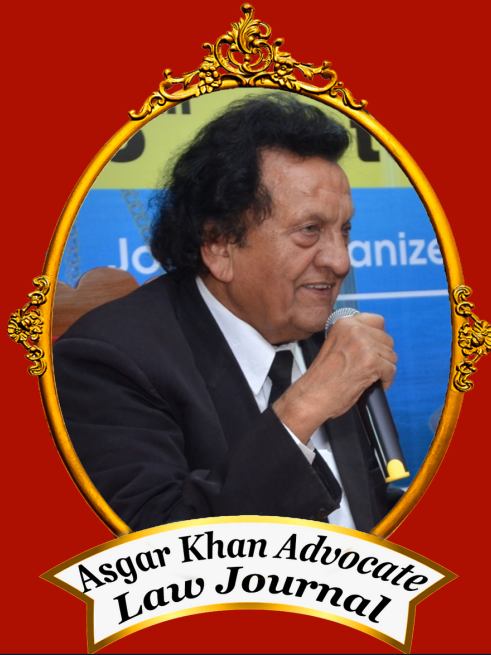


Online ISSN 2582-6476



ASGAR KHAN ADVOCATE LAW JOURNAL

*Volume 2. Issue 1
January 2021*

Table of Contents

- *Right To Death- Apropos of Indian Landscape- By:*
Shubham Bajaj
- *Art of Judgment Reading- By: Vishal Vyas*
- *“Law Relating to Maintenance and Welfare of Parents
and Senior Citizens”- By: Dr. Seema Totla*
- *The Bar Council of India and one-year LLM
Abolishment- By: Yoshita Singh*

ABSTRACT

“Whatever crazy sorrow saith, no life that breathes with human breath has ever truly long’d for death.” These were the words of Tennyson from his book **“The Two Voices”**¹ which essentially meant that whatever happens in a person’s life, he would never wish something as bad as death upon him. But as history has often shown us, even the most learned men could prove to be confounded when their statements are confronted with the unpredictability of the future. The discourse over morality and legality of assisted death has been in existence from centuries with both sides of the issue raising reasonable apprehensions in allowing or disallowing a medical practitioner to assist a patient in ending his life, with his own choice. For pursuing this act, the condition of the patient is of utmost importance and he and only he can decide whether he wants to end his life or not. There are numerous other guidelines which are followed in different countries. With Netherlands paving the way by legalizing Euthanasia in 2002, many countries like Belgium, Canada, USA, New Zealand, Australia and so on. In India, the 2011 judgement of the Hon’ble Supreme Court in the Aruna Shanbaug re-ignited the debate regarding ratifying euthanasia as a legal provision and an alternative to be looked at in order to dignify the passing away of a terminally ill patient. In this article, I have tried to track the evolution of Euthanasia in Indian socio-legal landscape and summarize the dialogue which has surrounded the concept of Euthanasia since the epoch of time.

¹ TENNYSON, ALFRED. *THE TWO VOICES*, (EDWARD MOXON, DOWER STREET, (1842)

RIGHT TO DEATH- Apropos of Indian Landscape

Right to death has been interpreted in a number of ways namely Euthanasia (Active or Passive), Suicide, Assisted Suicide and Physician-Assisted Suicide. By Right to Death, Right to Death by dignity is implied. As within the landmark judgement dated 9 March, 2019, **NGO Common Cause v. Union Of India**², the Constitution Bench headed by Chief Justice Dipak Misra, it was observed that the Fundamental Right to Life and Dignity also includes Right to Refuse Treatment and die with dignity. As the cases of Euthanasia or right to death being demanded by people more often, it becomes consequential to discuss its origins.

Euthanasia, EU meaning good and THANATOS meaning death, gave the meaning of “Gentle and straightforward death” to Euthanasia. The first recorded use of the word “Euthanasia” was by Suetonius, a Roman Historian, in **De Vita Caesarum- Divus Augustus**³ to explain the death of Augustus Caesar. The infamous Plato, who is renowned for his philosophy of life, observed that mentally and physically ill persons should be left to die, they do not have wish to live. Even in India, incurable patients were drowned in River Ganga in the name of deliverance during the ancient times.

