CONSTITUTIONAL LEGAL REGIME OF RIGHT TO EMERGENCY MEDICAL ATTENTION: INDIA IN PERSPECTIVE

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Abstract: Medical emergency is an unforeseen situation which may lead to bigger hazards; so is to be handled with high importance. The emergency medical services available in India are yet to develop a lot. So far as the legal developments are concerned, role of judiciary has been more than that of the legislature and executive. This paper analysis the state of emergency services and laws in India and also recommends some action points like availability of infrastructure, trained professionals and effective laws. Failure of a professional or a hospital to attend an emergency case must also be dealt with stringently. The SC of India as long back as 1989 observed in Parmanand Katara v. Union of India that when accidents occur and the victims are taken to hospitals or to a medical practitioner, they are not taken care of for giving emergency medical treatment on the ground that the case is a medico-legal case and the injured person should go to a Government Hospital. The SC emphasized the need for making it obligatory for hospitals and medical practitioners to provide emergency medical care.

Keywords: Right to Emergency Care, Medical Services, Medico- Legal Cases, Medical Practitioners.

Introduction: When it comes to medical emergency the consequences of failure to address it effectively and timely are much higher. Therefore, in the domain of medical emergency there are higher demands of legal permissibility for the relevant -trained professionals to take quick decisions and apply. A miscalculation or error of judgment by such medical professional does not always amount to negligence. Providing infrastructure, making available the best technology and facilitating with trained professionals are all responsibility of a welfare state. Similarly the welfare state has to have an adequate mechanism to address and redress the instances of negligence in handling medical emergency. The Constitution of India has provisions regarding the right to health. The ideals of article 21 demand life to be assured and if we club it with the development arrived at in the case of *Francis Coralie v. Union Territory of Delhi* [1] the burden of state is to ensure the life with dignity. In my understanding the rationale underlying the Francis Coralie judgment brings the state under liability to make available the necessities of medical support as well. I find that the bare language of Article 21, the judgment of Francis Coralie and the founding idea of the pronouncement in *Dr Parmanand Katra v. Union of India* [2] are closely interwoven with a thread of thought which unfailingly puts the state under liability to make sure that all cases of medical emergency are handled with best efficiency and within time. This can be observed from the judgment itself in *Dr Parmand Katra v. Union of India* [3] wherein the court expressed: "Every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. The effort to save the person should be the top priority not only for the medical professional but also for 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."[4] In *State of Punjab and others v. Ram Lubhaya Bagga and others*, [5] the Apex Court has held that the right of a citizen to live under Article 21 casts obligation on the State. The effect of including the right to medical attention within Article 21 is based on interpretative corroboration from a number of provisions Article 38 is definitely wide enough to cover such support for the citizens of India.

The connecting thread of thought linking Article 21 with Article 38,39, 41,42 & 47 is an example of judicial interpretation of the provisions of Part IV within the sense and ambit of Fundamental Rights. This is how the Supreme Court has been able to come up with utilitarian judgments like Court on *Its Own Motion v Union of India and others,* [6] *Dr. Kunal Saha, USA, Represented By Prabir Kumar Mullick* v *Dr. Sukumar Mukherjee and others*[7]*, Paschim Banga Khet Mazdoor Samiti* case[8]. The same thought would have been applied with higher vigour and sensitivity towards welfare responsibilities of the state when the court pronounced its judgment in *Dr. Parmanand Katara*[9]

Emergency Medical Care in India: Medical Profession is considered to be the most pious service of mankind and the doctors are perhaps the most revered among all professionals. From 20th Century onwards, it has been witnessed that awareness among people regarding the fundamental rights guaranteed by the constitutions in other countries and by the Constitution of India has increased. This has brought the medical profession under persistent scrutiny of both the public and the courts. In the course of practice of medicine, healthcare professionals, just like other people in different areas, have to face errors despite prudence and care, such as wrong diagnosis and treatment, or by otherwise doing something, which is termed as "wrong" or "harmful" – to the patients. Any kind of wrong action or misjudgment may result in the death of a patient. This fallibility, inherent in the medical profession like in any other human action, is directly related to legal consequences. In fact, in the medical field, consequences are high and serious. Health care professionals will have to learn to bear with not only their technical know-how, but also with their moral fallibility in performance of their duty.

