

A SAMARITAN COURT: AN ASSESSMENT OF THE SUPREME COURT OF INDIA IN SAVING ROAD ACCIDENT VICTIMS

—Yogesh Pratap Singh* & Nanditta Batra**

Abstract—As the final doctor of all legal and constitutional maladies, the Supreme Court of India has to lay down laws for all the courts in India. The decision-making process in the apex court makes it abundantly clear that the judiciary in India does not confine itself to mere interpretation of laws, but it makes law and in fact, has emerged as an institution of governance. Through this paper, authors examine the functioning of the Supreme Court of India as an institution by analyzing its role in a specific domain of road safety which continues to be a major public health concern and a leading cause of death and injury especially in the developing world. According to the latest data released by the Ministry of Road Transport and Highways, India, approximately 1,53,972 people died, and 3,84,448 individuals were injured in the year 2021 due to road accidents. The more serious concern is the trend reflected in the data that road accidents increased by 12.6% in 2021. How has the Court dealt with issues concerning the protection of life in road accidents? Has the intervention made by the Court in cases concerning road safety led to any positive change and improving the plight of road accident victims? Or whether the court orders have become paper tigers? Some of these issues are analyzed in this paper. The findings demonstrate that the interventions of the apex court on various facets of road safety have addressed some of the very sensitive issues like the reluctance of doctors

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to treat accident victims, protection of good Samaritans, state apathy and lack of medical facilities. The court has given precedence to the “preservation of life” as an arching norm over anything else. The executive however has been tardy in implementing many meaningful directions given by the Court. The paper suggests that the apex court instead of constituting committees which lack enforcement power must pass strong orders and ensure its implementation by exercising its power of contempt against those who defy them.

Keywords: Public Health, Road Accident, Road Accident Victim, Road Safety

I. INTRODUCTION

Public law scholarship in the United States has been progressively dominated by a school of thought famous as extra-textualist, non-interpretivist or supplementers. These scholars are unified by a normative principle that the role of the federal judiciary in the American legal system is not limited to the plain or popular meaning of the text of the Constitution, especially the fundamental rights. Instead, they argue that it is permissible for the Supreme Court to announce a right as fundamental which is nowhere implied in the constitution and strike down any action of the state if they breach these extra-textual rights.¹ Judges are free to consider values not specifically set forth in the text, such as those based on moral reasoning, practical consequences, structural relationships, or other considerations.² A classic example of extra-textualism can be seen in the famous case of *Griswold v. State of Connecticut*³ where majority judges struck down a Connecticut law that criminalized the furnishing of birth control to married couples as unconstitutional.⁴ The majority opinion was founded on the view that the Due Process Clause of the Fourteenth Amendment provides a general right to privacy.

Justice Black in his dissenting opinion which reflects the textualist view criticized the majority for straying too far from the text of the Bill of Rights. Relying on vague natural law principles and deriving the right to privacy in

¹ Goldstein, L. F. (1987). Judicial Review and Democratic Theory: Guardian Democracy v. Representative Democracy. *Western Political Quarterly*, 40(3), 391-412. <https://doi.org/10.1177/106591298704000303>.

² Philip Bobbitt, *Constitutional Fate: Theory of the Constitution* 36 (1982), p. 26.

³ 1965 SCC OnLine US SC 124: 14 L Ed 2d 510: 381 US 479 (1965).

⁴ *Id.*, 485–86.

marital relations in the Constitution—at least in his view—did not exist. Adhering to his preference for interpreting the Constitution in line with its text, Justice Black wrote, I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision.⁵

As the guardian of fundamental rights under Article 32 of the Indian constitution, the Supreme Court of India in its zealotry to protect the rights of people has internalized extra-textual jurisprudence and expanded the width of the fundamental rights by giving a contextualized and purposive interpretation to the word “life” used in Article 21. The Court widened the scope of Article 21 to include many unenumerated rights. It synthesized and integrated the fundamental rights and the directive principles in order to “constitutionalize” social and economic rights which actually played a very vital role in the realization of the directive principles, not only as a means to implement fundamental rights but also as a legal framework for a welfare state. The right to livelihood in *Olga Tellis*,⁶ the right to live with human dignity in *People’s Union for Democratic Rights v. Union of India*,⁷ the right to balanced and sustainable economic development in *Banwasi Sewa Ashram v. State of U.P.*,⁸ and the right to health in *Vincent Panikurlangara v. Union of India*,⁹ gave new dimensions to right to life.¹⁰

Famously, in *Francis Coralie Mullin v. UT of Delhi*¹¹ the court remarked that:

“[t]he right to life enshrined in Article 21 cannot be restricted to mere animal existence...We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings...”

