

LEGAL NECESSITY AND RELEVANCY OF GOOD SAMARITAN LAW

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Road accident fatalities are very concerning issue for every nation, and especially India where the numbers of these accidents are increasing every day. These accidents require speedy care and rescue which could only be provided by the person closest to the scene of accident, this vigilante act is very essential to enhance the chances of survival of the victim in 'golden hour' i.e. initial hour of the accident. As per the report submitted by WHO concerning India clearly stated that 50% of the victims die in the initial 15 minutes as the victim goes through serious cardiovascular or nervous system injuries. In order to avoid these contingencies basic life support and medical attention must be provided, but people fear initiating this help as they are falsely prosecuted and harassed by the police. India need Good Samaritan law to avoid these contingencies, the main purpose of formulating such laws is to provide protection to the Samaritans who in good faith help a person in need. This article focuses on the relevancy and need of Good Samaritan law in India and secondly it focuses on the necessity of such an act so that proper law and order can be established.

INTRODUCTION

Miss happenings and accidents depend on the rationality of a person. If it was done intentionally then it won't be known as an accident. The perpetration of an accident involves legal element but the focus of this article is brought towards the aftermath and consequence effect of these accidents. In a large democracy like India where people are empowered by fundamental rights and enjoy constitutional remedies, there are still many issues which create complications for a common prudent man. A person helping or providing first aid to a victim of a road accident who we term as a 'Good Samaritan' goes through a lot of problem in this country as no laws are in existence for their protection. James A Forbes very excellently stated that "a good Samaritan is not simply one whose heart touched in an immediate act of care and charity, but one who provides a system of sustained care."

Humanity has always been an ironical figure in this practically driven society, as all the imposters and genuine cases are measured in the same manner. India which is bestowed with the title of world's largest democracy and protected by the world's largest constitution needs a codified law in order to support and protect these good Samaritans. Good Samaritan law will not only modify the basic legal structure but will be the

first of its kind; this law for sure will be a landmark in Indian legal system and will benefit public at large. These good Samaritans are people who help a person in need, for example: a person wounded badly because of a road accident was taken to the hospital by a random person, that random person is a Good Samaritan. This humanitarian work turned into a worst nightmare when the Samaritans started facing harassment of police who kept them in custody for interrogation and were questioned by the police as if they are the culprit, not only the police person but the doctors also ignored their Hippocratic oath and waited for police investigation to get over in order to initiate the treatment of the victim. Even under Indian constitution Right to life is enshrined under Article 21 which includes right to safety of persons while travelling on the road and the immediate medical assistance as a necessary corollary is required to be provided and also adequate legal protection and prevention from harassment to good Samaritans is provided

Supreme Court on 29th October 2014 came to the rescue of these good Samaritans and in order to curb the injustice done to them[1], they approved the guidelines for the protection of good Samaritans at the hands of the police official or any other authority. A bench comprising of Justice V. Gopala Gowdaand, Justice Arun Mishra through these guidelines directed central government to take strict initiative and give wide publicity to the guidelines laid down, which clearly highlights that people who help any victim of road accident or any other problem or calamities will not be harassed in any manner.

Supreme Court's viewpoint:

Road accident fatalities is quite high in India, according to WHO report of 2013 total fatalities(adjusted/estimated) in India were 238,562 [2]. One of the major reasons for this high rate of road accidents fatalities is the deficiency and inability in provision of proper medical treatment to the victims. The official statistics of 2015 which laid down the total no. of deaths in road accident was summed up to 1.46,000[3]. According to experts and law commission also stated in 2006 that almost 50% of the victims in road accidents dies due to lack of medical attention, have they been provided with proper medical care they were chances of the victims getting well and survive the fatal accidents[4]. The other reason for this could be the bystander effect. Bystanders are those people who witness the road accidents, in india the major factors that discourages bystanders from taking the initiative to help the victim are as follows

- Fear that they would have to pay the admission costs in the hospital
- Fear that they would be detained for hours
- Fear harassment due to legal procedures
- Fear the harassment by the police

WHO report very specifically stated in its report that “skilled and empowered bystanders play a crucial role in saving lives” and “in order to enable bystanders to come forward and help injured persons, a supportive legal and ethnic environment is needed”[5].who in its “World Report on Road Traffic Injury Prevention, 2004’ has projected that by 2020, road accidents will be one of the biggest reasons for death in India. It also gave emphasis on the fact that in low income countries, the most common desisting factor restraining the public from coming forward to help victims is the fear of being involved in police cases. There is an absolute need to build confidence amongst the public to help road accident victims. Bystanders should not be insisted to divulge their personal information or detained in the hospital for interrogation. People have become hesitant to render immediate help to the road accident victims. The victims lay wounded on the road till the arrival of police. Delay rendering medical help in such cases sometimes can prove to be fatal. Good Samaritans have the fear of legal consequences, involvement in litigation and repeated visits to police station. The urgency to tackle these issues is required as they are jeopardizing both law and order. The save life foundation acknowledging these aforementioned issues moved to supreme court in 2012 in order to get justice for these good Samaritans. They were successful in getting an interim order which focuses over the guidelines to protect the interests of good Samaritans. The apex court in the case of Save Life Foundation and another V/s. Union of India[6] focused on the guidelines laid down by the central government. These guidelines can be summarized as follows:

