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GOOD SAMARITAN LAW - NEED AND IMPORTANCE *

Abstract

The crime and accident rate is increasing every year and India, being a developing country does not have reasonable rescue mechanisms in place. In such cases, the bystanders play a major role in saving lives by taking appropriate measures. However, people hesitate to help others as they fear getting involved in the case. Therefore, it is the duty of the State to take measures to ensure the protection of such people who willingly rescue those in need. This paper outlines the immediate need and importance of a Law that gives rights to such Good Samaritans and protects them from civil and criminal liabilities in case of any act done to save a life of a person in danger. It gives a brief background of the reasons why people fear to come forward to help and the ingredients of the law protecting the good Samaritans. It throws a light on the laws adopted by different countries with respect to the rights and duties of a Good Samaritan. The paper also analyses the current position in India namely, The Good Samaritan Bill (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014 and the Supreme Court Judgment of SaveLIFE Foundation & Anr. v. Union of India. It focuses on providing an effective and supportive legal mechanism that encourages bystanders to help people who are injured or hurt. Lastly, it also aims to give certain recommendations or suggestions that maybe incorporated in the Act or the subordinate rules or protocols established under the parent Act. These suggestions are given keeping in mind the nature of the accident or incident of crime and also by drawing a comparative analysis of the legislations in other countries on the same subject.

INTRODUCTION

A Good Samaritan refers to someone who renders aid in an emergency to an injured person on a voluntary basis. A Good Samaritan statute is a law that requires a person to come to the aid of another who is exposed to grave physical harm, if there is no danger of risk of injury to the rescuer.¹

India has the highest number of road accidents deaths in the world – 15 people die every hour and almost 60 are injured. The number of deaths due road accidents in the past decade is close to one million. 80% of road accident victims in India do not receive any emergency medical care within the critical first hour after an accident.² According to the Law Commission of India, 50% of fatalities could be averted if victims receive timely medical attention.³ The term

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¹ BLACK'S LAW DICTIONARY 279 (1st ed. 1996)

² Road traffic injuries, World Health Organisation (September 2016), <http://www.who.int/mediacentre/factsheets/fs358/en/>

³ Good Samaritan laws: A Comparative Study of Laws That Protect First Responders Who Assist Accident Victims, Suzanne E. Turner, Anuj Mohindra & Michael Peterson, For SaveLIFE Foundation (May 2014)

“Golden Hour” also known as “Golden Time” refers to a time period lasting for one hour following an accident or traumatic injury being sustained by a person, during which there is highest likelihood that prompt medical care will prevent death.⁴ Bystanders are therefore, of vital importance to prevent death and major injuries to the victims of such accidents.

However, a large number of bystanders are unwilling to help the injured victims because they fear harassment by the Police, payment of costs at Hospitals, etc. According to a National Study conducted by the SaveLIFE foundation and TNS India Pvt. Ltd.⁵:

- 74% of bystanders are unlikely to assist victims of road accidents;
- 88% of those bystanders gave the following reasons for their reluctance: legal hassles, including repeated police questioning and multiple court appearances; and
- 77% of the respondents cited detention at hospitals and having to pay hospital registration fees and other charges as reasons not to help.

The World Health Organization (WHO), in its “World Report on Road Traffic Injury Prevention, 2004” has projected that by 2020, road accidents will be one of the biggest killers in India. It also pointed out that high-income countries have well-organized ambulance-based rescue systems but middle and low-income countries, assistance by bystanders is most common.

Therefore, there was an immediate need to introduce a “Good Samaritan Law” in India to provide a legal framework to encourage bystanders to assist victims without fear of negative repercussions. “Good Samaritan Law” is a universal moral duty that must be legally protected. As a result, the Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill (*hereinafter referred to as “the Bill”*) was introduced in the Parliament in 2014 to protect a Good Samaritan from civil and criminal liabilities and to establish a supportive legal environment. It aims to constitute a Good Samaritan Authority and create an obligation on hospitals and clinics to help the victims. A Good Samaritan is a bystander who helps the victim by taking reasonable and necessary action to save his life or property.⁶ A bystander is someone who witnesses an accident⁷ which includes road, railway and air accidents.⁸ The Bill is still pending before the Parliament and there was a special mention in the Rajya Sabha on 3rd May, 2016.⁹

The Ministry of Road Transport and Highways of the Government of India laid down certain Guidelines and Standard Operating Procedure and the Supreme Court recently approved these guidelines and made them enforceable in all States and Union Territories till an effective legislation is in place.¹⁰

