

**S.S.JAIN SUBODH LAW COLLEGE INTRA MOOT COURT**

**COMPETITION 2019-2020**

**Moot Proposition**

Federalism is a device by which plural qualities of a society are articulated and protected. It is devised to secure both regional autonomy and national unity. It is a product of historical forces in plural societies. If the forces of national unity are very strong in such society, the central government shall have more powers. The strength of these regional and national forces changes from time to time, in keeping with changing social, economic and political conditions and compulsions.

Federalism is a principle which defines the relationship between the Central Government at the national level, and its constituent units at the regional, state or local levels. A well-designed, and more importantly, a well-functioning system of federal governance, by virtue of its manifold benefits, plays a key role in promoting the stability and prosperity of nations, as the heights attained in development by the leading federations of the world – USA, Canada, Australia and Switzerland – demonstrate.

Koshinda has adopted federalism to actualize and uphold the values of national unity, cultural diversity, democracy, regional autonomy and rapid socio-economic transformation through collective efforts. The Constitution of Koshinda establishes the Supreme Court of Koshinda which is the final interpreter of the ‘Constitution of Koshinda ‘ and is considered as the custodian of basic civil rights and liberties of its citizens

Under the constitutional scheme of Koshinda, the state of K & L, having multifarious historical background, is one of the twenty nine states. The State of K & L has been a debatable issue from the very day of its formation and it is facing higher militancy and internal insurgency at the behest of various internal as well as external banned organizations

Under the Constitution of Koshinda, the State of K & L has been conferred with disparate and greater degree of state autonomy as well as special powers to conduct their internal affairs. The autonomy of K & L has been enshrined and retained through the provisions contained under article 370 of the Constitution of Koshinda. The Article 370 of the Koshindian Constitution accords special status to the State of K & L and acts like a bridge between the Koshinda Constitution and the Constitution of the State of K & L.

Article 35A was introduced through a presidential order called The Constitution (Application to the State of K & L) Order, 1954, and absorbed into the state constitution of K & L, adopted in 1956 by exercising the powers conferred by the clause (1) of the Article 370 of the Koshindian Constitution, and with the concurrence of the Government of the State of K & L. Thus, The Presidential Order of 1954 provided framework for the division of powers between the State of K & L and the Union Government under Article 370. It defines.

It defines the “permanent residents” of the State of K & L – those who were already state subjects by 1954 or had lived there for at least 10 years. It conferred upon these subjects special rights and privileges, aimed at preserving the character, culture and demography of the State of K & L. The order was issued under Article 370, the Constitutional provision that ensured special status to the state after it became part of the Koshindian Union. It gave a large degree of autonomy to the State of K & L. The state surrendered three key subjects to Parliament: defence, communication, external affairs and ancillary areas. The special treatment is with respect to 'employment with the state government, acquisition of immovable property in the state, settlement in the state, or right to scholarships and such other forms of aid as the state government may provide'.

### **Background**

Prior to 1947, the State of K & L was a princely State under the British Paramountcy. The people of the princely states were "state subjects", not British colonial subjects. In the case of the State of K & L, the political movements in the state in the early 20th century led to the emergence of "hereditary state subject" as a political identity for the State's people. Origin of Article 35A dates back to 1927 when the Homas (community) from the State of K & L approached Maharaja Harjinder Singh fearing that arrival of people from neighbour provinces will lead to their control in government services. These fears led to the issuance of a separate notification by the maharaja in 1927 and 1932 which defined the state subjects and granted them the right to government office and the right to land use and ownership, which were not available to non-state subjects. Following the accession of the State of K & L to the Koshindian Union on 26 October 1947, The Maharaja ceded control over defence, external affairs and communications to the Government of Koshinda. The Article 370 of the Constitution of Koshinda and the concurrent Constitutional Order of 1950 formalised this relationship. To further the relationship between the State and the Union, in the 1952 Dongal Agreement was adopted.

Following the adoption of the provisions of the Dongal Agreement by the the State of K & L, the President of Koshinda issued The Constitution (Application to the State of K & L) Order, 1954, through which Koshindian citizenship was extended to the residents of the state, and simultaneously the Article 35A was inserted into the Koshindian constitution enabling the State legislature to define the privileges of the permanent residents.