1. The bystander who is the witness of the accident can take the injured person to the nearest hospital and if he denies to tell his name shall not be asked so and also shall not about his whereabouts. This is one of the crucial guideline which will come out as a great help to the good Samaritans as well as to the injured person.
2. The bystander should be fitly rewarded by the government so that other people gets encouraged and comes forward to help the victim of road accident.
3. No civil or criminal liability shall be imposed on the bystander.
4. If the bystander makes a call to the police or to a hospital telling them about the injured person, he shall not be forced to tell his name and address unless he wishes to tell so.
5. Name and address details of the Good Samaritan given in the medico legal case [MLC] form provided by the hospitals in case of road

accidents shall be made optional so now if a person does not wish to provide his details he is entitled to do so.

6. Strict actions shall be taken against the official person who forcefully take or intimidate the Good Samaritan to tell his name and other details.
7. If the bystander or the Good Samaritan is the eye witness too, then in that case video conferencing can be used during examination of such witness so that he does not have to go through any kind of harassment.
8. Every hospital shall publish a charter in Hindi, English or any other vernacular language stating that they should not charge the depositing fee from the bystander and is prohibited from detaining them.
9. If a doctor who is expected to provide care in case of a road accident fails to do so then it shall constitute 'professional misconduct'.
10. All hospitals, public and private are expected to implement these guidelines immediately and in case of non-compilation of these, strict action shall be taken against the concerned authorities.

Good Samaritan law in foreign countries:

Welfare and protection of a Good Samaritan is a new concept in India, but in many foreign countries it's a well-known and precisely established law. laws regarding the protection and welfare of the good Samaritans are based on three basic issues and the foundation of the good Samaritan law in many foreign countries are based on these three conditions which are as follows [7]:

- The legal duty of a citizen to assist someone in need
- The compensation for loss or injury , or the rights of a good Samaritan
- The liability or risk assumed by a Good Samaritan.

Good Samaritan may vary from jurisdiction to jurisdiction as every state have their own legal establishment and the laws laid down in any nation is based on various legal principles , such as consent , parental rights and the right to refuse treatment. Most of these laws are not obligated on medical professionals but exceptions to this are professional rescuers who are acting in a volunteer capacity as some law extends protection to them. it is quite evident to state that many foreign countries are legally aware of this concept and have a well-established law in their region .

Canada:

It is indeed a very interesting state as it is in the position where it has two legal systems, firstly civil law in Quebec and secondly the common law in the rest of the country in order to consider the role of a good Samaritan. This act falls under provincial jurisdiction and each of the provinces follow and regulate according to their own guidelines and legislation like in Ontario and British Columbia have respective good Samaritan acts, Alberta have emergency medical act and Nova Scotia have volunteer services act [8]. Canada has a long prevailing set of legislations followed in majority of the state, their set of laws are very detailed and precisely codified for instance

Section 2 of Ontario's Good Samaritan act 2001 talks about protection from liability and states that:

- Despite the rules of common law, a person described in subsection (2) who voluntarily and without reasonable expectation of compensation or reward provides the services described in that subsection is not liable for damages that result from the person's negligence in acting or failing to act while providing the services, unless it is established that the damages were caused by the gross negligence of the person. 2001, c. 2, s. 2 (1) [9].

The aforementioned example is quite evident in itself to state the fact that liability of a person arises in case of gross negligence otherwise he or she is very well protected by the state.

China:

China didn't have any legislation regarding Good Samaritan law but there have been incidents which compelled the state to formulate an act. The toddler was run over by two vehicles, 18 people seeing the child refused to help as they didn't want to fall into any sort of complication, the child died. Another incident is the infamous Peng Yu case of November 2006, where a youngster was sued by an old lady who he tried to help as she fell down while stepping down from a bus, the old lady sued Peng for roughly \$7,000 in medical expenses. These are not the only incidents which took place, there were many other aftermaths of these grisly incidents led to the formulation of Good Samaritan law. After long discussions and heavy debates the nation's first Samaritan law went into effect in Shenzhen.