It has also successfully maneuvered many procedural labyrinths and come to the rescue of marginalized, minorities and poor people by engineering “Public Interest Litigations”. The evolution of the Supreme Court of India

⁵ Id., 510.

⁶ *Olga Tellis v. Bombay Municipal Corpn.*, (1985) 3 SCC 545: AIR 1986 SC 180.

⁷ (1982) 3 SCC 235: AIR 1982 SC 1473.

⁸ (1986) 4 SCC 753: AIR 1987 SC 374.

⁹ (1987) 2 SCC 165: AIR 1987 SC 990.

¹⁰ Yogesh Pratap Singh, *Bancusprudence*, Journal of Indian Law Institute, vol. 63 (4), p. 395.

¹¹ *Francis Coralie Mullin v. UT of Delhi*, (1981) 1 SCC 608 (Supreme Court of India).

into a “People’s Court”¹² has invited sharp scrutiny of its functions. Judicial activism or not, many scholars argue that post-1980 the Court had become “an institution of governance”¹³ while others look at it condescendingly and are particularly unsympathetic to Public Interest Litigation as a “dangerous farce.”¹⁴ Others have argued that though the Court has distinctively championed many socio-economic causes, it has ultimately gone soft on the government and passed weak orders.¹⁵ The authors seek to test these alternative hypotheses on the functioning of the Court as an institution by analyzing its role in a specific domain of road safety. How has the Court dealt with issues concerning the protection of life in road accidents? Has the intervention made by Court in cases concerning road safety led to any positive change and improved the plight of road accident victims? Or whether the court orders have become paper tigers?

II. METHODOLOGY

The authors performed a string search on legal databases SCC Online to cull out the relevant cases on road safety and treatment of accident victims. While notable contributions to the area of road safety and victim care may have been made from the pulpit of the High Courts they have not been analyzed in this paper as the authors intended to assess the contribution of the Supreme Court of India only as an institution. The paper has looked at the role of the court as an institution and not at the contribution of individual judges despite some recent scholarly attempts to evaluate the performance of each judge and assess his/her contribution to the growth of the body of law.

III. PROVIDING CARE TO ROAD ACCIDENT VICTIMS

The benefit of motorization which improved the lives of millions has come with a heavy price, especially in the developing world. In terms of societal and economic costs, the burden of road traffic accidents and injuries has been rising substantially and has become a major public health concern.¹⁶ According to government data, a total number of 4,12,432 road accidents have been reported

¹² Aparna Chandra, William H. J. Hubbard, & Sital Kalantry, *The Supreme Court of India: A People’s Court?* 1 *Indian Law Review* 145 (2017).

¹³ *Supreme Court is Essentially Acting as an Institution of Governance: Upendra Baxi* (The Mint, 27 Dec 2014), <https://www.livemint.com/Politics/Shhv9cYP6x98pK9lTvw2lM/Supreme-Court-is-essentially-acting-as-an-institution-of-gov.html>. (last visited on Mar. 30, 2023).

¹⁴ Anuj Bhuwania, *Courting the People: Public Interest Litigation in Post-Emergency India* (Cambridge University Press 2017).

¹⁵ Shylashri Shankar and Pratap Bhanu Mehta, *Courts and Socioeconomic Rights in India* in Varun Gauri and Daniel M. Brinks (eds) *Courting Social Justice: Judicial Enforcement of Social And Economic Rights In The Developing World* (Cambridge University Press 2017).

