

Fourteenth Kerala Legislative Assembly
Bill No. 11

THE GOOD SAMARITAN BILL, 2016
(GIVEN NOTICE BY SHRI HIBI EDEN, M.L.A.)

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Bill

to mandate emergency medical treatment by hospitals and medical practitioners to victims of accidents without raising any objection or objections that the cases are medico-legal cases or any other objection and without demanding any payment as a condition precedent for such treatment and to provide legal protection to good samaritan and for other matters incidental thereto:

1. *Short title, extent and commencement.*—(1) This Act may be called The Good Samaritan Act, 2016.

(2) It shall extent to the State of Kerala

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires:

(a) 'accident' means any accident giving rise to severe bodily pain or serious injury to human beings who are in emergency medical condition;

(b) 'emergency medical condition' means a medical condition manifesting acute symptoms of sufficient severity (including severe pain) where the absence of emergency medical treatment could reasonably be expected to result in,—

(i) death of the person; or

(ii) serious jeopardy in the health of the person; or

(iii) serious impairment of bodily functions; or

(iv) serious dysfunction of any bodily organ or part.

(c) 'emergency medical treatment' means the action that is required to be taken, after screening of a person injured in an accident or who is in an emergency medical condition, as to the stabilization of the person and the

rendering of such further treatment as may, in the opinion of the hospital or medical practitioner be necessary for the purpose of preventing aggravation of the medical condition of the person or his death;

(d) 'medical practitioner' means a medical practitioner who possesses any recognized medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and who is enrolled in a State Medical Register as defined in clause (k) of that section and includes a private medical practitioner;

(e) 'hospital' includes a nursing home, clinic medical center, medical institution having hospital emergency department or facilities for emergency medical treatment;

(f) 'prescribed' means prescribed by Rules made under this Act;

(g) 'stabilize' means, with respect to an emergency medical condition and the word 'stabilized' shall be understood accordingly;

(h) 'good samaritan' a person who voluntarily gives help to those in distress or need;

(i) 'Good Samaritan Law' means a welfare legislation for the legal protection to people who give reasonable assistance to those who are, or who they believe to be, injured, ill, in peril, or otherwise incapacitated.

Explanation:—'designated medical practitioner' means any practitioner employed by the hospital for directing transfer outside a hospital's facility and includes any other medical practitioner temporarily discharging the functions of such designated medical practitioner.

3. *Duty of duty doctors in hospitals and private medical practitioners.*— It shall be the duty of every hospital and every private medical practitioner to immediately attend on every person involved in an accident or who is purportedly in an emergency condition, when such a person has come or has been brought to the hospital or to the private medical practitioner and screen or transfer such person as stated in section 4 and when the screening reveals the existence of an emergency medical condition, to stabilize or transfer such person as stated in section 5 and afford them, such medical treatment as may be urgently called for,—

(i) without raising any objection that it is a medico-legal case requiring information to the police authorities;

(ii) whether or not such a person is immediately in a position to make payment for the screening and emergency medical treatment, and without insisting on payment as a condition precedent;

(iii) whether or not such a person has medical insurance or is a member of any medical scheme of the person's employer or to a scheme which otherwise provides for medical reimbursement; and

(iv) without raising any other unreasonable objection.

4. *Maintenance of records.*—Every hospital, medical practitioner shall maintain a separate register containing the following information:

(a) name and address of the person injured, date or place of accident as reported, nature of injuries and other relevant details, and the person who brought him;

(b) name and address of the person purportedly in emergency medical condition, nature of emergency and nature of medical condition, and the person who brought him;

(c) details of the screening tests done and the determination of emergency condition;

(d) whether the person is in a position to give informed consent for emergency medical treatment including stabilization or for transfer or if he refused them;

(e) whether emergency medical treatment was not given for want of facilities, if so, which facilities;

(f) nature of tests done, results thereof, surgery conducted, who attended, time, date and hours of treatment;

(g) details of transfer to another hospital or medical practitioner;

(h) details of fee paid to consultants or laboratories;

(i) details of expenditure incurred;

(j) other particulars to show that the hospital or doctor complied with its or his duties under the Act;

(k) Such other particulars as may be prescribed.