Australia:

In Australia almost every state and territories have some form of Good Samaritan protection, which are working quite efficiently. These laws in general offer protection to good Samaritans if the care is made in a good faith, and not impaired by drugs or alcohol. There are variations between the states in terms of Good Samaritan law but all commonly follow a simple principle that a Samaritan is protected if help is provided in good faith. A 1994 decision by the Supreme Court of the Northern

Territory clarifies the nature and purpose of the statute: Section 155 of the Code, described by a previous Attorney General in the Legislative Assembly as "the Good Samaritan provision", provides as follows: Any person who, being able to provide rescue, resuscitation, medical treatment, first aid or succor of any kind to a person urgently in need of it and whose life may be endangered if it is not provided, callously fails to do so is guilty of a crime and is liable to imprisonment for 7 years. Criminal Code section 155 addresses social concerns held in the Northern Territory. [10]

Finland:

The law prevailing in Finland is so far the best and most accurate one as it is precisely codified as the Finnish rescue act. This act clearly highlights the fact that a duty to rescue is a "general duty to act". It does include a principle of proportionality which requires extending the immediate aid further than lay persons. Section 15 of the Finnish criminal code [11] stipulates:

"Neglect of rescue (578/1995) A person who knows that another is in mortal danger or serious danger to his or her health, and does not give or procure such assistance that in view of his or her options and the nature of the situation can reasonably be expected, shall be sentenced for neglect of rescue to a fine or to imprisonment for at most six months."

Finnish laws concerning good Samaritan law are one of the best around the world as the scope of Finnish rescue act in itself is so broad that they didn't require a separate law to set up a legal sanctity over the issue of good Samaritan welfare.

Germany

Section 323 (c) of German penal code enumerates punishment to a person who fails to provide a first aid to a person in need. An individual who helps another individual in need cannot be prosecuted in any condition even if it made the situation worse or did not fulfill the first aid criteria. The motive and sole purpose of such regulation is to encourage people to help in any possible way they can irrespective of any end result [12].

United States:

United States of America have a well-established legal network and it is quite evident to state this because all the 50 states and District of Columbia have some type of good Samaritan law. It surely varies from territory to territory and legal sanctity vary by jurisdiction, including the protection of an individual and condition requisite to it.

United Kingdom:

In the common law of England and Wales there is no specific provision which creates a criminal liability over someone who is failing to help another person in danger, however there are some exceptions to this rule. There are situations where there is an assumption of responsibility

by the bystander like a dangerous situation created by them, or there is some sort of contractual or statutory duty over the bystander to act, in these sort of situations criminal liability would be imposed on the bystander for their failure to take action. In common law courts are reluctant to penalize people attempting to rescue and English law makes provision for the actions of 'good Samaritan' provided their actions are not accompanied by gross negligence or they are not negligent in their conduct to be more precise. Lord Atkin's very scholarly culminates in the landmark case of *Donoghue vs. Stevenson* the principle of 'love your neighbor' which a parable principle with the Good Samaritan.

Common features and modifications suggested in context of Indian law:

Countries all over the world where Good Samaritan law exist are developed and very progressive. They are very well aware of the urgency of this type of law. Some of the countries like France and Germany have enacted such laws which not only make it an obligation to help a person in need but also eliminate the criminal liability arising due to any default. The French law doesn't impose any liability on a rescuer on the contrary there are strict laws and penalties over a bystander who witnesses an accident and doesn't intervene to help. Article 223(6) of the French code states that "whoever voluntarily fails to provide to a person in danger the assistance that, would risk for himself or a third party, he could provide, either by his own actions, or by initiating a rescue, may be punished by up to five years of imprisonment and a fine up to 75,000 euros[13].

The common feature of duty to rescue is reflected in article 323(c) of the German Criminal Code and same could be seen in Italian, Canadian, Australian, Argentinian and in some US states. The another common feature is the immunity from prosecution which observed in many countries as well. In India the genesis of good Samaritan law can be traced back to 1989 supreme court judgment in *Parmand Katra vs. Union of India*[14] where the learned judge scholarly stated that "the effort to save the person should be the top priority not only of the medical professional but even of the police or any other citizen who happens to be connected with the matter or who happens to notice such an incident or a situation"[15].

Not only does India require a codified Good Samaritan law which offers immunity from the prosecution to a person acting in a good faith but also requires creating an awareness regarding first aid. The paramount importance must be the first aid and help provided in order to save the victim, not the prosecution or other legal procedure. Supreme Court in its judgment of *save life foundation* case highlighted the fact that there are various provisions and statutes around the world from where Indian legislature can acknowledge and draft landmark legislation.

