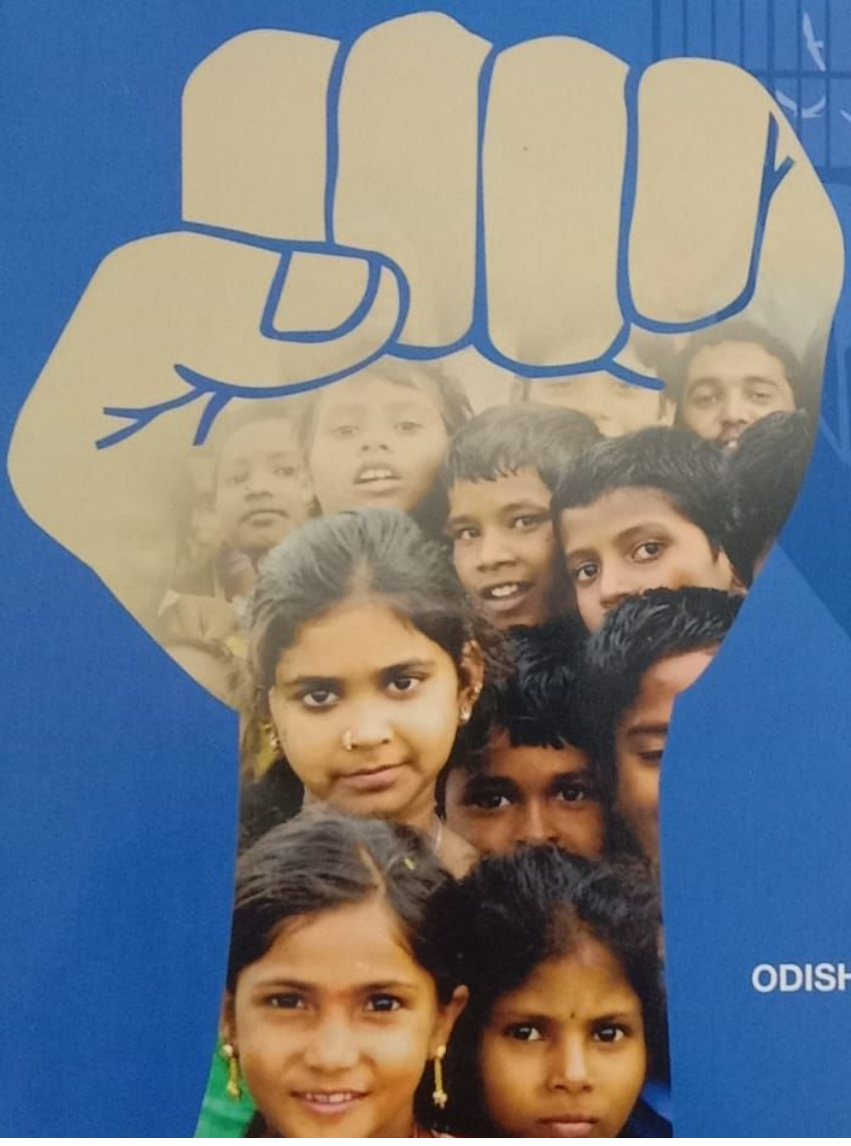
The People's Beacon



ODISHA HUMAN RIGHTS COMMISSION
BHUBANESWAR

WHERE IS JUSTICE FOR ARUNA?

Darshanika Panda
Second Year
Symbiosis law school, Pune

"You know what? The astrologer says that I have one in a hundred destinies. I shall live to be a really famous person and shall do very well in my field."

Those were the words uttered by a lady who was too excited about her career and had a strong belief that she would surely be a recognised person in her field. However, little did she know that this recognition she was talking about shall be given to her in the most unconventional way, something which even the best of astrologers wouldn't have imagined. A beautiful, spirited and sincere lady's life was cut short at the mere age of 25 by a devastating accident which rendered her in virtually dead forever. Even after her death on 18th may 2015, after lying in a persistent vegetative state for almost 42 years, she could never get justice in the true sense. It felt as if lying in the hospital room, she was screaming for justice at the top of her lungs, but no one ever paid heed to it. As if every wall of the hospital room even after her death today cries at her pitiable state. That is Aruna Shanbaug, the nurse whose story would stir even the cruellest of the cruel hearts. That is the story which established a major precedent in the country and yet, itself died an unheard death amidst this entire clamour. That is the story which grabbed the headlines for so many years and yet, couldn't give the victim the basic rights that she begged for. That is the story which clearly shows the loopholes in our society and its functioning.

