

Moot court and mooting



MOOT COURT



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Moot Court and Internship

After completion of the course the student will be able to:

- | | |
|--|---|
| 1. Understand how to prepare a suit and how to file in the court of law. | 1 |
| 2. Know the practical approaches of the legal education and its implementation while practicing. | 2 |
| 3. Draft complaints, written statement, say, affidavits. | 5 |
| 4. Refer citations during pleading. | 3 |
| 5. Appear confidently in front of court after doing internship. | 3 |

Introduction

- Object of a law institution is Holistic development of students.*
- Apart from imparting theory , training in practical presentation is essential part of legal education.*
- What is the meaning of 'Moot Court'?*
- A 'Moot Court' is a simulation of a real court of law, to give students an insight on dealing with a legal problem and how to present a case before a court of law.*
- Proceedings in a court room follow a set pattern of conduct. Right from the attire to the language and the way we speak and behave, follows some norms which are covered in this presentation.*

Why is 'Moot Court' important for students of Law.

Moot courts give law students a chance to get as close to real life lawyering as possible before one becomes a lawyer.

- To learn real life skills and practice them every day as a preparation for life as an advocate.
- Moot courts help students to explore the complexities of law.
- (eg. Medical profession – diagnosis and operation)
- Moot Court----- simulation of Higher judiciary
- (Argument only on law points, interpretation of law)
- Mock Trial----- Simulation of trial courts. (Recording of witness statement-chief, cross, re-examination etc.)

- ▣ *The process of becoming a good lawyer is a career long journey which begins at law school. Moot court presentation is an effort in this direction, where he develops the skills of understanding the complexities of a case, Research skills, a good drafting and a good oral presentation (arguments) all of which are essential for a law graduate to become a successful lawyer.*
- ▣ *What is Mooting :*
- ▣ *Mooting is the oral presentation of a legal issue or problem against opposing counsel and before a judge. Mooting is now a compulsory part of law education as their course curriculum and assessment , in law schools.*

- ▣ **The Teams :**

- ▣ *Mooting is a team exercise. Which develops co-ordination , co-operation and team spirit. (counsel, Researcher, Judge)*

- ▣ *In most of the competitions , generally the team comprises of a minimum of two and maximum of Three members.*

- ▣ **The Moot Court :**

- ▣ *The Moot Court should reflect, as far as possible, a real court room scenario.*

- ▣ *The presiding judge is supported by the clerk.*

- ▣ **Moot Problem :**

- ▣ Moot Problem is the Case which is to be presented before the moot court in the practical class or a competition.

- ▣ **Two Types :**

- ▣ **1. Decided cases of Higher Judiciary.**

- ▣ **2. Imaginary cases.**

- ▣ From the given problem , the students have to segregate the facts , issues and the judgement .

- ▣ In some competitions the organisers actually list the issues.

- ▣ **Moot Court Competitions :**

- ▣ 1. Inter class Moot court competition.
- ▣ 2. Inter collegiate (State or National)
- ▣ 3. International.

- ▣ **Some important Moot Court Competitions :**

1. NUJS Herbert Smith National Corporate Law Moot Court Competition.
2. Surana & Surana National Corporate Law Moot

- ▣ 3. Amity Moot Court Competition
- ▣ 4. NALSAR Justice Bodh Raj Sawhney Moot Court Competition
- ▣ 5. KLA Moot Court Competition, Kerala
- ▣ 6. All India Corporate Law Moot Court Competition, NLU Delhi
- ▣ 7. Bar Council of India International Law Moot Court Competition.
- ▣ 8. ELSA Moot Court competition.
- ▣ 9. Nani Palkhiwala Tax Moot. GLC. Etc.

The Attire

- ▣ In order to argue upon a case in the court room, one needs to don the specified court uniform.
- ▣ A standard court uniform includes-
 - Black suit with black tie or white band ,white shirt and black shoes.
 - No unnecessary accesories.
 - No ID or any object which reveals identification of your college/ university. (During Competitions- You are given a secret team ID/ code numbers)

Court Etiquettes

- Bow before the judge as soon as you enter regardless his attention or presence.
- The appellant has to take left seating and respondent has to take right; facing the judge (unless a contrary is arranged).
- If judge enters the court room, stand up, when judge reaches his chair, bow before him and take your seat only when the judge is seated.

