</sup>Golbar Hussain & Ors v. State of Assam and Anr,(2015) 11 SCC 242.

<sup>20</sup> Justice KT Thomas & M A Rashid, Ratanlal&DhirajLal, The Indian Penal Code, Volume 2 at 2038

<sup>21</sup> In *Ramesh Kumar v. State of Chhattisgarh*, 2001 (9) SCC 618.

*irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction, and that the accused had the intention to provoke,”*

31. Further, In the case of **Manikandan vs. State**<sup>22</sup>, it was observed that: *“It is not the wish and willingness nor the desire of the victim to die, it must be the wish of the accused, that matters much. There must be a positive act on the part of the accused.”*

32. *In the instant case*, the involvement of the accused cannot be proved as there was no role of instigation or active participation on the part of the Accused towards the committing of suicide of the Appellant. It is imperative to elucidate that despite the Appellant making defamatory remarks against him and tarnishing his reputation in the film industry, the Accused did not take any recourse of revenge on her and instead remained silent while she alleged false concocted stories in public.

33. That 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, the offence under Section 306 IPC cannot be said to be made out<sup>23</sup>

34. It is further submitted that, the accused is required to play an active act or direct act which leads the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a decision that he commits suicide.<sup>24</sup>

35. *In the instant case*, there was no active role played by the accused in regards to the commission of suicide by the Appellant. That the loss of working assignments and death

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<sup>22</sup> Manikandan v. State CrI.A.(MD)No.142 of 2016

<sup>23</sup>Jeet Singh v. State of Punjab, AIR 1976 SC 1421

<sup>24</sup>Vinay Garg and another v State of Punjab,SLP (CrI) No. 3583, 2017

threats cannot connote a direct relation to that of the Accused. Such unfortunate mishappening were on the part of the Industry and not the Accused.

36. Furthermore, even in her dying declaration, the Appellant has not mentioned any act done by the Accused that would indict him towards any instigation. The same is a necessity as has been held in of *Pawan Kumar Bhalotia V. State of W.B.*<sup>25</sup>

37. In the background of such legal positions, adverting to the case in hand, no knowledge or intention on the part of Mr. Romsay can be established. *In the case in hand*, even though the fashion and the movie Industry were divided into support, they were acting in an independent manner without any support or regard from the Accused. Furthermore, there was no statement or request on the part of the Accused asking the industry to give their support in such trying times of his life. It is a reasonable conclusion that the Accused had no active role in the acts of the Industry and various radical groups following the alleged incident.

38. Alice was, even before such alleged incident subjected to death threats due to her way of life and sexuality. The continuous death threats that followed the incident were again supplied by radical groups in all possibility. This inference can be drawn out keeping in mind that such radical groups function upon old-fashioned values which frown upon strong individualistic women and differing sexualities.

39. Further the court in the case of **Madhav Rao and Ors. V. State of Haryana and Anr.**<sup>26</sup>, the Hon'ble court asserted on the fact that, "*another person cannot be blamed for the wrong decision taken by a coward, fool, idiot, a man of weak mentality, a man of frail mentality.*"

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<sup>25</sup>Pawan Kumar Bhalotia v. State of West Bengal,(2005) SCC (Cri) 543

<sup>26</sup>Madhav Rao and Ors v. State of Haryana and Anr. CRM M-2068 of 2012 (O&M) and CRM M- 33057 of 2011 (O&M).

40. Hence, shifting the blame onto the Accused in the present case, in the absence of any evidence of any active role played by him, is nothing more than a strategy on the hands of the Prosecution to bring about a cause for the death of the Appellant. The essence of the same here concludes to be that the Prosecution has overstepped its powers with the complete disregard for justice.

## **2.2 THAT THE DYING DECLARATION IS NOT ADMISSIBLE IN THE COURT OF LAW**

41. It is humbly submitted before the Hon'ble Supreme Court that dying declaration is admissible under Section 32 of the Indian Evidence Act, 1872. That the Supreme Court while discussing the extent and ambit of Section 32(1) of the Evidence Act, 1872 in the case of *Patel Hiralal Joitaram v. State of Gujarat*<sup>27</sup> observed that: "*Two categories of statements are made admissible in evidence and further made them as substantive evidence. They are: (1) his statement as to the cause of his death; (2) his statement as to any of the circumstances of the transaction which resulted in his death.*"

42. Further in the case of *Sooraj v. State*<sup>28</sup> The Supreme court opined that "*The circumstances shall only be intimately connected with the circumstances of the transaction which resulted in his death*"

43. *In the present case*, the deceased has only cited the name of the accused in the dying declaration. Further, The *Bombay High Court*<sup>29</sup> in one of its recent findings has held that mere mention of a person's name in a suicide note does not by itself prove that the person is guilty of abetment of suicide.

