



KASHMIR UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2018
(2nd ó 4th September, 2018)

RULES AND REGULATIONS

ORGANISED BY:

LAW SOCIETY

SCHOOL OF LAW, UNIVERSITY OF KASHMIR, SRINAGAR-190006

CHAIRPERSON

Dr. Fareed Ahmad Rafique

CONVENOR

Dr. S.A. Bhat

ORGANISING SECRETARY

Mr. Hakim Yasir Abbas

9596049501

7889697136

Aim:

Written and oral advocacy are two basic skills required for an advocate. Moot courts develop not only these legal skills but also other skills such as legal analysis, reasoning, research and time management. The aim of moot court is to build confidence among the young law students and improve communication skills and presentation techniques. This competition aims at preparing the students for practical legal milieu.

Short Title

These rules and regulations shall be called Kashmir University National Moot Court Competition Rules and may be referred to as Competition Rules or Rules.

Main Provisions

1. The Kashmir University National Moot Court Competition, 2018 shall be held from 2nd to 4th September, 2018 at School of Law, University of Kashmir, Hazratbal, Srinagar, Kashmir ó 190006.
2. The administrator of the Competition shall be the Law Society, School of Law, University of Kashmir, Hazratbal.
3. The Competition shall be conducted in accordance with the rules mentioned hereunder. For the purposes of this competition, it will be presumed that all participants have read and submitted to these rules. The participants are required to comply with the rules and procedures prescribed herein.

KASHMIR UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2018

4. Important Dates:

Date	Event	
1 st June, 2018	Release of Moot Problem and Registration Form	
10 th July, 2018	Last Date for Registration [Via Email] [Scanned Copies of the Registration Form to be emailed to the organisers at hyabbas@uok.edu.in]	
11 th July, 2018	Issue of Team Identification Number [TIN]	
20 th July, 2018	Last Date for Receipt of Hard Copies of Registration Form Address: Hakim Yasir Abbas Assistant Professor School of Law, University of Kashmir, Hazratbal, Srinagar Jammu and Kashmir 190006 9596049501	
25 th July, 2018	Last Date for requesting Clarifications about the Moot Problem	
30 th July, 2018	Issue of Clarification to the teams.	
10 th August, 2018	Last Date to Receive Soft Copies of the Memorials [To be sent to hyabbas@uok.edu.in]	
20 th August, 2018	Release of List of Teams Selected for Oral Rounds	
27 th August, 2018	Last Date to Receive Hard Copies of the Memorials Address: Hakim Yasir Abbas Assistant Professor School of Law, University of Kashmir, Hazratbal, Srinagar Jammu and Kashmir 190006 9596049501	
2 nd , 3 rd and 4 th September, 2018	Dates of Competition	
	2 nd September	Registration + Inaugural Ceremony + Exchange of Memorials
	3 rd September	Preliminary Rounds + Quarter Final Rounds
	4 th September	Semi Final + Finals + Valedictory Ceremony (including prize distribution)

(Dates and timings are subject to change).

5. Eligibility for Participation:

All students currently enrolled in L.L.B or B.A. L.L.B (5 years) degree programme, in any Law School/College/University/Institution are eligible for participation.

6. Team Composition:

Each team shall be composed of three (3) members (two speakers and one researcher).

A two (2) member team, in which both the members are speakers, is also eligible. No

change in team composition shall be permitted once the registration of the team has been confirmed by the organisers. No additional/observer member shall be entitled to hospitality or certificate.

Provided that, in case of any contingency or emergency, the researcher may substitute the mooter with prior permission of the organizers.

7. Registration:

- i. Only one team per institution is allowed to register in the competition.
- ii. A total of 25 (twenty-five) teams will be accommodated for the competition. In case the number of registrations exceeds twenty five, the short-listing of the teams will be done on the basis of memorial knock-out.
- iii. Team members shall clearly fill up the form with correct spelling of each team member's name and other details, as may be required in the registration form. The names entered in the form will be used for all official purposes such as issuing of certificates, etc.
- iv. The registration process involves following two steps:

○ **Step 1: Email**

Each team must register through electronic means by sending a scanned copy of the duly filled registration form to hyabbas@uok.edu.in latest by 10th July, 2018.

The form must be sent through the official email id of the Moot Court Committee (or faculty in charge of the moot court) of the institution of the participating team.

○ **Step 2: Post**

A hard copy of Registration form duly filled and signed must be sent to the below mentioned address through registered post latest by 20th July, 2018.

Address:

Hakim Yasir Abbas
Assistant Professor
School of Law, University of Kashmir,
Hazratbal, Srinagar
Jammu and Kashmir
190006
9596049501

- v. The official language, for all purposes of the competition, shall be English only.

- vi. The registration fees for the competition is Rs. 1000/- which is to be paid (in cash) on 2nd September, 2018 before the inaugural session.

8. Team Identification Number (TIN):

Each team shall be allotted a Team Identification Number along with the confirmation email and teams shall only use the TIN for their identification at any time after the confirmation. The teams are not allowed to disclose their identity in any manner, other than by referring to their TIN. The TIN shall be used for completing registration formalities and in the Memorial submissions.

9. Written Submissions:

- i. All Written Submissions must comply with the requirements mentioned in this part of the Rules. The teams are required to carefully read and understand the rules mentioned in this part as any failure to abide by these requirements shall be penalized accordingly.

- ii. Soft copies of the Memorials for each side must be submitted by 10th August, 2018 in both .docx and .pdf formats to email: hyabbas@uok.edu.in. The subject of the email must be "Memorial for TIN"; for e.g., if TIN allotted is "SLKU15" the subject should read as "Memorial for SLKU15"

Each document should be submitted after labelling the header for each page with TIN_A for the Appellant(s)/Petitioner(s) side and TIN_R for the Respondent(s) side.

Example:

For TIN allotted as "SLKU15"

- 1) SLKU15_A > (Appellant(s)/Petitioner(s) side),
- 2) SLKU15_R > (Respondent(s) side).

