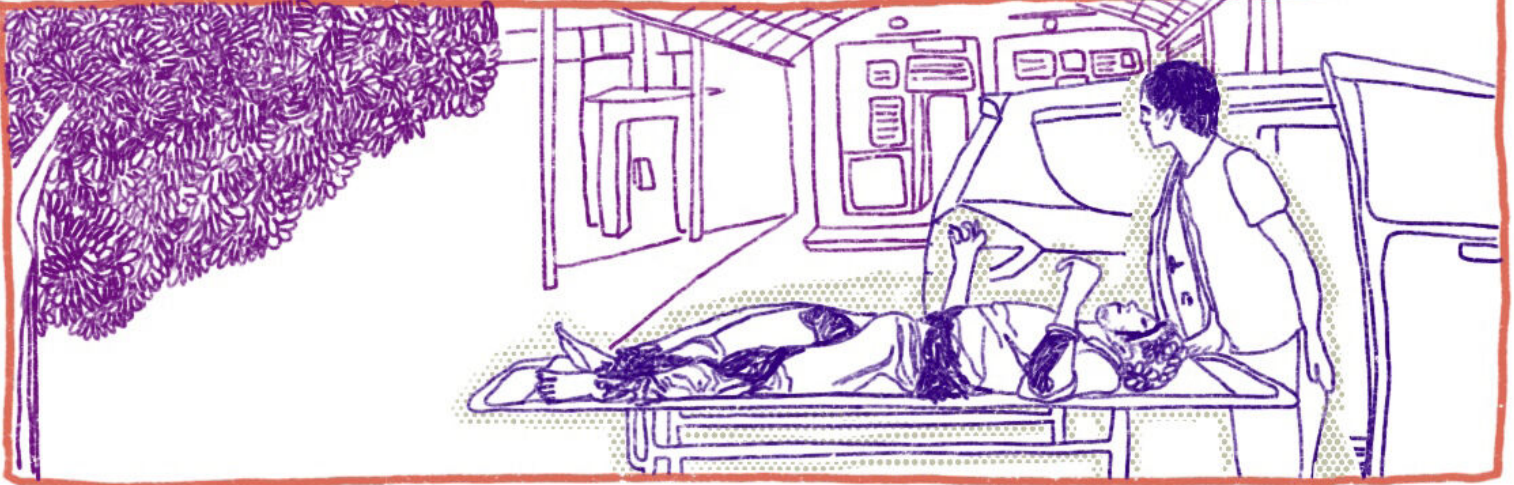


THE RIGHT TO HEALTH IN EMERGENCY SITUATIONS

Laying the foundations for a fundamental right to health

Based on the Supreme Court judgments in *Pt. Parmanand Katara v. Union of India and Ors.* (1989) 4 SCC 286 and *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr.* (1996) 4 SCC 37



CIRCA 1992:

Hakim Seikh falls off a train at a station in West Bengal suffering serious head injuries and a brain haemorrhage. He is taken to the nearest Primary Health Centre where he is directed to approach a state hospital for want of facilities. After an examination and recommendation for immediate admission by the state hospital, Hakim is turned away due to unavailability of a vacant bed. The same reason is given by six other government hospitals through the night. Hakim finally gets admitted in a private hospital the next morning after 10 am.

