

**GETTING MEDICAL AID FOR ROAD ACCIDENT VICTIMS SHOULD BE A FUNDAMENTAL
RIGHT UNDER RIGHT TO LIFE GUARANTEED UNDER ARTICLE 21 OF THE INDIAN
CONSTITUTION**

**Dr. Neelam Arora, Principal
Lala Lajpatrai College.
Haji Ali. Mumbai- 34.**

Abstract.

Road accidents, which lead to serious injuries including death or maiming of innocent and ignorant human beings have become a matter of grave concern. Due to an alarming development of road transport which includes various types of motor vehicles, i.e., buses, trucks, three wheelers, two wheelers, a large number of accidents take place day in and day out. In most of the cases, who are daily involved in the accidents caused by motor vehicles are mainly the pedestrians or the cyclists. Since the drivers and the owners of such erring vehicles are responsible for the accidents on the roads. The number of people who get killed or maimed in motor vehicle accidents is growing day by day. Indian constitution ensures many rights to the citizens as well as aliens. Article 21 of Constitution of India deals with only right to life and liberty includes that no person shall be deprived life and liberty except according to procedure established by law. Right to health is an important interpretation of article 21. Any person meeting with an accident should have a fundamental right to get immediate and urgent medical aid to save his life.

Article 21 secures two rights:

- 1) Right to life
- 2) Right to personal liberty

Key Words. Right to life, Right to Personal Liberty. Article 21. Constitution. Medical Aid.

Introduction:

Road accidents, which lead to serious injuries including death or maiming of innocent and ignorant human beings have become a matter of grave concern. Due to an alarming development of road transport alien which includes various types of motor vehicles, i.e., buses, trucks, three wheelers, two wheelers, a large number of accidents take place day in and day out. In most of the cases, who are daily involved in the accidents caused by motor vehicles are mainly the pedestrians or the cyclists. Since the drivers and the owners of such erring vehicles are responsible for the accidents on the roads.. The number of people who get killed or maimed in motor vehicle accidents is growing day by day. Indian constitution ensures many rights to the citizens as well as aliens. Article 21 of Constitution of India deals with only right to life and liberty includes that no person shall be deprived life and liberty except according to procedure established by law.

Article 21 secures two rights:

- 3) Right to life
- 4) Right to personal liberty

Need for study:

India Tops Global List of Fatalities from Road Crashes

1. More than 1.3 lakh people died on Indian roads, giving India the dubious honor of topping the list of road deaths across the world.
2. Until 2 years ago, the International Road Federation placed India second behind China.
3. China has managed to reduce the number of road deaths from over 100,000 to 90,000 or so, and in India the situation has worsened.
4. With just 1% of the world's vehicles, India manages to account for 10% of its road fatalities, up from 8% at last count.
5. In India the situation is exacerbated by poor enforcement of traffic laws and myopic policies on the part of our policy makers.
6. In the United States, which has close to 300 million people and more than 250 million vehicles, the number of deaths per 10,000 vehicles is 1.6, while in India this number, known as the "road fatality rate," is as high as 14.

Literature Review :

A critical Analysis of Right to Life and personal liberty under article 21 of Indian Constitution. By GarjeBalasahebSonajirao (2013) :

The researcher has stated that Right to life and personal liberty is the most cherished and fundamental human rights around which other rights of the individual revolve. The researcher has highlighted the different dimensions of article 21 of the Indian constitution. Highlighting the dimension of Right to Medical Care and Health the researcher has stated that Supreme Court has recognized the Right to health under article 21 as an individual right. The researcher has cited the case of West Bengal KhetMazdoorSamiti V State. Right to life guaranteed by article 21 of the constitution includes the right of injured to get timely treatment. It is the constitutional obligation of the state to provide adequate medical care.

Study of Medico-legal case management in Tertiary case Hospital (2011) By - A.K. Singh, Kanchan Singh, AnoopVerma. J. Indian Acad Forensic Med. October - December 2011, Vol 33 N04 SSN 09710973 :

The authors have reiterated has right to health care and medical assistance is integral to the right to life and the state has a constitutional obligations to provide health facilities. Failure of the government and other hospital to provide a patient timely medical treatment results in violation of the patient's right to life.

The authors state that every concerned person of the hospital, related with treatment and care of the patients must understand the nature of obligations and thus fulfills these obligations to the best of their ability to maintain nobility of medical profession medico legal cases implies lot of disputes unwanted burden, rough speaking police officials inordinate hours in the court unrelenting defense counsel etc. Due to this fear factor they either try to avoid the cases or try to get rid of them as soon as possible. A doctor has not only to play a vital role struggling to save the life of the patients or relieving their sufferings but also has to fulfill the required minimum formalities on medico-legal aspects in cases 'Health of my patient will be any first consideration' are the words of declaration of Geneva of world medical association bind the physicians towards

their duty to promote and safeguards the health of the people. In casualty while attending to an emergency the doctor should understand that is first priority is to save the life of the patient. He should do everything possible to resuscitate the patient and ensure that he is out of danger. All legal formalities stand suspended till this is achieved. This has been clearly exemplified by the Hon'ble Supreme Court of India in ParamanandaKatara V/S union of India. Every doctor is bound to provide medical aid to the victims irrespective of the cause of injury. He cannot take any excuse of allowing law to take its own course. On the same case medical council of India filed an affidavit stating that the MCI expects all the registered medical practitioners must attend to the sick and the injured immediately and it is the duty of the medical personnel to make immediate and timely medical care available to every injured person, whether he is injured in an accident or otherwise. Life of a person is far more important than the legal formalities.