44. It is submitted that the deceased has not mentioned any circumstances leading to her

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<sup>27</sup>Patel Hiralal Joitaram v. State of Gujarat, (2002) 1 SCC 22.

<sup>28</sup>Sooraj v. State, 1994 Cri LJ 1155

<sup>29</sup>Gulab v. State of Maharashtra (1969) 2 UJ 598 SC



death and no clear proximate relation can be made in conjunction of the actual transaction i.e. the night of the Christmas party.

### **2.2.1 That the Appellant was not in a fit state of mind**

45. It is humbly submitted before the Hon'ble Court that for a person to make a dying declaration, he/she has to be in a fit state of mind.

46. The Supreme Court while discussing the ambit of admissibility of a dying declaration in *Smt. Laxmi v. Om Prakash and Ors.*<sup>30</sup> held that one of the important tests of the reliability of the dying declaration is a finding arrived at by the Court as to satisfaction that the deceased was in a fit state of mind and capable of making a statement at the point of time when the dying declaration purports to have been made and/or recorded.. If the Court finds that the capacity of the maker of the statement to narrate the facts was impaired or the Court entertains grave doubts whether the deceased was in a fit physical and mental state to make the statement, the Court may in the absence of corroborative evidence lending assurance to the contents of the declaration refuse to act on it.”

47. It is humbly submitted that the deceased was under the influence of alcohol as has been brought to light in her post-mortem report. In the case of *Siyatha v. Bajaj Alliance General Insurance Company Ltd.*<sup>31</sup>, the court held that “Intoxication is perceived as a state of mind in which a person loses self control and his ability to judge”. In light of such case, it is submitted that the Appellant at the time of making the dying declaration was in a state where she had lost her inhibitions and her ability to judge due to the influence of alcohol.

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<sup>30</sup> Laxmi v. Om Prakash and Ors, Appeal (crl.) 717 of 1994.

<sup>31</sup> Siyatha v. Bajaj Alliance General Insurance Company Ltd, (2015) CPJ 104

48. Furthermore, it is submitted that the Appellant was seen crying and traumatized in the dying declaration which enunciates that she was depressed and overpowered by her emotions.
49. A reasonable conclusion derived from the aforesaid facts would be that the Appellant at the time of making the dying declaration in cause of her psychological state and influence of alcohol was not in a fit state of mind. Further, before the alleged incident at the Christmas party, Alice had been depressed as she, at a very young age, due to an unfortunate accident suffered the loss of her parents. Moreover, she was bullied for the choice of differential gender identity. The only recourse she found in life was her Sex-change operation but even after such surgery, she was publicly shamed and threatened by radical groups all over the country. That her career became her strength and anchor. Loss of her work assignments due to the acts of the Industry was the final nail in the wall and she wallowed in all of the sadness that she had repressed from the very start. Thus creating a depressed and a traumatized being who could not cogitate her own feelings.
50. It is submitted that a person suffering from depression becomes hypersensitive to situations or comments in the ordinary routine and thus if such a person commits any act on the basis of his hypersensitivity, then the person accused cannot be held guilty and the same has been upheld by the Supreme Court<sup>32</sup>.
51. Hence it is submitted that an analysis of the aforementioned circumstances and the influence of Alcohol is enough to make a reasonable conclusion that Alice during the time of her dying declaration was not in a fit state of mind along with her distressed state of mind. Furthermore, absence of any specific medical evidence to show if the Appellant was in a fit state or physical condition to make the statement adds suspicion and excites to form an opinion against the prosecution.

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<sup>32</sup>State of W.B. v. Orilal Jaiswal (1994) 1 SCC 73

52. It is further submitted that in the Post-Mortem report no cause of death has been mentioned apart from the finding that alcohol was found in the body of the deceased. Such vague analysis of the cause of death begs the question on the competency of the same examiner. Furthermore, there is no certificate of video being provided to check the authenticity of the video being morphed. The post mortem report is also silent about the time of the death of Alice.

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***CONTENTION 3: THAT S. 375 & 376 OF THE W.P.C., 1860 IS***

**CONSTITUTIONALLY VALID**

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53. It is humbly submitted before this Hon'ble Court that Section 375 & 376 of the Wonderland Penal Code, 1860 is constitutionally valid. That 375 was enacted in due course to punish the offence of rape undertaken by a man against a woman. While, such section has attracted many amendments, the essence of the Section remains intact through all of these years.

54. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds<sup>33</sup>.

