

THE JURISPRUDENCE OF EMERGENCY MEDICAL CARE IN INDIA: A HUMAN RIGHTS PERSPECTIVE

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"The right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health."¹

Right to medical care is included in the ambit of Human Right to Health. It was first derived from the Universal Declaration of Human Rights. The Human Right to Health means that every person has the right to physical and mental health. It includes access to medical services, sanitation, adequate food, decent housing, healthy working conditions and a clean environment. The WHO Constitution² states that Human Right to Health includes the enjoyment of the highest attainable standard of health. The Universal Declaration of Human Rights³ mentions health as part of the right to an

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- 1 The United Nations Committee on Economic, Social and Cultural Rights, The Right to the Highest Attainable Standard of Health, Para I, UN Doc. No. 12/2000/4, CESCR, General Comment No. 14 (2000).
 - 2 The Constitution of World Health Organization, 1946.
 - 3 Article 25; The Universal declaration of Human Rights, 1948.

adequate standard of living. It was recognized as a human right in the Covenant¹ as follows:

- i. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- ii. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - b. The improvement of all aspects of environmental and industrial hygiene;
 - c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Right to Medical Care in emergencies also comes under the ambit of Human Right to Health. If any person in need of a medical care is denied of the same, it would be directly the violation of the Fundamental Right². The only reason that Fundamental Rights are made justiciable is that nobody is denied of their basic human rights. If any person who is under duty denies any person his fundamental Rights then the person is answerable to the court.³

One of the various sufferers in need of immediate medical aid and medical care are those who are the victims of road accidents. They are the ones who suffer the most in cases of emergency, because no hospital other than the government hospitals is ready to admit them. Also because people are so afraid of trails and police that they refuse to help such victims, and till the time ambulance arrives it's already very late.

It's time to think where our system is lacking behind and what causes the victims of road accidents to pay with the cost of their life. Despite so many efforts being made by the judiciary for the victims to avail the maximum of benefits, the toll of the lives getting lost in accidents is still raising day by day instead of decreasing.

1 Article 12; The International Covenant on Economic, Social and Cultural Rights, 1966.

2 Article 21; The Constitution of India.

3 Ibid, Article 32 and Article 226.

Providing Medical Care in an emergency, especially in a road accident is not the responsibility of any single person, it is a joint responsibility. The responsibilities start from the person witnessing the accident. It becomes the responsibility of every person who is an eyewitness of the accident to help the person injured or at least offer every possible help without the fear of any prosecution in the court of law. The Supreme Court of India, while giving guidelines, in the landmark case of *Parmanand Katara v. Union of India*¹ held that the effort to save the life of person should be the top priority not only to 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.

It is also the duty of the person with whose vehicle the accident has taken place to take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearby medical practitioner or hospital². Thus it is made the duty of driver to provide medical to the victim of the accident if it is possible for him to do so³. It is also the duty of the doctors and medical practitioners to immediately attend the injured person and render medical aid or treatment without waiting for any procedural formalities⁴. It is the driver's duty to stop his vehicle and wait for a police officer for some reasonable time when he is involved in a road accident and injures any person, animal or causes damage to any other car or property⁵.

Accidents caused by the rashness or negligence of the driver give rise to criminal liability. Such liability is punishable for two years or fine or both⁶. It is necessary that death or injury should be a direct result of the negligent act of the accused. Any remote or indirect connection does not give rise to any criminal liability.

A person is guilty of negligence if his vehicle hits into something or someone unless without any reason to explain that he did everything in to keep the vehicle under his control but the accident was inevitable. This principle was established in the landmark case of *Ratlam v. Emperor*⁷. In the case of *K. Perumal v. State*⁸ it was held that the driver was liable to be

1 AIR 1989 SC 2039.

2 Sec. 134(a); The Motor Vehicles Act, 1988.

3 Ibid.

4 Ibid, Sec. 134 (a).

5 Ibid, Section 132.

6 Section 304A; The Indian Penal Code, 1860.

7 AIR 1935 Mad. 209.

8 (1998) 4 Crimes 382.

punished under section 304A of the IPC as he ran over his vehicle on the victim, without attempting to save him even though there was sufficient space on the other side.

Carelessness does not give rise to criminal liability but it does result in civil liability under the Motor Vehicles Act. Recklessness of the accused should reflect that there was an intention or *Mens Rea*. In the case of *Chintaram v. State of Madhya Pradesh*¹, the deceased was walking on the middle of the road and the accused was driving by the left of the road trying to keep a distance from her. When the accused reached close to the deceased she abruptly took a left turn and got struck by the motorcycle. In this case, the accused was not negligent. The sudden decision of the victim did not give any reasonable time to the motorcyclist to avoid accident and thus the accused was acquitted.

There are various other offences involving motor vehicle accidents which are punishable under the Indian penal code. Rash driving or riding on public way is punishable by the way of imprisonment up to six months or fine of one thousand rupees or both². Anyone who acts rashly or negligently which endangers human life or safety can be punished with imprisonment for a term up to three months or a fine of two hundred fifty rupees or both³. Causing hurt and causing grievous hurt which threatens life and safety of people and a person would be liable to pay up to rupees 500/- as fine and can be sentenced imprisonment for a term of six months or both in case of causing hurt and the driver can be punished with imprisonment extending up to two years or fine of rupees 1000/- or both In case of grievous hurt⁴.

It is a well known fact that accident victims are not helped easily by a common man. There are various reasons which prevent people from helping such victims. Many a times, people who can help an accident victim feels reluctant to help him. An incident happened in Jammu wherein the helpers of the victim who took the victim to the hospital were questioned. Although, it is all a part of investigation but, sometimes, cases like these become the biggest mind block for people to help those in need either in road accidents or in such cases. The family members, according to some media reports, even blamed the two youth who helped the victim and the duo was held back for a rigorous round of questioning.

1 ACJ 1043 MP 986.

2 Section 279; The Indian Penal Code, 1860.

3 Section 336; The Indian Penal Code, 1860.

4 Ibid, Section 337.

In rarest of rare cases where people come forward to help the victims, they become victims themselves and are questioned by the family of the victims and are also subjected to the rigorous questioning by the police. To keep themselves away from such mental agony that they are subjected to after helping a victim especially of road accident, people mostly don't come forward to help such victims and also prevents their near and dear ones from coming forward in such cases. Where a life could be saved by just a simple first aid they could give to the victims various times the victims dies because no first aid is provided to them by the commoners and everyone waits for the police or the ambulances to arrive and till the ambulances arrive the victim succumbs to his injuries. To investigate is the duty of police but while investigating, police starts to harass the helpers and which has in turn resulted in the fear of investigation in the people because of which they offer no help to the dying victims of road accidents which in turn defeats the idea of providing immediate Medical Care to such victims.

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