- When the judge indicates then the first counsel must approach the podium and bow before the judge/bench before starting the arguments.
- Single male judge or the bench, in the Court Of Appeal is to be referred as 'My Lord/Your Lordship/Your Honour' and a lady judge is to be referred as 'Your Ladyship'.

- Introduce yourself as the counsel for the side represented by you.
- Don't mention the college/university name.
- However, the team code specifically assigned can be mentioned.
- Mention the contentions/issues/submissions to be taken up by you. If the arguments are divided, then also mention the contentions taken up by co-counsel.

Do's And Don'ts

- ▣ When judges are consulting amongst themselves, then a counsel should never interrupt and wait for judges to instruct to proceed further with arguments.
- Never interrupt a Judge when he is asking or clarifying a point.
- Never point a finger or behave arrogantly or be hostile towards opposite party.
- Do not start with the rebuttal by seeking an answer from the opposite team. Instead, wait for the time reserved for rebuttal, if there is any such provision made.

- ▣ Avoid saying 'Thank You ,instead use 'Highly Obliged'.
- ▣ Seek permission of the judge/judges to proceed further.
- ▣ This can be done by mentioning- 'The counsel humbly seeks the permission to proceed with....'
- ▣ Don't use the same line every time you seek permission.
- ▣ Use different ways to do this.
- ▣ Never say ,'May I carry on...'
- ▣ Avoid using slangs such as
 - ▣ 'yeah.
 - ▣ yup.
 - ▣ okay.
 - ▣ all right'.

•Preferable salutations :-

- “May it please Your Lordship./ your honour...”
 - “With the due permission of Your Lordship....”
 - “The counsel seeks permission.....”
-
- Never display your back to the bench.

Calling The Co-counsel

- When the first counsel is finished with his argument then he should seek permission to call his co-counsel to proceed with the arguments. The phrase which is advisable to call upon counsel is
- “The counsel humbly seeks permission to call upon the co-counsel who will be dealing / continuing with.....”
- When permission granted then bow before the bench and take your seat .Do so without showing your back.

Tips For The Researcher

- All the above tips are applicable mainly to oralists but researchers should also observe some of court manners.
- Court manners are no exceptions to researchers, they also play significant role in presentation.
- Oralists require information for them as well as passing information to judges. The information should be passed swiftly and this transit should be rapid and cautiously done.

Leaving The Court

- As the judge leaves his chair, get up and bow before him.
- Wait for the judge to leave before proceeding out of the court room.

Preparation

- Taking Up A Moot Court Problem :-
 - 1) Problem provided by the organiser. Rules and regulations are specified and some times issues are also provided.
 - Rules with regard to represent both sides or one of the sides, rules of time limit for oral presentation, number of max words and font and spacing in memorial , deadline etc.
 - 2) Option of choosing the problem.
 - While choosing the problem care should be taken to choose a well balanced problem allowing both the sides to argue their case.

Research

- *Research is the most important step in a moot court presentation. Entire performance depends on the quality of research conducted by the team.*
- *Following points are important in a research.*
 - *1) Read and Re Read the problem until the entire facts and issues are properly understood.*
 - *Don't just depend on the Head note.*
 - *Every word has a specific meaning and context in which it is mentioned should be understood.*
 - *2) Pick up the relevant significant facts of the case. Minor insignificant facts may be ignored.*
 - *3) Read the full **judgement**.*

Research Underway



- ▣ 4) *Search for previous judgements of the supreme court on similiar facts and quote them as citation.*
- ▣ *Read the citation in detail and check that it really supports your case.*
- ▣ *A wrong citation may go against you. (art.141 of the constitution –precedent)*
- ▣ *5) It is very important to know the facts and judgements of the cited cases. So that you can prove that facts and situations are similar.*
- ▣ *6) Study the high court judgement of a cited supreme court judgement. So that to know why an appeal is preffered.*

- ▣ 7) Refer to foreign cases and academics
eg-In Shreya Singhal versus union of India – Justice R.F. Nariman considered jurisprudence from the rest of the world.
- ▣ (Section 66A of IT Act which provides for maximum 3 years of imprisonment and fine for sending and *offensive messages* through electronic and internet media, which was missused by police many times, validity of which was challenged in this case).
- Petition filed under art 32 for violation of right to speech and expression u/a 19 (1).
- provision 66A was struck down as unconstitutional.