- iii. Five hard copies of the Memorials (of the teams selected for oral rounds on the basis of memorial knockout) must reach the below mentioned address latest by 27th August, 2018. Teams are required to bring extra copies of Memorials for their own use during oral submission rounds.

Address:

Hakim Yasir Abbas
Assistant Professor
School of Law, University of Kashmir
Hazratbal, Srinagar

Kashmir ó 190006
9596049501

The hard copies of the Memorials must bear a cover page in conformity with the following scheme:

Petitioner(s)/Appellant(s): Blue

Respondent(s): Red

The evaluation of Memorial would be done based on the soft copy submitted.

- iv. The Memorial must not contain any disclosure about the team such as name(s) of members of the team or associated organization, any mark, character, text or any other form of identification mark in any part of the Memorial. Such act will attract penalty provision as per these rules and the organisers reserve the right to disqualify the team from the competition upon such act.
- v. The Memorial must necessarily consist of the following sections and no other section is allowed:
 - a. Cover Page, which shall necessarily and only have the following details:
 - Team Identification Number [TIN] on the top right corner of the cover.
 - The name and place of the forum.
 - The relevant legal provision for filing the suit.
 - Name of the parties and their standing (Appellant, Petitioner, Respondent etc.).
 - Memorial filed on behalf of _____.
 - Counsel appearing on behalf of _____.
 - b. Table of Contents
 - c. List of Abbreviations
 - d. Index of Authorities
 - e. Statement of Jurisdiction
 - f. Statement of Facts
 - g. Issues for Consideration
 - h. Summary of Pleadings
 - i. Written Submissions
 - j. Prayer for Relief/s

- vi. Memorials must strictly adhere to the following general requirements:
- a. All Memorials must be printed in Black and White on standard A4 white paper ONLY.
 - b. The font used must ONLY be Times New Roman, Size 12, with double line spacing.
 - c. The font used in the footnotes must ONLY be Times New Roman, Size 10, with double line spacing. However, the space between consecutive lines of a single footnote may be single spaced, subject to uniformity throughout the Memorial.
 - d. Speaking footnotes are not allowed.
 - e. The Harvard Blue Book Style of footnoting (19th Edition) must be followed as far as practicable. As far as possible, footnoting must be uniform throughout the Memorial.
 - f. Each page of the Memorial must have a margin of one inch (1ö) on all sides. No text must be placed within this margin of the page, other than the page number and the TIN.
 - g. The Written Submission (pleading) shall not exceed 6000 words including footnotes.
 - h. The organisers shall reserve the right to not evaluate submissions which are not in conformity with the aforementioned rules.
 - i. No amendments whatsoever shall be permitted to be made to the Memorial after the online submission has been made.
 - j. The Teams are advised to bring their compendiums/white paper book. However, same should not in any manner disclose the identity of the participating teams or institutions.

vii. Evaluation of Memorials:

Memorials shall be evaluated on the following criteria:

Application and appreciation of facts of the proposition	20 marks
Identification, structuring and presentation of issues	20 marks
Marks Ingenuity and logical reasoning	20 marks
Marks Application of legal principles, authorities and precedents	20 marks
Marks Lucidity, coherence and written composition of pleadings	10 marks
Marks Proper footnoting and formatting	10 marks
Total —————>	100 marks

Applicable penalties shall be deducted from each of the Memorials after each Memorial has been evaluated. The penalties deducted shall, in no condition, cause the marks to be reduced below two-fifth (2/5) of the maximum marks.

10. Researcher's Test:

The Researcher's Test shall be conducted at the venue on 3rd September, 2018 before the start of the Preliminary Rounds to adjudge the Best Researcher.

11. Oral Submissions:

- i. The language of the Court shall be English only.
- ii. The time limit for the oral submissions shall be as per the respective rounds for each team.
- iii. This shall include the submissions of both the speakers from the team and the time reserved for rebuttal/sur-rebuttal.
- iv. The sur-rebuttal shall be limited to the rebuttals made by the opposing team.
- v. The time split between the speakers must be communicated to the bailiff prior to the commencement of each Round.
- vi. Teams should adhere to the time restrictions to avoid imposition of penalties. In an event where the judges are of the opinion that a certain exigency does require an extension of time, they may extend the cumulative speaking time for a team by a maximum of five (5) minutes.
- vii. There shall be no communication, oral, written or in any other manner whatsoever, between team members seated on the table and the speaker. However, the Researcher is allowed to pass chits to the speaker in an orderly manner without disturbing the decorum of the Court.

12. Evaluation of Oral Submissions:

The following scale shall be used to evaluate the teams

- Logical structuring and reasoning
- Ingenuity and originality
- Marshalling of facts
- Articulation of issues
- Presentation skills and communication ability
- Response to questions posed

- Application of legal principles
- Use of authorities and precedents
- Court etiquettes
- Covering all the areas of the problem
- Effective rebuttals

13. Structure of the Rounds: The Oral round shall comprise of:

- A. Preliminary Rounds
- B. Quarter Final Rounds
- C. Semi-Final Rounds
- D. Final Rounds

A. Preliminary Rounds

- a. There shall be two Preliminary Rounds. Every team shall be given the opportunity to argue from each side in the Preliminary Rounds the schedule for which shall be determined by a draw of lots.
- b. Each team will be given a total of 30 minutes to present their case which includes rebuttal and sur-rebuttal.
- c. The division of time between the speakers is at the discretion of the team members, subject to a maximum of 18 minutes for any one speaker. Each team shall indicate to the court-clerk the allocation of its 30 minutes.
- d. The scheme of evaluation for the preliminary round will be as follows:

Total Marks ó Five Hundred [Memorial + Round 1 + Round 2]

Division ó

Category	Total Marks	Scheme of Division		
Memorial	100	Not Applicable		
Round 1	200	Speaker 1	100	Judge 1 - 50
				Judge 2 - 50
Round 2	200	Speaker 2	100	Judge 1 - 50
				Judge 2 - 50
Round 2	200	Speaker 1	100	Judge 1 - 50
				Judge 2 - 50
Round 2	200	Speaker 2	100	Judge 1 - 50
				Judge 2 - 50
Total	500			

- e. In case of a tie, the team with the higher memorial score will be considered as the winner of that round.
- f. The team which wins both the preliminary rounds automatically qualifies for the quarter final rounds.

