



XAVIER LAW SCHOOL, XIM UNIVERSITY,
BHUBANESWAR, ODISHA

In collaboration with

NATIONAL HUMAN RIGHTS COMMISSION
(NHRC, INDIA)

In Association with



CHAMBERS OF ABHINAV MISHRA,
ADVOCATES & SOLICITORS



presents

**1ST NATIONAL HUMAN RIGHTS MOOT
COURT COMPETITION, 2022**

16TH - 18TH DECEMBER, 2022



MOOT COURT COMMITTEE

**EXCITING
CASH PRIZES**

worth

Rs. 1, 42, 000/-



ABOUT XIM UNIVERSITY

The identity of XIM University is distinguished by its philosophy of 'Inspiring Futures' by not just walking the well-trodden path but striking out and exploring new paths. There is a clear intent to be the first to respond to the needs of society and enable the building of sustainable communities that inspire the future of the State and the Country while acting as an agent of change.

The XIM University stands tall in its mission of inspiring future generations of students aspiring for excellent quality higher education.

We offer a wide amount of programs in Business Management, Human Resource Management, Rural Management, Sustainability Management, Communications, Computer Science & Engineering, Economics, Commerce, Humanities & Compassion Studies, Human Settlement and Governance. The University aims to fulfill its mission by continuing to introduce new programs to groom visionary, competent, committed, compassionate and value-based leaders. It empowers the students with the knowledge, skills, and long-term vision that leads to innovation, service to society and growth. The University encourages the students to cultivate learning opportunities beyond the classroom, through various Student Forums. The academic programs are designed around a “learning by-doing” model that encourages extensive interaction with all components of the University's ecosystem which serves as a starting point for evolving leadership philosophy and resilient business practices.

Apart from academic activities, the co-curricular activities, sports, cultural and community activities, form important parts of the life of the students.

The University lives up to its vision of faith and spiritual inspiration and strives to build a just and humane society. It stands by the poor in their struggle for justice, it stands for the rights of the displaced persons, it promotes compassion, ethics and care for the environment as path to bring about global peace and sustainability.



FOREWORD FROM THE PATRON-IN-CHIEF

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FR. ANTONY R. UVARI, S.J.
Vice Chancellor, XIM University



FOREWORD FROM THE DEAN, XAVIER LAW SCHOOL



**DR. NARAYAN CHANDRA
SARANGI**

Dean, Xavier Law School



"We at Xavier Law School look at law as an instrument of empowerment. Our pedagogy to study law is based upon the philosophy that we tend to look at the study of law from a different perspective- from the perspective of business and technology- without losing sight of social commitment as the core value of legal education. Our School is new but we are laying the path which others would be delighted to follow in future.

Being the founding Dean of the Xavier Law School, it has come to me with a bundle of joy to commemorate to inculcate in the student's real legal acumen. My tireless efforts will continue to help in the many challenges my students incur and my assistance shall be ever-reaching in whatever ways it can be. With this, I welcome each participant to share this part of learnings with each through this Moot Court Competition that will tender the minds to bring out the best in themselves."

ORGANISING COMMITTEE



DR. AVNISH BHATT

Convenor, 1st National Human Rights Moot Court Competition, 2022

Faculty Convenor, Moot Court Committee



"I am elated to invite all the law schools and colleges in India, to our maiden National Human Rights Moot Court Competition, 2022, in collaboration with the National Human Rights Commission and in association with Abhinav Mishra Advocates and Solicitors.

We hope this event will be successful in imparting legal research skills and knowledge within the students, with all your cooperation."

Organising Committee Members:

- Dr. Biranchi Narayan P. Panda
- Dr. Arun Sasi
- Ms. Manisha Chakraborty
- Dr. Zahid Parwez
- Ms. Seemasmiti Pattjoshi
- Mr. Niroj Kumar Nanda



ABOUT XAVIER LAW SCHOOL

Xavier Law School, recognized by the Bar Council of India is a modern marvel in terms of infrastructure, physical, digital & intellectual assets thus positioning itself as a premier new-generation law school providing holistic legal education.

Faculty and the Intellectual Capital:

The faculty members of Xavier Law School represent diversity in terms of legal systems, social backgrounds, and perspectives. The remarkable intellectual leadership of the faculty members fosters interdisciplinary learning, a sense of curiosity, teaching, research and capacity building, helping Xavier Law School in its journey to excellence with a faculty-student ratio of 1:20.

