

SAVELIFE FOUNDATION & ANR.

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v.

UNION OF INDIA & ANR.

(Writ Petition (C) No. 235 of 2012)

MARCH 30, 2016

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[V. GOPALA GOWDA AND ARUN MISHRA, JJ.]

Constitution of India, 1950 – Arts 32/142, 141, 21/14 – Protection of samaritans-bystanders and passers-by who render help to the victims of road accidents – Development of supportive legal framework – Constitution of Committee to develop guidelines for protecting Good Samaritans from police harassment and legal hassles – Acceptance of the recommendations of the Committee by the Ministry – Issuance of Notifications laying down 'Good Samaritan Guidelines and standard operating procedures to be issued for examination of good Samaritans by the police or during trial – Prayer by the Ministry that the guidelines notified be declared to be enforceable by this Court so that it is binding on all the States and Union Territories until the Union Government enacts a law to this effect – Held: This Court can issue guidelines and directions by including a command for its compliance till such time a proper legislation is enacted – Issuance of such directions under Art 32/142 to implement and enforce the guidelines necessary for protection of rights under Art 21/14 so as to provide immediate help to the victims of the accident and protection to Good Samaritans – Guidelines will have the force of law u/Art 141 – Guidelines with certain modifications be complied with by the Union Territories and all the functionaries of the State Governments as law laid down by this Court under Art 32/142 and be treated as binding as per the mandate of Art. 141.

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Allowing the writ petition, the Court

HELD: 1.1 The guidelines and directions can be issued by this Court including a command for compliance of guidelines and standard operating procedure issued by Government of India, Ministry of Road Transport and Highways, till such time as the legislature steps in to substitute them by proper legislation. This Court can issue such directions under Article 32 read with Article

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- A 142 to implement and enforce the guidelines which are necessary
for protection of rights under Article 21 read with Article 14 of
the Constitution of India so as to provide immediate help to the
victims of the accident and at the same time to provide protection
to Good Samaritans. The guidelines will have the force of law
under Article 141. By virtue of Article 144, it is the duty of all
B authorities-judicial and civil-in the territory of India to act in aid
of this Court by implementing them. [Para 18] [62-E-F]

- 1.2 In the notification dated 12.5.2015, the guidelines
contained in para 13, the 'acknowledgement' if so desired by Good
Samaritans, has to be issued as may be prescribed in a standard
C format by the State Government. Till such time the format is
prescribed, there should be no vacuum hence it is directed that
acknowledgement be issued on official letter-pad etc. and in the
interregnum period, if so desired by Good Samaritan, mentioning
the name of Samaritan, address, time, date, place of occurrence
D and confirming that the injured person was brought by the said
Samaritan. [Para 19] [62-G-H; 63-A]

- 1.3 The notification dated 21.1.2016 with respect to the
examination of Good Samaritan by the Police as contained in para
2(vii) is modified and would be read in the following manner that
E the affidavit of Good Samaritan if filed, shall be treated as complete
statement by the Police official while conducting the investigation.
In case statement is to be recorded, complete statement shall be
recorded in a single examination." Remaining guidelines in the
notifications dated 12.5.2015 and 21.1.2016 are approved and it
is ordered that guidelines with said modifications be complied
F with by the Union Territories and all the functionaries of the State
Governments as law laid down by this Court under Article 32
read with Article 142 of the Constitution of India and the same
be treated as binding as per the mandate of Article 141. [Para
19] [63-A-D]

- G 1.4 It is directed that the court should not normally insist
on appearance of Good Samaritans as that causes delay, expenses
and inconvenience. The concerned court should exercise the
power to appoint the Commission for examination of Good
Samaritans in accordance with the provisions contained in section
H 284 of the Code of Criminal Procedure, 1973 suo motu or on an

application moved for that purpose, unless for the reasons to be recorded personal presence of good Samaritan in court is considered necessary. [Para 20] [63-D-E] A

1.5 Affidavits have been filed on behalf of State of Tripura and State of Orissa. They have issued the notification. However, the treatment shall not be less favourable than the one as provided in the said guidelines which are issued by the Ministry of Road Transport & Highways which have been made a part of this Order, and the guidelines issued by the state Governments in consonance thereof shall also be binding upon all concerned to be complied with scrupulously. However, it is clarified that guidelines in relation to protection of a Good Samaritan are without prejudice to the liability of the driver of a motor vehicle involved in a road accident as specified under section 134 of the Motor Vehicles Act, 1988. [Para 21] [63-F-G] B C