In Pattipati Venkaiah V/S state of Andhra Pradesh, the Honorable High Court of Andhra Pradesh decreed that doctor's duty is to attend to the injuries of the person produced before him. His primary effort should be to save the life of the patient and then inform the police.

Research Problem:

In view of the deprived state of medical help to the accident victims, this study aims to gain further insight into the situation arising out of the deprivation due to non-availability of medical help with the jurisdiction of Indian law. One of the major problems identified in the society is the right of medical care for accident victims in India. There is an extensive literature available which focuses on right of medical care for accident victims and the laws pertaining to the same.

3.2 Objectives of study :

To study the constitutional provisions pertaining towards right to medical aid given to victims.

Scope of study:

For the intention to complete the research the scope of research was confined to existing constitutional provisions pertaining towards right to medical aid given to accident victims.

3.4 Research design:

The research design deployed by the researcher was exploratory/explanatory.

Statistical technique deployed

The statistical techniques used was chi square to see the relationship between the medical aid provided and state.

Limitation of study

The study was restricted to the following limitations

- 1) Geographically the study was limited to only Indian Jurisdiction.
- 2) Since the need of study was right to medical care no other provisions were other than that taken into consideration.
- 3) Secondary data and information collected for review was assumed to be authentic in nature.

Leading Case Law

(ParamanandKatara vs. Union of India : AIR 1989 SC 2039).

ParamanandKatara, a human rights activist, filed a writ petition in the Supreme Court on the basis of a newspaper report concerning the death of a scooterist who was knocked down by a speeding car. The injured person was taken to the nearest hospital but doctors refused to attend to him and directed that he be taken to another hospital located around 20 km away, one that was authorized to handle medico-legal cases. The injured person succumbed to his injuries before he could reach the hospital. Among other things, the petitioner “prayed that the court issue directions to the Union of India that every injured citizen brought for treatment should instantaneously be given medical aid to preserve life”.

Based on the petition, the Supreme Court held that:

- There can be no second opinion that preservation of human life is of paramount importance. Once a life is lost, it cannot be restored as resurrection is beyond the capacity of man.
- Every doctor, whether at a government hospital or otherwise, has the professional obligation to extend his or her services with due expertise for protecting life.
- There is no legal impediment for a medical professional when he or she is called upon or requested to attend to an injured person needing his or her medical assistance immediately. There is also no doubt 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.
- Lawyers and judges and everyone concerned should also keep in mind that a man in the medical profession should not be unnecessarily harassed for purposes of interrogation or for any other formality and should not be dragged during investigations at the police station. This should be avoided as far as possible.

Right to Medical Care :

We can see that right to medical care is an integral aspect of right to life. The country witnesses large number of accident cases. A large number of persons die in the accidents as urgent and timely medical assistance is not provided to the victims. Accident cases become medico legal cases involving legal issues, police complaints, inquiries etc making it difficult to give life saving urgent treatment to the accident victim. This aspect was brought to light in the ParamanandaKatara case where by the accident victim died due to non-availability of medical treatment

According to World Health Organization, “Health is a state of complete physical, mental and social well being and not merely the absence of disease.” Right to health is not included directly as a fundamental right in the Indian Constitution .The Constitution maker imposed this duty on state to ensure social and economic justice. Part our of Indian constitution which is Directive Principles

of State Policy imposed duty on States. The Constitution directs the state to take measures to improve the condition of health care of the people. Thus the preamble to the Constitution of India, inter alia, seeks to secure for all its citizens justice-social and economic. It provides a framework for the achievement of the objectives laid down in the preamble. The preamble has been amplified and elaborated in the Directive Principles of State policy.

Directive Principle of State Policy and Health:

Article 38 of Indian Constitution imposes liability on State that states will secure a social order for the promotion of welfare of the people but without public health we cannot achieve it. It means without public health welfare of people is impossible. Article 39(e) related with workers to protect their health. Article 41 imposed duty on State to public assistance basically for those who are sick and disable. Article 42 makes provision to protect the health of infant and mother by maternity benefit.

In the India the Directive Principle of State Policy under the Article 47 considers it the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated. In 1995, the Supreme Court held that right to health and medical care is a fundamental right covered by Article 21 since health is essential for making the life of workmen meaningful and purposeful and compatible with personal dignity. The state has an obligation under Article 21 to safeguard the right to life of every person, preservation of human life being of paramount importance. The Supreme Court has in the case of *Parmanand Katrav's Union of India*, held that whether the patient be an innocent person or be a criminal liable to punishment under the law, it is the obligation of those who are in charge of the health of the community to preserve life so that innocent may be protected and the guilty may be punished.