Now, there are two sorts of Euthanasia, Active Euthanasia and Passive Euthanasia. In Active euthanasia, death is caused by the deliberate act of a person. There is an immediate relationship between the cause and effect. The objective of this act is to minimize the suffering of a diseased person, who is on his deathbed, by gratuitously killing him to free him of his agonizing state. Passive Euthanasia is that the act of hastening the death of a terminally ill patient by altering some sort of support and letting the character take its course. While in passive euthanasia, the death is not “directly” caused by a person, in active euthanasia it is, that is why, the former has garnered some support over the years. But the medical fraternity has refrained themselves from supporting any form euthanasia, active or passive. The Hippocratic oath which each health professional has got to take, desist them to administer poison to anybody, albeit asked. The Apex

² WP (C) 215/2005

³ SUETONIUS, GAIUS, DE VITA CAESARUM-DIVUS AUGUSTUS, (BERLIN STATE LIBRARY 121 AD)

Court, in its judgement dated 9th March, 2018 wrote down some guidelines to be followed regarding to pleas of euthanasia until the legislature makes laws on it. Another landmark case within the Indian history of euthanasia was that of **Aruna Shanbaug**⁴. She was a nurse in an hospital in a Mumbai and was raped by her colleague who later tried to strangle her by a dog chain too, which cut off oxygen supply from her brain and she was left deaf, blind, paralysed and in a vegetative state for the 42 years which followed. A person is said to be in a vegetative state when he is awake but not aware of the things happening to him, or when he is unable to perform the basic functions of life for a prolonged period of time. In this case, a journalist demanded euthanasia for Aruna Shanbaug which made the court to reconsider its earlier judgements in which euthanasia wasn't allowed. Although, the court did not grant euthanasia to Aruna Shanbaug, it made passive euthanasia legal in the country which was a big leap forward in shedding off the traditionalist tag that our hon'ble Courts behold. The court also gave its assent to the "living Will". It is an expressed informed consent, especially an advanced directive regarding future treatment which a person might make when he's fine and could state in it the way he wish to be treated if he falls sick. The central government, however, dissents from the majority judgement of the court. It argues that the living will could have serious repercussions in a country like India, where the children might persuade their aged parents to sign a living will in order to take the burden of taking good care of their parents, off their shoulder. They could be subjected to abuse and could become a victim of neglect. Although, the living will would spare the relatives from the moral burden of deciding the fate of the patient whether he deserves to die or not. The government, after the Aruna Shanbaug Case, introduced the "**Management of Patients with Terminal Illness, Withdrawal of Medical life Support Bill, 2016**" in the Parliament. The bill didn't recognize the concept of Living Will but nevertheless, it was a significant improvement in the facet of "Right to Die with dignity". This bill is yet to be passed by the legislature and is still at a developing stage because of the complex nature of the subject.

The Apex Court, in **NGO Common Cause v Union of India**⁵, held that the Right to Die with Dignity comes in the purview of Right to Life which is a fundamental right given to us by the Constitution of India and includes right to refuse treatment and die with dignity. The word

⁴ (2011) 4 SCC 454

⁵ WP (C) 215/2005

“dignity” was repeated in the progressive judgement a staggering 800 times, this could serve as a testimony to how much impetus is given to a dignified life of a citizen of this country. For people on the other end of the spectrum, they believe that this would lead to the weakening of the sanctity of life, as people would not be able to appreciate life as much as they would usually. The fact that accepting euthanasia as an option, would also implicate that some lives are valued less than others which questions the moral aspect of the law. In India, like in any other country, it becomes very difficult to establish which person is terminally ill or not, as some of the patients who were told that they only have a certain amount of time to live, have surpassed the given time in many cases. But that is not the only problem in front of the lawmakers of our country. An 89-year-old man, Narayan Lavate, and his 79-year-old wife, Irawati Lavate, have written to the President demanding active euthanasia because they simply don't have the will to live anymore and wish to die a dignified death.⁶ Another pertinent point is that the law has only offered euthanasia to patients who are suffering from unbearable pain, but an independent survey revealed that 2/3rd of the patients requesting for euthanasia were devoid of the quality of life they wanted for themselves and were totally dependent on others for performing the daily functions of life. As of now, the law for euthanasia is still in its perambulator and it remains to be seen as how our legislators counter these issues.