### **Rights of Permanent Residents**

1) The K & L Constituent Assembly incorporated in the State of K & L Constitution provisions under Section-51 (Qualifications for membership of the Legislature. - A person shall not be qualified to be chosen to fill a seat in the Legislature unless he is a Permanent Resident of the State), Section- 127 (Transitional provisions. - Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as service or

post under the State, shall continue in force so far-as consistent with the provisions of this Constitution) and Section-140 (The elections to the Legislative Assembly shall be on the basis of adult suffrage; that is to say, every person who is a permanent resident of the State and who is not less than Eighteen years of age, entitled to caste vote.

2) No person who is not a Permanent Resident of the State of K & L can own property there.

3) No person who is not a Permanent Resident of the State of K & L can obtain job within the State of K & L Government.

4) No person who is not a Permanent Resident of the State of K & L can join any professional college run by government of the State of K & L or get any form of government aid out of government funds.

## **I.**

A clutch of petitions now challenge Article 35A in the Supreme Court of Koshinda. The first of these petitions, filed in 2014 by a little known non-governmental organization called Citizen Rights, which claimed it worked to “promote the interests of citizens of this country”, argued against special status for the State of K & L. The state became an “integral part of Koshinda” once it acceded to the Union, the petitioners contended, so there was no question of special status or treatment. But most of the petitioners’ energies are focused on the presidential order of 1954. According to them, it went against Article 368(i), which said that amendments could be made by Parliament alone. The 1954 order, they argued, was beyond the jurisdiction of the president. Using a temporary provision of Article 370, they continued, the president had introduced “a new Article of permanent nature”.

## **II.**

In 2015, the Protagonists of Nozangabad Refugees Action Committee Cell had filed a writ petition in the Supreme Court. It pleads for the fundamental rights of refugees who crossed into the state after 1947, had lived there for decades and formed 7%-8% of the state’s population. The petitioners had argued that Nozangabad refugees had lived the state for 40 years without being recognised as permanent residents. This meant they could not get their names on electoral rolls, be elected to panchayats, take government jobs, buy land or be admitted to technical institutions. The petitioners argued that they be given the same rights as those who had voluntarily migrated to Nozangabad after Partition but then chosen to return. The Resettlement Act of 1982, passed by the State of K & L legislature, gave such persons and their children the rights of permanent residents. The Supreme Court recognised the plight of Nozangabad refugees, but left the matter to the Union government and the State of K & L. The petition includes a Dehlka report on the conditions under which such refugees lived as well as documents on the admission procedures for technical institutions and scholarship application forms.

### III.

Another petition was filed by Karisma Raj Mehta, lawyer and former member of the National Commission for Women, and Santosh Kashyap, a doctor. Mehta is described as a “Langoshian woman by ancestry” who “desires to build a home in K & L, in order to rediscover her roots”. She is unable to purchase property, the petition says, because of the “peculiar discriminatory laws” of the state, which have branded her a non-permanent resident, apparently because she had married “out of caste”.

The petitioners refer to a 2003 judgment by the K & L High Court, which notes that the state legislature had not enacted any law defining permanent residents. So “under the guise of Article 370 and Article 35A, the men and women state subjects are subjected to different treatments”, claims the petition.

Such discriminatory provisions for permanent residentship, the petitioners argue, perpetuate “the power politics, wherein the Koshinda of today on the path of ‘Har Kadam, sath sath’, with growing education, migration and economic and social mobility, women are claiming their spaces (whether in private or public sphere)”.

Further, Mehta pleads for the court’s intervention, asking, “Am I not a Langoshian?” She then proceeds to give “anecdotal” evidence of her ancestry.

The genealogy of her ancestors could be traced through 11,000 years of “myths and oral tradition”, she says. The Langoshians, are “Paryan Aaraswat Trahmins” who lived on the banks of the mythical Aaraswati river before they migrated to Langosh. She dwells on the “ancient history” of the state, which was absorbed into Rishoka’s Hauryan empire. One of her ancestors, she says, was given the title of “Wali”, which means “Saint”. Under the “brutal tyranny” of Afghan rule (1753-1819), however, her ancestors were forced to migrate from the state, part of the “sixth exodus” of Langoshians.