However, in case there are more than eight teams who have won both the rounds, the qualification will be decided on the basis of the total marks scored by the teams [Memorial + Round 1 + Round 2].

Moreover, in case there are less than eight teams who have won both the rounds, the qualifying teams among those who have one win will be decided on the basis of the total marks scored by such teams [Memorial + Round 1 + Round 2].

B. Quarter Final Rounds

- i. The side to be represented by the qualifying teams shall be determined by a draw of lots.
- ii. Qualifying teams shall argue only for one side in the Quarter Finals. Each team shall get a total of 35 minutes to present their case. This time will include rebuttal and sur-rebuttal.
- iii. The division of time between the speakers is at the discretion of the team members, subject to a maximum of 20 minutes for any one speaker. Each team shall indicate the time allocation to the court clerk.
- iv. The Quarter Final Rounds shall be knockout rounds based on the points awarded by the judges.
- v. The Scheme of Evaluation for the Quarter Finals will be as follows:

Total Marks ó Two Hundred [200]

Division ó

Total Marks	Division		
200	Speaker 1	100	Judge 1 - 50
			Judge 2 - 50
	Speaker 2	100	Judge 1 - 50
			Judge 2 - 50

- vi. The four winning teams shall advance to the Semi-Final Rounds.

C. Semi- Final Rounds.

- i. The side to be represented by the team shall be determined by a draw of lots.
- ii. Qualifying team shall argue only for one side in the Semi Finals. Each team shall get a total of 40 minutes to present their case. This time will include rebuttal and sur-rebuttal.
- iii. The division of time between the speakers is the discretion of the team members, subject to a maximum of 22 minutes for any one speaker. Each team shall indicate to the court clerk the time allocation.
- iv. The Scheme of Evaluation for the Semi Finals will be as follows:

Total Marks ó Three Hundred [300]

Division ó

Total Marks	Division		
300	Speaker 1	150	Judge 1 - 50
			Judge 2 - 50
			Judge 3 - 50
	Speaker 2	150	Judge 1 - 50
			Judge 2 - 50
			Judge 3 - 50

- v. On the basis of knock out, 2 teams shall advance to the Finals.

In case of a tie in any round (other than the Preliminary Rounds), the teams shall advance to the next round on the basis of highest memorial score.

D. Final Round

- i. The side to be represented by the team shall be determined by a draw of lots.
- ii. Each team shall get a total of 45 minutes to present their case. This time will include rebuttal and sur-rebuttal.
- iii. The division of the time is the discretion of the team members, subject to a maximum of 25 minutes for any one speaker. Each team shall indicate to the court clerk the time allocation.

14. Exchange of Memorials:

- i. There shall be an exchange of memorials between the respective opposing teams in accordance with the fixtures as determined by a draw of lots, prior to all the Rounds of the Competition.

- ii. The teams are prohibited from making any marks on the exchanged Memorials.
- iii. The teams are prohibited from making any copies of the exchanged Memorials
- iv. At the conclusion of their respective Rounds, the teams are required to return the exchanged Memorials to the Bailiffs of the Court.

15. Penalties:

- i. Penalty shall be imposed on the Memorials subject to Rule 9(vii).
- ii. Failure to include all sections of the memorial [as mentioned in Rule 9(v)] or the inclusion of an un-enumerated section, shall be penalized with two (2) marks with each of such section.
- iii. Failure to include necessary information on the cover page of the memorial [as provided under Rule 9(v)(a)], or the use of a colour on the cover page contrary to the scheme mentioned under Rule 9(iii) shall be penalized with two (2) marks for each error
- iv. Disclosure of identity of team or the associated institution will result in disqualification.
- v. Delay in submission of Memorials shall be penalized with two (2) marks on the first day of delay, and with one (1) mark per day for every day thereafter, subject to a maximum cumulative penalty of five (5) points.
- vi. Incorrect Margins [as per Rule 9(vi)(f)] shall be penalized with Two (2) marks, being a onetime penalty only.
- vii. Exceeding total words in the memorial [as mentioned under Rule 9(6)(g)] shall be penalized with One (1) mark for 500 extra words.
- viii. Improperly prepared structure/format of any of sections mentioned under the Rules shall be penalized with Two (2) marks, being a onetime penalty only.
- ix. Delay in Appearance/Presentation:
 - a. If a team scheduled to participate in the oral submissions of a Round does not appear for ten (10) minutes after the scheduled commencement of such Round, the other team shall have to make oral submissions ex-parte.
 - b. The criteria of rebuttals shall not be considered for evaluation in such cases, in place of which, an average for the same would be

given on the basis of the marks scored by such team on the other criteria.

- x. Scouting:
 - a. Scouting by the speakers, researcher or any other person affiliated with a team will lead to immediate disqualification of such team.
 - b. Scouting shall be deemed to have happened if any person affiliated with a team is found:
 - Witnessing, hearing, observing, etc. the oral submissions in a Round, except where the Round is one in which the team to which he/she is affiliated is participating in; or
 - Reading a Memorial of a team except where:
 - It is of the team to which he/she is affiliated; or
 - The Memorials have been obtained on account of an exchange of memorials prior to a Round of the team to which he/she is affiliated.
- xi. Any Memorial found with plagiarism shall be subject to deduction up to three-fourth (3/4) of marks awarded towards Memorials, based on the extent of plagiarism.
- xii. Moot Court Committee reserves the right to amend/alter any rules necessary for the conduct of the National Moot Court Competition and any contravention to any rules shall incur the penalty of Two (2) marks.