Drafting A Memorial

- *MOOT COURT MEMORIAL / WRITTEN SUBMISSION :*
- *Meaning : submission in writing of the details of the case . (jurisdiction , facts, arguments advanced and prayer)*
- 1. *The memorial is often the first thing moot court judges see your work , before hearing you orally.*
- 2. *Poorly written or illogically argued memorials leave a bad first impression.*
- 3. *Work on the memorial everyday.*
- 4. *Best memorial wins you half the battle and that is why you need to give ample time towards precise drafting.*
- 5. *Address all issues in the memorial---even those which support the opposition.*
- 5. *A good advocate will use all the research available, not just the cases that support his case. (But to the opposite party also)*

- ▣ 6. The writings must be clear and crisp .
- ▣ 7. The arguments must flow logically.
- ▣ 8. The law must be applied cogently to the facts.
- ▣ 9. The memorial takes several weeks or months to prepare and is the product of research , writing and editing.
- ▣ **This requires much work and dedication**

1st JAGANNATH MEMORIAL NATIONAL MOOT COURT COMPETITION, 2019

**IN THE HON'BLE SUPREME COURT OF INDIA
REVIEW JURISDICTION**

CURATIVE PETITION (Criminal) (/ 2019)

In

REVIEW PETITION (Criminal) (/ 2018)

In

WRIT PETITION (Criminal) (/ 2018)

IN THE MATTER OF

UNION OF INDIA.....APPELLANT

Versus

WOMEN FREEDOM UNION (WFU).....RESPONDENT

(UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA)

MEMORIAL ON BEHALF OF THE APPELLANT

TEAM CODE: R6

INTRA MOOT COURT COMPETITION, 2019

IN THE HON'BLE SUPREME COURT OF INDIA

**UNDER ARTICLE 132 AND 134 OF THE CONSTITUTION OF
INDIA, 1950.**

THE STATE.....(APPELLANT)

v.

RAMESH.....(RESPONDENT)

MEMORIAL SUBMITTED ON BEHALF OF THE RESPONDENT

COUNSEL APPEARING ON BEHALF OF RAMESH.

Contents Of A Memorial

- *The content in a memorial is divided into various heads which are as follows :-*
- *1) Cover Page*
- *2) Table Of Contents ---INDEX*
- *3) List of abbreviations. (short form -long form)*
- *4) Index Of Authorities --CITATION BASED ON*
- *5) Statement Of Jurisdiction-COURTS JURISDICTION TO TRY THE CASE.*
- *6) Statement Of Facts-----FACTS OF THE CASE*
- *7) Statement Of Issues -QUESTION PRESENTED FOR THE COURT TO RESOLVE.*
-

- ▣ *8) Summary Of Arguments (in brief)*
- ▣ *9) Arguments Advanced (oral arguments presented in detail before the honourable court)*
- ▣ *10) Prayer (Remedy seeked from the hounourable court)*

Detailed Contents

❖ *Cover Page* :-

- ❖ *Name Of The Moot Court Competition.*
- ❖ *Name Of The Court before which Petition /appeal is being filed.*
- ❖ *Name Of The Matter(Petition versus respondent). (Name of the parties to the dispute)*
- ❖ *Most respectfully submitted(Counsel For The Petitioner /Respondant).—At the right hand side of the bottom of the page.*

❖ Table Of Contents :-

❖ *Disclose subject heading and page number of each subject.*

❖ Index Of Authorities (A thing which carries the force of law.)

❖ *1. Constitution of India.*

❖ *2. Statutes (An enactment having binding force)*

❖ *3. Treaties Conventions And Acts (International)*

❖ *4. Judicial Decisions (Precedents –Art 141 of the constitution)*

❖ *5. International Judicial Decisions (International court of justice)*

❖ *6. Books, Essays, Articles and Journals.(By eminent jurists)*

.Index Of Abbreviations :-

❖ *Disclose all words which are used in short form.*

❖ *Eg.-----*

AIR _____ *All India Reporter*

SC _____ *Supreme Court*

SCC _____ *Supreme Court Cases*

SCR _____ *Supreme Court Reporter*

PIL _____ *Public Interest Litigation*

.Statement Of Jurisdiction -

- > State the Jurisdiction (authority of the court) under which you are approaching the appellate court, for the remedy you are seeking.
- It is extremely important and you should think carefully before you write it.
- The statement of jurisdiction addresses whether the court you are approaching has the authority to hear your case. **The courts jurisdiction can be challenged in main submission** by the opposing party.
- eg-
- Article 32, Article 131, Article 132, Article 133, Article 134, Article 136 and Article 226(HC)