UNDERSTANDING THE CONCEPT

The Good Samaritan law offers to protect the altruistic rescuers from any liability that may arise out of any negligent acts or omissions from such rescue attempts. With respect to other

⁴Statement of Objects and Reasons, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁵Study on Impediments to Bystander care in India, National Survey conducted by TNS India Pvt. Limited for SaveLIFE Foundation (July 2013)

⁶Clause 2(g), The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁷Clause 2(d), The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁸Clause 2(a), The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁹ www.prsindia.org

¹⁰SaveLIFE Foundation & Anr. v. Union of India, (2016) 7 SCC

countries, there was due consideration, provided through the common law for attending circumstances¹¹, including any disability under which the rescuer might be operating, as well as the urgency of the situation and the need to act quickly. In this way, it offered sufficient protection to rescuers, whether they were professionals or laypersons.

In order to understand how such law operates in a country, emphasis has to be placed on two guiding attributes namely: a) The elements which may require a bystander to be responsible as a “Good Samaritan” and b) The other essential ingredients to attract protection from any negative consequences from the authorities after a rescue attempt.

A) Elements Giving Rise to the Responsibility:

In the case of *Salmon v. Chute*¹², a 1994 decision of the Supreme Court of the Northern Territory of Australia involving a ‘hit and run’ offence, the court recognized the “novel nature” of the ‘duty-to-assist’ provision and propounded the following four elements:

- A person must have adequate mental-physical capacity and must be in close proximity of the victim, aware of the attention required;
- The person must be able to rescue, resuscitation, medical treatment, first aid or succor of any kind through personal action or through informing the necessary authorities;
- The abovementioned assistance is to be given to a person urgently in need of it and whose life may be endangered if such assistance is not provided; and
- In case a person callously fails to do so, it makes for an offence under the provision. This element restrains the broad nature of the previous three elements. The term "callous" requires that there be "more than normal" intent. Additionally, this heightened intent is measured subjectively and must be proved by the prosecution beyond a reasonable doubt.¹³

These elements were one of the primary explanations to the ‘duty-to-assist’ provision that would later take shape of the Good Samaritan law. It not only provided the procedure for further application of the required provision with respect to such road accidents but also provided for an appellate-level challenge to the Northern Territory's failure to rescue provision.

B) Other Essential Ingredients:

Along with the elements submitted by the court in the *Chute*¹⁴ case, there are five ingredients of the Good Samaritan law in other jurisdictions on which reliance is to be placed when ascertaining a case of providing protection to a bystander:

- Classes of Persons to whom Immunity is Granted: Appropriate bifurcation has to be made when immunity is required to be granted and to what extent and this may vary from person to person. (As a person can be a ‘layman’ or a ‘professional’ when they may be extending their help to the victim). In India, there is no such immunity at present but in the American Jurisdictions, thirty-seven out of fifty-one states give immunity under the respective State laws to the persons offering assistance.¹⁵ Such immunity is granted (keeping in the view the extent) contemplating various circumstances, for example:
 - Standard of care being utilized by a physician (outside the ordinary course of the practice or employment);

¹¹John T. Pardun, *Good Samaritan Laws: A Global Perspective*, Loyola Marymount University and Loyola Law School (1998)

¹²(1994) 4 N.T.L.R. 149

¹³Supra note 10.

¹⁴*ibid.*

¹⁵ Eric A. Brandt, *Good Samaritan Law- The Legal Placebo: A Current Analysis*, <https://www.uakron.edu/dotAsset/0b9e2436-8364-488b-98d7-0f3db9e11a0e.pdf>

- Immunity for anybody trained in any medical assistance course such as CPR, First-Aid;
 - Other professionals such as firemen, teachers and others also provided separate immunity;
- Good Faith State of Mind: Such act of rescuing should not be consequential to any ulterior motive on behalf of the bystander. The protection would only be operative if the help was extended by the rescuer in an ordinary course of action and in their good faith, when reacting to the accident/crime.
 - Standard of care: To avoid liability, a Good Samaritan must avoid falling below the standard set by the particular jurisdiction under the circumstances in his treatment of the victim.¹⁶
 - Location: Determination of location is also to be taken into account, as the rescuer would want to be aware of: i) how far from an accident scene, will the protection under the law be extended and ii) if the immunity cease upon the delivery of the victim to a medical care facility or upon delegation of care to a better qualified professional.
 - No remuneration: Due care so extended is without the expectation of remuneration, i.e., ‘gratuitously’.