16. Accommodation and Travel:

- i. University Guest House Accommodation shall be provided to the outstation participant/s subject to prior intimation, availability and payment of rent, to be borne by the participant(s), as applicable. Participants will have to make travelling arrangements at their own/their institutional expenditure.
- ii. Accommodation will be provided for the participating teams starting from 1st September, 2018 (evening) to the 5th September, 2018 (noon). Any extra guest shall not be entertained by the organisers.

17. Code of Conduct:

- i. The copyright in the memorials submitted by the teams shall vest with the School of Law, University of Kashmir. The acceptance of such vesting is a precondition to participation in the Competition.
- ii. Participants are required to observe a proper dress code i.e. Advocate's Uniform (including Gown and Band).
- iii. The court will follow its own rules of procedure within the frame work of accepted norms of judicial practice. On question of doubt or dispute in the manner of procedure of facts, the decision of the court shall be final.
- iv. Every team must maintain dignity and decorum in the court room. Inappropriate behaviour in the court room or blatant disregard for the procedures will result in instant disqualification or defaulting team will be incurred the reduction penalty of 05 points, as per the decision of the presiding judges.
- v. No participant will be allowed to enter the "control room" and any breach of this provision shall result in the immediate disqualification of the team.
- vi. Any participating team member having any grievances, queries or complaints shall communicate the same at hyabbas@uok.edu.in Any such representation made to a person except the designated email id shall not be entertained.

18. Following are the awards for the competition:

Category	Award
Winner	Winner's Trophy and Cash Prize of Rs. 5000/-
Runner ó Up	Runner Up Trophy and Cash Prize of Rs. 3000/-
Best Advocate (Final Round)	Trophy and Cash Prize of Rs. 2000/-
2 nd Best Advocate (Final Round)	Trophy and Cash Prize of Rs. 1500/-
Best Advocate (Preliminary Round)	Trophy and Cash Prize of Rs. 1200/-
2 nd Best Advocate (Preliminary Round)	Trophy and Cash Prize of Rs. 1000/-
Best Memorial (Appellant)	Trophy and Cash Prize of Rs. 800/-
Best Memorial (Respondent)	Trophy and Cash Prize of Rs. 800/-
Best Respondent	Trophy and Cash Prize of Rs. 500/-

KASHMIR UNIVERSITY NATIONAL MOOT COURT COMPETITION, 2018
SCHOOL OF LAW, UNIVERSITY OF KASHMIR

REGISTRATION FORM

NAME OF THE INSTITUTION (TO BE FILLED IN BLOCK LETTERS):

ADDRESS:

TEAM DETAILS:-

Speaker 1:

Name: _____

Gender: _____

Phone number: _____

E-Mail Address: _____

Photograph

Speaker 2:

Name: _____

Gender: _____

Phone number: _____

E-Mail Address: _____

Photograph

Researcher:

Name: _____

Gender: _____

Phone number: _____

E-Mail Address: _____

Photograph

Person to whom communication relating to the Competition should be sent:

Name: _____

Designation: _____

Phone Number: _____

E-Mail Address: _____

Signature of the Head of the Institution

Seal of the Head of the Institution

SCHOOL OF LAW
UNIVERSITY OF KASHMIR

**KASHMIR UNIVERSITY NATIONAL MOOT COURT
COMPETITION, 2018**

IN THE SUPREME COURT OF INDIA

YOUSUF KHAN & ORS. v. STATE OF JAMMU AND KASHMIR

[Cr. App. No. 221 of 2018 from High Court of Jammu and Kashmir]

Along-With

CENTRE AGAINST DEATH PENALTY, KASHMIR v. UNION OF INDIA &
ORS.

[W.P. No. _____ of 2018]

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1. Sabz Afridi was the resident of Lal-Bazaar colony located in district Srinagar of the state of Jammu and Kashmir. He was the son of a local shopkeeper (Gulzari Ahmed Afridi) and worked as a gatekeeper at New Kashmir University. Seema Khan, who was the daughter of a police officer, also resided in the same colony. Both fell in love and wanted to marry each other. However, Seema's family was against the same. Her family did not want her to marry someone who was poor and came from an inferior family. On 10th January 2013, with the help of some of their friends they eloped from their respective homes and married the next day in accordance with Islamic Law.
2. Two days later (12th January 2013), while buying bread in the morning, Seema's father (Yousuf Khan) while talking to some locals used abusive language against Sabz and his family. On the same day, Yousuf Khan and his son Younis Khan (Seema's brother) went to Sabz's house and abused his parents. They also beat up Sabz's younger brother who had to be taken to the hospital for treatment. Gulzari also claimed that Younis Khan used his connections in the police department to harass him and his family. Later that day, Yousuf Khan's neighbour Inzimam (Prosecution Witness-1) over-heard Seema's father and brother talking about killing someone. However, he was not sure who were the father-son duo talking about.
3. After their marriage, Sabz and Seema went to live with Sabz's uncle (Babar Afridi) who lived in Raj Bagh colony. Seema also had some relatives living in the same colony but they seemed to have abandoned her for marrying Sabz. Babar Afridi also provided Sabz with finance to set-up a medicine shop. Seema used to run the shop while as Sabz continued with his job at the university. However, both of them used to sit in the shop in the evening (i.e. after Sabz came home from the university).
4. On 12th March 2013, at about 6:30 p.m. some unidentified men came to the shop and broke all its windows. They also beat the couple violently and took away most of the medicine. Sula Baba (Prosecution Witness-2) saw the car bearing number JK 01AB 9K9K (registered under Yousuf Khan's name) leaving the Raj Bagh locality at 9:00 p.m. in the evening.
5. On 13th March, 2013 Sabz filed a FIR with police station Raj Bagh and named Yousuf Khan as one of the suspects. In the ensuing investigation the police found that Yousuf Khan was not in town on the day the incident occurred. The file was later on closed due to non-availability of the suspect names. However, Sabz still maintained that even

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though Yousuf Khan was not in town, he was the one who ordered the unidentified men to beat him and his wife and damage their property.