.Statement Of Facts -

- > you must think strategically about which facts to include and in which order to present them.
- State all the important relevant facts relating to the case.
- No need to state all the facts. (irrelevant to the outcome of the case) (In moot court competitions considering the time restrictions)
- 1. Write the facts chronologically.
- 2. Lead with the most legally important facts.

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.Statement Of Issues –

Issues relating to the Moot problem is generally provided by the organisers.

.In the absence of issues ,it is for the competing team to frame the issues on the basis of remedy sought from the court and the relevant legal issues to be settled by the approached court.

.> State all the issues pertaining to the case which is to be decided by the appellate court./ original jurisdiction court.

.Summary Of Arguments -

. > State all the arguments in favour of your client in short.

Arguments Advanced :-

- > State in detail the arguments to be made in support of your claim(Issue wise),before the honourable court.
- Arguments advanced is the actual arguments you present before the court to convince the judges on a point in your favour .
- Arguments should be presented in a logical manner and issue wise. Such arguments can be supported through citations.
- Eg : Issue – *Can a citizens passport be confiscated arbitrarily.*
- Your arguments should be based on provisions of the constitution where your right to life and liberty is a fundamental right.
- Then support your submission by *Maneka Gandhi vs Union of India judgement.*
-

Prayer :-The prayer is typically located at the end of the document and specifies the specific relief or remedy that the party is seeking, such as damages, injunctive relief, or a specific court order.

- The prayer should be clear and concise and should accurately reflect the relief that the party is seeking.
- The prayer helps to provide clarity and focus to the court on the specific relief or remedy that the party is seeking. This helps to avoid confusion or misunderstandings about the party's claims.

▣ > *In the light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this is honourable court maybe pleased to.*
(Seek what remedy you want from the court)

PREPARING FOR ORAL ARGUMENTS.

- ▣ Advocacy in India heavily favours oral submissions over written pleadings. In moot court competitions also the teams progress on the basis of their oral submissions. Articulation and clarity is the essentials of a good oral submission.
- ▣ A Moot court participant generally opens the arguments with the standard phrase “ May it please the Court” , “May it please your Honour” or “ May it please your Lordship” . Followed with I am the counsel for the petitioner / Respondent , as the case may be.
- ▣ You **should not greet** the judges with Good Morning , Good Afternoon etc.



Oral Submission

Running Order Of A Moot ?

- > There are normally three members in a team out of which two are speakers and the other one is a researcher.
- > Once a judge is seated, everyone takes their seat and the argument commences.
- > The lead speaker of appellant/petitioner approaches the podium and makes his submission, starting with the submission on the jurisdiction of the court and proceeds with the submission on various issues. Also he answers the question posed by the judges.
- It is also necessary to know the provisions of all the sections and articles specified in the submission.

- *Body language should be positive. Maintain Eye contact.*
- *Finish the submission within the time allotted . (Time management is very important.)*
- *State the facts, issues and your submission on each issue.*
- ▣ *Upon completion he seeks permission of the bench to call the second speaker to make his submission.*
- ▣ *> When the submission is complete, speakers for respondent are given a chance to make their submission.*
- ▣ *> As a concluding part of the submission, counsel for appellant/petitioner are given a chance for rebuttal.*
- ▣ *> After rebuttal the oral submission is concluded and the performance is evaluated by the judges.*

CASE ANALYSIS

ARUNA R. SHANBAUG V/S UNION OF INDIA



Sohanlal the accused



Pinki virani journalist.



▣ Introduction

- ▣ The concept of “Euthanasia” has not only been a brand new concept for the Indian medical industry; its public acceptance has been a debatable topic too. In the course of discussing the **legality of Euthanasia**, it has always been a general query whether the provision of the right to life under *Article 21* of the Indian Constitution also **encompasses the concept of the right to die**. Therefore, the dire need for improvement in medical law and the potential of the patient’s family members to abuse this privilege have made the right to die a crucial issue.