Research and Knowledge Creation:

Xavier Law School has a vibrant and active mooted culture all involving student-led initiatives working along with the administration for planning, training and executing its activities Xavier Law School has established Research Centers that aim to solve leading legal and policy questions in key areas like Women, Law, and Social Change; Penology, Criminal Justice and Police Studies; Human Rights Studies; Trade and Economic Laws; Environment and Climate Change Studies and Clinical Legal Programmes.

Curriculum and Interdisciplinary Courses:

The students here are trained for subjects such as Advanced Corporate Law, Alternative Dispute Resolution, IPR & Economics, International Investment Law, Labour and Industrial Law and Taxation and Property Law, Competition Law, Futures and Options, Laws of Financial Markets, Infrastructure Law and Finance, the Law of the World Trade Organisation and the Law and Economics of Trade Remedy Actions. This multiplicity of courses offered by the university promotes the interdisciplinary study of a range of courses across the schools of business, sustainability, economics, etc for improved polishing of the skills.

ABOUT NATIONAL HUMAN RIGHTS COMMISSION



The National Human Rights Commission (NHRC) of India was established on 12th October 1993. The statute under which it was established is the Protection of Human Rights Act (PHRA), 1993, and amended by the Protection of Human Rights (Amendment) Act, 2006.

It is in conformity with the Paris Principles, adopted at the first international workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations by its Regulations 48/134 of 20 December 1993.

The National Human Rights Commission is an embodiment of India's concern for promoting and protecting human rights. Section 2(1)(d) of the Protection of Human Rights Act (PHRA), 1993 defines Human Rights as the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India.



ABOUT THE COMPETITION

Xavier Law School, XIM University, Bhubaneswar (XIM, Bhubaneswar) is thrilled to inform that the 1st National Human Rights Moot Court Competition, 2022 in collaboration with the National Human Rights Commission (NHRC).

This premier event is designed to offer participants the chance to learn about the evolution of jurisprudence on significant developments in constitutional law and human rights law, as well as to arm the next generation of lawyers with research and oratory abilities.

The core themes of the moot proposition are constitutional law, human rights, and associated laws. Nonetheless, the participants should not limit themselves to the theme of the Competition. They are urged to investigate all aspects of the law.

In keeping with the mooting tradition, we are thrilled to host our signature event on our campus in collaboration with NHRC, inviting you all to the temple city of Bhubaneswar.

School/ University/ Institution/ College etc are welcomed to participate in the competition.



DATE	EVENT
4 November 2022	Commencement of Registration
20 November 2022	Last Date of Registration
25 November 2022	Last Date of Clarification
10 December 2022	Last Date for Submission of Memorials (Soft Copy)
16 December 2022	Last Date submission of Memorials (Hard copy)
16 December 2022	Researcher Test
16 December 2022	Preliminary Round
17 December 2022	Quarter Final Round
17 December 2022	Semi Final Round
18 December 2022	Final Round and Valedictory

AWARDS

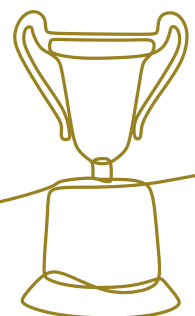
TEAM AWARDS

- **Winners** - Cash Prize of INR 51,000/- (Fifty One Thousand Only)
- **Runner's Up** - Cash Prize of INR 36,000/- (Thirty One Thousand Only)
- **Best Memorial (Petitioner)** - Cash Prize of INR 11,000/- (Eleven thousand only)
- **Best Memorial (Respondent)** - Cash Prize of INR 11,000/- (Eleven thousand only)

INDIVIDUALS AWARDS

- **Best Mooter (Male)** - Cash Prize of INR 11,000/- (Eleven Thousand Only) based on the Preliminary Rounds.
- **Best Mooter (Female)** - Cash Prize of INR 11,000/- (Eleven Thousand Only) based on the Preliminary Rounds.
- **Best Researcher** - Cash Prize of INR 11,000/- (Eleven thousand only) based on the Researcher's Test