**3.1 THAT S. 375 & 376 OF THE W.P.C IS NOT VIOLATIVE OF ARTICLE 14 AND 15 OF THE CONSTITUTION.**

55. It is submitted that Article 14 provides for equality before law. It holds ground on the principle of "Rule of Law". The spirit of "Rule of Law" lies in an understanding that all are equal before law. Thus, the law has to provide equal protection to all individuals. That

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<sup>33</sup>Prabhu Das V Union of India, AIR 1966 SC 1044

Article 15 of the Constitution curbs discrimination on the basis of sex, religion, caste, race or place of birth by the state and the public at large.

56. Notwithstanding that, an in-depth perusal of such fundamental rights would provide that, the principle of equality does not mean that every law must have universal application for all<sup>34</sup>. That it does not take away from the state the power of classifying persons for legitimate purposes.<sup>35</sup>That equals should not be treated unlike and unlikes should not be treated as alike. Likes should be treated alike.<sup>36</sup>

57. Mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable. What is necessary is that the/re must be a nexus between the basis of classification and the object of the Act under consideration<sup>37</sup>.

58. *In the Instant case*, the constitutionality of the rape laws in Wonderland have been challenged as being violative of Article 14 and 15 due to the fact of them relating solely to women. It has been stated that they are discriminatory towards Transgenders.

59. The selection or differentiation in such rape laws has been done with the intent of providing, women with the right of protection against sexual assault by men, the same being the essence of such section. Women of Wonderland, where we have a patriarchal sense of society have forever been considered as a weaker section, this is due to the repression that women face in their lives. Such repression consequents to men treating women, not as a human being but as an object over which they have inherit ownership for

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<sup>34</sup>KedarNath V State Of W.B., AIR 1953 SC 404

<sup>35</sup>ChiranjitLal V Union of India, (1950) SCR 869

<sup>36</sup>Gauri Shankar V Union of India, AIR 1995 SC 55

<sup>37</sup> Ibid

the gratification of their needs. That such mind-set of this degree has eradicated the essence of 'Consent' in a variety of sexual incidents, which abridges to the offence of rape. Thus, there was a need for a section to secure such rights and sexuality of women strictly in the form of 375 & 376 of the WPC. It is submitted the differentiation in the current situation cannot be termed as 'unreasonable' and seeks to satisfy the object of the section.

60. It is further submitted that Article 15(3) provides a right on the state to make special provisions regarding the protection of women and children in society. It has been stated that the women have been socially and economically handicapped for centuries and as a result thereof, they cannot fully participate in the socio-economic activities of the nation on a footing of equality. The object of Art. 15(3) is to strengthen and improve the status of women.<sup>38</sup>

61. In the light of cases and facts reiterated, it can be equitable to submit that the rape laws in Wonderland are not violative of Article 14 and 15 of the Constitution.

### **3.2 THAT SECTION 375&376 OF THE WPC IS IN CONSONANCE WITH ARTICLE 21 OF THE CONSTITUTION.**

62. It is submitted that Article 21 provides right to life and personal liberty to all person. Further, it is pertinent to elucidate that 'Right to Life' means something more than mere animal existence and includes the right to live consistently with human dignity and decency<sup>39</sup>.

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<sup>38</sup> M.P. Jain, Indian Constitutional Law at 992 (6<sup>th</sup> ed. 2012)

<sup>39</sup> Vikram V State of Bihar, (1988)Supp SCC 734

63. In *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>40</sup> the Supreme Court held that “Rape destroys the entire psychology of a woman and pushed her into deep emotional crises. Rape is the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the fundamental rights, namely, the right to life with human dignity contained in Art 21”.
64. In reference to such interpretation along with the ambit of article 14 and 15, it is submitted that the constitution provides the dire need for provisions of the law to provide remedies to those persons whose “Right to life” is violated due to a violation of their dignity. It is submitted that the rape laws of Wonderland provide for remedy to a woman when her ‘Right to life’ is infringed.
65. That understanding the scope that this right must extend to other individuals, especially Transgenders who are subjected to sexual abuse in the usual course of nature, the Legislature on 15<sup>th</sup> of January 2019, enforced the ‘*The Wonderland Transgender Persons (Protection of Rights) Act, 2019*’. That Section 19(d)<sup>41</sup> provides for a remedy for Transgenders in the unfortunate incident of their sexual abuse.
66. It is submitted that the demands of the ‘Transgenders’ pertaining to the amendment of rape laws in Wonderland, should not be entertained as the implication of the same would lead to rejecting the laws being provided to them by mere reason of it being unsatisfactory in their opinion.