GLOBAL PERSPECTIVE

Countries all over the world are very different from each other – they vary in races, cultures, languages, economic status, etc. but one thing that binds this diversity, is humanity. Providing assistance to a person who is in danger is an indispensable aspect of humanity and therefore, it is important to look at the various laws governing a “Good Samaritan” in different countries.

France: Under the French Law, any person who wilfully fails to offer assistance to a person who is in danger incurs a criminal liability.¹⁷ However, such a person is exempt if providing assistance to the person in danger would put him or any third parties to any risk. In other words, the law casts a duty on a bystander to assist and failing to do so would make such a person liable to fine and imprisonment. Further, Article 1382 of the Civil Code states:

“Any act which causes harm obliges the one whose fault caused the harm, to make reparation for it”.

This means that the rescuer who provides assistance, and by doing so causes harm to the victim or a third party, will be liable under civil law. Thus, the French Law might seem extremely harsh against the rescuer. However, to curb the strictness of the law, there are certain defences that can be used by the Good Samaritan to avoid liability:

- Status of Necessity: This defence is based on the need to avoid danger which can legally justify the harm caused to the victim or any third party by the rescuer.¹⁸ In other words, Status of necessity is the situation of the person for whom the only means of avoiding an evil is to cause another one, of less importance.¹⁹
- Implied Contract of Reciprocal Assistance/Rescue: This concept was recognized in a case law and entitled the rescuer to be indemnified by the victim for the damage the rescuer might suffer himself or cause to a third party. In this way, the liability is no longer founded on the Tort of Law, but only on contractual grounds.

¹⁶*ibid.*

¹⁷Article 223-6, Criminal Code

¹⁸Article 122-7, Criminal Code

¹⁹*The Good Samaritan Law Across Europe*, The Dan Legal Network, National Coordinators Committee (2009)

England and Wales: There are no statutes in England and Wales which impose a duty on people to take action to help others in need. An exception to this is the legislation which deals with the employer-employee relationship and the parent-child relationship. The common law does not impose liability for what are called “pure omissions.” A failure to act is only actionable in tort if there is a prior duty to act to safeguard the relevant interest of the Claimant.²⁰ Judges will only impose a duty of care if the following three stage test is satisfied:

- Was the damage to the Claimant reasonably foreseeable?
- Was there a relationship of sufficient proximity between the Claimant and the Defendant?
- Is it “*fair, just and reasonable*” for the law to impose a duty of care in the situation?

In addition to this, the law does not impose any special duty or obligation on the Police and Fire Brigade to attend to an emergency situation. In case of medical practitioners, generally there is no legal obligation to assist a person whom a doctor/employer has not accepted for treatment. However, doctors must abide by their Code of Conduct and may be in breach of this if they fail to act.

United States of America: 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.²¹

China: The Good Samaritans’ Rights Protection Regulation is a recently adopted statute and applies only to the Shenzhen Special Economic Zone in Guangdong Province. However, it sets a good example for other cities. It applies only to rescuers who have no legal or contractual obligation to provide assistance to the victim. The rescuer is exempt from legal liability for unintentional injury or death unless gross negligence is proved. If a “Good Samaritan” dies or is injured while helping will receive compensation from the Government. They also have the right to seek the help of legal aid organizations if they face the threat of lawsuits.²²

INDIAN PERSPECTIVE

The Indian scenario with respect to Good Samaritan law is underdeveloped and deficient in its operation. The discussions on the requirement of such a law have been undertaken only in the past decade. This is in consequence to the provision not being present anywhere in the Motor Vehicles Act, 1988 as well as lack of focus by the legislature, despite of the increase in road accidents in the past few years.

Although there have been shortcomings, in order to enact a suitable legislation for the protection of the ‘bystanders’ who come to the aid of the victims, substantial developments have taken place from the year 2012, where the Ministry of Road Transport And Highways (“MoRTH”) along with the judiciary have advanced the scope of the Good Samaritan Law. The most notable developments being:

- The Supreme Court, in the case of *Savelife Foundation & Anr. v. Union of India & Anr.*²³, granted legal teeth to the guidelines issued by MoRTH and the latter becoming binding in all states and union territories, till Union Legislature frames the required legislation.

²⁰Supra note 3.

²¹Supra note 9 (at para 2).