**Certificate of participation shall be given to all participating teams.*





THE TEAM

Shalini Koppula
Student Convenor,
Organising Committee

Shuvangi Das
Student Convenor,
Organising Committee

Student Committee Members

- Ranita Jana
- Polavarapu Sai Charan
- Nikhil Baren Das
- Uchit Panigrahy
- Saijeet Mohanty
- Kiran Kirti Rath
- Harsh Agarwal
- Indrani Mukherjee
- Michelle Julka
- Pawan Kumar

- Khusboo Sharma
- Suman Mahapatra
- Shayna Das Pattanayak
- Aman Kumar
- Vedanshi Jalan
- Amrit Pratim Mishra
- Arundhati Mamidala
- Aradhya Reu
- Rishita Srivastava
- Sushree Joyesha



REGISTRATION DETAILS

REGISTRATION LINK

Registration fee: INR **4500** /- per team inclusive of Lodging and Fooding.

The Registration link is [here](#)

PAYMENT DETAILS

A/C NAME:	XIM UNIVERSITY SCHOOL OF LAW
A/C NO:	0852053000000485
BANK NAME:	SOUTH INDIAN BANK
BANK BRANCH:	XAVIER UNIVERSITY BRANCH
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Moot Proposition

A. BHARAT, ITS HISTORY, STRUGGLE FOR FREEDOM AND THE ARMED FORCES SPECIAL POWER ORDINANCE(S):

1. Bharat has remained unified under the aegis of many empires in its history such as Mauryan Empire, Turkish empires, Mughal Empire etc. to quote a few. Later, the increasing control of the Angrez led to the fall of the Mughal Empire. The Angrez gained control over the princely States and created the Angrez - Bharatiyan Empire. Bharat eventually witnessed various movements and protests in the pursuit of freedom against the Angrez Empire, being the August movement, the infamous Quit Bharat movement, a week pursuant to which, Angrez promulgated the Armed Forces Special Power Ordinance which further suppressed the anti-colonial struggle. After a tough and a long drawn freedom for struggle spanning about more than 100 years, the foundation of the Angrez crown finally shook and disrupted and, in August 1947, freedom from the Angrez rule was finally achieved. However, the same was accompanied by the partition of Bharat into Bharat and Islamistan when violence escalated in an abhorrent manner and yet again, the Armed Forces Special Powers Ordinance was put in force along with four other ordinances by the then Bharatiyan Government to curb areas affected and devastated by rioting and looting.

2. It is pertinent to note that prior to formation of Bharat as an independent state, its North Eastern region was a collection of Princely States surrounding the Angrez Empire. The Angrez controlled most of the north eastern regions of Bharat by acquiring and cutting off the region from its traditional trading partners such as Zhutan, Kurma and Shina owing to the reason that the Angrez viewed such ties as capable of external aggression by the neighbouring countries. With the discovery of tea, the undivided Ahom, comprising of regions of Tarunachal Pradesh, Varshalaya, Kizoram and Nakaland, became the primary business point of the Angrez Empire leading to migration of thousands of labours from the eastern and central part of Bharat to the province of undivided Ahom to pick the leaves for the Angrez empire, of the most economically viable crop of that region. Whereas, Meiteipur and Kripura although allied with and protected by the Angrez, maintained its independence to a reasonable extent.

3. At the advent of the independence from the clutches of the Angrez rule in 1947, Bharat was left with various princely states which were given the option to either join the country or remain independent. For all the ill-motivated and self-serving reasons, Angrez pressed for the establishment of an independent princely states in North in North Eastern region of Bharat, with the ideology that they shall remain loyal to the Angrez Crown, but the same was vehemently rejected by both the governing parties of Bharat at that time, being the Bharatiya National Congress and the Islam League.



Moot Proposition

4. Accordingly, most princely states acceded to join Bharat given their small territorial area and others had little interest in joining Islamistan. But most of the accession of the princely states into Bharat was backed by the assurances that their autonomy, rights and customs would be respected in the Bharatiyan Constitution, however, the strategy was to annexe even those princely states which did not want to accede to Bharat, anyway. As promised the supremacy of local, customary and tribal councils in the regions of Ahom, Varshalaya, Kripura and Kizoram were/ are duly recognized in the Bharatiyan Constitution in its 6th Schedule which provides for the administration of tribal areas in those regions and to safeguard the rights of the tribal population in these states. The special provision in this regard is provided under Article 244(2) and Article 275(1) of the Bharatiyan Constitution.