⁶ DIXIT, SHUBHRA, DEATH WISH- NARAYAN LAVATE'S LIFELONG PURSUIT OF DEATH, THE CARAVAN, (2020, 31ST MAY), <https://caravanmagazine.in/law/narayan-lavate-lifelong-pursuit-of-death>

Art of Judgment Reading – By: Vishal Vyas

There are many sources from which we derive what we know to be as “law”. We have Codified laws, customs, and judgments. Judgments are an important source of law. For law students, young lawyers, professors, judges, aspiring or otherwise, reading judgments is extremely important. It is a practice that should become engrained in a person from the moment he steps into the world of law. It not only gives you a result. It not only tells you that a particular section has to be interpreted in a certain way. It also trains your mind in How to pick relevant from the irrelevant? How to decide issues? How to frame charges? How to appreciate evidences? It tells about the thought process of a Judge, the art of advocacy. Also, Reading judgments helps you with improving your vocabulary.

Having said that, it can be time-consuming to read judgments from beginning to end, particularly as they can be dozens of pages long. Some of these judgments which have come in recent times are easily running beyond 100 pages.

I think it’s fair to say that most of us are guilty of not reading the complete judgement because of the obvious reason that they are voluminous!

So, in this post, I’ll express some thoughts on how to read a judgment effectively? What are the different parts of it? What is Obiter dicta? What is ratio decidendi?

A judgment broadly comprises the name of the Court, followed by the names of the parties, citation, the facts of the case, the issues of law and fact, the findings of the Court, the arguments of the counsels of both the parties and finally the reasoning and the judgment. The judgment also has the names of the judges in the Bench.

A typical judgment will be divided into different sections. First paragraph tells you about the crux of the matter in it. If it is an appeal, it will tell you what is the order against which the appeal has been filed. To begin with, the first part of the Judgment would be about Facts of the case or the background of a case. The most basic premise to start reading any judgment is the facts of the case. It gives a clear context about the legal cases and provides a practical situation for the application of laws. Reading the facts and noting down the key points in one or two

lines is a good practice. This is of great help when we read the subsequent parts of the judgment where these facts are referred to while explaining the rationale.

Moving on, then you would see the issues which have been framed or the question of law that has to be decided. This is the dicey part of a judgment as the application of the legal principles, and the arguments of the parties are based on the issues of law and facts. To read the judgment effectively, it is of utmost importance that the issues are appropriately understood in the context of the facts of the case.

Then, the next part is about the submissions of the counsels. Typically, it starts with the Petitioner's counsel's submission followed by the respondent's counsel's submission. The arguments of both the counsels are on the questions of law and fact, where they assist the court in justice dispensation. Argument formation is an art, and this portion of the judgments is instrumental, especially to the young professionals who have embarked on the journey of law. It teaches you the "Art of Advocacy" to a great extent!

Now, let's move to the next and the last portion of a Judgment which consists *obiter dicta* & *ratio decidendi*. Both of them are important component of a judgment. The art of reading a judgment lies in that to be able to differentiate between the two - observations & findings!

Obiter dicta are remarks or observations made by a judge although included in the body of the court's opinion, do not form a necessary part of the court's decision. On the other hand, *ratio decidendi* is the actual finding of the court. The *ratio decidendi* is probably the most captivating part of the judgment where the court summarises the observation and applies the principles in the legal cases. It contains the ethos of the entire judgment and is the interpretation of the law. The proper reading and understanding of the *ratio decidendi* is the core of case law analysis. More often than not, the *ratio* also entails other judgments cited into it on which the court has relied upon to come to a particular conclusion. This portion needs to be carefully read and analysed so as to understand the actual findings of the Court.

Concluding by wishing all the readers "*Happy Judgment reading!*" :)

Article

On

**“Law Relating to Maintenance and Welfare of Parents
and Senior Citizens”**

Law Relating to Maintenance and Welfare of Parents and Senior Citizens

***Dr. Seema Totla**

Abstract:

"As a white candle in a holy place,

So is the beauty of an aged face."

Joseph Campbell

The Traditional Indian system inculcates respect for elders. Elders are considered an essential part of the family. Youngsters address their elders for advice in every situation of their life. This leads to senior citizens playing a crucial role in their families and society. In these days, these values are fast eroding. The ending of traditional joint families into nuclear families has resulted in the separation of families. Several senior citizens no longer have the same role in their families as was traditionally played. Efforts should be made to retain traditional values in this regard.