THE RIGHT TO HEALTH IN EMERGENCY SITUATIONS

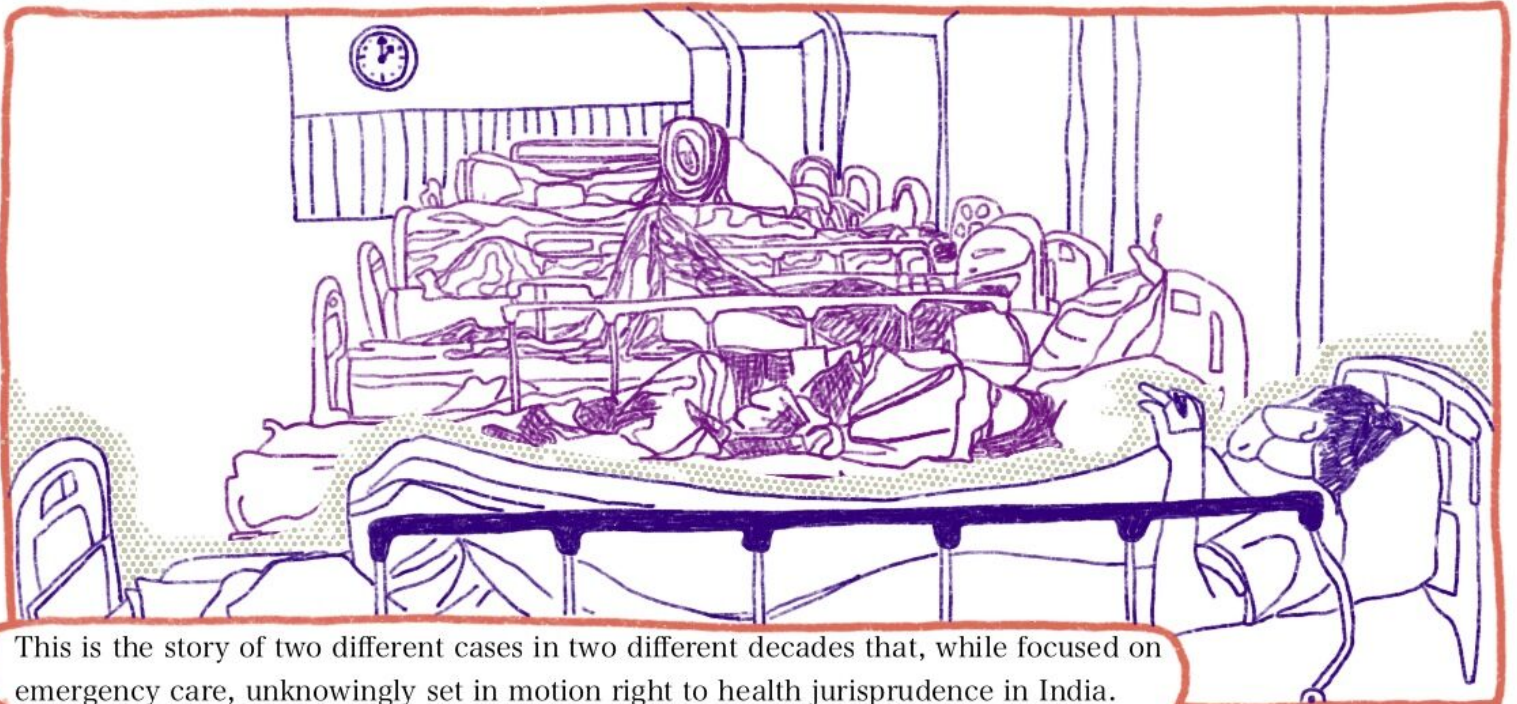
laying the foundations for a fundamental right to health

Based on the Supreme Court judgments in *Pt. Parmanand Katara v. Union of India and Ors.* (1989) 4 SCC 286 and *Paschim Banga Khet Mazdoor Samity and Ors. v. State of West Bengal and Anr.* (1996) 4 SCC 37

CIRCA 1989:

A profusely bleeding scooterist knocked down by a speeding car is picked up by a Samaritan who takes him to the nearest hospital. The doctor refuses to attend to the injured and tells the man that he should take the patient to a named different hospital located 20 kilometres away as that was the hospital authorised to handle medico-legal cases.

The good samaritan carries the victim, but before he can reach, the victim succumbs to the injuries. A leading newspaper carries the story with the title “The Law Helps the Injured to Die”.



This is the story of two different cases in two different decades that, while focused on emergency care, unknowingly set in motion right to health jurisprudence in India.

THE EARLY BEGINNINGS OF A FUNDAMENTAL RIGHT TO HEALTH

In the late 1980s and the early 1990s, the Supreme Court laid the foundations for the Fundamental Right to Health to be read into Article 21 of the Constitution of India.

But first, what does Article 21 of the Constitution say?

ARTICLE 21 of the Constitution of India states that no person will be deprived of their right to life and personal liberty, except according to procedure laid down by the law.

The starting point of this discourse was the Court holding that a denial of emergency medical aid would be a violation of one's right to life.

While one case dealt with the denial of aid on the basis of the case being medico-legal* in nature, the other relates to a denial on the basis of non-availability of facilities in a government hospital.

With these common points, let's delve into the stories of each of these cases...

*medico-legal cases are those where for any injury or ailment suffered, law enforcement has to get involved in order to determine liability. An example is of injuries arising out of cases of sexual violence or motor vehicle accidents.

THE STORY IN PARMANAND KATARA'S CASE

In August 1989, advocate Pt. Parmanand Katara approached the Supreme Court of India under Article 32* of the Constitution asking for two things:



A direction to the Indian government that every injured citizen brought for treatment should immediately be given medical aid and thereafter the procedural criminal law should be set in motion in order to avoid negligent death.

In case there is such a negligent death, appropriate action should be taken and compensation be given.



Called to respond on the other side were The Secretary, Ministry of Health and Family Welfare of the Indian government, the Medical Council of India and the Indian Medical Association.

Katara drew the attention of the court to the article carrying news of the tragic death of the scooterist to convey his point.

Article 32 of the Constitution give individuals the right to move the Supreme Court to enforce their fundamental rights

THE CONSIDERATIONS IN PARMANAND KATARA'S CASE

Each of the respondents placed their affidavits before the Court pointing out different facets of the issue...

The Medical Council of India:

"There is no prohibition in law justifying the attitude of the doctors. On the other hand, it is part of the professional ethics as recorded in clauses 10 and 13 Code of Medical Ethics that a patient cannot be neglected."

The Indian Medical Association:

"The Code of Criminal Procedure and the Indian Evidence Act mandate certain legal formalities with the goal of keeping evidence intact in such cases. Doctors sometimes are harassed by the police when dealing with such cases."