1.6 It is directed that the scheme framed by the Central Government and this order be widely published through electronic media and print media for the benefit of public so that public is made aware and that serves as impetus to good Samaritans to extend timely help and protection conferred upon them without incurring the risk of harassment. [Para 23] [64-B] D

Lakshmi Kant Pandey v. Union of India (1984) 2 SCC 244; 1984 (2) SCR 795; *D.K. Basu v. State of W.B.* (1997) 1 SCC 416; 1996 (10) Suppl. SCR 284; *Vishaka and Ors. v. State of Rajasthan & Ors.* (1997) 6 SCC 241; 1997 (3) Suppl. SCR 404; *Vineet Narain & Ors. v. Union of India & Anr.* (1998) 1 SCC 226; 1997 (6) Suppl. SCR 595; *Union of India v. Association for Democratic Reforms & Anr.* (2002) 5 SCC 294; 2002 (3) SCR 696; *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.* (2005) 3 SCC 284; *In Common Cause v. Union of India* (2015) 7 SCC 1; 2015 (5) SCR 29 – Referred to. E F G

Case Law Reference

1984 (2) SCR 795	Referred to	Para 13	
1996 (10) Suppl. SCR 284	Referred to	Para 14	
1997 (3) Suppl. SCR 404	Referred to	Para 15	H

A	1997 (6) Suppl. SCR 595	Referred to	Para 16
	2002 (3) SCR 696	Referred to	Para 17
	(2005) 3 SCC 284	Referred to	Para 17
	2015 (5) SCR 29	Referred to	Para 17

B CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 235 of 2012

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

Kush Chaturvedi, Adv., for the Petitioners.

C Pinky Anand, ASG, C.D. Singh, AAG, Sunita Sharma, S.S. Rawat, A.K. Panda, R.K. Rathore, R.R. Rajesh, Anshuman Srivastava, Rishabh Jain, D.S. Mahra, Gaurav Agrawal, Ms. Ruchi Kohli, Ms. Sharmila Upadhyay, Guntur Prabhakar, Ms. Prerna Singh, Kaushal Narayan Mishra, Nishant Ramakantrao Katneshwarkar, S. Udaya Kumar Sagar, Krishna Kumar Singh, Navnit Kumar, Riku Sarma, (For M/s Corporate Law Group), Pawan Upadhyay, Sarvjit Pratap Singh, V.G. Pragasam, S. Prabu Ramasubramanian, Joydeep Mazumdar, Parijat Sinha, Debojyoti Bhattacharya, Rohit Dutta, Sapam Biswajit Meitei, Ms. B. Khushbansi, Vijayanand Sharma, Ashok Kumar Singh, Mrs. K. Enatoli Sema, Edward Behlo, Amit Kumar Singh, Rahul Kaushik, Ms. Bhuvneshwari Pathak Kaushik, Ms. Shilpi Satya Priya Satyam, Sanjay Kr. Visen, Ms. Aruna Mathur, Avneesh Arputham, Yusuf Khan, Ms. Anuradha Arputham, Udit A., Tapeshe Kr. Singh, Mohd. Waquas, K.V. Jagdishvaran, Mrs. G. Indira, Anurag Kashyap, Advs. with them for the Respondents.

The Judgment of the Court was delivered by

F **ARUN MISHRA, J.** 1. The petition has been filed under Article 32 of the Constitution of India in public interest for the development of supportive legal framework to protect Samaritans i.e. bystanders and passers-by who render the help to the victims of road accidents. These individuals can play a significant role in order to save lives of the victims by either immediately rushing them to the hospital or providing immediate life saving first aid.

