



NLU Meg - NHRC **1st National Moot Court Competition 2023-24**

MOOT PREPOSITION

Clients of Ms. Nak Chin

v.

Republic of Chiga

1. Republic of Chiga ["Chiga"] was a welfare democracy in the southern hemisphere. Riga was its capital and the biggest city. All international treaties and conventions having the status of customary international law were signed, acceded to, and ratified by Chiga. It promulgated a lengthy written constitution in 1950.

2. Indradeep was the Prime Minister of Chiga. After a stellar career at the Institute of Industrial and Technical Knowledge spanning over two decades, he joined politics in 2021 and founded the Corruption Free Party. He waived his patent rights on key 5G technologies which allowed the state run entities to lower their costs in deployment of 5G technology. Due to a well drafted election manifesto, his party got majority in the 2023 general elections. Soon after coming into power, his government lowered the tax rates on 5G devices and in no time, Chiga became the first country in southern hemisphere to have a 100% 5G coverage with lowest data costs.

3. Deeper penetration of high speed internet access also resulted in an increase in cyber-crimes. To combat the exponential rise in cyber crimes, the Government introduced -the Anti Cyber Crime Amendment bill 2023 before the Parliament. On 31st January 2023, the Anti Cyber Crime Amendment Act 2023 was published in gazette and came into effect.

4. It was widely reported that organised gangs are involved in cyber crimes and most of their operators are outside the country and they employ young children who are tech savvy to do the ground work. To strengthen the law as well as deter juveniles from getting involved in any such pernicious activities, amendments by way of an Ordinance (Ordinance no. 12 of 2023) were promulgated on 1st March 2023, which was as follows:

<p>Relevant provision of Anti Cyber Crime Amendment Act 2023</p>	<p>Amendment introduced by way of Ordinance</p>
<p>Section 354E (1) A person or entity which sends or causes to be released, to public at large or another person or set of persons—</p> <p>(a)an article, message or communication which conveys—</p> <p>(i) anything which is indecent or grossly offensive or has the potential to be so;</p> <p>(ii)a threat; or</p> <p>(iii)information which is false and known or believed to be false by the sender; or</p> <p>(b)any article, message or communication which is intended to cause distress and anxiety, or is of an indecent or grossly offensive nature, and is used to blackmail, threaten, harass or extort anything, in cash or kind, is guilty of an offence if their purpose, is not bonafide or not one as saved under any law; and the minimum punishment for such offence shall be 14 years and the maximum punishment shall be rigorous imprisonment for life.</p>	<p>Section 354E (1) A person or entity which sends or causes to be released, to public at large or another person or set of persons—</p> <p>(a)an article, message or communication which conveys—</p> <p>(i) anything which is indecent or grossly offensive or has the potential to be so;</p> <p>(ii)a threat; or</p> <p>(iii)information which is false and known or believed to be false by the sender; or</p> <p>(b)any article, message or communication which is intended to cause distress and anxiety, or is of an indecent or grossly offensive nature, and is used to blackmail, threaten, harass or extort anything, in cash or kind, is guilty of an offence if their purpose, is not bonafide or not one as saved under any law; and the minimum punishment for such offence shall be 14 years and the maximum punishment shall be rigorous imprisonment for life.</p> <p><u>(c) Any person aiding and abetting any or all of the above acts, or in any manner assisting the persons involved in the above acts, will be deemed to be in conspiracy and share the criminal intention in the same manner as the person involved in the above acts,</u></p> <p><u>(d) No person will be allowed to claim the benefit of being a juvenile for the purposes of this section and will be treated as an adult for all incidental and ancillary purposes.</u></p> <p><u>(e) A confession given before a Police officer shall be valid for all purposes under this section.</u></p>



5. On 2nd February 2023, a newspaper report appeared about suicide attempts by 19 students of Riga Public National School. Investigations revealed that there was an organised gang of criminals which had brainwashed some students and used to pay them for sharing their peers social media identities. Then, this gang used to morph the pictures of the victims and threaten to post it online and blackmail the victims. The victims were expected to pay the gang so as to avoid their morphed pictures from being leaked. This was called the Riga school tragedy.

6. However, despite the investigation continuing for many months in the Riga school tragedy case, no accused could be arrested. It raised a public outcry and the National Human Rights Commission took suo moto cognisance of the matter on 31 October 2023. It sought reports from all concerned. NHRC filed a petition before the Supreme Court and sought directions for investigation by the Federal Bureau of Investigation (“FBI”), which were granted by the Court.