Neglect to the aged parents and other aged persons in the family may be possible in the western countries. Indian tradition and culture never accept it because aged persons in the family are never considered as useless. They are most valuable assets of the family. The aged persons just require a little care, attention, polite behavior in case of illness and few minutes time for discussion about day's business. In return they can give the family members priceless advice and emotional support wherever and whenever required. In the words of **Edison:**

* LL.M., Ph.D., prosecution officer, Rajasthan

“A young man learns quickly and forgets faster. But the aged person learns slowly and never forgets. Their knowledge matures along with their hair. Their experience of life is like the scientific discovery of any scientist which is beneficial to the entire society”.¹

Thus, provisions for protection of aged parents and other family members existed from several years in India. In present times, in few families, there has been the violation of such customary law, for which the state has to come forward to issue a command binding them to pay regards to the great Indian traditions. Section 125 Cr.P.C. and some provisions of personal laws are there to protect the interest of aged parents. For the purposes of protection of the rights of the parents and aged persons (senior citizens), Parliament has enacted a law, maintenance and welfare of parents and senior citizens Act, 2007.

Thus taking care of the elderly and making them lead a dignified, secure, meaningful and comfortable life is a duty of all, including the society and the State. The Constitution of India has recognized the duty of the State to care for the elderly by virtue of Article 41. This provision puts a duty on the State to respond appropriately for the care and welfare of this weaker section of the society. However, one must admit that the legislature has tried to protect the interests of the elderly, Though the elderly have been accorded the status of “Senior Citizens”, a name that spells respect, a lot needs to be done to make them actually feel senior citizens.

There has been a spate of reports of elder abuse, especially during the International Year of Older Persons. A couple of seminars and meetings organized by voluntary agencies tried to focus public attention on this issue. Newspapers report that 50 per cent crimes committed against elderly citizens involve matters of inheritance. Neglect is manifested in less severe forms of ill-treatment like insensitivity and negligence towards the need of the elderly. The reports in newspapers and electronic media regarding the neglect and

¹ From - Samman kay Paatra - Hammaray Vayovradja - by Mata Bhagwati Devi Sharma of Shanti Kunj, Haridwar, Uttarakhand Page - 24.

abandonment of aged parents by their children are alarming. In the name of generation-gap such reports and incidents are increasing.

The history and growth of maintenance legislation in India and the laws and benefits which are made for parents and senior citizen are very effective. The rights which are provided by laws protect them. Parents cannot be evicted from a house without due process of law if they have been staying there before; parents are entitled to get maintenance from their children. These laws are:

- (1) Section 20 of Hindu Adoption and Maintenance Act, 1956
- (2) Under Muslim Law
- (3) Section 125 of Criminal Procedure Code, 1973
- (4) The Domestic Violence Act, 2005
- (5) Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Section 125 Criminal Procedure Code, 1973 aims at providing a quick and inexpensive remedy to the neglected person namely the wife, children and parents who may obtain relief from their husband, father and children respectively. As the section aims at prevention of vagrancy and starvation, emphasis has been laid on the inability of the victims of neglect and refusal to maintain themselves. It is meant to achieve a social purpose. This section over-rules the personal law if there is any conflict between the two. The criminal procedure code is a law of the land and not of any community. The legislative will is supreme in this land and is controlled only by the constitution.

Supreme Court in *Dr. Mrs. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai & another*,² said :

An application under section 125(1)(d) of the Code of Criminal Procedure, 1973, by a father claiming maintenance from his married daughter is perfectly maintainable.

² AIR 1987 SC 1100

This is clear that the natural parents are entitled to receive from their children provided two conditions are fulfilled:

- (i) the son or daughter have sufficient means, and
- (ii) The father or the mother is unable to maintain himself or herself.

It is decided that even a daughter possessing sufficient means has the obligation to maintain her parents unable to maintain themselves.³

It is rich culture prevailing in India to respect, regard and maintain the parents and other members of the family like God. This culture, in the form of customs and traditions, prevailed in Indian society from time immemorial. Wherever there is any hole in such culture, the legislation always steps in to repair the same. Thus, apart from this customary protection of the interests of the parents and the senior citizens, it will be proper to discuss the legislative protection provided to the parents under the personal law.

Section 20 of the Hindu Adoption and Maintenance Act, 1956 provides for the maintenance of children and parents. Section 20 of the Hindu Adoption and Maintenance Act, stated that The obligation of a person to maintain his or her aged or infirm parent extends in so far as the parent is unable to maintain himself or herself out of his own earnings or other property.