6. Sabz and Seema usually returned home at 7:00 p.m. after closing their shop. However, on 11th October 2013 they did not return at their usual time. And when Babar Afridi did not hear from them till 10:00 p.m., he went and filed an FIR in police station Raj bagh. The police traced Sabz's cell phone to someplace near Hazratbal. A team was sent to the location, but they were not able to find anything.
7. Two days later, Mr. Nazim Shah (resident of Hazratbal) found two bodies lying on the bank of river Nigeen. He immediately informed the police about the same. The police immediately reached the spot and later on identified the bodies as that of Sabz and Seema. The police informed the families of the deceased about the incident and the bodies were sent to Government Medical College Srinagar for Post Mortem. Subsequently, an FIR was lodged on the information provided by Mr. Nazim Shah.
8. After taking cognisance of the matter, Inspector Ibrahim Sufi was appointed as the investigating officer. After the preliminary investigation, the FIR was amended and Yousuf Khan, his son Younis Khan, Nabi Shafi (Yousuf Khan's bodyguard), Mohd. Sami (Yousuf Khan's servant) were named as prime suspects. Soon after that the police raided Yousuf Khan's house and arrested all the suspects. The police also found a local made pistol from the servant quarter and some bloody clothes in the house. These items were taken in as evidence in front of witnesses and were sent for forensic examination. Moreover, the police also found a large amount of nitro-glycerine and nitrous peroxide from the house. When asked about the same, Yousuf Khan replied that same was used by their gardener.
9. The suspects were brought before the chief judicial magistrate Srinagar who sent them police custody for 14 days so that the investigating officer would be able to complete the investigation.
10. The post mortem report on Sabz's body concluded that there were a lot of injuries which he suffered before death. While as the post mortem report on Seema's body suggested that she could have been raped before she was killed.
11. After the investigation was completed, the investigating officer submitted the final report before the competent court which took the cognisance of the same. The report named Yousuf Khan (Accused 1), Younis Khan (Accused 2), Nabi Shafi (Accused 3) and Mohd. Shami (Accused 4) as the accused for the murder of Sabz Afridi and

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Seema Khan. Subsequently, the prosecuting officer filed the charge-sheet under which the case was made against the accused on following charges:

- a. Murder under Section 302 of R.P.C
- b. Rape under Section 375 of R.P.C

12. During the trial, the prosecution informed the court that Mr. Mohd. Shami (Accused No. 4) had confessed to the crime in the police station. Shami voluntarily took a Narco-analysis test (in absence of a lawyer) and repeated the same statement that he had given to the police. The prosecution informed the court that Shami had agreed to be the witness for the state and wanted to make a confession before the court. However, when produced before the court, the accused turned hostile and decided to recant the testimony he gave to the police. He told the court that the statement given to the police was given under compulsion. And that the narco-analysis test was not admissible. After looking into all the evidence as well as hearing all the witnesses, the court found all the accused guilty of murder on 06.05.2018. While coming to this conclusion the court relied on the confession made by accused no. 4 because same was corroborated by the Narco-analysis test. The court also found accused no. 3 guilty of rape. The court sentenced all the accused to death. All the accused preferred an appeal against the same to the High Court of J&K. The High Court upheld the decision of the trial court and confirmed the death sentence. The accused have now appealed to the Supreme Court of India which has agreed to hear the appeal [Cr. App. No. 221 of 2018].

13. Centre against Death Penalty, Kashmir [CDPK] is a think tank based in Srinagar that was set up by a group of law graduates in 2010. It has been running a campaign for the abolition of death penalty since its inception and has been creating awareness about the same. They have also assisted the High Court and the Supreme Court in a large number of cases involving death penalty. On 14.05.2018 they filed a Public Interest Litigation [W.P. No. 08 of 2018] in the High Court of J&K challenging the constitutionality of death penalty. They argued that the case of *Bachan Singh v. State of Punjab* was decided long back and a lot of things have changed since then. They particularly relied on the 2016 Death Penalty report of National Law University, Delhi to highlight the inhumane and degrading treatment, particularly the ineffective representation that the death penalty convicts receive. They also placed reliance on the reports of the Law Commission of India and on a lot of foreign and international

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material to argue their point. Agreeing with counsel for CDPK that the case of *Bachan Singh v. State of Punjab* needs to be reconsidered and the matter of Death Penalty revisited by the Supreme Court, the High Court of J&K allowed CDPK to withdraw the writ petition and file the same in the Supreme Court.

14. Realising that the outcome of the appeal [Cr. App. No. 221 of 2018] depends upon the challenge raised against the death penalty in W.P. No. 08 of 2018, the Chief Justice of India clubbed the two cases and placed it up for consideration before the appropriate bench. The Supreme Court of India has framed the following issues:

- a. Whether the trial court and the High Court of J&K were correct in finding the accused guilty of murder?
- b. Whether the trial court and the High Court of J&K were correct in finding accused no. 3 guilty of rape and accused no. 1 and 2 guilty of abetment to rape?
- c. Considering the need to re-consider *Bachan Singh v. State of Punjab*, whether death penalty is constitutionally valid in the light of the same?
- d. Assuming that death penalty is valid, did the trial court err while giving death penalty to all the accused in *State of J&K v. Yousuf Khan & Ors.*?

