

## MULTIDIMENSIONAL VIEW ON MERCY

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### **INTRODUCTION**

The word mercy came from Anglo-French *merci* and Medieval Latin *Merced*, *merces* it is a broad term which refers to as forgiveness or giving apology.

In courts too some amount of mercy could be granted by the judge to the convict by reducing his or her awarded sentence, if the justice thinks that he or she has really repentance for the deed he or she has committed. Under *Article 161* of constitution of India a convict has a right to make a mercy petition to the governor and under *Article 72* to the president of India. And also it made clear in Section 12 of the contempt of courts Act makes it clear that the accused of contempt of court may be discharged or the punishment awarded maybe remitted on apology being made to the satisfaction of the court<sup>1</sup>. For example in Rajiv Gandhi assassination case all the three convict Murugan, Santhan and Perarivalan were accepted mercy and thus their capital punishment got reduced to life sentence. But it is not compulsory in every 0case. Which is been cleared in *M.C Mehta versus Union of India*, apology tendered by the contemnor was not the product of remorse was rejected on the ground that it was not the product of remorse or condition. The court has made it quite clear that an apology is not a weapon of defence to purge the guilty of the contemnor. It must be sought at the earliest opportunity.

Mercy and killing though sounds totally opposite but still they can be brought together in some situations. Euthanasia though considered as illegal all over the country except in those

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<sup>1</sup> ) DR.Kailash Rai, Legal Ethics , XI<sup>th</sup> edition,pg282 p.2

which has given its consent but still there are situation in which such crime is required to give the appellate revile from his or her existing sufferings.

For example in Aruna Ramachandra Shanbaug case where 36 years had expired since the incident of her rape and Aruna Ramachandra Shanbaug is about 60 years of age when she filed the euthanasia case. She was featherweight, and her brittle bones could break if her hand or legs are awkwardly caught, even accidentally, under her lighter body. She has stopped menstruating and her skin is now like papier mache' stretched over a skeleton. She is prone to bed sores. Her wrists are twisted inwards. Her teeth had decayed causing her immense pain. She can only be given mashed food, on which she survives.<sup>2</sup>

She was like a death skeleton. Though Supreme Court of India didn't agree to accept the prey of the plaintiff due to its obligation but still it with the ethnic prospective mercy should have been granted.

### **METHODOLOGY**

The project is purely based on secondary data. Report, judgements and articles are been observed, analysed and reinterpreted to prepare this report.

### **RELIGION AND MERCY**

Mercy is an idea basic to the comprehension of divine beings managing mankind. As indicated by Hinduism god can never pardon yet he furnishes just with benevolence. It says that leniency is divine while no such things like celestial absolution exist. Since to excuse somebody one needs to first get insulted on him or her however it is said that god can never judge or have resentment on his youngster. In this manner we can unmistakably see the contrast in the middle of benevolence and pardoning. There is likewise a contrast in the middle of leniency and beauty. Leniency is God not rebuffing us as our transgressions merit,

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<sup>2</sup> Aruna Ramachandra Shanbaug V. UOI, (2011)15 SCC 480

and effortlessness is God favoring us in spite of the way that we don't merit it. Kindness is deliverance from judgment. Elegance is stretching out generosity to the unworthy<sup>3</sup>.

In the twentieth century, there was new focus on altruism in the Roman Catholic Church, not entirely on account of the Divine Mercy responsibility. The vital focal point of the Divine Mercy commitment is the tolerant love for God and the desire to let that worship and consideration travel through one's own heart towards those requiring it<sup>4</sup>.

The 7 Spiritual Works of Mercy:

1. To instruct the ignorant;
2. To counsel the doubtful;
3. To admonish sinners;
4. To bear wrongs patiently;
5. To forgive offenses willingly;
6. To comfort the afflicted;
7. To pray for the living and the dead.

The 7 Corporal Works of Mercy are:

1. To feed the hungry;
2. To give drink to the thirsty;
3. To clothe the naked;
4. To harbor the harborless;
5. To visit the sick;
6. To ransom the captive;

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<sup>3</sup> **What is the difference between mercy and grace**, as on 4<sup>th</sup> August 2015, also available at: <https://www.gotquestions.org/mercy-grace.html>

<sup>4</sup> Quick Hits: Not always what they seem: Deaconesses, Jesuits, Christmas displays, By Dr. Jeff Mirus Sep 29, 2016, [www.catholicculture.org](http://www.catholicculture.org)

7. To bury the dead.<sup>5</sup>

It is believed that faith of a person turns to gets activated or turns or changes through his merciful deed.