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<sup>40</sup>*Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) AIR 922, 1996 SCC (1) 490

### **3.3 THAT OBLITERATION OF RAPE LAWS WOULD CAUSE GREAT INJUSTICE.**

67. It is submitted that under Article 13(1) of the Constitution, when a law is inconsistent with the fundamental rights, it is seeks to be void. That the implication of the word 'Void' would be "*having no legal or binding effect*"<sup>42</sup>

68. That in the possibility of such section being adjudged to be "unconstitutional" it would lead to gross injustice to the rights of women all over the country. The need for such section arises from the violation of fundamental rights that a women has to suffer in the usual course of nature. It is submitted that if the same section is said to be 'Void', the women of the country would be left with no remedy for violation of their 'Right to life' as they would be forced to a life without any form of dignity.

69. Furthermore, it would provide criminals and delinquents, the motivation and freedom to treat women as their own objects for the purpose of gratification of their sexual appetites. Such change in society would in all possibilities lead to not only chaos but also a society derived of basic human rights. That such Neanderthal form of living would lead to the dropping of women's self-esteem and respect in society.

70. Therefore, taking such a strong step of adjudging 375 & 376 to be unconstitutional, would lead to ultimate chaos and violation of basic human rights.

### **3.4 THAT THE ALTERNATIVE PRAYER OF INTERPRETING THE DEFINITION OF 'SHE' AND 'HER' TO INCLUDE TRANSGENDERS CANNOT BE GRANTED.**

71. It is submitted that if the prayer is granted, it would cause grave muddle in the provisions of law. Such definition cannot be included in an abstract manner where the laws are not considered individually but grouped together and dealt with in the same manner.

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<sup>42</sup>Surendra Malik &Sumeet Malik, Supreme Court Words and Phrases at 1936 (ed.3 of 2013)

72. Such laws deal with different aspects of a life and thus their interpretation cannot be changed in a similar manner. Furthermore, with the advent of the new Transgender act, the offences dealt with under WPC would be inclusive of the transgender, in the provisions provided under the act.
73. A thorough evaluation of each and every law under WPC relating to women needs to be made for such prayer to be accepted in the court of law. Thus, in all its essence, the Act cannot be held ultra vires the Constitution.

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**CONTENTION 4: THAT TRANSGENDER PERSONS PROTECTION OF RIGHTS  
ACT, 2018 IS CONSTITUTIONAL**

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74. It is humbly submitted that the Transgender Persons Protection of Rights Act, 2018 holds good in the eyes of as *firstly*, it is in consonance with the fundamental rights, namely, Articles 14,15, 21 and 27, *secondly*, there is overwhelming importance of this Act in terms of protection of vulnerable sections of society and *lastly*, it ought to grown and developed by this Hon'ble Court to remove even a question of infirmity for the furtherance of fundamental rights and the growth of law itself, by exercising its power of interpretation. Therefore, the law in view of such parameters is valid and will only further the cause of justice and fundamental rights enshrined under part III of the Constitution of Wonderland.
75. In *Ashutosh Gupta V. State of Rajasthan*<sup>43</sup> the Hon'ble Supreme Court held that *there is always a presumption in favor of the constitutionality of an enactment. This presumption stems from the wide power of classification which the legislature must, of necessarily possess in making laws and operating differently as regards the different groups of*

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<sup>43</sup> Ashutosh Gupta v. State of Rajasthan, [2002] 4 SCC 34.



*persons in order to give effect to its policies<sup>44</sup>. It must be presumed that the legislature understands and correctly appreciates the needs of its own people.*

#### **4.1 That the Act Adheres to Article 14**

76. It is most humbly submitted that the Act is in consonance with Article 14 of the Constitution of Wonderland as it does not violate the guarantee of equality before and equal protection of law and therefore, is valid. The Supreme court has declared Article 14 to be non-arbitrariness and principles that comply with the rules of Natural Justice.<sup>45</sup>The wide scope of the Article has extended to the transgender persons in health care, employment, civil and human rights.

77. In *National Legal Service Authority v. Union of India*,<sup>46</sup>the elucidation of the word ‘person’ was broadened and was held that Article 14 of the Indian Constitution does not restrict the word ‘person’ and its application is not restricted to male/female. Hijras/transgender persons who are neither male/female fall within the expression ‘persons’ and, hence, entitled to legal protection of laws in all spheres of State. The historic judgment paved a path for the transgender community for safeguarding their rights in the Constitution and the laws made henceforth. The legislature is required to deal with diverse problems arising out of an infinite variety of human relations. It must, therefore, have the power of making laws to attain particular objects and, for that purpose of selecting and classifying persons and things upon which the law is to operate. In lieu of the judgment and the aforesaid element, the Act came into existence and furthered its application to the transgender community.