¹⁶ Gopalakrishnan S. *APublic Health Perspective of Road Traffic Accidents*, *J Family Med Prim Care*. 2012 Jul;1(2):144-50. doi: 10.4103/2249-4863.104987. PMID: 24479025; PMCID: PMC3893966.

in the country, claiming 1,53,972 lives and causing injuries to 3,84,448 persons in the year 2021. Unfortunately, the worst affected age group in Road accidents is 18-45 years, which accounts for about 67 percent of total accidental deaths.¹⁷

Road accident cases can be fatal for many. However, immediate availability of medical treatment during the “golden hour” can save lives.¹⁸ Unfortunately, access to emergency healthcare for the victims of road accidents is delayed due to various systemic bottlenecks. The first delay occurs at the site of the accident where the reluctant bystanders seeking to avoid legal rigmaroles do not provide immediate help. The second opportunity is lost within the hospitals where either bureaucratic compliances or insistence on completion of police formalities prior to the commencement of treatment leads to delay. The third delay occurs when there is an absence of qualified surgeons and a lack of essential facilities leads to referral to another hospital. Some hospitals wait for advance deposits to be made to begin the treatment. So, there is a conglomeration of individuals’ failure to perform their moral to help others, failure of the doctors to discharge their professional duties to save life, failure of the State to maintain well-equipped primary health centers and lack of regulation of private healthcare providers. In *S. Rajasekaran v. Union of India*,¹⁹ the Supreme Court lamented:

“Insofar as emergency care is concerned there is perhaps no denial of the fact that many deaths and loss of limbs and serious disfiguration of victims can be saved by timely medical attention. Lack of an adequate number of good Samaritans; squabbles between police stations and administrative authorities over jurisdiction; lack of quick response in removing the victims to hospitals and centres of medical care due to lack of necessary infrastructure like ambulances; absence of adequate and well-spread out number of hospitals and medical centres; the poor condition and lack of adequate infrastructure in government-run hospitals and health centres and the prohibitive costs of health care facilities in the more advanced centres of medical care besides insistence of large deposit of money by such advanced health care centres in the private sectors are some of the problems that have seriously plagued post-trauma/accident care in the country”.

¹⁷ Government of India, Ministry of Road Transport & Highways. Transport Research Wing, Road Accidents in India 2021, Report, https://morth.nic.in/sites/default/files/RA_2021_Compressed.pdf (last visited on Mar. 30, 2023).

¹⁸ The Law Commission of India in one of its report states that 50 percent of those who die on Indian roads can be saved if they receive timely medical attention, including assistance from bystanders and passers-by. An astounding 70,000 lives can be saved every year.

¹⁹ *S. Rajasekaran v. Union of India*, (2014) 6 SCC 36.

The question, however, is whether the law can address any or all of these failures so as to create a responsive system to cater to the needs of accident victims. The law obviously cannot compel the performance of moral duties unless those moral duties are transported to the realm of legal duties. However, embracing the spirit of transformative constitutionalism with social justice as the guiding light, the Supreme Court of India has steered the State and its instrumentalities towards performing many positive obligations. Through its various successive pronouncements, the Court has addressed some systemic issues of road safety including drunken driving, timely availability of medical care and treatment and protection of good Samaritans. Some of the notable interventions of the Court are on the following aspects:

1. **Duty of Doctors and Healthcare Establishments:** The irrational fear of the operation of the legal system in accident cases has led many doctors in India to wait for the completion of police formalities. While there is no provision in any law including the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and the Motor Vehicles Act, 1988 that forbids doctors from providing immediate care to injured persons, it had become a standard practice for the doctors to insist on the arrival of police and their taking steps for registration of criminal case before the treatment could be provided. This problem was highlighted in a newspaper report published in Hindustan Times, “Law helps the injured to die”²⁰ which acted as a catalyst for a public interest litigation before the Supreme Court of India. The petitioners sought a direction to that effect that the treatment of the injured be given precedence over the application of procedural criminal law. Clearing any room for doubt, the court categorically stated that doctors are not required to wait for the police in accident cases. As this case was a result of the misconception of law entertained by many doctors, the Court ordered wide publicity to be given to its decision. The court insisted on the ‘preservation of human life’ as a sacrosanct principle and read it as a part of Article 21 of the Indian Constitution. According to Ranganath Misra, J