- ▣ There is still an ongoing discussion over whether the “Right to Life” may be construed to include the “Right to Die.” On the other hand, the idea of euthanasia in India has met with various mixed reactions as the medical sector increasingly focuses on patients’ informed permission.
- ▣ This case of Aruna Ramchandra Shanbaug continues by separating passive and active euthanasia.

▣ **Facts of Aruna Shanbaug Vs Union of India**

- ▣ Aruna Shanbaug Vs Union of India case has paved the way for the legalization of passive euthanasia in India.
- ▣ Aruna Ramchandra, the victim, was a nurse at King Edward Memorial Hospital of Mumbai. One of the sweepers of the hospital had attacked her on 27th November 1973. He had choked and strangulated her via a dog chain with the intent to rape her and restrain her movements. Subsequent to realizing that Ms Aruna was menstruating, he sodomized her.
- ▣ On 28th November 1973, she was found lying on the floor, wounded, with blood everywhere and all over her

- ▣ . She was found in an unconscious condition by one of the cleaners. Consequent to such heinous strangulation via the dog chain, the supply of oxygen to her brain had ceased entirely, causing severe damage to the cortex of her brain. She had sustained a brain stem contusion besides having a cervical cord injury.
- ▣ After 36 years of the incident, a petition for the case was filed under **Article 32 of the Indian Constitution** by a friend of Ms Aruna in 2009.
- ▣ For these many years, Ms Aruna has been in a permanent vegetative state and has become highly feeble and infirm.

▣ Legal Issues Involved in Aruna Shanbaug Vs Union of India Case

▣ Following Legal Issues Involved in Aruna Shanbaug Case

- ▣ Does Article 21 of the Constitution include the right to die embedded within the right to life?
- ▣ What is the difference between passive euthanasia and active euthanasia?
- ▣ Can individuals be allowed to give a “Living Will”, i.e. directives on medical treatment, if they become incompetent or unable to communicate in the future?
- ▣ Should the right to die and the right to die with dignity be studied comparatively?

▣ **Petitioner's Arguments in Aruna Shanbaug Case**

- ▣ The petitioner in Aruna Shanbaug Vs Union of India case, contended that the right to life enumerated under Article 21 of the Constitution defines the right to live a fulfilled life with utmost dignity.
- ▣ It must, therefore, also include the right to die with dignity.
- ▣ Individuals suffering from any terminal illness or permanent vegetative state must be included under the right to die with dignity to end the prolonged suffering and agony.

- ▣ Ms. Aruna lacks any awareness of her surroundings and is even unable to chew her food; she cannot express anything on her own and is just bedridden for the past 36 years with no scope for improvement. The patient is virtually dead, and the respondents, by not feeding Ms Shanbaug, will not be killing her.
- ▣ **Respondent's Arguments in Aruna Shanbaug Case**
- ▣ The Respondent's arguments in Aruna Ramchandra Shanbung Case are, the hospital dean contended that Ms Shanbaug was being fed and cared for by the nurse and hospital staff for as many as 36 years.

- ▣ Now that the patient has crossed as many as 60 years of age, she might naturally succumb to death. The staff had exceptional and utmost responsibility and willingness to take care of her. Therefore, they opposed and resented the idea of Ms Shanbaug being euthanized.
- ▣ They begged the court not to permit the act of killing since the staff had been diligently and with respect taking care of all her fundamental necessities and prerequisites. Therefore, if euthanasia has been legitimized, such a step can be profoundly inclined to abuse.

- ▣ One medical attendant has even been willing to care for her without being remunerated.
- ▣ Therefore, it is evident that the petitioner, unlike the hospital staff, neglects to have a close-to-home connection with the patient and lacks the necessary emotional attachment.
- ▣ Moreover, since the hospital staff diligently and with utmost dignity took care of Ms Shanbaug for many years, they looked after her basic needs with care.

- ❑ Legalization of passive euthanasia can be prone to misuse by family members and relatives. They pleaded with the court to reject the allowance of euthanasia.
- ❑ Terminating Ms Shanbaug's life would be immoral and inhuman since she has a right to live. Moreover, the hospital staff's exceptional and selfless service must also be considered.
- ❑ Furthermore, since the patient is not in a condition to consent to withdrawal from the life support system, the big issue is who would consent for Ms Shanbaug.