²² Shenzhen introduces Good Samaritan law, He Huifeng, August 01, 2013, www.scmp.com/news/china/article/1293475/shenzhen-introduces-good-samaritan-law

²³ *ibid.*

- ***The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014***²⁴, discussing the immunity which can be availed by the ‘bystanders’ or ‘first responders’ along with the need for a Good Samaritan Authority and the duty of the hospitals and clinics. Although still pending enactment by the parliament, the bill is a step in the right direction.

Elucidating on the recent advancements made in the Indian Scenario, the following has been observed:

A) The Savelife Foundation Judgement

Background

The events of the petition were triggered through a Public Interest Litigation filed by the SaveLife Foundation, a non-profit, non-governmental organization aiming to create a unique network of medical responders to come to the victim’s aid.²⁵

In the year 2012, the Supreme Court had constituted an expert committee headed by Justice V.S. Agarwal, former judge of the Delhi High Court, to deal with the legislation with respect to the creation of road safety, treatment of accident victims etc. to be considered under one umbrella. In the year 2013, Justice Agarwal conveyed his inability to continue which led to the appointment of Shri S.K. Skandan, Additional Secretary (CS&K) as the ad-hoc chairman of the committee with adequate representation from Union of India.

Out of the various recommendations made by the committee, [majority being dealt with in SC order dated April 22nd, 2014 in *S. Rajasekaran v. Union of India*²⁶], the reliance was placed upon the report²⁷ under the Head “Recommended Directions in Relation to Protection of Good Samaritans”, for immediate attention.

The MoRTH and the Ministry of Law and Justice were also supportive of the recommendations made by the aforesaid court appointed committee. Henceforth, the court had directed both the Ministries, in consultation with each other, to issue necessary guidelines with regards to protection of the Good Samaritans, which were issued in the notification titled “Good Samaritan Guidelines”²⁸.

The Judgment *vis-à-vis* the MoRTH Guidelines

- **Judgment**: Pronounced on March 30th, 2016, primary focus was on the issue of the development of a supportive legal framework to protect the Good Samaritans. Although the Judgment had put emphasis on the guidelines issued by the 2015 Notification²⁹, it also shed light on the critical deficiencies in the Motor Vehicles Act and other laws governing road safety.

²⁴ Bill No. 156 of 2014.

²⁵ WP (Civil) No. 235 of 2012

²⁶ (2014) 6 SCC 36

²⁷ Skandan Committee Report, dated January 3rd, 2014 (Pg No.29)

²⁸ Notification No. RT-25035/101/2014-RS., dated May 12, 2015

²⁹ *ibid.*

The judgment highlighted the fact there is a requirement to build confidence amongst the public³⁰, by being free of the fear of legal consequences, to help the road accident victims, especially in cases where the delay in rendering immediate help can prove to be fatal, stating “*Saving life must be the top priority*”.

Due consideration was given to laws of other jurisdictions such as England and Wales³¹, Ireland³², New South Wales & Victoria³³ and Canada³⁴, while also providing terms such as “Golden Hour” i.e. the first hour of the injury and the association of Article 21 to the same citing “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.”.

- **Guidelines:** Hereunder are the important guidelines, to be followed by hospitals, police and all other authorities for protection of the Good Samaritan by:
 - Not holding the person liable for any civil and criminal liability;
 - Allowing the person (including an eyewitness), who took the injured person to the nearest hospital, to immediately leave (except after furnishing address by the eyewitness only), with no further questions are to be asked;
 - Providing compensation or reward along with due acknowledgement by the rescued person, in manner specified by the State, encouraging other citizens simultaneously;
 - Letting disclosure of personal information be voluntary and optional (including the Medico Legal Case Forms of the hospitals) and disciplinary action taken against the persons coercing the disclosure;
 - Conducting investigation through an examination only on a single occasion with application of the standard operating procedure so established under Section 284 (by way of commission) or Section 296 (through an affidavit) of the Criminal Procedure Code;
 - Conducting the aforesaid investigation using video conferencing extensively to prevent harassment;
 - Undertaking disciplinary action against the doctor for lack of response under the Medical Council regulations.

In addition to the above, the Ministry of Health and Family Welfare is required to issue guidelines for both public and private hospitals stating the procedure to be followed when assistance is provided by the bystander.

B) Standard Operating Procedure: The Standard Operating Procedure came into force pursuant to a Notification³⁵, issued by MoRTH for implementation of the procedure to be followed when conducting the examination of the Good Samaritan. The Superintendent of Police or Deputy Commissioner of Police or any other Police official of corresponding seniority heading the Police force of a District has to ensure that the procedure is adopted in the respective jurisdictions.