“[E]very 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

²⁰ [“In the said publication it was alleged that a scooterist was knocked down by a speeding car. Seeing the profusely bleeding scooterist, a person who was on the road picked up the injured and took him to the nearest hospital. The doctors refused to attend on the injured and told the man that he should take the patient to a named different hospital located some 20 kilometres away authorised to handle medico-legal cases. The samaritan carried the victim, lost no time to approach the other hospital but before he could reach, the victim succumbed to his injuries.”].

of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way...We must make it clear that zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules the victim has to be sent elsewhere or how the police shall be contacted, the guideline indicated in the 1985 decision of the Committee, as extracted above [In para 3] , is to become operative”.

While Parmanand Katara’s case is a landmark in expounding upon the duty of doctors in emergency care, it doesn’t address the issue of liability of the doctors who failed to perform their duties in providing emergency care. Whether the failure to provide emergency care can amount to criminal negligence? In *Martin F. D’Souza v. Mohd. Ishfaq*,²¹ the Supreme Court of India held that while the answer to that question will depend upon facts and circumstances of the case²², the nature of ‘the law is a watchdog, and a bloodhound’.²³ Subsequently, in *Savelife Foundation v. Union of India*,²⁴ the Court held that “Lack of response by a doctor in an emergency situation pertaining to road accidents, where he is expected to provide care, shall constitute “Professional Misconduct”, under Chapter 7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and disciplinary action shall be taken against such doctor under Chapter 8 of the said Regulations.”

- 2. Protection of Bystanders:** Good Samaritan Guidelines: The doctors can provide medical aid only if the injured is taken to them during the golden window. The reluctance on the part of bystanders and the general public in not helping the accident victims due to fear of getting embroiled in legal cases has been catastrophic. To prevent unnecessary harassment of the good Samaritans and minimize their interaction with the medical and legal system, the Court issued guidelines for the protection of good Samaritans. Some of them are as follows:²⁵

[T]he bystander or good Samaritan shall not be liable for any civil and criminal liability.

...

The disclosure of personal information, such as the name and contact details of the good Samaritan shall be made voluntary

²¹ *Martin F. D’Souza v. Mohd. Ishfaq*, (2009) 3 SCC 1.

²² *Id.*, 49.

²³ *Id.*, 65.

²⁴ *Savelife Foundation v. Union of India*, (2016) 7 SCC 194.

²⁵ *Id.*

and optional including in the Medico-Legal Case (MLC) Form provided by hospitals.

(6) The disciplinary or departmental action shall be initiated by the Government concerned against public officials who coerce or intimidate a bystander or good Samaritan for revealing his name or personal details.

(7) In case a bystander or good Samaritan, who has voluntarily stated that he is also an eyewitness to the accident and is required to be examined for the purposes of investigation by the police or during the trial, such bystander or good Samaritan shall be examined on a single occasion and the State Government shall develop Standard Operating Procedures to ensure that bystander or good Samaritan is not harassed or intimidated.

...

(12) All hospitals shall publish a charter in Hindi, English and the vernacular language of the State or Union Territory at their entrance to the effect that they shall not detain bystander or good Samaritan or ask depositing money from them for the treatment of a victi[m.]

It is noteworthy that in this case the Court elevated the ‘right to road safety’ as a fundamental right and situated the protection of good Samaritans in the fundamental rights regime. According to the Court,

“[R]ight 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”.

These guidelines were to have the force of law under Article 141 of the Indian Constitution till appropriate legislation is made by the Union Parliament. The guidelines do not create mandatory duties or impose liability on any member of the public in case of their failure to provide assistance for whatever reasons. However, what they do is to create an incentive-based, non-discriminatory, unbiased ecosystem whereby people who voluntarily come to the rescue of the distressed are not harassed by law enforcers or hospital staff. Consequently, in 2019 the legislative inertia broke and Section 134 A was inserted in the Motor Vehicles Act, 1988 by way of an amendment to give

statutory protection to good Samaritans.²⁶ Further, rules have been framed by the Central Government²⁷ for the prevention of disclosure of the identity of good Samaritans and their voluntary examination as witnesses on the lines of Supreme Court guidelines.

