

# THE 4<sup>TH</sup> RGNUL NATIONAL MOOT COURT COMPETITION, 2015

(27<sup>TH</sup> MARCH-29<sup>TH</sup> MARCH)



## MOOT PROPOSITION

*Kormi* is a religion which is in majority in the Province of *Hidamb* and it constitutes around 60% of the total population of *Hidamb*. *Hidamb* is a Province in the Federal Republic of Hindistan. *Kormis'* are a religious minority in the Federal Republic of Hindistan and constitutes around 2% of the total population of the country. *Kormis'* have religious Shrines all over the country. *Kormis'* have been declared by the Federal Government as a religious minority. Federal Republic of Hindistan was a colony of British Empire till 1947 and it gained independence in 1947.

Religious Shrines of *Kormis'* were managed by Mahants upto 1925 and there were wide spread allegations of corruption against Mahants. *Kormis'* community alleged that they professed the religion but did not conform to its outward signs and symbols. Further there were allegations that they had got the properties of *Kormi* Shrines registered in their own names. The religious community of *Kormis'* started a movement to gain control of their religious Shrines and to administer *Kormi* Shrines in accordance with the basic principles of their religion. The *Kormi* community constituted a committee to take over the Shrines from Mahants and at some places; possession was taken forcibly leading to bloodshed. Province of *Hidamb*, therefore, enacted *Kormi Shrines Act, 1925* dealing with management and administration of *Kormi* Shrines.

The aims and objects of the Act were to provide a legal procedure by which *Kormi* Shrines may be brought effectively and permanently under the control and administration of *Kormi* community and that they be reformed so as to make them consistent with the religious views of that community. The Act laid down that the *Kormi* Shrines are the heritage of *Kormi* community and Shrines would be managed and controlled by the community. The Act lawfully handed over the management and control of the Shrines to the representative of the

Kormis. Consequently, it recognised that mahants were not the proprietors but the custodians of the Shrines and the properties thereof.

The Act provided for two-tier management of Kormi Shrines. The Committees of management were constituted to manage and administer the Shrines at local level. A Central Board was also constituted which was named as Kormi Shrine Management Board (KSMB). KSMB was vested with power to control and superintend committees managing Kormi Shrines. The Act also empowered the KSMB to bring various Shrines under its direct control and to work as management committee for those Shrines.

In 1966, the Province of Hidamb was re-organised by *Hidamb Province Reorganisation Act, 1966* and a new Province 'Gatoch' was carved out of the erstwhile Province of Hidamb. Section 72 of the *Hidamb Province Reorganisation Act, 1966* laid down as under:

**72. General provisions as to statutory corporations:**

- (1) *Save as otherwise expressly provided by the Act, where any body corporate constituted under a Federal Act or Provincial Act for the existing Province of Hidamb or any part thereof serves the needs of the successor Provinces or has become an inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Federal Government, until other provisions is made by law in respect of the said body corporate.*
- (2) *Any direction issued by the Federal Government under sub-section (1) in respect of any such body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect, subject to such exceptions and modifications as may be specified in the direction.*
- (3) *For the removal of doubt it is hereby declared that the provisions of this section shall apply also to Kormi Shrine Management Board.*

The KSMB had effective control and management of the Kormi Shrines in the Province of Hidamb and the new Province of Gatoch. However, there were demands in the Province of Gatoch that Kormis residing in Gatoch were not given adequate representation in KSMB and

their grievances were not taken care of and hence Kormis' in the new Province of Gatoch started demanding a new elected body for them. Considering the long standing demand of Kormis', the legislature of the Province of Gatoch passed an enactment *Gatoch Kormi Shrine Management Act, 2014* (GKSMB Act, 2014) on 10<sup>th</sup> May 2014 creating a new, elected and independent body (GKSMB) to take over, manage and administer Kormi Shrines in the Province of Gatoch. It is worth mentioning that some other Provinces had also enacted similar laws for the management and administration of Kormi Shrines in their Provinces.

Kormi Intellectuals Forum (KIF), a registered society, claiming to represent Kormis' intellectuals, had started a movement claiming that a National Kormi Shrine Management Act should be enacted which should provide for a central body for administering and controlling Kormi Shrines in the entire country. The KIF got wide support from community residing across various states.