G 2. The petitioner is 'SaveLife Foundation', a non-profit, non-governmental organization registered as a Public Charitable Trust and had been established in 2008. The petitioner aims to create a unique network of medical responders to come to the victim's aid. The petitioner

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has also drafted recommendations to address the critical deficiencies in the Motor Vehicles Act, and other laws governing road safety. A

3. The Department of Road Transport is responsible for framing motor vehicle legislation and evolving road safety standards in India. The 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 emphasized that in low income countries, the most common desisting factor restraining the public from coming forward to help victims, is the apparent fear of being involved in police cases. There is need to build confidence amongst the public to help road accident victims. Bystanders should not be insisted to divulge their personal particulars or detained in the hospital for interrogation. People are hesitant to render immediate help to the road accident victims. The victims lay wounded on the road for some time till the arrival of police. Delay rendering medical help in such cases sometimes is fatal. Good Samaritans have the fear of legal consequences, involvement in litigation and repeated visits to police station. There is urgent need to tackle these issues. There is need to establish legal framework so that Good Samaritan is empowered to act without any fear of adverse consequences or harassment. Save life must be the top priority. B
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4. Several countries have enacted such laws. In England and Wales, the Parliament has enacted the *Social Action, Responsibility and Heroism Act 2015* which provides for certain factors to be considered by the Court while hearing an action for negligence or breach of duty. Section 2 of the Act provides that the Court must consider whether the respondent was acting for the benefit of society or any of its members. Section 5 of the Act further provides that the Court must consider whether the respondent was acting heroically by intervening in an emergency to assist an individual in danger. In Ireland, section 51D of the *Civil Law (Miscellaneous Provisions) Act 2011* provides that a good Samaritan will not be liable in negligence for any act done in emergency to help person in serious and imminent danger. In Australia, protection to good Samaritan is provided in several states. In New South Wales and Victoria, for instance, a good Samaritan is protected from personal civil liability with respect to anything done in state of emergency or accident by virtue of *Civil Liability Act 2002* and *Wrongs Act 1958* respectively. In Canada, various states like Ontario, Alberta and British Columbia offer protection to good Samaritans. In Ontario, the *Good* E
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A *Samaritan Act 2001*, by Section 2 (1), provides that except for gross negligence, a person is not liable for damages resulting from his acts during aid in emergency. Similar protection is provided in states of Alberta, British Columbia and Nova Scotia by *Emergency Medical Aid Act*, *Good Samaritan Act* and *Volunteer Services Act* respectively. 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.

C 5. Accident cases require fastest care and rescue which could be provided by those closest to the scene of the accident. Bystanders clear support is essential to enhance the chances of survival of victim in the 'Golden Hour' i.e. the first hour of the injury. As per the WHO India Recommendations, 50% of the victims die in the first 15 minutes due to serious cardiovascular or nervous system injuries and the rest can be saved through by providing basic life support during the 'Golden Hour'. Right 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.

E 6. In letter dated 9.9.2004, Joint Secretary, Department of Road Transport and Highways addressed to all the State Governments and Union Territories, it has been highlighted that the WHO in its World Report on Road Traffic Injury Prevention, 2004 has pointed out that

F "while in high-income countries, there is a reasonably well-organised ambulance based rescue system, in middle and low-income countries, assistance by bystanders is most common. In our country, while organizing of trauma care apart of intervention is also required, there is another factor, namely, relative ignorance on part of public to come forward to help the road crash victims, for apparent fear that they might

G be involved in "police cases." The letter further states that Research shows that a number of the accident victims can be saved if they receive immediate medical attention." The letter also admits that due to fear of harassment people do not always come forward to attend them."

H The Department of Road Transport and Highways had also sent letter dated 19.2.2004 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. The Circular stated that it is likely that the person who brings the injured to the hospital would hesitate to provide his particulars, and in such a case, it should not be insisted upon. Furthermore, it was also stated therein that the escorts or the person who bring the victims to the hospital should, under no circumstances, be detained in the hospital for interrogation. It was suggested in the said letter that action on similar lines may be considered by the States and UTs.

7. The people have the notion that touching the body could lend them liable for police interrogation. Passerby plays safe and chose to wait for the police to arrive whereas injured gradually bleeds to death. People are reluctant to come forward for help despite, desperate attempts to get help from passerby, by and large they turn blind eyes to the person in distress. Sometimes those who help are rebuked due to ignorance by the others on touching the scene. In the case of a convoy even when there are several vehicles in the convoy, people wait for the ambulance to arrive and also for the concerned police help. There are several desisting factors which are required to be taken care of such as fear of legal consequences if once action is ineffective or harmful to victim, fear of involvement in subsequent prolonged investigation and visit to the police station. There is need to evolve the system by promptly providing effective care system with certain ethical and legal principles. It is absolutely necessary that Good Samaritans feel empowered to act without fear of adverse consequence. There is need to provide certain incentives to Good Samaritans. There is also dire need to enact a Good Samaritan Law in the country since there is a felt need of legislation for affording protection to Good Samaritans.