3. Duty of the Driver to Assist and Assessment of ‘Criminal Negligence’: There is a statutory duty of driver and owner of the motor vehicle involved in the road accident under Section 134²⁸ read with Section 187²⁹ of the Motor Vehicles Act, 1988 to take reasonable steps to secure medical attention for the injured person. Despite these provi-

²⁶ S.134 A, Protection of Good Samaritans. --(1) A Good Samaritan shall not be liable for any civil or criminal action for any injury to or death of the victim of an accident involving a motor vehicle, where such injury or death resulted from the Good Samaritan's negligence in acting or failing to act while rendering emergency medical or non-medical care or assistance. (2) The Central Government may by rules provide for the procedure for questioning or examination of the Good Samaritan, disclosure of personal information of the Good Samaritan and such other related matters.

Explanation. --For the purposes of this section, “Good Samaritan” means a person, who in good faith, voluntarily and without expectation of any reward or compensation renders emergency medical or non medical care or assistance at the scene of an accident to the victim or transports such victim to the hospital

²⁷ Rr.168 and 169, Central Motor Vehicle Rules. See also Ministry of Road Transport and Highways Notification dated 29 September 2020 vide G.S.R. 594 (E), Central Motor Vehicles (Twelfth Amendment) Rules, 2020.

²⁸ 134.Duty of driver in case of accident and injury to a person. — When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall—

- (a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities, unless the injured person or his guardian, in case he is a minor, desired otherwise;
- (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, or not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence;
- (c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely—
 - (i) insurance policy number and period of its validity;
 - (ii) date, time and place of accident;
 - (iii) particulars of the persons injured or killed in the accident;
 - (iv) name of the driver and the particulars of his driving license.

Explanation. —For the purposes of this section, the expression ‘driver’ includes the owner of the vehicle.

²⁹ 187.Punishment for offences relating to accident.—Whoever fails to comply with the provisions of cl.(c) of sub-s.(1) of S.132 or of S.133 or S.134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

sions, it quite commonplace for the driver to flee from the scene. The tendency of the drivers to flee from the scene has, however, been depreciated by the Supreme Court in *State v. Sanjeev Nanda*.³⁰ It might also be evidence of their culpability.

4. Availability of Ambulances and Trauma Centers Near Highways:

Well-equipped ambulances are crucial not only for transporting the victims to healthcare facilities but also in providing immediate first aid to the victims. In *Sanjeev Nanda's* case, the Court directed that 'Private hospitals and government hospitals, especially situated near the highway, where traffic is high, should be equipped with all facilities to meet with such emergency situations. Ambulance with all medical facilities including doctors and supporting staff should be ready, so that, in case of emergency, prompt and immediate medical attention could be given.'³¹ However, these directions have hardly been enforced. In *S. Rajasekaran's case*,³² it was brought to the notice of the court that limited attempts have been made on experimental basis and that too on national highways alone to provide ambulances and trauma care centers. The Court therefore directed addition of ambulances on all the highways and setting up of trauma centers. Unfortunately, under the 12th Year Plan 85 Trauma Care Facilities (TCFs) have been identified however 80 TCFs have been supported. But according to government's own admission none of the 80 TCFs is yet operational.³³

5. Well-equipped Hospitals: In *Paschim Banga Khet Mazdoor Samity v. State of W. B.*³⁴ directions were given to the Union of India and other States to ensure adequate medical facilities are available to people. The Court located the provision of adequate medical facilities in Article 21 which imposes an obligation on the State to safeguard the right to life of every person. The Court held, '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

³⁰ *State v. Sanjeev Nanda*, (2012) 8 SCC 450.

³¹ *Id.*

³² *Supra* note 22.

³³ National Programme for Prevention and Management of Trauma and Burn Injuries (NPPMTBI), <https://main.mohfw.gov.in/sites/default/files/Prog%20brief%20Trauma%20component%20.pdf> (last visited on Mar. 30, 2023).