In the meanwhile, three other provinces of the Federation requested the Federal government to pass a law for their States with respect to management of Kormi Shrines. Accordingly federal legislature (House of People) passed a Bill (National Kormi Shrines Management Bill, 2014) on 16<sup>th</sup> May 2014, aimed at creating a Central National level Body for administration and management of Kormi Shrines across the country including the Provinces of Hidamb and Gatoch. Before the Bill could be passed by the Upper House (Council of States), the House of People was dissolved on 18<sup>th</sup> May 2014 and a new government came to power at the federal level.

The new Federal Government of Hindistan issued a direction to the Governor (Champak Khangotra) through telephone on 10<sup>th</sup> June 2014 not to give assent to the Bill as the federal government claimed that there were intelligence reports of wide scale violent protests in the Province of Hidamb and on the ground that the federal government is in the process of enacting a comprehensive national law on the subject. Subsequently, on 16<sup>th</sup> June 2014 federal government wrote a letter to the governor to reserve the Bill for the assent of the President of the Federation claiming that even otherwise the Province did not had legislative competence to enact the law. However, the Governor gave his assent to the Bill on 18<sup>th</sup> June 2014. The Act was to become applicable from such date as may be notified by the Province of Gatoch.

The Governor was removed from his office by the President of the Federation on 30<sup>th</sup> June 2014 and a new Governor was appointed. The federal government issued a direction to the Province of Gatoch on 02<sup>nd</sup> July 2014 to refrain from notifying the date of commencement of the Act. Aggrieved by this, Province of Gatoch filed a petition before the Federal Court of Hindistan against the Federation of Hindistan on 20<sup>th</sup> August 2014, contending

- 1) That the Provincial government had the legislative competence to enact the law.
- 2) That it is the discretion of the Governor whether to reserve a Bill for the Assent of the President or not and that the Federal Government had no competence to direct the governor to reserve the Bill for the assent of the President. The Challenge was made to the validity of letter dated 16<sup>th</sup> June 2014.
- 3) That the Federal government was not competent to issue directions to the Provincial government to refrain from notifying the date of commencement of an Act passed by the provincial legislature. The Challenge was made to the validity of letter dated 02<sup>nd</sup> July 2014.
- 4) That the removal of Governor was against the Federal principles and was unconstitutional.

Some other intervening events also deserve mention here.

In the Province of Gatoch, elections to Municipalities were not held though the tenure of municipalities had ended on 1<sup>st</sup> January 2014. The Governor had written a letter and a report to the Federal Government that the provincial government was bound to hold elections to Municipalities before the expiry of their tenure. In his report dated 1<sup>st</sup> February 2014, the Governor had recommended to the Federal Government that since the Province of Gatoch has failed to conduct elections to municipalities, as per the constitutional mandate, the Provincial Government of Gatoch could not be carried on in accordance with constitution. The Governor had recommended for dismissal of the Provincial government owing to failure of constitutional machinery. In response to the said letter, the Federal Government wrote a letter dated 15<sup>th</sup> April 2014 to the provincial government of Gatoch containing a direction to hold the elections as early as possible and to notify the date of elections immediately. The provincial government of Gatoch replied that it is willing to conduct elections as early as possible but it needs some time to make preparations. However, elections were not held till date.

Taking cognizance of the said report, the Government of Gatoch was dismissed on 10<sup>st</sup> October 2014 by a Presidential Proclamation and President's Rule was imposed with immediate effect. The Chief Minister of the Province of Gatoch (Mr. Somesh Haider) challenged the order of dismissal of his government in the Federal Court of Hindistan claiming that his government has been dismissed without following requisite procedure and with malafide intentions by the Federal Government with a view to appease its coalition partners who are also running the Government in the Province of Hidamb. The constitutionality of the order was challenged vide petition dated 18<sup>th</sup> October 2014.

The Proclamation was laid before House of People on 25<sup>th</sup> November 2014 and was approved by the House of People. The Proclamation was also approved by Council of States on 28<sup>th</sup> November 2014.

Mr. Champak Khangotra also filed a petition in the Federal Court of Hindistan challenging his removal from office.

The Federal Court of Hindistan ordered all the three petitions to be heard and tried together and the Federal Court constituted a three judge Bench to hear the matter.

Constitution of Hidamb is analogous to the Constitution of India. Kormi Shrines Management Act, 1925 is analogous to Sikh Gurudwara Act, 1925.