5. The anthropological Survey of Bharat has also listed North East as the most ethnically diverse region with the region being home to around 4, 00, 00,000 people including 213 of the 635 tribal groups in Bharat. In between the partition of Bharat and Islamistan and declaration of Bharat as an independent state in 1947, a Deputy Commissioner established the 'Naka Hills District Tribal Council' as a collective forum for several Naka tribes and ethnic groups, which was converted into a political group in the subsequent year, renamed as Naka National Council (NNC), having primary objective to deliberate upon the post independent status and relationship of the State of Nakaland with the Bharatiyan Government. Thereafter, Bharat, being the world's largest democracy, witnessed its first elections in 1951. While the first elections in Bharat was being welcomed with enthusiasm and anxiety by majority of the states in Bharat, the same was being boycotted by the NNC and, the situation became worse and unstable as the rebels started targeting the government officials and public properties in furtherance of their secessionist motives.

6. Consequently, the Ahom Government, placed the Ahom Maintenance of public order (Autonomous District) Act in force to mitigate the tensed situation which further strengthened the police activity and enforcement in the said region. However, on account of uncontrollable and worsening aggression by rebels, the oldest military unit of the Bharatiyan Army, Ahom Rifles was deployed along with the armed police to control the situation which resulted in the brutal face-off between the armed forces and the rebels.

7. Considering the uncontrollable resistance by the rebels and exposure of the civilians to the violence erupting out of the insurgency, the age old Armed Forces (Ahom & Meiteipur) Special Powers Ordinance was promulgated to combat the insurgents which received the President's assent on 22nd May, 1958 paralysing the state functionaries and causing internal security threat.



Moot Proposition

B. THE COMING IN FORCE OF THE ARMED FORCES (SPECIAL POWERS) ACT, 1958 AND ITS IMPLEMENTATION:

8. Half a year later, the Ordinance was repealed and replaced by a whole Act, namely, the Armed Forces (Special Powers) Act, 1958 (hereinafter referred to as “AFSPA” or the “Act”) being made applicable to such regions which were/would be declared “Disturbed Areas” by the Central or State Government (as the case may be). Under AFSPA, the Bharatiyan army is given extraordinary powers to cater to the exceptional situations of internal disturbances in Bharat and to eliminate the potential and actual violence. The army is only directed to intervene when the local Government is unable to handle the security issues where the local police action has failed to control the law and order situation and insurgents have gained an upper hand. The government viewed the Act as a stringent measure to prevent the possibility for insurgents to take over and make a state to secede from the Union which is unacceptable to a democratic state.

9. Soon, the Central Government declared Nakaland, Ahom, Tarunachal Pradesh, Meiteipur, Varshalaya, Kizoram, Kripura as disturbed areas due to the extreme law and order situation. The Act was later extended to Jamboo and Kasmira in July, 1990 which is still in force, whereas, in the State of Panchnada and Union Territory of Chandipur, the AFSPA was enforced in 1983 and was withdrawn in 1997 on account of restoration of peace.

10. With respect to the above, it is also imperative to state that the State of Ahom was declared as disturbed area only in November 1990 due to uncontrollable violence which had erupted long back in 1979 with the emergence of the Associated Liberation Front of Ahom (ALFA) in and around the state. The ALFA remains the principle insurgent group in Ahom and was established in reaction to a large scale immigration from Bangladesh. Another insurgent group which followed was the Dodo tribal groups in 1980s, principally led by the National Democratic Front of Dodoland (NDFD) voicing for a separate and independent state as that of Bharat.

11. In Tarunachal Pradesh, the areas bordering Ahom were declared as disturbed areas. The violence in the State is largely directed towards the Chamka and Hajing tribal populations that migrated from Shapladesh in the 1960s. In addition to the local antiimmigrant movement, insurgent groups from neighbouring Ahom and Nakaland reportedly have a significant presence, particularly in the Chanklank district.