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<sup>44</sup>*Ibid.*

<sup>45</sup>M. Nagaraj v. Union of India, (2006) 8 SCC 212

<sup>46</sup>NALSA v. UOI (2014) 5 SCC 438

78. Social justice does not mean equality before law in papers but to translate the spirit of the constitution, enshrined in the Preamble, the Fundamental Rights, whose arms are long enough to bring within its reach and embrace this right of recognition to the Transgenders which legitimately belongs to them<sup>47</sup>.
79. It is submitted that the Act was introduced with the object to provide for protection of rights of transgender persons and their welfare which envisages the directive principle encompassed in Article 46.<sup>48</sup> The said directive principle provides for education and economic development of the weaker sections. It is humbly submitted that the word 'weaker sections' has been connoted as persons those are socially and therefore educationally and economically backward, and the expression can also take within its compass, individuals who constitute weaker sections of weaker parts of the society.<sup>49</sup> Further, the Supreme court held that transgender people are preserved as socially and backward classes.<sup>50</sup>
80. The court in the case of *Minerva Mills Limited v. UOI*<sup>51</sup> The provisions of statute which are basically and essentially necessary for giving effect to the directive principles are protected under Article 31-C. Thus, it is submitted that the Act safeguarding the interest of weaker sections of the society is in consonance with the directive principles read with Article 31- C cannot be violative of Article 14 of the Constitution
81. Therefore, it is humbly submitted that the Act is in consonance of Article 14 and is widely lauded for laying out legal protections to transgender people which goes beyond

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<sup>47</sup>Ibid

<sup>48</sup>Promotion of education and economic interests of scheduled tribes, schedules castes and other weaker sections

<sup>49</sup>Indra Sawhney v Union of India, 1992 Supp (3) SCC 217

<sup>50</sup>Supra note 45

<sup>51</sup> Minerva Mills Ltd v. UOI, AIR 1980 SC 1789

male and female. It also furthers the growth of gender identity and expression to social justice.

#### **4.2. That the Act adheres to Article 15 and 16**

82. It is submitted that with the passage of the Act, the constitutional guarantee under Article 15 has been given effect thereto to ensure overall development in an egalitarian manner. That Article 15 of the constitution prohibits discrimination on the basis of Sex. The discrimination on the ground of sex under Articles 15 and 16 of the Indian Constitution includes discrimination on the ground of gender identity.<sup>52</sup> The expression sex 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.<sup>53</sup> The present Act envisages the same principle enshrined in the aforesaid judgment and therefore brimming an environment free from discrimination.

83. That the fundamental right has been conferred on citizens as an Individual and is a guarantee against his being subjected to discrimination in matters of rights, privileges pertaining to him generally.<sup>54</sup> In the view of the aforesaid case, the Act provides no discrimination to Transgenders .That the definition of transgender person under the said act is an umbrella definition, which provides within its ambit all the persons who are not confined to the gender they were born with.

84. The Transgender act envisages for prohibition against discrimination in relation to education, employment, health services, right to movement, right to enjoy goods and services, right to reside, unfair treatment and also to acquire public office.The Interest of the society at large would be served by promoting the advancement of the

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<sup>52</sup>Supra at 4

<sup>53</sup>Ibid

<sup>54</sup>Nain Sukh v. State of UP, AIR 1953 SC 384

weaker elements in the society that Article 15(4) authorises.<sup>55</sup> Thus, taking affirmative action in favour of socially and background disadvantages classes.

85. It is submitted that before the inception of the law, the legal provisions with respect to transgender community were nowhere to be recognized. With the advent of this Act, such discrimination in terms of sexual, physical abuse and emotional abuse have been waived off.<sup>56</sup>

86. The Act by affirmative action has attempted to bring members of unrepresented groups, usually that have suffered discrimination, into higher degree of participation in some beneficial programme<sup>57</sup> like education, social security, creation of welfare schemes by the government to secure full and effective participation of transgender persons.

87. That the said Act seeks to provide social equality to these communities which are included within the category of socially and educationally backward classes. Articles 15(2) and 16(4) has also been interpreted to provide social equality to these communities such as equality in public employment, it provides that the states shall have the power to make any special provision for the upliftment of these weaker sections who are now included within the category of socially and educationally backward classes.<sup>58</sup> Thus, it is humbly submitted that the Transgender Act is in consonance with Article 15 and 16 paving a long road ahead for imperative and systematic change in the notions of equality, dignity and culmination of discrimination.

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<sup>55</sup>M.R. Balaji v. State of Mysore, AIR 1963 SC 649

<sup>56</sup>Section 19 (d), Transgender Act

<sup>57</sup>Durga Das Basu, Constitution of India, Volume 2 at 1769, (8<sup>th</sup> Ed, 2007)

<sup>58</sup>Sourav Agarwal, Civil and Political rights to Transgenders in Indian constitution, ijlljs.in, (28<sup>th</sup> February, 2019, 10:24am), <http://ijlljs.in/civil-political-rights-transgenders-indian-constitutional-perspective/>.