▣ **Decision of Aruna Shanbaug Vs Union of India Case**

- ▣ The court in the Aruna Shanbaug Vs Union of India case, distinguished between active and passive euthanasia. Active euthanasia can be seen as the positive and deliberate termination of one's life by injecting and administering lethal substances. It is considered to be a crime worldwide except permitted by legislation.
- ▣ In India, active euthanasia is a straight infringement of ***Section 302 and Section 304*** of the IPC.

- ▣ The High Court, under article 226, was entitled to make decisions regarding the withdrawal of the life support system.
- ▣ The apex court enlisted a proper procedure and guidelines for granting passive euthanasia in the “rarest of rare circumstances” while rejecting the plea made by the petitioner.
- ▣ A bench was constituted by the Chief Justice of the High Court when an application was received, before which a committee of three reputed doctors nominated was referred. A thorough examination of the patient, state, and family members was conducted along with a notice issued by the bench.

- ▣ Therefore, in support of the “*Parens Patriae*” concept, the Supreme Court entrusted the authority to decide the end of a person’s life in the High Court in order to avoid any abuse. As a result, in certain circumstances and with the High Court’s consent after following the proper procedure, the Supreme Court permitted passive euthanasia.
- ▣ However, Supreme Court opined that passive euthanasia could be allowed in exceptional and rare cases with due approval from the patient’s family members and doctors.

- ❑ Supreme Court held that it should be sparingly used and not become a tool for eroding Article 21 of the Indian Consitution. Therefore, the court's assessment of the medical report and the definition of brain death provided in the *Transplantation of Human Organs Act, 1994*, clearly explains that Ms Aruna's brain was not dead.
- ❑ Despite being in a Permanent Vegetative State, she had a stable state. She had sensations and could breathe without assistance. Therefore, ending her life was not warranted.

▣ **Ratio Decidendi of Aruna Shanbaug Case**

▣ **The Supreme Court stated the following reasoning for its judgment in the Aruna Shanbaug Vs Union of India Case:**

- ▣ It is pretty implied that all over the world, active euthanasia has been stated as illegal in the absence of any legislation permitting it. In contrast, even in the absence of legislation, passive euthanasia has been stated as legal.
- ▣ The report presented by the committee of doctors stated that Ms Shanbaug's brain was then responsive to likes and dislikes, which she can express through small gestures and sounds like smiling and blinking eyes. Therefore, she was responding to the outside environment.

- ▣ The potential threat of misuse of passive euthanasia cannot be ruled out, which holds every chance of breaching Article 21 of the Constitution of India in the event of low ethical standards prevailing in our society and with increasing corruption. Therefore, there is a dire need for a balanced approach in such a sensitive issue, which includes a person's death and life.

- ▣ **Critical Analysis of Aruna Shanbaug Case Judgment**

- ▣ **Concept of Euthanasia in Brief**

- ▣ Euthanasia could be termed as a mercy killing, which defines any act or practice that contributes to painlessly putting to death of persons suffering from painful and irremediable disease or paralysed physical condition or permitting them to die by withdrawing treatment or any artificial life support system.

- ▣ In the concerned case, High Court has provided specific guidelines concerning passive euthanasia. These guidelines enumerate the lawful procedure for withdrawing any medical treatment or artificial life support system to any patient that could lead to a person's death. Such a judgment has legalized passive euthanasia in India under certain conditions that the High Court shall fix.

- ▣ In 2018, in the case of *Common Cause v. Union of India*, Supreme Court stated that while considering the legality of passive euthanasia, it has to be noted that the right to die with dignity is included under Article 21 of the Constitution along with the right to life. Therefore, it is very much relevant to withdraw the life support system of patients suffering from a terminal illness who are in a coma for a lifetime; so that they can die with dignity. The notion of “living will” was also provided in the concerned case..

- ▣ The concept of “living will” is a document that facilitates in taking the consent of a patient in advance in the event if and when, during the term of the treatment, the patient gets seriously ill or paralysed in future or becomes the victim of a situation or medical condition wherein he is unable to give consent or take any decisions. The document then serves as the concerned patient’s living will or living consent

- ▣ **Right to Die v. Right to Die with Dignity**

- ▣ The right to life has been expressly provided in the Constitution under Article 21. On the contrary, the right to die has always been debatable and has not been expressly provided anywhere in the Constitution. However, the right to die has been diversely interpreted by various courts in their judgments based on their individual opinion and knowledge.