**ANNEXURE - 1
FIRST INFORMATION REPORT
[No. 512 of 2013]**

1. District: Srinagar Police Station: Nigeen
2. Date: 20.10.2013
3. Act: Ranbir Penal Code, Section 302, 375.
4. Occurrence of Offence: Between 10.10.2013 and 14.10.2013.
5. Time From: 6:30 p.m. Time to: Unknown.
6. Information Recorded By: Sub-Inspector Syed Anwar.
7. Type of Information: Written/Oral: Telephonic.
8. Place of Occurrence: Direction/Distance from Police Station: Near Nigeen Lake - about 1.5 Km North from Police Station.
9. Details of the Complainant/Informant
 - a. Name: (self) Mr. Nazim Shah
 - b. Date of Birth: 21.10.1977
 - c. Nationality: Indian
 - d. Residence: Hazratbal
 - e. Basis on which FIR is lodged: Information received from Mr. Nazim Shah, resident of Hazratbal who found the bodies.
10. Details of Known/Unknown/Suspected accused with full particulars:
 - a. Mr. Yousuf Khan, S/O Riyaz Khan, R/O Lal Bazar Colony, Srinagar.
 - b. Mr. Younis Khan, S/O Yousuf Khan, R/O Lal Bazar Colony, Srinagar.
11. Reasons for delay in reporting by the complainant/informant: NA
12. Particulars of Injuries sustained: 2 deceased.
13. Particulars of Post Mortem Report: Not yet.
14. Post Mortem report done by: Not Yet.

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**ANNEXURE – 2
DEATH CERTIFICATES**

**Srinagar Municipal Corporation
Death Certificate of Sabz Afridi**

Date of Issue: 15.10.2013

Name of the Concerned Doctor: Dr. Mehbooba Wani

Registration No.: 4258

Place of Issue: Government Medical College, Srinagar

Name of the Deceased: Sabz Afridi

Sex: Male

Age: 30 years

Height: 5ø11ö

Weight: 80 kg

Date of Death: Inconclusive [Between 11.10.2013 and 14.10.2013]

Time of Death: Dead on arrival

Cause of death: Bullet wounds in neck, chest and abdomen. Slit throat

Signed

Dr. Mehbooba Wani

Duty Doctor

**Srinagar Municipal Corporation
Death Certificate of Seema Khan**

Date of Issue: 15.10.2013

Name of the Doctor: Dr. Mehbooba Wani

Registration No.: 4258

Place of Issue: Government Medical College, Srinagar

Deceased's Name: Seema

Sex: Female

Age: 25 years

Height: 5ø2ö

Weight: 95 kg

Date of Death: Inconclusive [Between 11.10.2013 and 14.10.2013].

Time of Death: Dead on arrival

Cause of death: Bullet wounds in head and chest. Slit throat.

Signed

Dr. Mehbooba Wani

Duty Doctor

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ANNEXURE - 3

POST-MORTEM REPORT OF SABZ AFRIDI [Report No. A-421] AND SEEMA KHAN [Report No. A-422]

POST –MORTEM REPORT NO. A-421

Autopsy Number: A-421

Name: Sabz Afridi Age: 30 yrs Complexion: White Sex: Male

Admitted: 14.10.2013

Autopsy Date: 14.10.2013 Time: 2:15 p.m.

Autopsy by: Dr. Mehbooba Wani, M.D.

Cause of Death: Gunshot wounds to the neck, chest and stomach. Slit throat.

EXTERNAL EXAMINATION

External examination reveals a well developed white male measuring 5 foot, 11 inches in length and weighing an estimated 180 to 185 pounds. The hair is brown and slightly wavy. The irides are gray, the pupils are equal at 5 mm. Rigor Mortis is present. Oral hygiene is good. Hair distribution is normal. Identification marks on the right cheek, left elbow and left ankle.

There are three entrance types of wounds:

- Wound no. 1 is 2 ½ inches to the left of the heart and 3 ¾ inches to the top of the middle. This measures 3/8 x ¼ of an inch. Powder tattooing is noted at the margins.
- Wound no. 2 is 10 inches from the top of the head on the right side of the neck. It measures 3/8 x ¼ of an inch. This is surrounded by a contusion ring.
- Wound no. 3 is 2 inches below the midline and 2-1/4 inches above the left thigh. It measures 5/16 x ¼ of an inch. This is surrounded by a contusion ring.

There are no exit wounds on the back. There is a tanning of the arms. The nails are well cared for although slightly dirty. There is a scar below the left wrist which runs in an oblique fashion and terminates at the elbow. There are multiple bruise marks on head, both arms, and both legs. The left side of the rib cage has a fracture and one of the ribs is protruding out of the skin. Left arm and both the legs have multiple fractures. Most of these bruises are pre-mortem. The throat has been slit from ear to ear. The groin has been mutilated.

COURSE OF THE BULLETS.

Examination of the first wound is made. Wound no.1 is seen to have entered through the neck and travelled upwards through the cranium and recovered from the brain matter. There is no

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exit wound. Wound No. 2 is found to penetrate the chest wall as externally described, is surrounded by haemorrhage, and penetrated the left lung. The wound is seen to have followed a straight course through the body and recovered from there only. Wound no. 3 seems to have entered below the midline and immediately traversed through the stomach and recovered from there.

FINDINGS:

Gunshot wound to the neck - Brain parenchyma damage and haemorrhage.

Gunshot wound of the chest - Penetration of the left lung.

Gunshot wound to the midline - Penetration of the stomach.

Blood Group of the Deceased: AB óve.

POST MORTEM REPORT NO. A - 422

Autopsy Number: A-422

Name: Seema Khan Age: 25yrs Complexion: White Sex: Female

Admitted: 14.10.2013

Autopsy Date: 14.10.2013

Autopsy by: Dr. Mehbooba Wani, M.D.

Cause of Death: Gunshot wounds to the chest and head. Slit throat.

EXTERNAL EXAMINATION:

External examination reveals a well developed female measuring 5 foot, 2 inches in length and weighing an estimated 140-50 pounds. The hair is black and straight. The irises are brown and pupils are equal at 5mm. Rigor Mortis is present. Hair distribution is normal. Identification marks on the right wrist, left ankle, and left toe.