In Islam the title "Most Merciful" (al-Rahman) is one of the names of Allah and Compassionate (al-Rahim), is the most generally perceived name happening in the Quran. Rahman and Rahim both get from the root Rahmat, which implies delicacy and consideration. As a sort of mercy, the giving of offerings (zakat) is the Five's fourth Pillars of Islam and one of the necessities for the reliable.

Kwan Yin the bodhisattva of benevolence and sympathy is one of the best known and most loved Bodhisattva in Asia.

In the Jewish Bible leniency is one of the remarkable characteristics of god. Key to the focal at Sinai is to perceive YHWH as kind, as Exodus says: "The Lord, the Lord, a God benevolent and generous, moderate to outrage, and possessing large amounts of resolute affection and devotion." This is additionally stressed in the setting of the Babylonian oust in Isaiah: "For the Lord has helped his kin, and will have empathy on his misery ones. Be that as it may, Zion said, 'The Lord has neglected me, my Lord has overlooked me.' Can a lady overlook her nursing youngster, or demonstrate no sympathy for the offspring of her womb? Indeed, even these may overlook, yet I won't overlook you." Also: "It regards supplicate and quick, to be benevolent and simply." Psalm calls upon all countries to adulate the Lord for God's "tolerant graciousness."

### **HOW TO JUDGE**

It's a wide area to research upon. No one on earth can clearly give the definition of mercy since what one may think as correct or a mercy another may think it's a crime or injustice to the person himself or other. No fix boundary can be fixed around the term and practice of

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<sup>5</sup> Year of Faith Catechism Study: CCC 2855-2856, 2865 - The Final Doxology, September 25, 2013 01:02 by [John](http://www.solemncharge.com/) available at <http://www.solemncharge.com/>

mercy, for example euthanasia a hotly debated topic of the date is verily debated just because different people have different prospective on the topic. For some “*mercy killing*” is ‘*mercy*’ will for others it is just ‘*killing*’ or ‘*murder*’. Both can justify their view with logic but none can totally deny other’s prospective sine both are correct and wrong at the same. In the case of Aruna Ramachandra Shanbaug it may be said by many that it was wrong to not grant her mercy petition but at the same time the court has its own law which have to be followed to maintain code of conduct of the society.

Mercy is also provided to a convict by the president under article 72 which quotes “Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases” and by the governor under article 161 it is stated that “Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends”. For many these provision of law is making the guilty a chance of escape in fact it is also insulting the Judgement of Hon’ble Courts and making their value of verdict low and thus it should be made void. Moreover criminals like Yakub Menon is getting chance to kill time. Other criminal are getting some time to make plan of escaping. But for many since a convict also has a right to exercise his or her legal and fundamental right to a certain extent until it is harming others, maintaining the sentence of court and contempt of prison. So they should also get a last chance especially if the person is really feeling guilty of his or her deed. After all the work of the court is not to kill criminal but to kill crime to make a person realize his or her mistake. Here also though both are totally opposite to each other neither of them is wrong both are correct but standing within their respective shoes. If we take ones side the other will be put to injustice. Similarly while giving Judgement in civil court some amount of mercy is shown by the court by seeing the guilty person’s background such as financial condition, dependency and others. We all are standing in evening neither in complete light nor in complete darkness while deciding whether a mercy decision is correct or wrong.

**WHAT IS THE CORRECT WAY:**

The only way out of choosing the right path is by adapting the theory of consequentialism and utilitarianism which is the class of normative ethical theories holding that the consequences of one's conduct are the ultimate basis for any judgment about the rightness or wrongness of that conduct and somebody ought to do some action act which will bring about the greatest happiness (pleasure) for the greatest number of person (the community). The trauma though will get a little reduce but still it will be tough to say which side will give more pleasure and which one pain. The value of a pleasure or pain, considered by itself, will be greater or less according to the four following circumstances:—

- (1) Its intensity.
- (2) Its duration.
- (3) Its certainty or uncertainty.
- (4) Its propinquity or remoteness.