Right to Health Care as a Fundamental Right:

The Supreme Court, in *Paschim Banga Khetmazdoor Samity & ors v. State of West Bengal & ors*, while widening the scope of art 21 and the government's responsibility to provide medical aid to every person in the country, held that in a welfare state, the primary duty of the government is to secure the welfare of the people. Providing adequate medical facilities for the people is an obligation undertaken by the government in a welfare state. The government discharges this obligation by providing medical care to the persons seeking to avail of those facilities. Article 21 imposes an obligation on the state to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the state are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his right to life guaranteed under Article 21. The Court made certain additional direction in respect of serious medical cases:

1. Adequate facilities be provided at the public health centers where the patient can be given basic treatment and his condition stabilized.
2. Hospitals at the district and sub divisional level should be upgraded so that serious cases be treated there.

3. Facilities for given specialist treatment should be increased and having regard to the growing needs, it must be made available at the district and sub divisional level hospitals.
4. In order to ensure availability of bed in any emergency at State level hospitals, there should be a centralized communication system so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment, which is required.
5. Proper arrangement of ambulance should be made for transport of a patient from the public health center to the State hospital.
6. Ambulance should be adequately provided with necessary equipments and medical personnel.

Professional obligation to Protect Life of Accident Victims:

The Supreme Court in its landmark judgment in *ParamanandKatara v Union of India* ruled that every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or state action can intervene to avoid delay, the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute, and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained, and must, therefore, give way. The Court laid down the following guidelines for doctors, when an injured person approaches them:

- I. Duty of a doctor when an injured person approaches him: Whenever, on such occasions, a man of the medical profession is approached by an injured person, and if he finds that whatever assistance he could give is not really sufficient to save the life of the person, but some better assistance is necessary, it is the duty of the man in the medical profession so approached to render all the help which he could, and also see that the person reaches the proper expert as early as possible.
- II. Legal protection to doctors treating injured persons: A doctor does not contravene the law of the land by proceeding to treat an injured victim on his appearance before him, either by himself or with others. Zonal regulations and classifications cannot operate as fetters in the discharge of the obligation, even if the victim is sent elsewhere under local rules, and regardless of the involvement of police. The 1985 decision of the Standing Committee on Forensic Medicine is the effective guideline.
- III. No legal bar on doctors from attending to the injured persons: There is no legal impediment for a medical professional, when he is called upon or requested to attend to an injured person needing his medical assistance immediately. 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.

**Relation between states/ union territories and medical help received after accidents
Survivor Percentage after Road Accidents in different states in 2015**

State	Medical help after Accident		Total
	Yes	No	
Maharashtra	560	440	1000
Gujarat	462	130	592
Punjab	390	280	670
Assam	660	440	1100
Bihar	289	100	389
Goa	385	120	505
Himachal	445	200	645
Rajasthan	350	300	650
West Bengal	720	320	1040
Delhi	840	250	1090
Daman	880	440	1320
Pondicherry	600	250	850
Karnataka	450	100	550
Kerala	500	350	850
Total	7531	3720	11251

Source: Secondary source

The hypothesis considered for the above data collected is as follows.

H0: There is no relation between the state / union territories and the medical help received after accidents.

H1: There is a relation between the state / union territories and the medical help received after accidents.

The above hypothesis was tested by chi-square test.

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)

Pearson Chi-Square	3.533E2 ^a	13	.000
Likelihood Ratio	359.467	13	.000
Linear-by-Linear Association	31.074	1	.000
N of Valid Cases	11251		

Source: SPSS

Findings:

Since the p value is $0.000 < 0.005$ thus we reject H_0

Thus we conclude that there is a relation between the state / union territories and the medical help received after accidents.

Conclusion and Suggestions :

The above findings lead to the inference that it is very important to give the medical aid to the accident victims so that their life can be saved. This also proves that how critical and important Right to medical aid for accident victims is. The Right to medical aid should be considered as a fundamental right.

Good Samaritan Policy :

The Supreme Court on 30th March 2016 approved the guidelines issued by the Centre for the protection of Good Samaritans at the hands of the police or any other authority.

The Law Commission of India observes that 50% of those killed in road accidents could have been saved had timely assistance been rendered to them. And a World Health Organisation report claims 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 ethical environment is needed".

The guidelines lay down the following:

The Good Samaritan will be treated respectfully and without any discrimination on the grounds of gender, religion, nationality and caste.

Any individual, except an eyewitness, who calls the police to inform them of an accidental injury or death need not reveal his or her personal details such as full name, address or phone number.

The police will not compel the Good Samaritan to disclose his or her name, identity, address and other such details in the police record form or log register.

The police will not force any Good Samaritan in procuring information or anything else.

The police will allow the Good Samaritan to leave after having provided the information available to him or her, and no further questions will be asked of him or her if he or she does not desire to be a witness

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