³⁴ *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37 (Supreme Court of India). [This case concerns the treatment of one Hakim Seikh who had sustained head injuries due to falling off from a train. He was taken to the Primary Health but as necessary facilities for treatment were not available there, he was taken to other State hospital for better treatment. The Emergency Medical Officer recommended immediate admission for further treatment but he could not be admitted in the said hospital as no vacant bed. The same saga on non-availability of bed was repeated in couple of other government facilities. At one hospital admission was denied due to non-availability of specialists. Ultimately, he was admitted in a private hospital, where he received treatment.]

Article 21.³⁵ In order that proper medical facilities are available for dealing with emergency cases the court specifically directed the following:

- a. Adequate facilities are available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stabilize his condition
- b. Hospitals at the district level and Sub-Division level are upgraded so that serious cases can be treated there.
- c. Facilities for giving specialist treatment are increased and are available at the hospitals at district level and Sub-Division level having regard to the growing needs.
- d. In order to ensure availability of bed in an emergency at State level hospitals there is a centralised 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.
- e. Proper arrangement of ambulance is made for transport of a patient from the Primary Health Centre to the district hospital or Sub-Division hospital and from the district hospital or Sub-Division hospital to the State hospital.
- f. The ambulance is adequately provided with necessary equipment and medical personnel.
- g. The Health Centres and the hospitals and the medical personnel attached to these centres and hospitals are geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.

6. Funding the Emergency Treatment: Another issue that prevents the doctors from providing timely care is the insistence on payment of huge advance deposits. It is symptomatic of negative externalities of private capital in healthcare. While, the court is yet to specifically adjudicate on the legality of advance deposit as pre-requisite to avail emergency treatment, it is unlikely that they will be held valid. Pertinently, in *Union of India v. Moolchand Kharaiti Ram Trust*³⁵, the Court observed as follows:

[T]hus, in our considered opinion members of the medical profession owe a constitutional duty to treat the have-nots. They cannot refuse to treat a person who is in dire need of treatment by a particular medicine or by a particular expert merely on the ground that he is not in a position to afford the fee payable for such an opinion/treatment. The moment

³⁵ *Union of India v. Moolchand Kharaiti Ram Trust*, (2018) 8 SCC 321.

*it is permitted, the medical profession would become purely a commercial activity, it is not supposed to be so due to its nobleness.*³⁶

To tackle this problem, some States have run pilot projects and set up funds to provision for the treatment expenditure incurred during the first 48 hours following the accident.³⁷ In *S. Rajasekaran's case* exhorted the Central and State Governments to extend the provision of funding for treatment during first 48 hours beyond areas covered by pilot projects. However, there has been tardy implementation of the Court's order. It was only in 2019 that the Motor Vehicles (Amendment) Act, 2019 made a statutory provision for creation of a fund to cater towards the treatment costs of accident victims.³⁸ However, the plans³⁹ to make the fund operational are still hanging in an administrative limbo. As on date very few stretches are proposed to be covered by the Union⁴⁰ under the cashless facility. It is still in the shape of a pilot project. Further, only a handful of States have come forward with similar schemes for providing cashless facility.⁴¹

7. Supreme Court Committee on Road Safety: Espousing the urgent need to make the roads safe and avoid loss of human lives in road accidents, a leading orthopedic filed a public interest litigation seeking a multi-pronged approach to road safety in *S. Rajasekaran v. Union of India*.⁴² In this case, the Court took notice of the fact that Indian roads were “giant killers” and one of the most fatal in the world. It was also noticed that the USA had a higher rate of accidents but a lower number of deaths and that the death rate in China, “which had stood on a par with India at a certain point of time, has shown a significant downward

³⁶ Id., 57.

³⁷ ‘Cashless Treatment’ Scheme for NH Crash Victims set for Launch (The Times of India, 17 Jan. 2022) available at http://timesofindia.indiatimes.com/articleshow/88940164.cms?utm_source=contentofinterest&utm_medium=--text&utm_campaign=cppsthttps://timesofindia.indiatimes.com/india/cashless-treatment-scheme-for-nh-crash-victims-set-for-launch/articleshow/88940164.cms.