Aruna Shanbaug was a junior nurse in the year 1973 in the King Edward Memorial (KEM) hospital, Parel, Mumbai. Like every other girl of her age, she too had some dreams, some aspirations and loads of happy moments to look forward to.She was engaged to a doctor of the same hospital and was to get married soon. She along with other staff, sweepers etc. was entrusted with the charge ofthe "dog lab" (a laboratory where unclaimed street dogs were being kept for experimental purposes).Aruna however had a particular dislike for the sweeper named Sohanlal BharthaValmiki whom she often scolded for mistreating the animals as well as stealing food and medicines meant for the stray animals. She had threatened him that she would complain of his behaviour to the dean of the hospital if he didn't change his ways. Obviously Sohanlal was quite piqued about this.On the fateful day of 27th November 1973, she had finished with her duty by evening and was heading towards the hospital basement for changing clothes when seizing the opportunity Sohanlal attacked her to take revenge. He had come with the intention of raping her, but finding her to be menstruating instead sodomised her by choking her with a dog chain. The next morning she was found lying there in a pool of blood by a cleaner. On taking her to the hospital it was confirmed that this act of strangulating her neck with a dog chain had caused asphyxiationand cut the supply of blood to her brain resulting in brain stem contusion injury, cervical cord injury and cortical blindness. Such was the impact of the injury that she went into a vegetative state permanently, never to recover again. All efforts to bring her back to normal state went in vain. Police after investigating this matter on the basis of the FIR filed came to the conclusion that the accused had committed attempt to murder and robbery under sections 307 and 392 of the IPC. So he was sentenced to seven years in the prison. After this the matter was forgotten.It again rose to prominence when the social activist Pinki Virani took up Aruna's case and wanted mercy killing i.e. euthanasia for her under Article 32 of the Indian constitution seeing the obvious fact

that there were no chances of her recovery and all she needed was a decent death. The furore which surrounded the case hereafter was that whether Aruna should be allowed mercy killing to ease her complications as there were no signs of her recovery. Soon after this case, lot of such cases came forward from different parts of the country which required giving immediate relief to the patient and that could be only done by giving them a peaceful death. Finally on 7th march 2011 passive euthanasia was made legal in our country under high court monitored mechanism. On that day, Aruna became the first lady to have set such a major precedent in the country for passive euthanasia. Sadly though, not only was this lady herself denied the benefit of this law but also she was denied justice in many more matters that needed immediate attention.This article describes about the areas where the law failed to give appropriate justice to a victim who herself established such a vital law in the country and took legal justice to new heights.

Where on one hand the medical reports of Aruna stated about her pitiable condition of asphyxiation and its repercussions , on the other hand it didn't mention anywhere about a vital issue - the fact that she had been sodomised.It was when Pinki Virani took up this case then the actual scenario came to light. The hospital authorities on being questioned stated that certain medical reports of Aruna had gone "missing". On probing further it was found that since Aruna was to be married to a junior doctor of the same hospital, the doctor who had examined Aruna purposely denied making those reports public to save her family and fiancé from being ostracised by the society.The hospital authorities never wanted to give the tag of "rape victim" to Aruna. Her husband-to-be, a doctor himself, never lodged a complaint against this heinous crime. However, on being questioned he admitted that he didn't want his wife-to-be to face any stigma in the society, so he chose to remain mum about this matter. If only the victim herself would have been in the state to answer!If only she could have a say in this matter as to whether or not should her offender be punished or let off. The poor lady, who suffered so much due to a beast, was forced to suffer further by hiding the atrocities which had been committed against her. She was the one who was asked to hide in shame instead of the culprit. The hospital wanted justice to be delivered to Aruna and yet, chose to remain quiet about the harm that she had suffered. Incredible! What kind of society do we reside in? A society which forces us to remain silent against crime and injustice? Besides, the hospital paid no compensation to the lady. Neither did the government extend any helping hand to the hospital nor Aruna's family. On top of this they wanted to ensure that justice was delivered to her. Doesn't it sound weird? When Aruna was staying in the hospital, Sohanlal had tried to attack her once again by entering in her room and pulling the bed railings so that she could fall and die. Where was the security for the patient then? It was after this incident that she was shifted to another secure room where no outsiders were allowed to meet her save the people who attended her. It came to notice that the hospital authorities weren't in the mood of keeping Aruna in the hospital for a long time and wanted her family members to take her home. How could a family with meagre income take care of her for such a long point of time without adequate money? After this, even they stopped visiting Aruna altogether. Even there had been reports of the activist Pinki Virani being asked to take Aruna to her (Pinki's) home. There had been news that the Bombay Municipality Corporation didn't want her to stay in the hospital as well- it had made two efforts to remove her from the hospital. It is said that solely due to the determination and love of the fellow nurses of Aruna her stay in the hospital could be possible. They were the ones who voluntarily looked after her without any hesitation. They never asked anyone for her bills to be paid. They were the ones who bathed, clothed and fed her for so many years. They took care of her needs and