State is under responsibility to raise the nutrition level of its citizens. Article 47 of the Constitution of India states that it is a duty of State to raise the level of nutrition, the standard of living and to improve public health. When a patient consults a doctor, the doctor owes him certain duty, viz., a duty of care in deciding whether to undertake the case and a duty of care in deciding what treatment to give. A breach of any of these duties gives a right of action for negligence to the patient.[10] However Supreme Court has decided in *Paschim Benga Khet Mazdoor Samity v. State of West Bengal*[11], that providing medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state.[12] In the ordinary course of practice private medical practitioners and private hospitals, have a right to decide whether to undertake a case or not.[13] Code of Medical Ethics Regulations 2002[14] also imposes duty on the physicians toward their patients. Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but also should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention. A physician should endeavour to add to the comfort of the sick by making his visits at the hour needed by the patient. A physician advising a patient to seek service of another physician is acceptable; however, in case of emergency a physician must treat the patient. No physician shall arbitrarily refuse treatment to a patient. However for good reason, when a patient is suffering from an ailment which is not within the range of experience of the physician, may refuse treatment and refer the patient to another physician.[15]
The Patient must not be neglected. Once having undertaken a case, the physician should not neglect the patient, nor should he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care.[16]

In *Paramanand Katara v. Union of India*[17], the Supreme Court observed that, "Preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond human capacity. The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence as tantamount to legal punishment. A doctor at the Government hospital positioned to meet the State obligation is, therefore, duty bound to extend medical assistance for preserving life. 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 or 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. Every doctor should be reminded of his total obligation and be assured of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before him.

Need of Emergency Medical Infrastructure: In a large country with huge population like ours, accidents happen in significant numbers and the victims require emergency medical care are not confined to motor accidents. Emergencies may arise due to motor accidents, fire, floods, cyclone, earthquakes etc. or even sudden collapse of victims or emergent deliveries in pregnancy.[18]

Emergency medical infrastructure means a network of services coordinated to provide medical aid and assistance from primary response to definitive care, involving personnel trained in the rescue, stabilization, transportation, and advanced treatment of traumatic or medical emergencies. Linked by a communication system that operates on both a local and a regional level, EMS is a tiered system of care[19], which is usually initiated by citizen action in the form of a telephone call to an emergency number. Subsequent stages include the emergency medical dispatch, first medical responder, ambulance personnel, medium and heavy rescue equipment, and paramedic units, if necessary. In the hospital, service is provided by emergency department nurses, emergency department physicians, specialists, and critical care nurses and physicians.[20] The purpose of effective Emergency medical service is to provide emergency medical care to all who need it. Advances in medical care and technology in recent decades have expanded the parameters of what had been the traditional domain of emergency services. These services, no longer limited to actual in-hospital treatment from arrival to stabilization, now include prehospital care and transportation.

In *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*,[21] the Supreme Court further held that, "in this context Shri Dhavan has invited our attention to the recent developments that have taken place in this field in the United States. There it was found that private hospitals were turning away uninsured, indigent persons in need or urgent medical care and these patients were often transferred to, or dumped on public hospitals and the resulting delay or denial of treatment had sometimes led to disastrous results. To meet this situation the US Congress has enacted the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) to prevent refusing the patients by private hospitals. By the said Act all hospitals that receive medicare benefits and maintain emergency rooms are required to perform two tasks before they may transfer or discharge any individual:
(i) the hospital must perform a medical screening examination of all prospective patients, regardless of their ability to pay;
(ii) if the hospital determines that a patient suffers from an emergency condition the law requires the hospital to stabilize that condition and the hospital cannot transfer or discharge an unstable patient unless the transfer or discharge is appropriate as defined by the statute.

Provision is made for imposing penalties against hospitals or physicians that negligently violate COBRA[22]. In addition, the individual who suffers personal harm as a direct result of a participating hospital's violation can bring a civil suit for damages against the hospital." The Supreme Court further held that, "the Constitution envisages the establishment of a welfare State at the federal level as well as at the State level. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the government in a welfare State. The government discharges the obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities. Art. 21 imposes an obligation on the State to safeguard the right to life of every person."

The National Consumer Disputes Redressal Commission, in Pravat Kumar Mukherjee vs. Ruby General Hospital & Others[23] declared that a hospital is duty-bound to accept accident victims and patients who are in critical condition and that it cannot refuse treatment on the ground that the victim is not in a

position to pay the fee or meet the expenses; or on the ground that there is no close relative of the victim is available who can give consent for medical treatment.