8. While issuing notice on 17.8.2012, this Court has observed:

“It remains undisputed before us that it is not insufficiency of law but it is implementation of law which is a matter of concern. Different guidelines including guidelines for ambulance Code, emergency care and appropriate directions to the hospitals on the highways for handling the accident trauma patients, as a top priority are stated to have been issued.

Learned counsel appearing for the parties submit that an expert committee would need to be constituted to monitor the various directions issued for their due compliance.

A Learned counsel for the parties even propose to make joint suggestions in this regard after consulting the relevant Ministries and NHA. The counsel appearing for the petitioner has vehemently argued that the joint suggestions now to be filed should also consider the directions and safeguards that could be provided to the passers-by or informers of the accident. This will even help the expeditious disposal of criminal cases. Let this aspect be also examined by the learned counsel appearing for the parties who are to submit the joint suggestions.”

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C 9. This Court vide order dated 11.12.2012 has constituted a Committee consisting of 8 members and to submit the suggestions before this Court. The members of the said Committee are as follows:

1. Additional Secretary of Ministry of Home Affairs;
2. Secretary and or his nominee, Ministry of Health and Family Welfare to be nominated in consultation with Directorate General Health Services;
- D 3. Secretary and or his nominee from Ministry of Law and Justice;
4. Jt. Commissioner (Traffic) – Delhi Police;
- E 5. Chief of the AIIMS Trauma Centre;
6. The Director General or his nominee not below the rank of the Additional Director General of the Protection Road Organizations;
7. Save Life foundation representative;
- F 8. Mr. M.P. Tiwari or his nominee from any of the NAOS John Ambulance representative.

The scope of reference of the Committee inter alia included following aspects with which we are concerned in the instant matter;

- G “(ix) Identify the root causes for fear of harassment and legal hassles in general public regarding helping injured victims.
- (x) Deliberate and develop a set of guidelines for protecting Good Samaritans from police harassment and legal hassles. The guidelines will aim to address the root causes for fear of harassment and legal hassles in general public regarding
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helping injured victims. These guidelines will also serve as
a foundation for further legislative work in the area of
protecting Good Samaritans.” A

The Committee was required to submit report to this Court within
three months. On 14.8.2014, this Court passed an order to have the
views of concerned ministries of Union of India. This Court observed in
order dated 24.9.2014 that in this petition the only issue which is required
to be addressed is with regard to ‘Good Samaritans’. All other issues
that arise in the writ petition have already been referred to the Committee
headed by Mr. Justice K.S. Radhakrishnan, former Judge of this Court. B

10. This Court on 29.10.2014 has passed an order in view of
affidavit filed on behalf of Ministry of Road Transport and Highways
wherein it has been stated that the recommendation made in the Skandan
Committee’s report regarding protection of good Samaritans has been
accepted by the said ministry and also by Ministry of Law & Justice.
This Court directed both the ministries in consultation with each other to
issue necessary directions with regard to protection of good Samaritans
until appropriate legislation is made by the Union Legislature. C D

On 7.8.2015, this Court has noted that notification dated 12.5.2015
laying down ‘Good Samaritan Guidelines’ has been issued by the Ministry
of Road Transport and Highways, Government of India. Suggestions
were invited so as to give more teeth to the guidelines. E

On 27.11.2015, this Court was informed by the learned Additional
Solicitor General that the suggestions given have been incorporated in
the form of Standard Operating Procedure which has been issued as an
Office Memorandum. The views of Ministry of Health and Family
Welfare, Ministry of Home Affairs and Ministry of Law and Justice are
awaited. This Court issued a direction to look into the possibility of
giving statutory status to the Standard Operating Procedure either in the
form of a notification or regulations or guidelines. F

11. The Ministry of Road Transport and Highways has issued a
notification containing guidelines on 12.5.2015 published in the Gazette
of India para 1 of Section 1 of the Notification dated 12.5.2015 for
protection of good Samaritans and a further Notification has been issued
on 21.1.2016 in accordance with para 1(7) and 1(8) of the guidelines
dated 12.5.2015 which required standard operating procedures to be
framed and issued for examination of good Samaritans by the police or
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- A during trial. It has been mentioned in the affidavit filed by Ministry of Road Transport and Highways, Government of India that in the absence of any statutory backing, it is felt that it will be difficult to enforce these guidelines issued on 12.5.2015 and standard operating procedures as notified on 21.1.2016. It has also been mentioned that the notified
- B guidelines in relation to protection of a bystander or good Samaritan are without prejudice to the liability of the driver of a motor vehicle involved in the road accident, as specified under section 134 of the Motor Vehicles Act, 1988.