#### ***4.3. That the Act adheres to Article 21***

88. The right to choose one's own identity is one of the most essential right under this article to life with dignity.<sup>59</sup>The Transgenders' Act postulates the right to be recognised as a self perceived gender identity. Further, the NALSA Judgment avowed both, firstly, the right of an Individual to choose their own gender and secondly, existence of third gender.<sup>60</sup> That the Transgenders' are accorded a right to change the gender as a male or female in accordance with the Act.

89. That the Supreme Court postulated self determination of one's gender is part of the fundamental right to dignity, freedom and personal autonomy guaranteed under the Constitution.<sup>61</sup>The Act therefore stands that the requirement of the aforementioned judgment and Article 21 on the Constitution.

#### ***4.4. Growth in the interpretation of law***

90. It is humbly submitted that the presumption of Constitutionality is always with the statute.<sup>62</sup> and it is incumbent upon the Hon'ble Courts to adopt a constitutional interpretation to a statute, where two interpretations are found<sup>63</sup>.

91. That being the case, the essence of the law is to grow, grow to better the lives of individuals and this growth inherently effectuated by the growth of society itself. In the spirit of this principle, it is humbly submitted that the lay may be read down, to effectuate the growth of the Transgender Act to incorporate the societal growth and acceptance, vis-à-vis, the fundamental rights. But it is essential that the law must grow and not be struck down immediately, in this present matter, as this Act has applications of overwhelming

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<sup>59</sup>I.R. Coehlo v. State of Tamil Nadu, AIR 2007 SC 861

<sup>60</sup>Supra note 45

<sup>61</sup>Ibid

<sup>62</sup>Charanjeet Lal Vs. Union of India [1950] SCR 869

<sup>63</sup>Mysore State Electricity Board VS BWCS Mills AIR 1963 SC 1128.

importance and the incumbent within it is the scope of interpretation so clear in its constitutionality, that the court may choose the interpretation that is most constitutional<sup>64</sup>.

92. The position of law here-in, is similar to that of the art of bonsai where the artist meticulously shapes the bonsai tree over decades to give it a perfect form. Where such artist sees inconsistency in the shape of the bonsai leaves, he does not strike down the branch but rather takes out his finest scissors for the job and trims the leaves to ensure that what is in fact the bonsai tree is maintained in its perfection. Similarly, the law must grow, it cannot stand still; it must change with the changing concepts and values<sup>65</sup>.

93. Therefore, for the law to grow and achieve perfection, the law ought not to be stuck struck down at every step but rather, the law must grow through the power of interpretation exercised by the Judges of the Hon'ble Courts in exercise of their powers of interpretation and judicial activism.

94. As ruled in *State of Madras v. Zenith Lamps*,<sup>66</sup> the presumption of constitutionality of laws requires that it has to be resolved in favour of constitutionality unless so irrational as to incur any constitutional infirmity.

95. In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report and the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

96. The Courts should rather preferably put into service the principle of 'reading down' or 'reading into' the provision to make it effective, workable and ensure the attainment of

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<sup>64</sup>*Indra Das Vs. State of Assam* [2011] 2 SCC 380; *Namit Sharma Vs. Union of India* [2013] 1 SCC 745.

<sup>65</sup>*National Textile Workers' Union Vs. P R Ramakrishnan* [1983] IL LJ 45 [SC].

<sup>66</sup>*State of Madras v. Zenith Lamps*, AIR 1973 SCC 724

the object of the Act<sup>67</sup>. These are the principles which clearly emerge from the consistent view taken by this court in its various pronouncements<sup>68</sup>.

97. It is further submitted in the case of *Indra Das Vs. State of Assam*<sup>69</sup> the Hon'ble Supreme Court held that *"the court can depart from the literal interpretation so that the provision becomes constitutional if the literal interpretation makes the law unconstitutional.* "It is thus submitted that the court ought to scrutinize the Transgender Act looking to the overwhelming need for Transgender Act to achieve the avowed goal of their empowerment in its true nature.

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**CONTENTION 5: THAT THE TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) ACT, 2019 IS CONSTITUTIONALLY VALID.**

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**5.1. THAT THE ACT IS IN NOT VIOLATIVE OF ARTICLE 23**

98. It is humbly submitted that the Trafficking Act, 2018 is in consonance to Article 23 of the Constitution. In the case of *People's Union for Democratic Rights v. Union of India*<sup>70</sup>, The Apex Court held that *"the prohibition against 'traffic in human beings and begar and other similar forms of forced labour' is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice."*

99. It is humbly submitted that the Act embarks the foremost step towards human trafficking. The Act has far reaching assistances not only to prevent trafficking of persons, especially women and children but also protection and rehabilitation of victims of trafficking. That, Article 23, has

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<sup>67</sup>*Namit Sharma Vs. Union of India* [2013] 1 SCC 745.