The victim was presented with torn wearing garments at places, stained with mud and sand particles. Blood stained froth was found around the mouth and nostrils. Multiple ligature marks, continuous and horizontal, bruises with nail scratch abrasions were found over both sides of the neck.

There are multiple stab wounds in the stomach and chest. There are also two entrance types of wounds. Wound no. 1 is to the left of the temple and about 1 inch above the left ear and measures $\frac{3}{4}$ x $\frac{1}{4}$ of an inch. There is some powder tattooing along the margins of the wound. Wound no. 2 is equidistant from either side of the body and is right in the middle of the chest

area, 4 inches above the midline. The wound measures $3/8 \times 1/2$ an inch. There is a contusion ring surrounding the wound. There is a tanning of the arms. The nails are dirty.

There are multiple bruises on chest, shoulder, both arms and both legs. The autopsy also concludes that the deceased had indulged in sexual intercourse few hours before her death. There are bruises on labia minora, recent hymnal tears at 5 and 7 o'clock position with oozing of blood with a tear of the posterior fourchette. The nature of the vaginal injuries suggests forceful penetration. However, it cannot be conclusively concluded whether such intercourse was consensual or not.

COURSE OF THE BULLETS:

Examination of the first wound is made. The wound is seen to have entered through the left temple, pierced the cranium, and exited through the back of the head, taking along with it some portions of brain matter. Wound no. 2 seems to have penetrated the wall of the chest right through the middle and taken a downward course, through the 3rd and 4th rib on the left, piercing left lung and the stomach, the liver, penetrates the diaphragm and is recovered 1 inch below the diaphragm.

FINDINGS:

- Gunshot wound to the head.
- Penetration of the cranium and brain.
- Gunshot wound to the chest.
- Penetration of the chest, left lung, left ribs, stomach, liver and diaphragm.
- Bruises on labia minora.
- Recent hymnal tears at 5 and 7 o'clock position with oozing of blood with a tear of the posterior fourchette.

**ANNEXURE - 4
FORENSIC REPORT**

1. Date of Report: 27/10/2013.
2. Laboratory Address: J&K Forensic Science Laboratory
3. Case Pertaining to FIR 512 of 2013.
4. Laboratory Tracking No: 33.
5. Written Title for the Case: Murders of Sabz Afridi and Seema Khan.
6. Examinations Requested:
 - a. Examination of Firearms.
 - b. Bullet Comparison and Identification.
 - c. DNA Analysis and Comparison.
7. List of Evidence Items Received:
 - a. One Local made Gun.
 - b. Two 5 x .208 Gun Bullets removed from the gun.
 - c. Six 5 x .208 Bullets removed from the bodies of Sabz Afridi and Seema Khan.
 - d. White Shirt with Blood Stains [However, the shirt was damaged and the sample was enough for conducting a blood group test and not a DNA Analysis].
 - e. Blood sample of Sabz Afridi and Seema Khan.
8. When, how and by whom the evidence items were received:

Evidence received on 22/10/2013 personally by Dr. Asgar Farooq, Chief Examiner.
9. Examinations performed :
 - a. Examination of Firearms:

The firearm was found in the servant quarter at the residence of Mr. Yousuf Khan. It was a local made revolver without any registration number. The examination of the gun ó powder residue on the gun revealed that it had been discharged recently.
 - b. Bullet/Cartridge Examinations:

There were eight 5 x .208 bullets. Two of them were removed from the gun and six were recovered from the bodies of Sabz Afridi and Seema Khan. On comparing the bullets from the gun to the bullets recovered from the bodies of the victims, it was found that the bullets were of the same shape and model. However, there was no conclusive way of determining that they were discharged from the same weapon.
 - c. Characterization and Evaluation of Fired Projectiles:

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Based on the structure of the gun and the shape and design of the bullets, it could be argued that they have a capability of travelling a distance of 900 metres approximately. The bullets from the guns, when fired from a distance of 100-120 metres, the target being a soft object, may cause a hole of about $3/8 \times 1/4$ inches which is almost same as that on the victims bodies.

d. DNA Analysis.

DNA analysis was attempted on the blood that was found on the shirt that was recovered from the house of Mr. Yousuf Khan. However, the damage to the shirt was such that enough blood samples could not be extracted to conduct a DNA analysis. However, it was sufficient to conduct a blood group test and the test showed AB óve.

ANNEXURE - 5
STATEMENT OF WITNESSES
[Before the Trial Court]

The witnesses have been examined and cross-examined and the following statements have been put on record by the court. However, the participants are free to derive valid assumptions from the same as long as they are able to properly establish the connection between such assumption and the following statements.

Persons examined:

1. Mr Inzimam
2. Imam Sula Baba
3. Mr. Juni Ahmad
4. Mr. Gup Unwani
5. Mr. Shiekh Baba

1. Mr. Inzimam

I am a resident of House No. 15, Lal Bazar Colony, Srinagar. My house shares a common wall with that of Mr. Yousuf Khan. On the evening of 12th January 2013, I was standing in my lawn watching my children playing cricket. I suddenly heard some loud voices coming from the other side of the wall and went to stand closer to the same. I realised that it was Mr. Yousuf Khan and his son talking loudly about Ahmed Afridi. They were abusing Sabz and Seema and at one point of time, Mr. Yousuf, who is a policeman talked about using his service pistol to kill Seema and Sabz as both of them disgraced his name.

2. Imam Sula Baba.

I am the Imam of Raj Bagh Masjid. On the evening of 12th March 2013, I was walking towards the local mosque at around 9:00 p.m. and I saw the car bearing number JK 01AB 9K9K and immediately recognised the same as Mr. Yousuf's car. This is because Mr. Yousuf has some relatives in Raj Bagh and he often comes to visit them. However, since the windows of the car were tinted, I was not able to see who was inside the car.