³⁸ S.162: Scheme for golden hour (1) Notwithstanding anything contained in the General Insurance Companies (Nationalisation) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the insurance companies for the time being carrying on general insurance business in India shall provide in accordance with the provisions of this Act and the schemes made under this Act for treatment of road accident victims, including during the golden hour. (2) The Central Government shall make a scheme for the cashless treatment of victims of the accident during the golden hour and such scheme may contain provisions for creation of a fund for such treatment.

³⁹ Plan to kick start cashless treatment of motor accident victims (Press Information Bureau, 1 July 2020). available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1635596>.

⁴⁰ NHAI Plans Cashless Treatment Facility on Golden Quadrilateral for Road Accident Victims (The Hindu, 31 Mar. 2022), available at <https://www.thehindu.com/news/national/nhai-plans-cashless-treatment-facility-on-golden-quadrilateral-for-road-accident-victims/article65277588.ece>

⁴¹ Some of the States that have cashless facility for treatment during first 48 hours of the accident are: Odisha and Tamil Nadu.

⁴² *S. Rajasekaran v. Union of India*, (2014) 6 SCC 36.

trend while in case of India the said figures has shown a disturbing increase.” The reduction in fatalities in the other countries meant that it was very much possible to do the same in India. However, as there was “the absence of significant and meaningful results from the governmental action” the Court regarded it as a fit case for judicial intervention. The Court notes:

An accident is an incident that happens unexpectedly and unintentionally. It is occasioned either by human failure or human negligence. Viewed from the above perspective and also thorough hindsight, every road accident is an avoidable happening. The history of humankind has been one of conquests over the inevitable. The resignation to fate has never been the accepted philosophy of human life. Challenges have to be met to make human life more meaningful. This is how the constitutional philosophy behind Article 21 has been evolved by the Indian courts over a long period of time...

The Court then built upon the four-dimensional approach to road safety concerning enforcement, engineering, education and emergency care and issued a slew of directions concerning each of them. While the court appreciated the role of Central and State Governments, it was aware of the delays that might impede the progress so it appointed a ‘Monitoring Committee’ to ensure sufficient and timely action is taken by the Centre and States on road safety saying,

“We are aware that the journey that has been undertaken would be long and arduous. It is difficult to visualise when the same would end, if at all. To ensure the success of the process undertaken, constant supervision of this Court of the measures undertaken by the Central Government and the State Governments and the extent of affirmative action on part of the Union and the States will have to be measured and monitored by the Court from time to time. Keeping in mind that the time available to this Court is limited we deem it proper to constitute a committee to undertake the process of monitoring on behalf of the Court”.

The Supreme Court Committee on Road Safety appointed in pursuance of this order though had initial operational hiccups⁴³ has been functioning and issuing directions from time to time on various facets of road safety and implementation of Motor Vehicles Act, 1988 to the Centre and States.

⁴³ S. Rajasekaran (II) v. Union of India, (2018) 13 SCC 516.

IV. CORRECTIVE AND PREVENTIVE ACTIONS TO ENSURE ROAD SAFETY

Evidence-based research in many developed countries has perceived a decline in road accidents by espousing a multi-pronged approach to road safety. This encompasses a broad range of measures, such as traffic management, design and quality of road infrastructure, safer vehicles, law enforcement, provision of accident care, etc. The challenge for us is to adapt and evaluate these approaches to suit our needs.⁴⁴ The Supreme Court has endeavoured to provide some preventive measures.

- 1. Removal of Advertisements and Hoardings:** Hoardings along the roadside are a major distraction for drivers thereby resulting in accidents. In *M.C. Mehta v. Union of India*,⁴⁵ the apex Court directed the removal of all hoardings which are on roadsides and which are a disturbance to safe traffic movement. Upholding its directions, the Court subsequently in *M.C. Mehta v. Union of India*,⁴⁶ held that ‘every hoarding, other than traffic signs and road signs on the roadsides have to be removed irrespective of its kind.’
- 2. Prohibition on Liquor Vends Near Highways:** One of the major causes of road accidents is drunken driving. While ‘to drink and drive’ is an offence under Section 185 of the Motor Vehicles Act, 1988,⁴⁷ the problem was compounded due to the easy availability of alcohol near the roadside and highways. In the *State of T.N. v. K. Balu*,⁴⁸ the court imposed a ban on the sale of liquor within 500 m of highways and passed directions under Article 142 to obviate dangers to the lives and safety of persons using the highways, resulting from the menace of

⁴⁴ Road Safety is No Accident: Synthesis Report of four Working Groups on Education, Enforcement, Engineering and Emergency Care constituted under the National Road Safety Council. Ministry of Road Transport and Highways Government of India December 2011, p. iv.