C) Enforcement

³⁰Department of Road Transport and Highways, letter dated February 19th, 2004, “addressed to the States and Union Territories enclosing a Circular issued by the police authorities in Delhi in order to build confidence in the public for helping road accident victims”

³¹Section 2& 5, Social Action, Responsibility and Heroism Act, 2015

³²Section 51D, Civil Law (Miscellaneous Provisions) Act, 2011

³³Civil Liability Act, 2002; Wrongs Act, 1958

³⁴Good Samaritan Act, 2001; Emergency Medical Aid Act; Volunteer Services Act

³⁵Notification No. RT-25035/101/2014-RS. dated January 21, 2016, Standard Operating Procedures, Ministry of Road Transport and Highways

To confirm that the directions ordered and guidelines issued were enforceable by the Court under Article 32, to be binding on all the states and union territories, reliance was placed upon various judgments³⁶ of the apex court to conclude that certain principles and norms are to be followed, as there was absence of statutory provisions with respect to them.

The Supreme Court also relied upon the judgment of *Vishaka and Ors. v. State of Rajasthan & Ors.*³⁷, having similarly laid down guidelines with respect to the law against sexual harassment at workplaces until the legislation was enacted for the purpose and quoted that “it is the duty of the executive to fill the vacuum by executive orders because its field is coterminous with that of the legislature, and where there is inaction even by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations under the aforesaid provisions to provide a solution till such time as the legislature acts to perform its role by enacting proper legislation to cover the field.”

The Court hence concluded that an exercise of this kind by the court is a well-settled practice having a substantial stand in the country’s constitutional jurisprudence and added that such exercise was essential to fill the void in the absence of suitable legislation to cover the field.

ANALYSIS OF THE BILL

The object of The Good Samaritan (Protection from Civil and Criminal Liabilities) Bill is to protect Good Samaritans from civil and criminal liabilities and to establish a supportive legal environment by constituting a Good Samaritan Authority. The Bill also aims to create an obligation on hospitals and clinics to provide emergency medical treatment. It extends to the whole of India. Clause 2 of the Bill is the definition clause and it defines an accident, bystander, emergency response, Good Samaritan, etc. The main features of the Bill are as follows:

- **Good Samaritan Authority and Fund:** The Bill provides for creation of a Good Samaritan Authority and outlines the qualifications of the Chairman of the Authority. The Authority is required to have representation from each State and Union Territory.³⁸ The functions of the Authority are to receive complaints regarding harassment of Good Samaritan, process claims of the hospitals/clinics for treatment of the victim and to sensitize the public regarding the provisions of the Act along with rights of the Good Samaritan through mass media, campaigns, etc.³⁹ In addition to this, the Bill provides for constitution of a Good Samaritan Fund for carrying out the purposes of the Act.⁴⁰
- **Rights of the Good Samaritan⁴¹:** The most important right given to a Good Samaritan is the exemption from civil and criminal liability for any act done to save the life and property

³⁶Lakshmi Kant Pandey v. Union of India (1984) 2 SCC 244; D.K. Basu v. State of W.B. (1997) 1 SCC 416; Supreme Court Advocates-on-Record Assn. v. Union of India (1993) 4 SCC 441; Dinesh Trivedi, M.P. v. Union of India (1997) 4 SCC 306

³⁷(1997) 6 SCC 241

³⁸ Clause 3, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

³⁹ Clause 4, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁴⁰ Clause 10, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁴¹ Clause 5, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

of a victim. Apart from this, a Good Samaritan cannot be compelled to file an FIR or pay any charges for the treatment of the victim. He shall also not be compelled to stay at the Police Station or Hospital nor give any information regarding the identity of the victim, his own identity, or any other evidence regarding the accident. In other words, a Good Samaritan cannot be compelled to stand as a witness to give evidence. It is pertinent to note that one of the main reasons for bystanders not helping victims is that they are afraid that they will get involved in the case and be subject to harassment at the hands of the Police. These rights are extremely important and will encourage people to come forward and help victims of accidents thereby, saving thousands of lives. Another important aspect is that in case the Good Samaritan willingly wants to assist in the investigation, he must not be called repeatedly and his statement is required to be recorded through a video at a single hearing.