According to the explanation to Section 20 of the Act, the word 'parent' includes natural father, mother and childless step-mother. However, grandfather or grandmother does not come under the word parent. The expression parents in the present context would include the adoptive father and adoptive mother. A step-father is not entitled to claim maintenance from a step-child but a childless step-mother can claim maintenance from the step-son or step-daughter. Only infirm parents are entitled for the maintenance under this section who are unable to maintain themselves out of their own earnings or other property. The oldest

³ Vijaya Monohar Arbat v. Kashirao Rajaram Sawai, 1987 (1) Crimes 713 (SC).

case decided on the subject of maintenance is one *Khetramani Das v. Kashinath Das*,⁴ in this case the Calcutta High Court referred to the Shastric Law as under -

"The duty of maintaining one's family is, however, clearly laid down in the Dayabhaga Law, Chapter-II, Section XXIII, in these words:

The maintenance of the family is an indispensable obligation, as Manu positively declares."

In the case *Jagjit Singh Bhatia v. Balbir Singh Bhatia*,⁵ it is held that a Hindu son is personally obliged to maintain his aged mother irrespective of inheritance of his father's estate, so keeping in mind the numerous family properties noticed in family settlement itself and personal income of sons from properties and business and standard of life which members of the family maintain and also considering that maintenance was agreed in April 2000 and sufficient time has since elapsed, so marginal increase in maintenance was allowed to meet the inflation, sons would pay Rs. 5,000/- each per month to the aged mother w.e.f. August, 2002 and also arrears, if any Rs. 5,000/- per month be also paid from April, 2000 i.e. date of family settlement. Further, sons were also restrained from dispossessing aged mother from the second floor of the house, the said relief was granted in proceedings in a partition suit.

In **Muslim Law** the Law of maintenance differs from the Law of maintenance in most other systems of Law. Mostly the obligation of a Muslim to maintain another arises as long as the claimant has no means or property out of which he or she will maintain himself or herself. It may be mentioned here that the main ground of liability to maintain, therefore, centers upon the capacity to inherit. Whether a Muslim man has means or not, he is obliged to maintain his wife and children, but distant relatives are to be maintained only if they are poor and the person himself is in easy circumstances.

According to the **Section 3 of Domestic Violence Act, 2005**, any act, omission, commission or conduct of the respondent shall constitute domestic

⁴ (1868)2 Beng LR 15.

⁵ AIR 2003 NOC 450 (Del.)

violence in case if it harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical and sexual abuse and assault, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to force her or any other person associated with her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person associated with her by any conduct mentioned in clause (a) or clause (b); or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Though, the maintenance of parents was included in section 125 of Criminal Procedure Code, 1973 and in section 20 of Hindu Adoption and Maintenance Act 1956, but these provisions have been proved really insufficient owing to various reasons like the tedious and time consuming court procedure, expensive recourse to justice and execution, and on top of that meager amounts, if at all realized through them. Interestingly, there is no provision in these statutes regarding childless elderly people. So there's need of an easy, inexpensive and speedy procedure to claim maintenance by the needy parents. Indeed, the National policy on Older Persons states, "Some areas of concern in the situations of older persons will also emerge, signs of which are already evident, resulting in pressures in living arrangements for older persons". And hence "To cast an obligation on the persons who inherit the property of their aged relatives to take care and maintain them and to form provisions for fixing up old age homes for providing maintenance to the indigent older persons and to supply better medical facilities to the senior citizens and to make provisions for protection of their life and property the Maintenance and Welfare of Parents and Senior Citizen's Act was introduced in the Parliament

The Maintenance and Welfare of Parents and Senior Citizens Act 2007 aims "to provide for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and recognized under the Constitution and for matter connected therewith or incidental thereto."

As the name says, this Act aims to protect the interests of not only parents but also of elderly childless people. The Act entitles a senior citizen (aged 60 or above) or a parent who is unable to maintain him/herself from his/her own sources, a claim for legal maintenance. The other most salient feature of the Act is its time bound directive. The case for maintenance has to be decided within a period of ninety days (extendable for another thirty days in exceptional circumstances), from the date of filing of application. Moreover, this Act is made not only to provide maintenance to the elderly, but also gives directives for care, welfare and protection of this vulnerable group of citizens by the State Governments. The act is having 32 sections. The various salient features of this Act may be summarized as below:

1. A childless senior citizen can claim for legal maintenance from his relatives who inherit his property.
2. The term “children” includes grand children and thus even the interests of grandparents are secured.
3. Adoptive parents or Step parents are also benefited by this Act in the same way.
4. The Maintenance Application is to be filed by the parent or the senior citizen himself or through an NGO before Maintenance Tribunal created by the State Government. On his choice, a District Maintenance Officer deputed by the State Government may also represent a parent before such tribunal. But no advocate is allowed to represent the senior citizens before the tribunal.
5. The case for maintenance may be referred to a Conciliation Officer.
6. A maximum of Rs. 10,000 per month may be awarded as maintenance by the Maintenance Tribunal. However there is also a provision for the interim period maintenance and interest thereupon @ 5 to 18% p.a.
7. The respondent has to deposit the entire amount within a period of thirty days from the date of the order of the Tribunal or face consequences like fine and/or imprisonment. However there is a provision for appeal against the order of the Tribunal before an Appellate Tribunal as created by the

respective State Government. The Appellate Tribunal has to pass its order within one month and that order is final.

8. Where any agreement is made to transfer a property of a senior citizen with the condition that the transferee will take care of the senior citizen and later he fails to do so, such transfer of property shall be declared void at the option of the transferor.
9. Where a custodian of a senior citizen abandons him, he may be charged with a fine up to Rs, Five Thousand and/or imprisonment upto three months.
10. State Governments are also directed to make comprehensive plans and to take adequate measures including creation of Old Age Homes to take care of the health, safety, security, medical care and means of entertainment to the senior citizens.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' has made an earnest attempt to render justice to parents and senior citizens.

Besides all these attempts which are done by government, by judiciary or legislature, some voluntarily organization like, old age home running by NGO's, day care centers, senior citizens associations (SCAs) etc. are doing work for the protection and welfare of senior citizens.

Old Age Homes and Day Care Centers:

The concept of old age home is very new to India. An old age home is a place for those old people who have no one to look after them or those who have forced to leave their homes by their children. The place is like home where the aged get all the facilities for a routine living, like food, clothing, and shelter. All these necessities are fulfilled here but, the love, and care of loved ones is missing. In old age homes, it is very useful, interesting and even touching to talk to old age people whether they are men or women.

However, for western countries it may not be so new for, because it is their original life style that there two generations never stay under one roof. But, in India where, for centuries, many generations have lived together, this new

concept of nuclear families is not accepted in India. It is the end of the joint family system and the introduction of a nuclear family that has brought this unhappy situation into our society and the old age homes have had to come up to complete the needs of the elderly.

It is seen by all who visit an old age home, that all the aged who are there, do not want to be away from home but because there is no better alternative left for them when they are neglected and unwanted in their homes by their own children, they have to stay at old age homes.

Senior Citizens Organization:

Senior Citizens Associations (SCAs) are like a community-based group of senior citizens working together to enhance the condition of older people and the community they live in and belong to.

Help Age India recognizes the potential of the Senior Citizens and is involving them in various activities. A number of seminars have been organized by Help Age in conjunction with Senior Citizens Associations across the country on the National Policy on Older Persons and Maintenance & Welfare of the Parents and Senior Citizens Act, 2007, for better advocacy of the rights and entitlements of senior citizens. As a result of the seminars, the Government in various states has initiated action for speedy implementation of State Policies on Older Persons and implementations of Maintenance & Welfare of the Parents and Senior Citizens Act, 2007. Help Age India is also organizing health camps in different parts of the country in association with Senior Citizens Associations.

A fund should be created for providing maintenance and looking after the other needs of the senior citizens to whom the Act is to be made applicable. The contributions made by family members of applicants must be deposited in the said fund. There should also be some budget allocation by the Centre or State or both, towards the said fund. The National Policy on older persons said that larger budgetary allocations from the State will be needed and the Rural and Urban poor will be given special priority and attention. However, it is never desirable for the State alone to attain the objectives of the National Policy. Companies, families,

communities, individuals and institutions of civil society have to join hands as partners.⁶ And the elderly must be helped, in every way, that they do not miss the "occasional episode" in the twilight of their lives. AAO UNHEN NAMAN KAREIN. Let us bow to them not reject them or neglect them.