⁴⁵ (1997) 8 SCC 770.

⁴⁶ (1998) 1 SCC 363.

⁴⁷ Driving by a drunken person or by a person under the influence of drugs. —Whoever, while driving, or attempting to drive, a motor vehicle, —

(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or

(b) is under this influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees, or with both.

Explanation. —For the purposes of this section, the drug or drugs specified by the Central Government in this behalf, by notification in the Official Gazette, shall be deemed to render a person incapable of exercising proper control over a motor vehicle.

⁴⁸ *State of T.N. v. K. Balu*, (2017) 2 SCC 281.

drunken driving.⁴⁹ The directions contained in the judgment are reproduced below:

“29.1. All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along National and State highways;

29.2. The prohibition contained in sub-para 29.1 above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

29.3. The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1-4-2017;

29.4. All signage and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on National and State highways;

29.5. No shop for the sale of liquor shall be (i) visible from a National or State highway; (ii) directly accessible from a National or State highway and (iii) situated within a distance of 500 m of the outer edge of the National or State highway or of a service lane along the highway.”

However, the decision in *K. Balu's* case does not apply to roads that essentially provide connectivity within the city. Nor does it prohibit licensed establishments within municipal areas.⁵⁰

Road Design: The Supreme Court in *S. Rajasekaran's case*⁵¹ mandated that road safety be made an integral part of road design at the planning stage and sought regular road safety audits of selected stretches for identification of ‘black spots.’⁵² An audit of road safety is essential to reduce the possibility of road accidents through corrective measures. However, in *S. Rajasekaran (II) v. Union of India*,⁵³ it was noticed that there is a dearth of qualified auditors in Road Safety Engineering. While capacity building was advocated, it is a long walk towards road safety. It was further ordered that the Road Safety Audit should include the design stage audit of new road projects of 5 km or more, rather than being based on the cost of the project.

⁴⁹ Yogesh Pratap Singh, Sanjeeb Panigrahi, Liquor Ban, a Judicious Overreach, *The New Indian Express*, 21 April 2017.

⁵⁰ *Arrive Safe Society of Chandigarh v. State (UT of Chandigarh)*, (2018) 13 SCC 133.

⁵¹ *Supra* note 22.

⁵² A black spot is a place where a large number of accidents occur.

⁵³ *S. Rajasekaran (II) v. Union of India*, (2018) 13 SCC 516.

V. CONCLUSION

Analysis of the Court's interventions on various facets of road safety shows that the Court is a compassionate institution working to protect and improve the lives of common people. It has carefully addressed various sensitive issues like the reluctance of doctors to treat accident victims, protection of good Samaritans, State apathy and lack of medical facilities and given precedence to the "preservation of life" as an arching norm over anything else. Momentum has been generated by the Court's interventions and led the legislature to make suitable amendments in the law relating to Motor Vehicle. However, the executive has been tardy in implanting many meaningful suggestions and directions given by the Court. There is still no uniform policy to enable cashless facilities to treat road accident victims. In many other areas also, the directions passed by the Court have hardly been enforced, especially when they relate to investment in basic facilities like setting up of trauma centers and upgrading of healthcare facilities. Another point of concern is the appointment of the Supreme Court's Monitoring Committee on Road Safety. The creation of such committees by the Court is problematic on many counts. *Firstly*, it is a delegation of the ongoing list; *secondly*, these committees do not receive much assistance from the administration and have knocked at the doors of the court to seek basic facilities to work properly and *thirdly*, these committees don't have any enforcement power for their directions or guidelines. It is hoped that instead of constituting committees, the court will pass strong orders and use the power of contempt against those who flout them.