- **Awareness and Education**⁴²: All the rights provided by legislation are of no use if people are not aware of these rights. Therefore, spreading awareness to the public is essential for effective enforcement. The Bill casts a duty on educational institutions and the Appropriate Government to impart training in first-aid and emergency response, at least once a year. Emergency response is the reasonable necessary reaction to an accident or incident of crime which includes taking the victim to a hospital to save his life or calling an ambulance or Police. In addition to this, it is the duty of the Appropriate Government to organize workshops and programmes to sensitise the citizens regarding their rights as a Good Samaritan, make them aware of emergency responses, and train them in the art of first-aid.
- **Duty on Hospitals and Clinics**⁴³: The Bill mandates all hospitals and clinics to provide emergency medical treatment without demanding payment for such treatment. In other words, a hospital or a clinic cannot deny emergency treatment even if the family is unable to make the payment. For reimbursement of the payment, the hospital or clinic can make an application to the Authority created under the Act. In case the hospital is not equipped to handle the victim, it is their duty to direct the victim to the nearest hospital or clinic where the facility for treatment is available. Further, it is the duty of the hospitals and clinics to inform the Police as soon as a victim is brought to the hospital or clinic by the Good Samaritan. In case the victim suffers any physical or mental damage, or death is caused due to denial of emergency medical service by the hospital or clinic, a penalty of minimum Rs. 10 lakhs can be imposed along with the cancellation of the license. However, the Bill exempts the hospital or the clinic from any liability in case any physical, mental damage or death is caused due to any complications during the medical attention. This immunity is not applicable in case of gross medical negligence.⁴⁴

RECOMMENDATIONS AND CONCLUSION

Good Samaritan laws point society in a proper direction and act as a “moral compass”. In other words, human life must be valued at all times over all things and one must help those whose life is in danger. Most of the people who are willing to help out in such a situation have various fears that have been mentioned above. In such circumstances it is the duty of the State to ensure that adequate protection and rights are given to the persons willing to help those in need.

⁴² Clauses 6-8, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁴³ Clause 9, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

⁴⁴ Clause 11, The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014

- It is pertinent to note that the Bill enumerates the rights of the Good Samaritan but does not impose any duties on the bystanders. It is suggested that the Act must differentiate between a “layman” that is a person who does not have the knowledge of the procedure to be followed and a “professional” which would include the Police, Medical Practitioners, Fire Brigade, etc. The law should cast a general duty on the laymen bystanders and a special duty (attracting a fine in case of breach) on the Professionals, with respect to emergency response. However, the French Model of imposing a fine and imprisonment on a bystander who does not help the victim seems very harsh and would defeat the purpose of encouraging people to come forward and help voluntarily. Just like the Fundamental Duties enshrined in the Constitution of India, the real purpose behind incorporating a set of duties on the bystanders would be to lay down a system of norms, which in due course would help change the established attitudes and generate new ones along with creating a psychological climate conducive to the development of alert, dedicated and informed citizens.
- A crime is an action or omission which constitutes an offence under the law but there is a vast difference in the nature of the crimes such as road accidents, sexual assaults, kidnapping, theft or murders. It is true that the end result of all of the abovementioned crimes is that a person is injured and the emergency response would remain the same for all that is, calling the Police or an ambulance or taking the victim to a Hospital or a Clinic. However, due to the difference in the nature of the crimes, there is a need to frame certain rules or protocols to be followed that would be specific to each crime.
- The Bill emphasises on the importance of spreading awareness about the rights of the Good Samaritan. Even though Clause 5 (1) of the Bill states that a person will not be liable with respect to anything done to save life or property of the victim, this clause is very general fails to emphasise on the basic right of immunity. Just like it is clearly provided that hospitals and clinics are immune from liability in case any complication arises during the treatment (except in the case of negligence), in the same way the Law must specify that the Good Samaritan will be immune from any liability in case something happens to the victim after or during the emergency response of the Good Samaritan which would include calling the Police or ambulance or taking the victim to the hospital. This is extremely necessary because apart from the fear of payment for treatment or being harassed by the Police, people also have the fear of causing more harm.

Since the accidents and incidents of crime are at a rise in India, there is an urgent need to enact the legislation that would deal with the protection of the Good Samaritans. The Guidelines issued by the MoRTH along with the Standard Operating Procedures are only applicable to accidents on roads and highways. The Bill on the other hand, deals with not only accidents which include road, air and railway accidents but also “incidents of crime” which include sexual assault, robbery, theft, murder, attempt to murder, kidnapping, attempt to kidnap and road rage.⁴⁵ Needless to say, the Bill has a much wider scope than the existing guidelines and provides various rights to the person who comes forward to help victims of accidents or incidents of crime.

⁴⁵ Clause 2(e), The Good Samaritan (Protection from Civil and Criminal Liabilities) and Miscellaneous Provisions Bill, 2014