- C Notification dated 12.5.2015 issued by the Ministry of Road Transport and Highways containing guidelines for protection of good Samaritans to be in force till appropriate legislation is framed by Union Legislature, is extracted hereunder:

- D “No.25035/101/2014-RS.—Whereas the Hon’ble Supreme Court in the case of Savlife Foundation and another V/s. Union Of India and another in Writ Petition (Civil) No. 235 of 2012 vide its order dated 29th October, 2014, interalia, directed the Central Government to issue necessary directions with regard to the protection of Good Samaritans until appropriate legislation is made by the Union Legislature;

- E And whereas, the Central Government considers it necessary to protect the Good Samaritans from harassment on the actions being taken by them to save the life of the road accident victims and, therefore, the Central Government hereby issues the following guidelines to be followed by hospitals, police and all other authorities for the protection of Good Samaritans, namely:-

- F 1. (1) A bystander or good Samaritan including an eyewitness of a road accident may take an injured person to the nearest hospital, and the bystander or good Samaritan should be allowed to leave immediately except after furnishing address by the eyewitness only and no question shall be asked to such bystander or good Samaritan.

- G (2) The bystander or good Samaritan shall be suitably rewarded or compensated to encourage other citizens to come forward to help the road accident victims by the authorities in the manner as may be specified by the State Governments.

- H (3) The bystander or good Samaritan shall not be liable for any civil and criminal liability.

- (4) A bystander or good Samaritan, who makes a phone call to inform the police or emergency services for the person lying injured on the road, shall not be compelled to reveal his name and personal details on the phone or in person. A
- (5) The disclosure of personal information, such as name and contact details of the good Samaritan shall be made voluntary and optional including in the Medico Legal Case (MLC) Form provided by hospitals. B
- (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. C
- (7) In case a bystander or good Samaritan, who has voluntarily stated that he is also an eye-witness 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. D
- (8) The methods of examination may either be by way of a commission under section 284, of the Code of Criminal Procedure 1973 or formally on affidavit as per section 296, of the said Code and Standard Operating Procedures shall be developed within a period of thirty days from the date when this notification is issued. E
- (9) Video conferencing may be used extensively during examination of bystander or good Samaritan including the persons referred to in guideline (1) above, who are eye witnesses in order to prevent harassment and inconvenience to good Samaritans. F
- (10) The Ministry of Health and Family Welfare shall issue guidelines stating that all registered public and private hospitals are not to detain bystander or good Samaritan or demand payment for registration and admission costs, unless the good Samaritan is a family member or relative of the injured and the injured is to be treated immediately in pursuance of the order of the Hon'ble Supreme Court in Pt. Parmanand Katara vs Union of India & Ors [1989] 4 SCC 286. G
- (11) Lack of response by a doctor in an emergency situation pertaining to road accidents, where he is expected to provide care, H

A shall constitute “Professional Misconduct”, under Chapter 7 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002 and disciplinary action shall be taken against such doctor under Chapter 8 of the said Regulations.

B (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 victim.

C (13) In case a bystander or good Samaritan so desires, the hospital shall provide an acknowledgement to such good Samaritan, confirming that an injured person was brought to the hospital and the time and place of such occurrence and the acknowledgement may be prepared in a standard format by the State Government and disseminated to all hospitals in the State for incentivising the bystander or good Samaritan as deemed fit by the State Government.

D (14) All public and private hospitals shall implement these guidelines immediately and in case of noncompliance or violation of these guidelines appropriate action shall be taken by the concerned authorities.

E (15) A letter containing these guidelines shall be issued by the Central Government and the State Government to all Hospitals and Institutes under their respective jurisdiction, enclosing a Gazette copy of this notification and ensure compliance and the Ministry of Health and Family Welfare and Ministry of Road Transport and Highways shall publish advertisements in all national and one regional newspaper including electronic media informing the general public of these guidelines.