It argues that the princely state of K & L had already acceded to the Koshindian dominions under the Government of Koshinda Act, 1935. A fresh instrument of accession was signed by the Homas ruler in 1947 merely to “remove any doubt, confusion or ambiguity”. The petitioners then conclude: “Thus it is on record that Langosh never separated from federation of Koshindian dominion or union of states.”

Second, the petitioners argued that the state acceded to the union to become an “integral part of Koshinda”, four representatives from the state were part of the Constituent Assembly and “participated in the making of the Koshindan Constitution”. “Therefore, no special provision was made in the Koshindan Constitution giving special status/treatment to the state of K & L,” the petitioners reasoned.

But the focus of this petition is the validity of constitutional orders passed by the president, first limiting the powers of Parliament to make laws for the state of K & L and then allowing provisions for permanent residentship. Article 35A was inserted in 1954 through the “Constitution (Application to K&L) Order 1954”. These orders were passed according to powers given to the president under Article 370.

But the petition points to Article 368 (i) of the Constitution, which says that amendments could be made by Parliament alone. “By this provision, act of amendment, variation or repeal is excluded by any other contained in the Constitution including Article 370 of the Constitution of Koshinda,” they argued. Building on this, they concluded that it was “beyond the president’s jurisdiction” to pass the order of 1954.

“The President of Koshinda under the garb of a temporary provision i.e. Article 370 (1) cannot amend the Constitution by incorporating a new Article of permanent nature,” the petitioners argued. The petition also objects to Article 35A on the grounds that it creates “two classes of citizens”, which violates the right to equality under Article 14 of the Constitution. Finally, the petition concludes, the “radical changes” in the “socio political scenario” in the State of K & L had made the order of 1954 “irrelevant and redundant”.

These petitions also argued that Art 35A affects the basic structure of the Koshindian Constitution. The petitions are posted for hearing before the Supreme Court of Koshinda on 14th March, 2019.

**Note: The provisions under Koshindian Constitution are in pari - materia with the Constitution of India.**

**S.S.JAIN SUBODH LAW COLLEGE INTRA MOOT COURT**  
**COMPETITION 2019-2020**  
**RULES AND REGULATIONS**

**AIM AND PURPOSE**

- a. To expose students pursuing the B.A LL.B. Course to the nuances of court system in India and to hone advocacy skills.
- b. To provide a real-life experience cum training in doing cutting-edge research, presenting ground breaking arguments (oral and written) and contributing to the development of jurisprudence in the concerned area of laws.
- c. To select team(s) for inter-college moot court competitions.

**STRUCTURE OF THE COMPETITION**

The Competition will be conducted by way of fixtures and shall be limited to ONE ROUND only.

**LANGUAGE**

The language of the Competition shall be English.

**ELIGIBILITY**

- Students pursuing 5 years undergraduate LL.B. degree course are eligible to participate in this competition.
- First semesters students are only allowed to participate as volunteers and not as competitors.

**TEAM COMPOSITION**

- The team composition, for the competition, shall comprise of three members (two of them shall be designated as Speakers and one Researcher).

**DRESS CODE**

The participants shall adhere to following dress code when present in any court room during the Competition.

- a. Girls: White salwar and kurta or white shirt and black trousers along with black coat and black shoes.
- b. Boys: White shirt, black trousers and black tie along with black coat and black shoes.

## **PARTICIPATION AND REGISTRATION PROCEDURE**

- Teams must register by 25<sup>th</sup> August 2019 by giving their names to the faculties in charge for Moot Court Competition.

## **MEMORIALS**

- All memorials submitted for all purposes of the Competition shall strictly adhere to the rules of the Competition. Each Team participating in the Competition must prepare one Memorial on behalf of Petitioner(s)/ Appellant(s) and one on behalf of the Respondent(s). Further each team has to submit 2 hard copies of the Memorials from each side. Non-compliance will entail a penalty of 1 point per copy not submitted.
- Petitioner memorials are required to have a Blue cover and Respondent memorials are required to have a Red cover. A penalty of 1 mark shall be levied in case the memorial is submitted in any other format or as a multiple file by the team.
- Each Team must submit their memorials for evaluation on or before 5<sup>th</sup> September 2019 before 4.00 P.M. No extensions will be granted with respect to this deadline.