interests. It was her only family after the incident happened, so to say. However, there had been reports which stated that there had been protests about the fact that proper care of Aruna wasn't been taken in the hospital. Little is known about what came out of those protests.

Medical conditions like persistent vegetative state (PVS), which Aruna was suffering from, require use of palliative drugs. Palliative drugs are the drugs which are given to a patient in his/her last days to end the suffering, yet in a painless way. No where in her medical reports was there any mention of palliative drugs. Had she at least been administered such drugs, her pain could have been lessened a bit, if not anything else.The hospital staff said that they loved her which is why they stopped collecting her wastes in the catheters. The catheters could lead to infections; these required drugs and they preferred to keep drugs to the minimal, just in case something happened to her. Which is why- when her gums caught rot, her teeth fell out one-by-one in that locked room- two doctors stopped her full medical examination even though organised outside, in a private hospital. Prior to that, the fear of losing her apparently caused the nurses to stop the physiotherapy, which led her body to atrophy, her joints to lock into angles, the nails to grow inwards to cut into her palms. Medical mismanagement? They bristle with righteousness at the notion; ardently stating that everything was done in Aruna's best interests, only outsiders think otherwise. Look, they triumphantly point out, not even one bed sore. And that they state is their biggest achievement. Is that all that could have been done? Realy?

The pertinent question that arises here is- if a person simply, because he/she is in a vegetative state, is not allowed to live with the basic dignity any human expects to have, isn't that a violation of their right to life as stated under section 21 of constitution of India? If a person is kept alive forcefully in a state where she/he can't take care of their own basic needs due to medical issues, then proper care should be taken of that person. Or else that person should be allowed to die with dignity. There had been efforts to introduce this right to die in 1994 in the case of *P Rathinam vs Union of India*. In this case the Supreme Court said that a person has the right to die. But again it was overruled in the year 1996 by Supreme Court under article 21 of the constitution. The honourable court stated that such an act would amount to suicide which is considered a criminal offence. Under this even euthanasia became illegal. After Aruna Shaunbaug's case became a national rage and lots of people started coming to courts with their own grievances then this matter was again taken up seriously. In 2011 it was legalised finally by the apex court that euthanasia i.e. passive euthanasia would be allowed. But the apex court stated that the high courts would have to clear any "application filed by the near relatives or next friend or the doctors/ staff praying for the permission to withdraw the life support" from a patient. But in spite of all this, Aruna was not allowed to derive the benefit of this law that could be established solely due to her case. She couldn't avail the benefits of this act because the law requires a patient's immediate relatives or kin to permit such mercy killing. In her case, she had already lost her own relatives the day she was deserted by them on the grounds that they couldn't take care of her well-being because the hospital and even the government had denied any compensation or financial assistance to them. Even the nurses in KEM hospital who were looking after her were not in the favour of her being given a peaceful death. They stated that they loved her so much that it was difficult on their part to see her die "unnaturally".The activist Pinki Virani who wanted mercy killing for her was stopped from doing so as she wasn't the "next friend" of Aruna. But amidst all this, everyone almost forgot about the victim's pain and agony.She being the actual sufferer never had a chance to decide her own fate, given her conditions. An important fact which slipped out of

everyone's notice is that, according to medical reports, even though she was in a vegetative state, the pain detecting cells of Aruna's brain were alive. Those cells undoubtedly would have been able to sense her pain and agony all these 42 years. She must definitely have had a tough time in all these years, given all the physical pain and mental trauma she had undergone. Had active euthanasia been legal in India, she would have died a peaceful death. Or at least, had the rules of passive euthanasia been relaxed a bit in her case she would have died earlier rather than suffering so much. Even though the honourable court passed such a great verdict legalising passive euthanasia in the nation following the case of Aruna, yet in no way could that erase the slightest of her agony.