F 2. The above guidelines in relation to protection of bystander or good Samaritan are without prejudice to the liability of the driver of a motor vehicle in the road accident, as specified under section 134 of the Motor Vehicles Act, 1988 (59 of 1988).

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Sd/- Jt. Secy.”

H 12. Para 1(7) and 1(8) of the guidelines dated 12.5.2015 required standard operating procedure to be framed for the examination of the good Samaritans. The Central Government, Ministry of Road Transport and Highways has issued notification on 21.1.2016 which is as under:

“No. RT-25035/101/2014-RS.—Whereas, the Hon’ble Supreme Court in the case of Save Life Foundation and another Vs Union of India and another in Writ Petition (Civil) No. 235/2012 vide its order dated 29th October 2014, inter-alia, directed to issue necessary directions with regard to the protection of Good Samaritans until appropriate legislation is made by the Union Legislature;

And whereas, the Central Government published the guidelines in the Gazette of India, Extraordinary, Part I, Section I dated 12th May 2015 for protection of the Good Samaritans, i.e. a person who is a bystander or a passer-by, who chooses to assist an injured person or a person in distress on the road;

And whereas, as per para 1 (7) and (8) of the said guidelines dated 12th May, 2015, Standard Operating Procedures are to be framed for the examination of Good Samaritans by the Police or during trial;

And whereas, the Central Government considers it necessary to issue Standard Operating Procedure for the examination of Good Samaritans by the Police or during trial and here by issue the following standard operating procedure, namely:—

1. The Good Samaritan shall be treated respectfully and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.
2. Any person who makes a phone call to the Police control room or Police station to give information about any accidental injury or death, except an eyewitness may not reveal personal details such as full name, address, phone number etc.
3. Any Police official, on arrival at the scene, shall not compel the Good Samaritan to disclose his / her name, identity, address and other such details in the Record Form or Log Register.
4. Any Police official or any other person shall not force any Good Samaritan who helps an injured person to become a witness in the matter. The option of becoming a witness in the matter shall solely rest with the Good Samaritan.
5. The concerned Police official(s) shall allow the Good Samaritan to leave after having informed the Police about an injured person on the road, and no further questions shall be asked if the Good Samaritan does not desire to be a witness in the matter.

- A 2. Examination of Good Samaritan by the Police
- i. In case a Good Samaritan so chooses to be a witness, he shall be examined with utmost care and respect and without any discrimination on the grounds of gender, religion, nationality, caste or any other grounds.
- B ii. In case a Good Samaritan chooses to be a witness, his examination by the investigating officer shall, as far as possible, be conducted at a time and place of his convenience such as his place of residence or business, and the investigation officer shall be dressed in plain clothes, unless the Good Samaritan chooses to visit the police station.
- C iii. Where the examination of the Good Samaritan is not possible to be conducted at a time and place of his convenience and the Good Samaritan is required by the Investigation Officer to visit the police station, the reasons for the same shall be recorded by such officer in writing.
- D iv. In case a Good Samaritan so chooses to visit the Police Station, he shall be examined in a single examination in a reasonable and time-bound manner, without causing any undue delay.
- E v. In case the Good Samaritan speaks a language other than the language of the Investigating Officer or the local language of the respective jurisdiction, the Investigating Officer shall arrange for an interpreter.
- F vi. Where a Good Samaritan declares himself to be an eye-witness, he shall be allowed to give his evidence on affidavit, in accordance with section 296 of the Code of Criminal Procedure, 1973 (2 of 1974) which refers to Evidence in Formal Character on Affidavit.
- G vii. The complete statement or affidavit of such Good Samaritan shall be recorded by the Police official while conducting the investigation in a single examination.
- viii. In case the attendance of the Good Samaritan cannot be procured without delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, or his examination is unable to take place at a time and place of his convenience, the Court of Magistrate may appoint a commission for the examination of the Good Samaritan in accordance with section 284 of the Code of Criminal Procedure, 1973 (2 of 1974)
- H on an application by the concerned.

3. The Superintendent of Police or Deputy Commissioner of Police or any other Police official of corresponding seniority heading the Police force of a District, as the case may be, shall be responsible to ensure that all the above mentioned procedures are implemented throughout their respective jurisdictions with immediate effect.

Sd/- Jt. Secretary.”

