

MOOT PROPOSITION

1.Rita, aged about 13 years, was found by some people in a dumpster at a busy marketplace in the district of Vidhipur on 1st December, 2015 in the state of Harit Pradesh located in the country of Gandhar. One in the crowd was Ms. Aastha Bahuguna.

2.Ms. Bahuguna took Rita over to her own place, which was 3 km away from the marketplace. She prepared supper and tucked Rita in. Her children, Sachin, Madhav and Gita played with Rita and made her feel at home. In order to ensure that Rita does not become the subject of gossip which could mean traumatising Rita even further, the Bahuguna children introduced Rita in the neighbourhood as one of their distant cousins. Nobody suspected that Rita was in fact a lost child.

3.On 13th December, 2015, Ms. Ruksana Ahmed, a family friend of the Bahugunas, advised that Rita's story be told to the Child Welfare Committee (CWC) of Vidhipur District since it is the only way Rita's parents could possibly be discovered. On 16th December, 2015, Aastha took Rita over to Mr. Valmiki Tyagi's residence, who was a reputed member of the CWC. She was greeted by Ms. Poonam, Tyagi's trusted housekeeper. Poonam informed that Mr. Tyagi and his family had taken the weekend off and were out of town celebrating his birthday. She also informed that his colleagues at the CWC had accompanied him and joined the celebrations. She gave to Aastha, Tyagi's and his fellow CWC member-colleagues' phone numbers, lest she was thought to be lying. Aastha had no doubts on Poonam. She came back two days later, on 18th December, 2015, and narrated the whole incident before Tyagi. Tyagi promised that he and his team would look into Rita's matter.

4.That very day, Tyagi raised the matter before the CWC. It was soon declared that Aastha Bahuguna would be the right person to look after Rita for the time being. Meanwhile, the team would upload Rita's matters on the state government's online portal, *Track Missing Child*, in the hope of discovering Rita's parents. An inquiry was also initiated. Later it became clear that no parent would come to take Rita back and consequently, the CWC declared Rita as a child legally free for adoption as per Section 38

of the Juvenile Justice(Care and Protection of Children) Act,2015. Calling her a Child in Need of Care and Protection (CNCP), the CWC ordered that Rita be placed in Sunshine Foundation, a charitable organisation run by a group of social workers and a registered Children's Home in the state given the fact that Ms. Aastha Bahugana was not financially empowered enough to raise Rita.

5. Within a 3 months , the social workers at the Children Home came to realise that Rita was mentally challenged. The doctors diagnosed her with 'mild intellectual disability or mild mental retardation'(MID), it was often that she could not remember the interactions she had with people. She also had difficulty in reading and understanding the simplest of day to day activities.

6. Although the social workers were kind to her, Rita trusted only Ms. Anjali Mukherjee, the person in charge of the Children Home. She also confided in Kanhaiya, the driver and Mohammad, the cook. On the night of 29th March, 2018, Rita went down with fever and started vomiting. Nirmala, the sister of Kanhaiya and house-help, did her best to help Rita and stayed alongside her when the nurse finally arrived to examine her the next day. The nurse assured Nirmala to not worry too much but advised that she take better care of the children home since the sickness was caused by the unhygienic conditions of living in house. Nirmala asked Anjali to provide more housekeeping staff in order to ensure better management of the home. Anjali regretted that the Children Home, being a voluntary charitable organization, had little financial and capital resources.

7. Rita overheard this conversation between Nirmala and Anjali and was convinced that she would not fare well inside this organization. Remembering how Renuka, Kanhaiya's 10 year old daughter and her friend, worked in a nearby factory and seemed to be able to take care of themselves, Rita decided to run off in search of work in similar factories. On 3rd April, 2018, Rita did in fact run off looking for employment.

8. However, few hours later, she could not remember why and where she was going. Luckily for her, Kanhaiya and Mohammad found her and brought her back. Since that day, her relations with Kanhaiya and Mohammad developed into one of deep affection, respect and trust. Both of them grew very fond of Rita seeing her childish innocence. Kanhaiya spent a lot of time seeing to it that Rita could grasp whatever was being taught

by her tutor. Mohammad was also very supportive in taking care of Rita. He cooked her favourite dishes and spent his leisure time playing with her.

9. Though conditions seemed to improve for Rita, late in November, 2018, Rita began complaining of nausea and light headedness to her caregivers. She was administered over the counter medicines and natural home remedies by her caregivers. When her symptoms did not subside and increased over the next three months, she was finally taken to a hospital where it was detected that Rita was already thirteen weeks pregnant. Everyone at the Foundation believed that Kanhaiya and Mohammad had committed rape although Rita herself had no recollection or comprehension of the event.

10. Noting this development, the management of the Children Home decided to terminate both Kanhaiya and Mohammad's employment contracts and registered a written complaint at the local police station accusing both of them of committing rape. Accordingly police registered an First Information Report under Section 376, 376C of the Indian Penal Code, 1860 and Section 5(d) of the Protection of Children from Sexual Offences Act, 2012 against both the accused and initiated investigation.

11. Rita was interviewed by the police about the incident. She could not remember any details regarding the incident and had no recollection of what had happened. She was not able to understand the responsibilities of motherhood and was happy that she was having a child. She could not recall whether the pregnancy was caused by rape or not. However, Kanhaiya and Mohammad were the named accused in the FIR.

12. The Children Home had a clear stance favouring termination of the pregnancy. According to the social workers at the foundation, Rita's mental retardation would not allow her to successfully bring up a child without constant care and support. Rita on the other hand was vehemently opposed to allowing any medical procedure involving her body and because she was scared that killing the child would invite the wrath of God. Ms. Bahuguna, her previous caregiver who came to know of Rita's pregnancy stressed that Rita's strong insistence to continue with her pregnancy must be considered.

13. As there was no clear basis in law on the termination of pregnancy because of the fact that Rita was presumably a minor with MID but was not consenting to the MTP, the High Court of Harit Pradesh was approached who constituted a committee consisting of medical experts and a judicial officer, to look into the facts of the case. The High Court

framed a comprehensive set of questions to be answered by the expert body in order to ascertain the 'best interests' of AB.

14. The High Court took into account the findings of the expert body which opined that while Rita had enough physical ability to bear and raise a child, her MID would limit the mental capacity to bear and raise a child in the absence of adequate social support and supervision. On the other hand, Rita's ossification test also yielded that her age is within 16-18 years of age. However the High Court took into account three factors: Rita's MID, lack of conclusivity of ossification tests for ascertaining age and the lack of continued support post pregnancy from the Children Home. On the basis of these factors, the High Court of Harit Pradesh directed termination of pregnancy on 25th March, 2019.

15. Ms. Bahuguna has approached the Supreme Court of India against the High Court order claiming that Rita's consent is vital in this case and noting her disputed age it is important that the State take responsibility for Rita's care and support after giving birth to her child. The matter is listed before the Supreme Court of India on 3rd April, 2019. Parties are required to prepare memorials and argue from both sides.

The laws of Gandhar are in pari materia with the laws of India