THE BAR COUNCIL OF INDIA AND ONE-YEAR LLM ABOLISHMENT –

YOSHITA SINGH

ANALYSIS:

In January 2013 one-year LLM programme was introduced by UGC in India, before January 2013 India was following the traditional 2-year LLM programme. Many reputed Universities opted for this one-year LLM programme like NLU's (Delhi, Bangalore, Hyderabad, Kolkata, Jodhpur, and many more), Indian Law Institute, Tata Institute of Social Science, etc. While some followed the traditional LLM programme only like, Faculty of Law (Delhi University). The BCI has stated that, if a person gets an LLM degree from a "highly accredited" foreign law school or university after doing LLB from an Indian Law School, then that degree will not be considered equivalent to Indian LLM degree. To consider it to be equivalent to an Indian LLM degree the concerned foreign LLM degree holder will be required to teach as Visiting Professor/Internee Faculty/Clinical Faculty in an Indian University at least for a year. One-year LLM degree (from highly accredited foreign law school) may be considered equivalent with one-year teaching experience in an Indian University. In India, the average Law School fee is 1-3 Lakhs per annum for an undergraduate law degree, and LLM its average 2 lakhs per annum. Starting salary which is offered to a non-NLU law graduate is 25-30 thousand per month. Now the question is, in a country like India where most of The Student study on an education loan or some kind of loan and opt for a professional degree will they be able to pay back their loan and survive in this amount?

COMPARISON:

According to the Bar Council of India Guidelines, a person needs 2-year LLM degree or 1-year LLM degree + M.Phil. Degree as minimum eligibility to become Assistant Professor in an Indian Law School. M.Phil. programme is of 2 years, so an aspiring Assistant Professor needs to study for 3 years if he opts for the 1-year LLM programme. One-year LLM provides time to aspiring advocates to gain more practical knowledge in their respective field than a two-year LLM provides. After doing LLB fresher's generally opt for Judiciary, Practise or Corporate Jobs, a very small number of graduates opt for teaching in Law School. Better book knowledge is required for teaching the law students as it will be the base of the career of aspiring Judge or Lawyer but at the same time, Practical knowledge is required to survive in this competitive

field of profession and to be a better Advocate and Judge. Many world-renowned Law Schools are offering one-year LLM Programmes with a great and compact curriculum, like Harvard, Yale, Stanford, Oxford, etc. These Law Schools have provided extraordinary professionals at our community, society and the world with a one-year LLM programme

. If we see Harvard Law School (Law and Business) they have divided it into 6 parts:

- Foundation Course of Business Law
- Intermediate Corporate Law
- Advance Corporate Law
- Advanced Taxation
- Bankruptcy and Commercial Law
- International/Comparative Law
- Seminars + Clinical Work Offering

NLU, Delhi who offers one-year LLM programme is divided into 3 parts:

Semester 1

- Legal Research Methodology
- Comparative Public Law/System of Governance
- Law and Justice in a Globalizing World
- Specialization Course-One
- Specialization Course-Two

Semester 2

- Specialization Course-Three
- Specialization Course-Four
- Specialization Course-Five
- Specialization Course-Six

DISSERTATION

- Dissertation

Faculty of Law, Delhi University who offers 2-3-year LLM Programme is divided into 4 semesters:

Semester 1 (four courses)

- Comparative Constitution Law and Governance
- Legal and Social Science research methods
- Optional Course-One • Optional Course-Two

Semester 2 (four courses)

- Law and Justice in a Global World
- Optional Course-Three
- Optional Course-Four • Optional Course-Five

Semester 3 (three courses)

- Optional Course-Six • Optional Course-Seven
- Optional Course-Eight

Semester 4 • Dissertation

After comparing one-year and two-year LLM programme of Indian Law Schools as well as Foreign Law School the question is: Was it necessary to abolish the one-year LLM programme? As a very small number of LLB graduate opts for the teaching sector, and many recognized Law schools were offering 2-year LLM programme. What was the problem in NLU's and many other respected universities one-year LLM curriculum?

CONCLUSION

In today's world where time is money adding one more year in the LLM programme and following traditional curriculum is not going to help the fresh law graduates of India. Taking a step back in time will not only affect the quality of the graduates, but it will also affect the pocket of people who wish to get specialization and define their legal career because one extra year of study means one extra year fee to the law school. Law Graduates could have used to that one extra year in working as a solicitor or working in a firm, but now they cannot do so.

The pay scale of a fresh law graduate is very low in our country, paying a hefty amount to law schools for a salary which will hardly help in surviving is not enough. Imagine an Indian getting an LLM degree from Harvard Law School (ranked no 2 in the world by QS ranking) and coming back to his country to work, According to Bar Council of India that person is supposed to work in an Indian University for at least a year just to get his LLM degree to be considered equivalent to an Indian LLM degree. This just doesn't seem logical in any way for someone who wishes to practise as a lawyer.