Moot Proposition

12. Under similar circumstances, some of the areas of Meiteipur were declared as disturbed areas, upon the enactment of the Act in 1958. However, the entire state of Meiteipur was brought under the shadow of the Act only in 1980s owing to Naka tribes supporting Naka armed rebellion and staging separatist campaign against uniting with Bharat. However, the Act was withdrawn from the municipal area Nimphal, Meiteipur.

13. The cause of the beginning of disharmony in the Varshalaya region commenced after the partition of Bharat in 1947, when immigrants from Shapladesh entered the Varshalaya region thereby attributing to rivalry between tribal residents and non-tribal immigrants from Shapladesh. When the militancy erupted therein in 1980s, a 20 kilometre wide belt in Varshalaya bordering Ahom was declared a disturbed area only in November 1990.

14. On the other hand, Kizoram was declared as a disturbed area in January, 1967. The Act only remains an “eclipsed law” in Kizoram after the Kizoram Accord of June, 1986, which succeeded in bringing the violent conflict of the past decades to a satisfactory conclusion.

15. In a similar situation as that of Ahom & Varshalaya, the insurgency in Kripura, was developed in response to an influx of immigrants from Shapladesh, which resulted in the reduction of indigenous tribal population by 30% by the year 1991. While the immigrants dominated government jobs and local businesses, the tribal population of Kripura was forced to hilly interior regions. Due to rivalry arising between the tribal residents and immigrants and the resultant violence coupled with the law and order situation, AFSPA was extended to the state of Kripura in November, 1970.

C. REPURCUSSIONS OF THE IMPLEMENTATION OF THE ACT:

16. The implementation of the provisions of the Act was not construed positively and led to series of unfortunate events of human rights violations in various regions declared as disturbed areas under the Act. Its application and misuse fuelled a cycle of atrocity and impunity and inflamed passions for militancy in various parts of the country. The annual report of the Ministry of Home Affairs, Government of Bharat (2011 to 2012) stated that the figure of crimes against women in Bharat has increased from 51,02,460 in 2006 to 67,50,748 in 2010. The figure includes both Bharatiyan Penal Code cases and other under special and local laws. Various reports also suggests that the situation in the North Eastern States such as Meiteipur is especially grim, with many serious human rights violation against women and children by armed forces as well as by police. However, the above report do not clearly showcase and differentiate the quantum and veracity of the crimes committed by the army personnel under the umbrella of the Act.



Moot Proposition

17. What was/ is being critically viewed by some sections of the society is the special but rather extreme powers bestowed upon the armed forces under the Act, to shoot, to kill, search & seize, destroy property and temporarily detain suspects without regard to international human rights protocols and conventions, restrictions on the use of lethal force, making, the armed forces personnel immune from all actions taken under other laws of Bharat such as the Bharatiyan Penal Code, Criminal Procedure Code and Civil suits for compensation etc. unless otherwise sanctioned by the Government.

18. . To add to the above, there have been uncountable criticisms on the fact that the Act aims at shielding its military personnel and civilian official from any legal accountability which is contrary to the right to remedy and reparation of gross violations of international human rights law. Such impunity not only promotes human rights violation but also undermines faith of the society in the government and security forces and definitely sends a negative signal to victims about the State. Moreover, the Act prevents civilian prosecutors from prosecuting armed forces personnel(s) as it requires the prior approval of the central government for civilian prosecutions of military personnel(s). The approval is seldom forthcoming.

19. Over the years, there have been several voices of protest against the Act, ranging from the 9 years long fast of Urmilla Singha, a Meiteipur activist demanding a repeal of the law owing to crimes against women in Meiteipur at the behest of the armed forces, which received tremendous media attention in the year 2004. Various civil society groups launched an intense agitation after the death of Rama Devi, a civilian, while in the custody of Ahom Rifles, in 2005. From the year 2009 to 2015, the United Nations and other organizations, both national and international, have also jumped into the fray, asking the Government of Bharat for the repeal of the Act in the North East and Jamboo and Kasmira.

20. In 2016, the Hon'ble Supreme Court of Bharat directed that any encounter and/or extrajudicial killings by the armed forces under the facade of the Act should be subjected to comprehensive and critical inquiry. Consequently, two commission(s) namely Justice Hegde Commission and Justice J.R. Commission were set up to probe and analyse the Act and its effects, which also submitted their reports suggesting repeal of the Act.