Thus the question lies that even after applying all this theory can we satisfy all? The answer is no since no one view or path can satisfy other nor two way can satisfy all. There are many ways or view and no one is complete in itself each one have its own faults and achievements so which is the correct path? Or rather is there any so called correct way on which we can walk? Maybe mercy to be done or not is itself becomes a big question every time since time immemorial. No matter how educated and wise one becomes this question will always haunt while taking decision. And during this time the mind and heart can become the worst enemy. But at the same time how good is a person as a decision maker can be said on the correct or incorrect decision and he or she have taken at this point of time similarly how its consequence is impacting on his or her near and dear's life including himself. For example:- king of kings the great Akbar once arrested a unruly courtier only at the age of 13. The courtier was once his father's favourite courtier so if at the time of arrest he might have thought to provide mercy and let him go but she didn't do anything like that and the strict step was taken. The action alone can't judge but the consequence can judge its rightness. And the consequence made the action absolutely correct and necessary to show his power and maintain conduct of the court and to give a message that let their king not be get judged by age cause his mental strength is much more than his number age or physical age.

But at the same time he must have dishonoured the loyalty, faith and trust of the courtier and his family. The courtier might not have got the correct price of his hard work. And the king's such a step had not only put the king's reputation down in front of his family but to the society at large. By seeing such a reward of loyalty they might thought of not to give so much to a person who can't respect others hard work. Thus no one can say which the correct way is. Since if king Akbar didn't take such a step than it might happened that Akbar may not have got such a control over the court and had become just a puppet of his powerful courtiers. Thus we can't find any one correct way since all the available path are bed of rose where pleasure of beauty and pain of spike will surely be present. Nobody can achieve one by not facing another. It's very tough to identify the value of the way on which we have to walk. Doing mercy is not always the correct decision when, how, and in what quantity is an important question that should be address. And the more fine one can address the more good and happy life one can live.

### **IS MERCY BY LAW IS ALWAYS MERCY BY ETHICS**

Law in some cases do find its foundation stone in ethics but many a times it gets contradicted and both become rivals to each other. Sometimes ethics too will contradict with itself since many rules of ethics can't be kept in same box. For example if a hungry farmer steal some cereal from neighbour to feed his family and himself he will be punished by law but under the philosophy of ethics she can get mercy. Such a mercy is repealed by law. According to law crime and criminal has no face no past. If it is done by someone then he should also get ready to face its consequences.

In ethics to it is sometimes very complicated to decide whom to provide mercy with. The plaintiff who suffered out of no cause or the defendant who did committed the crime but had quite a few reasons for it.

### **CONCLUSION**

Mercy in law can be found in different perspective. Sometimes though ethics may say yes to a verdict but law doesn't give its green signal and vice versa. For example at present



euthanasia is a major problem dealt by the courts all over the world thus we can say that ethics is struggling with law in a way in certain cases like the one cited. Mercy petition should not be regarded as a weapon of defence to save oneself from being sentenced as convict. It should contain three main elements with it i.e. should be asked with

- 1) Sincerity
- 2) Good faith
- 3) And real feeling of repentance

Whether mercy will be given or not depends on factors like attitude of the contemnor, gravity of the contumacious conduct, his past record etc. Thus, usually the apology is not accepted from those who are found to be indulging in repeated disobedience or from those who persist in justifying the action rather than express the genuine regret from those who do not have real feeling of repentance and blame the circumstance which led the contempt<sup>3</sup>.

Mercy is divine and while deciding how should and how much mercy the theory of consequentialism should be followed by one. Providing mercy is a human nature. We derived this nature from our ancestors or rather from god who is the supreme source of divine mercy.

In every religion the teachings of mercy is been taught about and it is intended that no matter which religion or path to reach the god one follows mercy will be provided by and for all. Thus we can say in a way this human attitude can make the world have a new look. And not only can unity the world but also can reduce any sought of crime rate.

Prior to the contempt of court act an apology with justification was not accepted since both can't be fitted in the same box. However explanation to section (12) subsection (1) enabled the contemnor to both apply for bona-fide apology and defence at the same time. Mercy thus in law not only means forgiveness but also to show sympathy or benevolence on the existing situation and provide a helping hand to people who is in need of it.