7. Post transfer of the investigation to the FBI, investigation gathered pace. On 2nd Dec 2023, a series of nationwide raids were conducted and 12 people were arrested. One of them, agreed to be an Approver and gave statement on 18th Dec 2023 before competent court implicating scores of people who were involved in criminal activities by luring young students and harassing their peers, which resulted in the Riga school tragedy. Two of those persons named by the Approver were juveniles. The role attributed to them was to have assisted in keeping a database of social media identities of students of Riga Public National School.

8. A chargesheet was filed before the competent Court on 19th December 2023 which was primarily based on the statement given by the Approver and named all those arrested and named by the Approver as accused in the Riga school tragedy case, including the two juveniles.



9. In the meantime, post the promulgation of the Ordinance abovesaid, a lot of international organisations as well as the statutory child rights protection body of the country sent representations against the amendments as effected by the Ordinance. The government neither re- introduced the Ordinance nor was any bill mirroring its contents ever tabled.

10. The two juveniles approached the statutory child protection body seeking legal assistance. Nak Chin, a famed constitutional lawyer agreed to lend her services pro bono in the matter. A criminal petition was filed under Art. 226 of the Constitution before the High Court of Riga.

11. During the preliminary hearing , the Court observed :

“21.12.2023

Heard.

Ld. Counsel for Petitioners Ms. Nak Chin, appearing pro bono, argued at length that the matter involves substantial questions of law which are res-integra and require detail hearing. While seeking quashing of the FIR and the Chargesheet qua the Petitioners, she has pressed for grant of urgent interim relief and seeks no coercive steps to be taken against the Petitioners who admittedly are juveniles. Interim relief, as prayed, is granted. As Petitioners are minors, application for non-disclosure of their identity in the case papers stands allowed. Let the matter be registered as “Clients of Ms. Nak Chin v Republic of Chiga.”

The following questions would be considered by us in the present matter:

1. Whether the Ordinance in question is intra-vires, and applicable ?

a. Whether the Ordinance is in conflict with international obligations of Chiga or whether it is in furtherance thereof as it seeks to deter juveniles from getting involved in cyber bullying, cyber stalking and other cyber crimes?

b. Whether the provisions contained in the Ordinance dealing with cyber- crimes and cyber bullying are just and valid or repugnant?

c. Whether the Ordinance is inoperable as having lapsed ?



d. Whether the Ordinance if it is held intra vires, would apply to the facts of the present case?

2. Whether the provisions of Sec. 354E are arbitrary, vague and thus ultra vires?

3. Any other matter, which the parties seek to raise as an issue ancillary to the above questions.

We make it clear that we will not do any academic exercise and restrict our consideration only to those aspects which directly arise in the present Petition, specifically while considering the vires of Sec. 354E.

As the matter involves challenge to the vires of central government enactments, let notices be issued to all concerned including the Id. Attorney General and post the matter in the third week of March 2024 for hearing. Let the pleadings be completed in the meantime.”

12. In the above backdrop, the matters are fixed for final hearing as above. Now, Clients of Nak-Chin are to argue on the Petitioner side and the Id. Attorney General would argue for the State on the respondent side.



Nota Bene:

1. All references are fictional. The legal system and legal history of India, applies mutatis mutandis, with all its laws (including subordinate legislation), international obligations and judgments.
2. Participants stand advised to devise a 'litigation strategy'. The issues can be argued in the alternative/without prejudice, be divided into sub-issues, and can be added to or amended upon. Some of the questions do not have a binary 'for-against' argument, and as future lawyers, mooters are expected to think as officers of the court before taking a stand on any given issue. Written submissions/memorials must however address all the issues.
3. Any citations, without actual para/page references, will invite negative marking. Unnecessary citations and passim references are to be avoided.
4. During oral arguments, primary references for all case-laws being referred to **is mandatory** and no participant will be allowed to cite a case-law from secondary sources like text-books or commentaries. It is expected that the participants read the cases which are being cited and relied on. Primary reference may be made to select treatises which are treated as authorities in their own right.
5. Please avoid use of any plastic materials or binding for the Memorials. Use simple color-paper sheets for identification of respective sides. Use of any plastic material will invite negative marking.