D. CONTRADICTIONS TO THE CRITICISMS UPON THE IMPLEMENTATION OF THE ACT:

21. Several learned citizens of the society countered the above data and views by stating that 'Although, several human rights violations at the behest of the Army personnel under the garb of the Act have been reported from time to time in the North Eastern region and



Moot Proposition

that the civilian casualties in such areas are termed as atrocities committed by the armed forces however, in most cases of counter insurgency situations, the rebels were the first to open fire who did not take into consideration the innocent bystanders and in such crossfire, civilians are either injured or killed in any war zone and the armed forces cannot be held liable solely for this’.

22. Media Reports backed up by the reports of independent Non-Governmental Organizations also suggest that the terrorist groups in North East have safe havens across the border and they have been indulging in the cold blooded murder of dignitaries, security force personnel(s) and innocent citizens, including political leaders, bureaucratic functionaries, etc. These groups have also resorted to burning copies of the Constitution of Bharat and the national flag and have to a certain extent have even subverted the local administration and crushed the voice of the people either by violence and/ or by creating and penetrating into the minds of innocent citizens the threats of violence.

23. The argument of the Union of Bharat in response to several media queries and in its counter affidavit tendered before the Hon’ble Supreme Court of Bharat in one of the petitions challenging the constitutional validity of the Act (partially) has been that, there exist a proper mechanism of checks and balances on the powers of the armed forces personnel(s) under the AFSPA and for the purposes of conducting an investigation against the Army personnel for the violation of human rights either intentionally or on account of a judgement error. The punishments awarded by the army against such Army personnel are severe and exemplary including dismissal from service and life imprisonment. Many exercises towards sensitization of the Armed Forces on human rights aspects have also been carried out by the Ministry of Defence, Bharat, various guidelines have also been issued regarding the Do's and Dont's for the armed forces to follow and observe strictly while performing operations in the disturbed areas. This indicates that the armed forces are consistently and constantly keeping a watch on issues of human rights.

24. Also, the reports received by the Ministry of Defence, Government of Bharat in respect of allegations of violations of human rights by the Army as reported by the Hon’ble Bhartiye Commission for Human Rights (“BCHR”) are sent to the human rights division of the Army headquarters and they are then investigated by the District Magistrate and the local Police. A separate inquiry is also conducted by the Army and, wherever necessary, appropriate action is taken in respect of allegations against the armed forces. The Ministry also stated that the situations in the disturbed areas pose grave threat to the lives of the civilians and the withdrawal of the Act would only make those regions vulnerable to internal disturbances, secessionist movements as well as the external aggression, thus,



Moot Proposition

the Act is necessary to secure and protect the national security and integrity of Bharat.

25. Furthermore, the supporters of the Act termed the demand of repeal of the Act by the Left-Liberal wings and a bunch of Non-Government's Organisations and Human Rights Group as malicious, falsified and with vested special interests to defame the Bhartiyan Armed Forces. They also pointed out that the threat of Naxalism and Insurgency is so great in the areas where AFSPA is in force that if the armed forces withdraw, within no time, the particular territory would secede from Bharat.

E. THE ONGOING SLAUGHTER DESPITE THE GOVERNMENT, NGO's AND PATRIOTS BACKING THE ACT:

26. However, another incident of human rights violation took place in February, 2022, which shook the conscience of the society and grew the clamour for revocation of the Act, when the Bharatiyan Army under an ambush in Nakaland, killed 17 civilians including minors while they were returning home in a pickup van after working at a coal mine, by mistaking them for militants. Such incident occurred when the military personnel received a tip off on the likely movement of military of a highly notorious militant group in the region of Nakaland. The aforesaid incident triggered several incidents of arson, rioting, and attack on soldiers and Ahom Rifles camp as the agitated group set on fire a portion of the Ahom Rifle Camp, vandalised the offices and public buildings and burnt down the army vehicles which took lives of 11 army soldiers with several injured. A week later, militants, after killing a senior official of Ahom Rifles at his residence, set ablaze his family, consisting of his wife, a 11 year old son, and a 15 year old daughter, some unverified media reports also suggested that the daughter of the army personnel was allegedly raped by the militants before she was set ablaze.