Prayer has been made on the part of the Ministry of Road Transport and Highways of Government of India that the guidelines notified on 12.5.2015 and the standard operating procedure notified on 21.1.2016 may be declared to be enforceable by this Court so that it is binding on all the States and Union Territories until the Union Government enacts a law to this effect.

13. In *Lakshmi Kant Pandey v. Union of India* (1984) 2 SCC 244 in the matter of inter-country adoption and so as to prevent malpractices and trafficking of children under the guise of adoption, this Court has laid down certain principles and norms to be followed in the cases of such adoption in detail, as there was absence of statutory provisions with respect to inter-country adoptions.

14. In *D.K. Basu v. State of W.B.* (1997) 1 SCC 416, this Court considering the fact that the custodial violence, torture, rape, death in police custody/lock-up infringes Article 21 as well as basic human rights and strikes a blow at the rule of law, directions have been issued for compliance by Police personnel while arresting or detaining any person as preventive measures in addition to constitutional and statutory safeguards and previous directions of this Court.

15. In *Vishaka and Ors. v. State of Rajasthan & Ors.* (1997) 6 SCC 241 considering the absence of enacted law to provide for effective enforcement of the basic rights to gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, this Court has laid down guidelines and norms for due observance at all work places or institutions until the legislation is enacted for the purpose.

16. In *Vineet Narain & Ors. v. Union of India & Anr.* (1998) 1 SCC 226 this Court has referred to various decisions in which guidelines and directions have been issued in exercise of powers of this Court under Article 32 read with Article 142. The relevant portion is extracted hereunder :

- A “51. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In *Erach Sam Kanga v. Union of India* [WP No.2632 of 1978 decided on 20.3.1979) the Constitution Bench laid down certain guidelines relating to the Emigration Act. In *Lakshmi Kant Pandey v. Union of India* (1984) 2 SCC 244 (*In re, Foreign Adoption*), guidelines for adoption of minor children by foreigners were laid down. Similarly in *State of W.B. v. Sampat Lal* (1985) 1 SCC 317, *K. Veeraswami v. Union of India* (1991) 3 SCC 655, *Union Carbide Corpn. v. Union of India* (1991) 4 SCC 584, *Delhi Judicial Service Assn. v. State of Gujarat* (1991) 4 SCC 406 (*Nadiad case*), *Delhi Development Authority v. Skipper Construction Co. (P) Ltd.* (1996) 4 SCC 622 and *Dinesh Trivedi, M.P. v. Union of India* (1997) 4 SCC 306 guidelines were laid down having the effect of law, requiring rigid compliance. In *Supreme Court Advocates-on-Record Assn. v. Union of India* (1993) 4 SCC 441 (*Ind Judges case*) a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 elaborate guidelines have been laid down for observance in workplaces relating to sexual harassment of working women. In *Vishaka* (supra) it was said: (SCC pp. 249-50, para 11)
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- F “11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 (*) (*As amended at Manila, 28th August, 1997*) as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:
- G
- H “Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following: A

(a) to ensure that all persons are able to live securely under the rule of law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and B

(c) to administer the law impartially among persons and between persons and the State.”

Thus, an exercise of this kind by the court is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. This exercise is essential to fill the void in the absence of suitable legislation to cover the field. C

52. As pointed out in *Vishaka* (supra) 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.” D

17. In *Union of India v. Association for Democratic Reforms & Anr.* (2002) 5 SCC 294, the decisions in *Vineet Narain* (supra), *Vishaka* (supra) and other decisions have been followed and this Court has laid down the law that an exercise to fill the void in the absence of suitable legislation is now a well-settled practice which has taken firm roots in our constitutional jurisprudence. Similar is the decision in *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav & Anr.* (2005) 3 SCC 284. In *Common Cause v. Union of India* (2015) 7 SCC 1, law to the same effect has been reiterated thus : E

“7. In the earlier order dated 23-4-2014 (2014) 6 SCC 552, this Court, after holding that reasonableness and fairness consistent with Article 14 of the Constitution would be the ultimate test of all State activities proceeded to hold that the deployment of public funds in any government activity which is not connected with a public purpose would justify judicial intervention. We would like to say something more. F