In addition to all this, her offender was never really punished for the atrocities he had committed against her. Those days there were no proper codified laws for women against sexual harassment in workplaces, which again clearly shows the lackadaisical nature of the government towards ensuring the safety of women in their workplaces. During those days in the cases where a woman faced sexual harassment at her workplace, she had to lodge a complaint under section 354 and also under section 509 of IPC.Aruna's offender wasn't convicted under section 354 or section 509 of the IPC. When social activist Pinki Virani, who had taken up Aruna's case tried to persuade the Delhi police to catch the offender and punish him, they gave her the explanation- "there won't be any record or photograph of the offender after such a long time and it isn't possible on our part to send a lookout notice for him". Wasn't this carelessness on the part of the police department to not have any photograph or record of such a criminal? When in Nirbhaya's case the images of the criminals were splashed across newspapers, news channels and every other possible source in the media, why was there no single image of Aruna's offender? Why was it so difficult for the police department to issue a lookout notice for such a wanted criminal? These questions still remain unanswered. If reports are to be believed, the accused simply changed his name after being released from the prison and thus got a new identity. After serving his sentence of seven years for robbery and attempt to murder, he went to Delhi and started living his life afresh by marrying and having kids, grandkids and also had money for taking care of his family by working as a daily wage labourer. Had there been sincere efforts to nab him, he would have surely been caught and punished for his crimes.Instead he was allowed to be freewith a minimal punishment of seven years in prison.No charges were made against the offender under sections 325, 354 and 376 of the IPC. He wasn't tried for causing grievous hurt, assault or use of criminal force on a woman to outrage her modesty and for rape under these sections respectively.He could have at least been tried under section 377 of IPC for unnatural offences as he had committed the barbaric act of sodomy on Aruna. Though the judgement stated the offender to be guilty of rape, yet he was never tried for it. Why was it so?Recently, when there were protests to charge him with those offences, the court ruled that charging the accused under rape won't be feasible as 42 years is too long a gap to find any marks of rape on victim's body. There had already been tests that proved that he had brutally assaulted and sodomised Aruna, why wasn't he punished then? No answer here too.

Sohanlal wasn't tried for rape but then what about the fact that he attempted to kill Aruna twice?After being convicted for attempt to murder, still the man had no change of conscience and shamelessly tried doing the same act again after being released from the prison. Then also, he was allowed to go free. Our constitution disapproves of double jeopardy, but in cases where the offender doesn't feel ashamed of the crime he committed, what is to be done? Leave them like that so that they can go on committing the same offence repeatedly?

So, to state in a nutshell, Aruna lay in her bed while a court battle ensued over her life. Sohanlal served his "sentence" of seven years and walked free, a beneficiary of our squeamishness for rape.The assault took mere 10 minutes. It got the man convicted for seven years. However, Aruna on the other hand, got sentenced for her life. It wasn't her family members, or her fiancé, or the police or the judiciary which bought the lady some dignity and justice;it was rather her fellow nurses in the hospital who gave her respect, say some. Dignity for sure, but justice? That wasn't really taken care of.The system not only failed her in 1973, but also failed her after 42 years. Justice had been denied to her then, justice has been denied to her till now as well. The police till date have no idea about where the accused is; neither do they have any picture of the man. They don't even have a clue about whether he is alive or dead.Now there are being investigations regarding the possibility of including section 302 of IPC and meting out punishment for Sohanlal, after almost 4 decades of the crime. Aruna had been held as a prisoner of the state in her entire lifetime, later was held hostage by the quality of its mercy. Now let us ensure that Aruna gets some justice, at least posthumously. A learned judge once said, justice should be merged with mercy. Mercy has been done enough for the offender here; now what waits to be done is justice in the true sense for the victim. Let true justice prevail!



Odisha Human Rights Commission
Toshali Bhawan (2nd Floor)
Satyanagar, Bhubaneswar - 751 007
Phone: (0674) 2573783
Email: ohrc@nic.in
Website: www.ohrc.ori.nic.in