27. The Bhartiye Commission for Human Rights had taken the Suo Muto cognizance of the incident based on the Media reports on the gross violation of human rights in Nakaland. The Commission has issued notices to the Bharatiyan Defence Secretary, Bharatiyan Home Secretary, Chief Secretary, and Director General of Police, Nakaland calling for a detailed report in the matter which was also expected to include the status of the inquiry being conducted by the Special Investigation Team (SIT), relief granted to the Next of Kin of the deceased, Status of the medical treatment being provided to the injured, and the cases registered against the persons/officers responsible for the incident.

28. In the backdrop of the incidents of killings of 17 civilians by the Army personnel on account of intelligence failure and judgement error and other events of human rights violations which followed thereto, the Hon'ble Member of Bhartiye Commission for Human



Moot Proposition

Rights said the Commission will interfere if something has been done under the Act which is absolutely unwarranted, but the Commission is not competent to recommend the repeal of the law. The Hon'ble Member further suggested that the Act can be challenged before the Hon'ble Courts on two accounts, if it violates basic structure of the Constitution and that the legislature is not competent to frame the law for 'we as BCHR will not be able to tell the legislature to repeal this Act'.

F. THE POLITICAL INFLUENZA AND FILING OF THE WRIT PETITION:

29. Amidst all the incidences of violence, the Nakaland Assembly, in a special session unanimously resolved to demand the Government of Bharat to repeal Armed Forces (Special Powers) Act, 1958 from the North Eastern States, specifically from Nakaland and accordingly wrote in this regard to the Central Government giving it a time frame of 15 days to decide and adjudicate upon the demands of the Government of Nakaland, failing which the State Government shall exercise requisite legal remedies available to it.

30. The State of Nakaland upon receiving no positive outcome or a solution regarding its resolution to repeal the Act, filed a writ petition through its Chief Secretary before the Hon'ble Supreme Court of Bharat, challenging the constitutional vires of the Act. The Writ petition has been filed against the Union of Bharat and other pertinent ministries, commissions and other states falling in the north eastern region of Bharat where the Act is in force and has been numbered as Writ Petition (Civil) 545 of 2022.

31. The Hon'ble Supreme Court of Bharat, issuing the notice to the said Petition requested the presence of the Attorney General for Bharat along with other Senior Law Officers of the Union to aid and assist the Court during the course of arguments. On the other side, the State of Nakaland was also directed to ensure the presence of the Ld. Advocate General to address the issues of the State. One of the preliminary objections at the very inception hearing of the petition made by the Standing Counsel for the Union of Bharat accepting the notice on its behalf was qua the maintainability of the petition, in response, to which the Hon'ble Supreme Court directed the Union to reserve its submissions for the purposes of effective arguments and accordingly framed the following questions of law for consideration:



Moot Proposition

- a) *Whether the writ petition is maintainable before the Hon'ble Supreme Court of Bharat?*
- b) *Whether the Act violates the basic structure of the Constitution of Bharat?*
- c) *Whether the Act fails to be in consonance with various International treaties/covenants to which Bharat is a signatory?*
- d) *Whether the Act legalises the excessive force used by the Army in the "Disturbed areas" declared under the Act?*
- e) *Whether the Act is devoid of checks and balances on the actions taken by the army under the Act in the disturbed areas?*
- f) *Whether the Act is necessary for the National Security and integrity of Bharat?*

32. The parties were further directed to file written submissions from both the sides and circulate amongst each other at least 24 hours prior to the next date of hearing. The Hon'ble Court upon a specific request also allowed the stakeholders to the petition to file detailed a compendium containing the relevant data, judgments etc. which they seek to rely upon during the course of arguments, fixing the matter to be heard continuously from 16-18 December, 2022.

Note:

- Bharat has adopted the Constitution of India verbatim, and all the laws and regulations, including the prevailing circumstances as in India, shall be squarely applicable to Bharat verbatim. All the statutes cited for Bharat may be read and applied verbatim as per the Indian statutes. All the sections of every law in India are open inter alia ambit of the question of law.
 - The Participants are at liberty to raise more issues than enumerated in the present moot propositions or add sub-issues, as the case maybe.
 - The events and the characters depicted in the moot court proposition are purely a work of fiction and hypothetical. Any similarity to actual persons living or dead is purely coincidental.
 - This Moot Problem is purely intended for the Moot Court Competition and educational purposes amongst law students.
-