3. Mr. Juni Ahmad

I am a resident of House No. 16, Nigeen Resorts which is located on the banks of Nigeen Lake. On the evening of 13.10.2013, I was standing on my balcony when I saw a Scorpio stop on the road adjacent to the Nigeen lake. I was not able to see the car number but I believe that it was either black or grey in colour. I am suffering from long sightedness and

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was not wearing my spectacles. I saw two people coming out of the car who were carrying a heavy bag which they dropped into the river. One of the people was walking with a limp.

4. **Mr. Gup Unwani**

My name is Gup Unwani and I live in Shalimar colony, srinagar. I am a member of Kashmir Golf Course and am a frequent visitor there. I know Mr. Yousuf Khan and his family very well. He is also a member of the Kashmir Golf Club and we play almost every day. Between 10.10.2013 and 17.10.2013, Mr. Yousuf visited the golf course every day. He usually stayed there from morning to evening. However, I did not visit the Golf course on 15.10.2013 and 16.10.2013.

5. **Mr. Sheikh Baba**

My name is Sheikh Baba and I am the manager of Kashmir Golf Course. I know for sure that Mr. Yousuf Khan visited the Golf Course every day between 10.10.2013 and 17.10.2013. However, on 15.10.2013 and 16.10.2013 he left after lunch and came back at 5:00 p.m. in the evening.

ANNEXURE – 6

STATEMENT OF ACCUSED

[RECORDED AT POLICE STATION, NIGEEN]

1. Mr. Yousuf Khan [Accused No. 1]

My name is Yousuf Khan and I am a resident of Lal-Bazaar Colony, Srinagar. However, since I am posted as a Station House Officer [SHO] at Police Station Qamarwari, I spend most of the time there. I don't get much time to visit my family and most of the times I deliberately avoid visiting them due to security reasons. Speaking honestly, I never approved the affair between my daughter (Seema Khan) and that third class and low-life boy Sabz Afiridi. Neither did I approve their marriage. My daughter did not die recently. She died to me the day she decided to marry without my permission. I am glad that she is dead. I no longer have to face the shame she brought to my family. But, I did not kill her and neither did I ask anyone else.

I was on an official tour from 4.10.2013 to 8.10.2013. And when I returned back on 9.10.2013, I straightaway went home to meet my family. The next day, i.e. 10.10.2013, I returned back to my station and resumed my duties. I own a black scorio and I use it exclusively for myself. On the evening of 11.10.2013 I received a call from my colleague who is the SHO of Raj Bagh Police station. He informed me that Sabz's uncle (Babar Khan) has filed a missing person report regarding my daughter and her husband. I told him that I was not concerned about them and that he should do his job in accordance with due process of law. I did not hate my daughter. I was just indifferent towards her. I hated Sabz and his family. And I think every father who finds himself in my situation would do the same.

I do not know anything about the pistol that was recovered from the servant's quarter at my residence. A lot of policemen come to my house and I also have some security officers there. Maybe the gun belongs to one of them. I have a service revolver which I have not used for a very long period of time.

2. Mr. Younis Khan [Accused No. 2] - Declined to give any statement to the police.

3. Nabi Shafi [Accused No. 3] ó Declined to give any statement to the police.

4. Mohammad Sami

My name is Mohammad Sami and I am the resident of Nowshera, Srinagar. I have been working as Mr. Yousuf Khan's driver for the last 6 years. Everyone at Khan Sahib's home was very upset when they came to know about Seema's affair. Khan sahib and chota sahib

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(Younis Khan) abused her a lot and beat her with a rod. We had to call a doctor and she received six stitches that day. Khan Sahib also sent me, Nabi Shafi and some other men to threaten and abuse Sabz Afridi and his family. And then Seema ran away and married Sabz Afridi. I still remember when Khan Sahib came home after being informed about the incident. He came and straight away went to his room. He came out with a local made pistol which had a brown handle. We stopped him from leaving the house because we knew that he will kill Sabz as well as Seema.

On 7.11.2013, Khan Sahib called me and told me about a special assignment. He asked me to collect some package from a shop in lalchowk and strictly instructed me not to check what it is. Nabi Shafi, Yousuf Sahib's bodyguard, accompanied me. We collected the package which included two heavy sacks covered in white cloth. We returned to Khan Sahib's home and stored the package in his garage. However, while Shafi was removing the white cloth I glanced and looked at the sacks. I was not able to read everything written on it but I was able to see 'peroxide'. The rest of the word was blocked. On 10.10.2013 Shafi informed me that Khan Sahib was planning of to teach Seema and Sabz a lesson and he wanted my help as well. I said yes. This is because Khan Sahib had always been kind to me and my family. And I had already helped him in similar assignments before. I was under the impression that we will pick Seema and Sabz and will beat them and threaten them. That was how we generally carried out such assignments.

On 11.10.2013, Shafi and I waited for Seema and Sabz to close their shop. We saw them leaving the shop at around 6:00 p.m. and approached them. We stopped them and told them to get in the car. We had rented a van to avoid any suspicion. Shafi took out a gun and told them to get into the van. They got in and I started driving. Shafi told me to take us to an abandoned factory located at Bagh-e-Ali-Mardaan Khan Industrial Complex. When I asked why, he simply said that it was the order of Khan Sahib. We reached the complex at around 10:00 p.m. and took Seema and Sabz inside. Thereafter, we tied them to the chairs and left. I dropped Shafi back and went home. However, before I left Khan Sahib told me not to come to work till further notice.

On 13.10.2013, I got a call from Khan Sahib at around 1:00 p.m. asking me to come to work immediately. I reached his home at around 2:00 p.m. and he asked me to drive him to the Nigeen Lake. Shafi was accompanying us. We reached Nigeen Lake at around 5:30 p.m. and Khan Sahib asked me to stop at a particular place. Thereafter Khan Sahib and Shafi got out of the car and asked me to wait inside. They took out some sacks from the back of the car

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and threw them in Nigeen Lake. They quickly got into the car and asked me to drive back home as fast as I could.