- ▣ In the landmark case of *State of Maharashtra v. Maruti Sripati Dubal*, the Bombay High Court stated that the right to die had been included in the right to life as per enumerated under Article 21 of the Constitution. It was further stated that **Section 309 of IPC** is unconstitutional to the extent that it violates the provisions of Article 21 of the Constitution since the right to die directs towards the right to commit unnatural death.

- ▣ Later on, Supreme Court, in the case of *P. Rathinam v. Union of India*, passed the judgment, thereby recognizing the right not to live, which has been included in the right to life as enumerated under Article 21 of the Constitution.
- ▣ However, the Supreme Court, in the case of *Gian Kaur v. State of Punjab*, overruled the decision given in the P. Ratinam case and stated that the right to life should not include the right to die. Albeit, the right to life shall include a life that is lived with human dignity and further extends to the inclusion of the right to die with dignity.

- ▣ The Court held that there is a fundamental difference between the right to die and the right to die with dignity. The right to die shall include taking away a person's natural life span, thereby causing unnatural death.
- ▣ However, the right to die with dignity shall include undertaking a process or causing a situation to accelerate the process of death in case of patients who are in a Permanent Vegetative State or under the influence of a coma for a lifetime.

- ▣ Therefore, the recognition of the right to die with dignity through passive euthanasia could be applied to terminate the lifelong suffering and mental agony of patients having paralysed physical conditions or incurable diseases.
- ▣ It is evident that both of these rights are opposite and poles apart and should not be misinterpreted on purpose. Lately, the right to die with dignity has been recognized by upholding and legalizing the execution of Passive Euthanasia (both voluntary and involuntary).

▣ Conclusion

- ▣ Aruna Shanbaug's case has, for the first time, laid down the guidelines relating to the procedure for execution of Passive Euthanasia in India. Prior to this, rarely was the concept brought into concern. The judgment in the concerned case has opened up a new horizon in regard to the right to die with dignity, thereby expanding the ambit of Article 21 of the Constitution.

▣ Press Esc then
triple click this ->



Nelson Mandela University Faculty of Law Moot Court Final 2017.mp4

- ▣ **MOOT COURT PROBLEM**

- ▣ **CONSTITUTIONAL LAW**

- ▣ Maratha Butchers' Association, a Registered Society and Others Petitioner

- ▣ v.

- ▣ State of Maratha and Others Respondent

- ▣ The Republic of Indica is located in the South Asian Region of Asia. It is one of the ancient nations in the world. Till 1947, Republic of Indica was a British colony for about 150 years. It achieved independence in 1947. Now the Republic of Indica is a democratic country with a written Constitution which came into force in 1950. It has 29 States and 7 Union Territories.

- ▣ The Constitution has adopted Parliamentary system wherein President is the executive Head of the government. The majority of the population of the country belongs to Hindu religion. Buddhism, Christianity, Islam, Jainism and Sikhism are the other major religions followed by the people of Republic of India. The Republic of India is characterized by a diversity of religious beliefs and practices, dressing, cultural outlook, food-habits etc.

- ▣ Some religion like Jainism strictly follow the principle of non-violence and therefore stressed upon vegetarian food habit. This is not so in case of other religions. Under Hindu religion some are vegetarians and some are non-vegetarians. Throughout the Republic of Indica's history, religion has been an important part of the country's culture. The history of Republic of Indica has witnessed some prominent instances of religious disharmony amongst various religious groups.

- ▣ The Constitution of Republic of India declares various rights as fundamental rights. Some of the fundamental rights are the right to freedom of religion, freedom to carry on any trade, profession and business, right to life and personal liberty etc. The fundamental rights are mostly enforceable against the 'State'. The concept of 'State' is defined by the Constitution of Republic of India. The Constitution also incorporates some features of secularism. The Supreme Court of Republic of India, in its few landmark judgments has expanded the meaning of 'right to life and personal liberty'. Almost everything which has connection with person's meaningful life has been held as integral part of this right. Recently the Supreme Court of Republic of India held that right to privacy is a part of right to life and personal liberty'.