<sup>68</sup>*Ibid.*

<sup>69</sup>*Indra Das v. State of Assam*, [2011] 2 SCC 380.

<sup>70</sup>*People's Union for Democratic rights v. UOI*, (1982) 3 SCC 235

covered in its wide ambit the definition of ‘Victim’ which inculcates ‘Any person’ on whom the offence of trafficking has been committed to be attempted by any other person.

100. That the Act supplements the already existing criminal laws on trafficking and further attains the purpose of Article 23. That the bill punishes all forms of trafficking including but not limited to aggravated forms trafficking and has addressed a long term pending legislation.

101. It is submitted that such Act is of prime importance to bring forward social and economic mutiny in which every person would be benefited with rudimentary human rights and participate in the fruits of freedom and liberty in an egalitarian framework and the Act furthers the operation towards the same aforesaid goal.

## **5.2 THAT THE ACT IS NOT VIOLATIVE OF ARTICLE 14 & 15 OF THE CONSTITUTION**

102. Art. 14<sup>71</sup> declares that ‘they shall not deny to any person equality before the law or the equal protection of the laws within the territory of India’. Further, the Hon’ble Supreme Court in *Dasaratha v. State of A.P.*<sup>72</sup> observed that Art. 14& Art.15 enshrines the principle of equality and absence of discrimination. Article 14&15 bars discrimination and prohibits discriminatory laws. All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed<sup>73</sup>.

103. It is submitted that the initial presumption is in favor of the validity and if the person fails to adduce sufficient evidence in support of his challenge to the law in question, his plea of the provision in question being violative of Art 14. Cannot be entertained. The state can lean on the initial presumption on the validity of the law<sup>74</sup>.

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<sup>71</sup>M.P. Jain, Indian Constitutional Law (6<sup>th</sup>Edn. 2011)

<sup>72</sup>Dasaratha v. State of A.P, AIR 1961 SC 564

<sup>73</sup>John Vallamattom V Union of India, (2003) 6 SCC 611

<sup>74</sup>G.K Krishnan V State of Tamil Nadu, AIR 1975 SC 583



104. In the present case, the '*Trafficking of Persons (Prevention, Protection And Rehabilitation) Act, 2019*' has been claimed to be *Ultra Vires* of the Constitution due to the allegation that it is discriminatory towards Transgenders.

105. That the act in question, is an all-encompassing act with has a prime focus on the Victims of trafficking. The Act does not dwell on the discrimination with regards to protection and rehabilitation of victims. Further, the Act provides assistance to all those who have been unfortunate and caught in the shackles of trafficking without any impetus to sex, place of birth, religion, race and caste. Moreover, the Act also upholds the principles of equity by providing separate individual care plans to the victims on the basis of their trauma, age and experience. Further, the rehabilitation centres do not treat all individuals in the same manner which would be detrimental to their growth in society.

106. It is further submitted that The Act was enacted with the one of the primary objectives to legislate the policy of the state towards securing the principles laid down in securing Article 39 (d) and (f). That with the application of Article 31-C, any law giving effect to directive principles cannot be deemed to be void on the ground that they are inconsistent with Article 14 of the Constitution.<sup>75</sup>

107. In the light of the facts and the aforesaid provisions of law, it can be deduced that such Act cannot be deemed to be void and *ultra vires* of the Constitution.

### **5.3. THAT THE ACT IS NOT VIOLATIVE OF ARTICLE 21 OF THE CONSTITUTION.**

108. Article 21 of the Constitution envisages Right to life and liberty. It is stated that right to live means something more than 'mere animal existence and includes the right to live consistently with human dignity and decency'<sup>76</sup> Further, the Apex court has stated "It is

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<sup>75</sup>Minerva Mills Limited V UOI, AIR 1980 SC 1789

<sup>76</sup>Sunil v. Delhi Admin. AIR 1978 SC 1675

the fundamental right of everyone in this country assured under the Interpretation given to Article 21 to live with human dignity free from exploitation”<sup>77</sup>

109. In the present case, it has been alleged that the Act in question is violative of Article 21 of the Constitution. It is humbly submitted that such Act rather than infringing upon such right encompasses such provisions that would lead to protection of such right.