Emergency medical situations and related issues can be seen in two parts. First, availability of emergency services and second is proper handling of the cases of emergency. As of now in India, there is no proper legal framework to:

a) encourage citizens to report and come out to give help to the accident victims without fear of harassment,
b) to mandate all doctors and hospitals to attend the victims of accidents and provide all medical facilities for stabilizing patients in emergency,
c) establish trained paramedics for pre-hospital care during transport
d) to aid and implement trauma care system regardless of jurisdictional boundaries.[24]

State Of The Emergency Medical Services In India[25]: Emergency services demand a set of services always available. This is affordable only at collective level. The generally prevalent method of EMS systems worldwide is to have a common emergency communication number connected to healthcare agencies[26]. The most widespread Emergency Response Model in India is the "108" Emergency service managed by EMRI (Emergency Management and Research Institute) across ten states. The "108 Ambulance Service" is a Public Private Partnership between state governments and Emergency Management and Research Institute (EMRI) and the service provides complete pre-hospital emergency care from event occurrence to evacuation to an appropriate hospital. The concept of "108 Ambulance" aims at reaching the patients within 20 minutes in urban areas and within 40 minutes in rural areas and that the aim is to shift the patient to the nearest hospital within 20 minutes after reaching him/her. The emergency transportation is conducted in a state-of-the-art ambulance, which is provided free of cost. The transportation is coordinated by emergency call response center, which is operational 24-hours a day, 7-days a week. In addition, the call to the number 108 is a toll free service accessible from landline or mobile.

The CATS (Centralized Accident and Trauma Services) ambulance system was conceptualized in 1984[27]. The service was expanded nationally, but lack of a driving force behind the initiative made it fall by the side. Today, NGOs (non-governmental organizations) and private hospitals in cities and states have constructed their own emergency medical support setups. Most important among these are the National Network of Emergency Services (NNES), Ahmedabad, Delhi, Pune, Hyderabad, Chennai, Raipur, Ranchi, and Kolkata[28]. Emergency Management and Research Institute (EMRI), Haryana, Chandigarh, Uttaranchal, Rajasthan, Gujarat, Madhya Pradesh, Andhra Pradesh, Goa, Karnataka, Tamil Nadu, Meghalaya, and Assam[29] is also functional in the relevant areas. Life Support Ambulance Service (LSAS), Kerala, Mumbai [30], Operation Sanjeevani, Bengaluru, Ambulance Access for All (AAA), Mumbai, Indian Institute of Emergency Medical Services (IIEMS), Kerela, etc. are also there to support the victims of emergency situations.

Conclusion: Healthcare needs of individuals can be managed to some extent by a careful lifestyle but there can not be a guarantee by resorting to any preemptive care. Above this is the fact that India has a large population of poor people who cannot afford medical facilities at their expense. Also due to the nature of the services involved, the person undergoing such service is generally unaware of quality of services extended o him. Apart from all this, in the age of welfare state governance the state is under liability to take medical care of the population. The Supreme Court held in *Paramanand Katara v. Union of India*,[31] as follows:

> "there are no provisions in the Indian Penal code, Criminal Procedure Code, Motor Vehicles Act, etc., which prevent doctors from promptly attending seriously injured persons and accident cases before the arrival of police and thus taking into cognizance of such cases, preparation of FIR and other formalities by the police."

The state of emergency services available in India appears to be in the early developing stage. After completion of more than six decades of the Constitution state must come up to fulfill the very basic

welfare directives envisaged in and intended by the constitution of India. Towards establishment of a fairly good emergency and medical health care system in India, the state must ensure the availability of Emergency support infrastructure. Transportation and first responder facility should be made available in all parts of the country. For this the public private partnership model, as already functional in some states of India appears to be a favoured mechanism. This would definitely require some basic operability conditions like proper road connectivity in all parts of territory of India. Skilled manpower, equipped hospitals within short distances, prompt supply of life saving drugs through state mechanism and maintenance of all such things are also sine qua non for fulfilment of the state responsibility. Various studies, including a review of EMRI by the health ministry found certain gaps in the existing EMS in India: like Hospital infrastructure, especially in public hospitals, for treating and managing medical emergencies need further strengthening, Lack of training and training infrastructure for training healthcare staff (public or private) and other stakeholders in medical emergency management system and first aid.[32]

Number of expert doctors and research centers should be empaneled by the government who are available for emergency services at governmental expense. Such doctors and medical research centers should also be connected with technological support like video conferencing so that the emergent situation is addressed by the highest possible expertise.

Laws and procedures should be framed or moulded in such a way that an ordinary member of the public does not feel frightened in involving himself for the help of an emergency- victim. Such faith building in the population will not happen merely by adopting suitable texts of the law. The state personnel should act responsibly and sensitively in dealing with such cases and the public spirited citizens should be taken as respected. The economic orientation in the country has been towards privatization since the last twenty five years. However, certain basic amenities must not be disinvested to private hands. It may be a constraint to gather enough resources to take care of total healthcare need of the population solely at state expense. Private ownership has to be opened which shall always operate for profit. In such situation role of regulatory agencies becomes crucial in ensuring sensitive services to the victims.

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