"There are several countries which have enacted such laws. In England and Wales, the Parliament has enacted the Social Action, Responsibility and Heroism Act 2015 which provides for certain factors to be considered by the Court while hearing an action for negligence or breach of duty. Section 2 of the Act provides that the Court must consider whether the respondent was acting for the benefit of society or any of its members. Section 5 of the Act further provides that the Court must consider whether the respondent was acting heroically by intervening in an emergency to assist an individual in danger. In Ireland, section 51D of the Civil Law (Miscellaneous Provisions) Act 2011 provides that a good Samaritan will not be liable in negligence for any act done in emergency to help person in serious and imminent danger. In Australia, protection to Good Samaritan is provided in several states. In New South Wales and Victoria, for instance, a Good Samaritan is protected from personal civil liability with respect to anything done in state of emergency or accident by virtue of Civil Liability Act 2002 and Wrongs Act 1958 respectively. In Canada, various states like Ontario, Alberta and British Columbia offer protection to good Samaritans. In Ontario, the Good Samaritan Act 2001, by Section 2 (1), provides that except for gross negligence, a person is not liable for damages resulting from his acts during aid in emergency. Similar protection is provided in states of Alberta, British Columbia and Nova Scotia by Emergency Medical Aid Act, Good Samaritan Act and Volunteer Services Act respectively. Similar protection to good Samaritans is to be found in different states' laws in the USA. States of Alabama, Alaska, Arizona, Arkansas, California and New York, to name a few, provide that if a person lends emergency assistance or service to another person in good faith, he is not liable in civil damages with respect to his act or omission".[16]

CONCLUSION:

Prior misconception of people that helping a victim of road accident would result in their unnecessary involvement has been somewhat set aside by this act. Good Samaritan law should be the priority of Indian legislature as being one of the most established democracy India cannot ignore such major legal contingencies. The increasing rates of road accidents are quite evident to state that the legislature has to formulate strong laws to curb the situation. The guidelines laid down by the supreme court in its latest judgment of *save life foundation* where it suggested legislature to formulate India's very own good Samaritan law, which will be a codified statute in order to protect the interest of a Samaritan helping and aiding in good faith. Indian legislature have shown no concern so far yet the ministry of road transport and highways along with ministry of health and family welfare laid down some guidelines in order to resolve the dispute, but what we need is a

codified law which will create deterrence and protect the interest of good Samaritan to its fullest. The harassment by police and doctors cannot be cured by mere guidelines as they needed to be obligated by the standing law and they must be legally bounded so that the purpose of this good Samaritan law is fulfilled.. There is no hard and fast rule imposed on the people but rather it's their duty to help someone in need. However, this brings us to a question popping in our mind that is it only because of the fact that legal protection is offered so one should be helping when in the first place, it is our moral and ethics which should compel us to save someone's precious life but obviously due to the exploitation suffered from the police, people have withdrawn themselves from doing such an act. The condition was so disturbing that even rape victims were denied medical treatment unless the case was registered by the person. The reference from foreign countries like Germany can be acknowledged where there are no legal consequences imposed over a person helping the one in need , another example which can be acknowledged is of France where there is a legal obligation over a person witnessing an accident to help that person in need. If that person fails to provide help then that person will be penalized, these legal actions were imposed in order to curb the bystander effect .other countries like Canada, USA, UK, Australia where good Samaritan law is already in existence could be consulted in order to draft a proper statute which will curb the situation and help in providing India's very own good Samaritan welfare law. Implementation of this act would surely result in providing urgent medical care to the victim and would result in saving lives of thousands. What needs to be done is to create awareness regarding this law in order to aid more and more victims, it is quite pertinent to state that government should take initiatives in order to create vigilance amongst people so that help could be provided to more and more victims. Indeed, there is a need to appreciate the person who comes forward in the society to help rather to exploit such a person. As help have always been the most ethical and benevolent characteristic which is bestowed in every individual from the initial age of his/her life. The country which experienced more than 1, 41000 fatalities in the past few years must take every possible step to encourage people to help the victims of road accidents as the aid and help provided in this situation could create a vast difference. India needs more and better Samaritans and government must take every possible step to support and protect them in order to promote their welfare. One small step of a man is a giant leap of a mankind and we can all just hope that government initiates the law concerning good Samaritan very soon. The onus is now on the central and state government to ensure the enactment of laws concerning the welfare of Good Samaritan and till then guidelines laid down by the Supreme Court will act as a shield as noncompliance with the guidelines would result in contempt of court.

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- [11] <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039>
- [12] Section 323 (c), German criminal code, and http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p2729.
- [13] French penal code 1791.
- [14] 1989 AIR 2039
- [15] Para 13, Parmand Katra vs. Union Of India , 1989 AIR 2039
- [16] Para 4, Save life Foundation & Anr vs Union Of India