110. With the object to ensure that such victims have the capacity to live a life of dignity after being entrapped in such an unfortunate situation, the Act provides for interim relief to the victim within thirty days. Furthermore, the victims will also be provided with compensation within sixty days from the date of filing of the charge sheet. Such provisions aim at improving the quality of life of such victims.

111. Right to life envisages fair procedure<sup>78</sup> hence any violation of a fair procedure would lead to violation of such fundamental right. That with the understanding of such gravity, the Act provides that any person whose property is in danger of being attached or forfeited would be given an opportunity to be heard. That the Act also states that if a victim is unable to afford a legal counsel, the legal services authority shall be entrusted with the duty of providing one.

112. That speedy trial is sine qua non of Art 21<sup>79</sup>. The purpose of right or speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch.<sup>80</sup> In the light of such aspect of Article 21, the Act provides designated courts for the purpose of a speedy trial of any offence under the Act. Moreover, it has been stated that the designated court shall complete the trial within one year from the date of taking cognizance.<sup>81</sup>

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<sup>77</sup>Neeraja Chaudhary v. State of Madhya Pradesh, AIR 1984 SC 1099

<sup>78</sup>Ranjit Singh Brahmajeet Singh Sharma v. State of Maharashtra AIR 2005 SC 2277

<sup>79</sup> M.P Jain , Indian Constitutional Law at 1179 (8<sup>th</sup> ed.2018)

<sup>80</sup>MotiLal Saraf v. State of J&K, AIR 2007 SC 56

<sup>81</sup>Chapter 13, The Trafficking of Persons( Prevention, Protection and Rehabilitation) Act, 2019

113. In order to safeguard the lives of such trafficked victims, the Act provides Anti-trafficking authorities, the right to rescue a person without undue delay if there is a reasonable belief that there is imminent danger to the life of the victim. Furthermore, the victim possesses a right to make an application to the designated court to take measures for protection of such victims.
114. That in the case of *Budhadev Karmaskar v. State of West Bengal*<sup>82</sup> The Apex Court has enunciated that no one becomes a prostitute out of their own desire but it is due to compulsion. The society must have sympathy for them and that they are also entitled to right to life and dignity. That under the Act in question, the dignity of such persons has been protected through punishing the act of distributing, in any form incidents of sexual exploitation or sexual assault for the purpose of extortion or coercion. Thus, the Act provides that any distribution of recording of trafficked victim would be a crime, hence, protecting their safety and dignity in society.

#### **5.4 THAT THE ACT IS IN CONSONANCE WITH ART. 19 OF THE CONSTITUTION.**

115. The objective of The Act is to prevent trafficking of persons, especially women and children and to provide care, protection and rehabilitation to the victims of trafficking, to prosecute offenders and to create a legal, economic and social environment for the victims and for matters connected therewith or incidental thereto. That in the due course of seeking to satisfy such objectives, there may be some restrictions imposed on the victims but such restrictions are within the confines of Art. 19(5) as they are undertaken in the interest of the public.
116. It is submitted that the main objection towards such act rises from the notion that this act curtails 'sex work' and 'begging', the consequence of which bears to a violation of

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<sup>82</sup>Budhadev Karmaskar v. State of West Bengal,(2011) 11 SCC 538

the freedom to practice any occupation. In regards to such objection, it is submitted that, In *Shama Bai v. State of U.P*<sup>83</sup>, it has been observed that a law for the suppression of traffic would be valid by reason of art 23 even though it may restrict the freedom of business and profession guaranteed by Art 19(1) g of the Constitution.

Furthermore, The Act entails the principles of DPSP<sup>84</sup> and thus cannot be held to be void on the grounds of being violative of Art 14 and 19 of the constitution in accordance with Art 31C. Article 31C of the Constitution.

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<sup>83</sup> *Shama Bai v. State of U.P*, AIR 1959 All 57

<sup>84</sup> Art 39 (d)(e)

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**PRAYER**

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Wherefore, in light of the facts of the case, issues raised, arguments advanced and authorities cited, Counsel on behalf of the Respondent humbly prays before the Hon'ble Supreme Court of Wonderland, to kindly adjudge and declare that:

1. That the Accused should be acquitted of all charges under S. 306 and 377 of the WPC.
2. That S. 375 and 376 are in consonance with the basic provisions of the Constitution and hence are constitutionally valid.
3. That the Transgender Persons (Protection of Rights) Act, 2019 is constitutionally valid.
4. That the Trafficking of Persons (Prevention, Protection and Rehabilitation) Act, 2019 is constitutionally valid.

And to further pass any such order, judgement or direction that the Hon'ble Court deems fit in the interest of justice. For this act of kindness the Counsel on behalf of the Respondent, duty bound shall forever pray.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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THE COUNSEL FOR RESPONDENT