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- A 8. Part IV of the Constitution is as much a guiding light for the
Judicial organ of the State as the Executive and the Legislative
arms, all three being integral parts of the “State” within the meaning
of Article 12 of the Constitution. AIR 1967 SC 1, (1973) 4 SCC
225. A policy certainly cannot be axed for its alleged failure to
B comply with any of the provisions of Part IV. Neither can the
courts charter a course, merely on the strength of the provisions
of the said Part of the Constitution, if the effect thereof would be
to lay down a policy. However, in a situation where the field is
open and uncovered by any government policy, to guide and control
everyday governmental action, surely, in the exercise of jurisdiction
C under Article 142 of the Constitution, parameters can be laid down
by this Court consistent with the objects enumerated by any of
the provisions of Part IV. Such an exercise would be naturally
time-bound i.e. till the legislature or the executive, as the case
may be, steps in to fulfil its constitutional role and authority by
framing an appropriate policy.”

- D 18. In view of the aforesaid discussion, it is apparent that guidelines
and directions can be issued by this Court including a command for
compliance of guidelines and standard operating procedure issued by
Government of India, Ministry of Road Transport and Highways, till
such time as the legislature steps in to substitute them by proper legislation.
E This Court can issue such directions under Article 32 read with Article
142 to implement and enforce the guidelines which are necessary for
protection of rights under Article 21 read with Article 14 of the Constitution
of India so as to provide immediate help to the victims of the accident
and at the same time to provide protection to Good Samaritans. The
F guidelines will have the force of law under Article 141. By virtue of
Article 144, it is the duty of all authorities – judicial and civil – in the
territory of India to act in aid of this Court by implementing them.

- G 19. We have carefully gone through the notification dated
12.5.2015. However, as per the guidelines contained in para 13, the
'acknowledgement' if so desired by Good Samaritans, has to be issued
as may be prescribed in a standard format by the State Government. In
our opinion, till such time the format is prescribed, there should be no
vacuum hence we direct that acknowledgement be issued on official
letter-pad etc. and in the interregnum period, if so desired by Good
Samaritan, mentioning the name of Samaritan, address, time, date, place

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of occurrence and confirming that the injured person was brought by the said Samaritan. A

We have also gone through the notification dated 21.1.2016 with respect to the examination of Good Samaritan by the Police as contained in para 2(vii) which we modify and be read in the following manner :

“The affidavit of Good Samaritan if filed, shall be treated as complete statement by the Police official while conducting the investigation. In case statement is to be recorded, complete statement shall be recorded in a single examination.” B

Remaining guidelines in the notifications dated 12.5.2015 and 21.1.2016 are approved and it is ordered that guidelines with aforesaid modifications made by us be complied with by the Union Territories and all the functionaries of the State Governments as law laid down by this Court under Article 32 read with Article 142 of the Constitution of India and the same be treated as binding as per the mandate of Article 141. C

20. We also direct that the court should not normally insist on appearance of Good Samaritans as that causes delay, expenses and inconvenience. The concerned court should exercise the power to appoint the Commission for examination of Good Samaritans in accordance with the provisions contained in section 284 of the Code of Criminal Procedure, 1973 *suo motu* or on an application moved for that purpose, unless for the reasons to be recorded personal presence of good Samaritan in court is considered necessary. D E

21. Affidavits have been filed on behalf of State of Tripura and State of Orissa. They have issued the notification. However, the treatment shall not be less favourable than the one as provided in the aforesaid guidelines which are issued by the Ministry of Road Transport & Highways which have been made a part of this Order, and the guidelines issued by the state Governments in consonance thereof shall also be binding upon all concerned to be complied with scrupulously. However, it is clarified that guidelines in relation to protection of a Good Samaritan are without prejudice to the liability of the driver of a motor vehicle involved in a road accident as specified under section 134 of the Motor Vehicles Act, 1988. F G

22. We record our appreciation for the efforts made in formulating guidelines by all concerned, the members of Committee, concerned Department, learned Solicitor General and positive attitude of the counsel H

- A for the other parties who have readily agreed that guidelines be approved and be enforced as binding till appropriate legislative provisions are made.

23. We also direct that the scheme framed by the Central Government and this order be widely published through electronic media and print media for the benefit of public so that public is made aware and that serves as impetus to good Samaritans to extend timely help and protection conferred upon them without incurring the risk of harassment.
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24. In view of the aforesaid directions, the writ petition stands allowed. No order as to costs.

- C Nidhi Jain

Writ petition allowed.