## **GUIDELINES FOR FORMATTING**

**1. Memorial Structure:** The memorial must have following pages only:

- i. Cover Page – The cover page shall contain the case title, side of the memorial, year of competition, name of the Court and team Code on top right corner.
- ii. Table of Contents
- iii. List of Abbreviations
- iv. Index of Authorities
- v. Statement of Jurisdiction
- vi. Statement of Facts
- vii. Issues Raised
- viii. Summary of Arguments
- ix. Pleadings /Arguments Advanced
- x. Prayer

**2. Team Code:** The team code must be ascribed on the top right corner of the cover page.

**3. Content Specifications:** The following content specifications must be strictly adhered to:

- i. Font and Size (General) - Times New Roman, 12 pts
- ii. Line Spacing (General) - 1.5 lines
- iii. Font and Size (Footnotes) - Times New Roman, 10 pts
- iv. Line Spacing (Footnotes) - Single line
- v. Page Margins - 1 inch on all sides
- vi. The Hard Copies of the Memorial shall be printed on only one side.
- vii. The citation should be in compliance with the 19<sup>th</sup> / 20<sup>th</sup> edition of Bluebook. Speaking footnotes or Endnotes are not allowed.

***4. Marking Criteria for Memorials:***

<b>PARTICULARS</b>	<b>MARKS</b>
Evidence of Original Thought	20
Knowledge of Law and Facts	20
Proper and Articulate Analysis	20
Correct format and Citation	20
Extent and Use of Research	20
<b>TOTAL MARKS</b>	<b>100</b>

**RULES FOR THE ORAL ROUNDS**

***1. Marking Criteria Oral Rounds:***

The oral rounds shall be judged on the following criteria:

<b>PARTICULARS</b>	<b>MARKS</b>
Preparation and familiarity with facts	10
Structure of Legal Argument	10
Knowledge & Application of Law	10
Organization, Presentation, Speaking Ability	05

Responsiveness to Questions	05
Persuasiveness and Advocacy	05
Courtroom Etiquette	05
<b>TOTAL MARKS</b>	<b>50</b>

## ***2. Draw of Lots:***

The match up of teams in Preliminary Rounds shall be determined on the basis of draw of lots. Draw of lots and Memorial Exchange shall take place on 9<sup>th</sup> September 2019.

## ***3. Manner of Proceedings:***

- The oral rounds will be held on 9<sup>th</sup> September 2019. It shall comprise of One Round of oral arguments subject to the allotment of team codes. Each team shall have to argue once, either as a petitioner or respondent, subject to fixtures.
- Each team will get a total of 30 minutes to present their case. This time will include rebuttal and sur-rebuttal time (if permitted by the judge(s)). The division of time per speaker is left to the discretion of the team subject with a minimum of 10 minutes per speaker and not more than 15 minutes per speaker. Rebuttals can be assigned a time period of not more than 2 minutes.
- The oral arguments should be confined to the issues presented in the memorial. The researcher may sit with the speakers during the oral rounds. The speakers can provide the copies of the compendium, only if the same is permitted by the panel of judges in their respective court rooms. Top 10 teams will be selected on the basis of aforesaid marking criteria.

## ***4. Scouting***

Teams shall not be allowed to observe the orals of another team. Scouting is strictly prohibited. Scouting by any team shall entail instant disqualification.

## **OUTCOME OF THE COMPETITION**

The top 10 teams which shall be selected in the Oral Round of this Intra-Moot Court Competition shall only be permitted to represent the S.S. Jain Subodh Law College in Inter-College Moot Court Competitions, subject to further discretion of the Moot Court Committee.

**\*Any contravention of the abovementioned rules or any other rules specified by the Moot Court Committee from time to time shall lead to disqualification of team/team member(s)**

**from participating in intra-moot court competitions as well as inter-college moot court competitions.**