5. *A strong legal framework to encourage the Good Samaritan to step forward.*—(a) The Good Samaritan will be treated respectfully and without any discrimination on the grounds of gender, religion, nationality and caste.

(b) Any individual, except an eyewitness, who calls the police to inform them of an accidental injury or death need not reveal his or her personal details such as full name, address or phone number.

(c) The police will not compel the Good Samaritan to disclose his or her name, identity, address and other such details in the police record form or log register.

(d) The police will not force any Good Samaritan in procuring information or anything else.

(e) The police will allow the Good Samaritan to leave after having provided the information available to him or her, and no further questions will be asked of him or her if he or she does not desire to be a witness.

6. *Human face should be ensured for the public spirited persons.*— Even when Good Samaritans agree to become witnesses, the guidelines accord them protection and comfort. They ensure that:

(1) If a Good Samaritan chooses to be a witness, she will be examined with utmost care and respect.

(2) The examination will be conducted at a time and place of the Good Samaritan's convenience and the investigation officer will be dressed in plain clothes.

(3) If the Good Samaritan is required by the investigation officer to visit the police station, the reasons for the requirement shall be recorded by the officer in writing.

(4) In a police station, the Good Samaritan will be examined in a single examination in a reasonable and time-bound manner, without causing any undue delay.

(5) If a Good Samaritan declares himself to be an eyewitness, she will be allowed to give her evidence in the form of an affidavit.

(6) Protect the people who help accident victims before the police arrives, from harassment in police stations and courts.

(7) Exempt them from civil and criminal liability.

(8) They should not be forced to reveal their identity as regards fulfilment of medico-legal formalities, they should be examined at their residence/ place of work.

(9) They should be allowed to make their statement through affidavits in police stations.

(10) If summoned as an eyewitness, the Good Samaritan's statement should be recorded in a single hearing. They should not be made to come to court again and again.

(11) State board and CBSE syllabus should have chapters on first aid training.

7. *Rule making powers.*—The State Government may make rules for the purpose of enforcement of the provisions of this Act and publish the same in the State Gazette.

The rules referred to in section 7 shall be laid before the legislature within a period of one month from the date of publication of the rules in the State Gazette as stated in subsection.

STATEMENT OF OBJECTS AND REASONS

“The world is a dangerous place, not because of those who do evil, but because of those who look on and do nothing.” Albert Einstein

Why does India lose more than 15 people every hour to traffic accidents? Can bystanders and Police play a role in saving lives? Are attitudes of the police discouraging people from helping accident victims? Is our criminal procedure contributing to fatalities on the road? Are hospitals a part of the problem or the solution? Are cumbersome and opaque judicial processes making people hesitant to help a fellow human being while he is seriously injured? If current investigation procedure was simplified will bystanders step forward? Should the name and identity of Good Samaritans be kept anonymous? Should a bystander pay the medical cost of a victims/he has brought in? Should first aid training be made mandatory before getting a driver's license? Is it worrying that in India people believe that a pizza arrives faster than an ambulance? Do we have a conducive legal & ethical environment for bystanders to help injured victims?

The Law Commission of India observes that 50% of those killed in road accidents could have been saved had timely assistance been rendered to them.

And a World Health Organisation report claims that "skilled and empowered bystanders play a crucial role in saving lives" and "in order to enable bystanders to come forward and help injured persons, a supportive legal and ethical environment is needed".

Can a strong legal framework encourage Bystanders to step forward? Does Kerala need a Good Samaritan Law?

This bill aims at addressing these crucial questions, a law encouraging people to help others in danger.

FINANCIAL MEMORANDUM

There will be no financial commitment if the bill is passed.

HIBI EDEN, M.L.A.