Indian government:

"There is no impediment in the existing law. A Committee formed under the chairmanship of the Director General of Health Services in 1986 had decided that (a) full medical report should be prepared and given to the police as soon as the examination is over - the treatment of the patient would not wait for the arrival of the police (b) zonalisation will be carried out so that cases are not referred to any other hospitals."

...noting these submissions, the Court observed that although it appeared that the matter had engaged the attention of the authorities for over a decade, no improvements had been made.

THE RULING IN PARMANAND

On 28 August 1989 the court pronounced a decision with the following key points, applicable throughout the territory of India:

21

Article 21 of the Constitution of India casts an obligation on the State to preserve life.



The life of a patient must be preserved, whether an innocent person or an alleged criminal liable to be prosecuted.



Every doctor, whether at a government or a private hospital, has the professional obligation to extend their services with due expertise.



Laws of procedure, whether in statute or otherwise which interfere in the discharge of a doctor's obligations must give way.



Zonal regulations and classifications cannot operate as fetters.

THE STORY OF HAKIM SEIKH

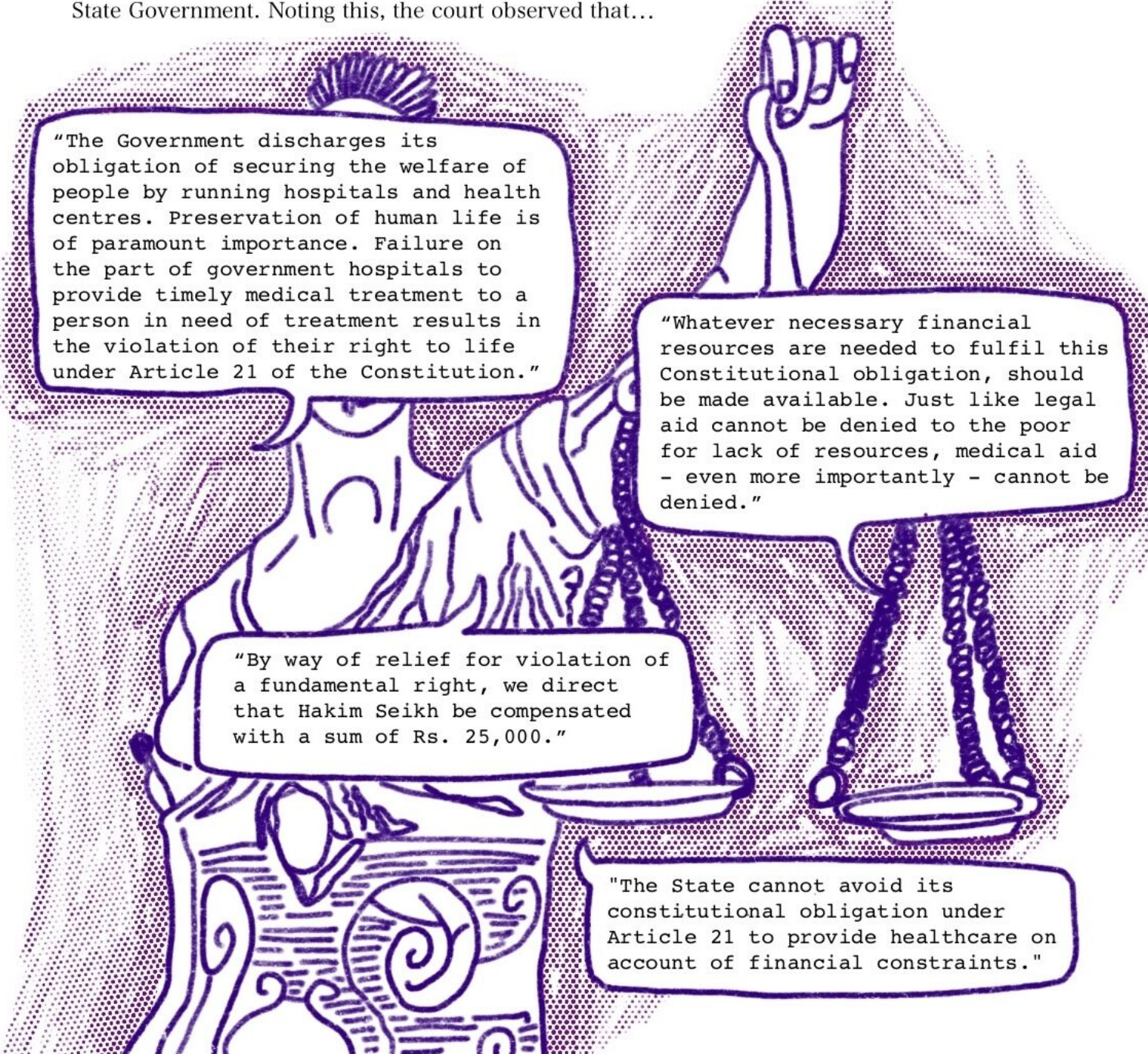
Almost 7 years after Katara's case came another case to the Supreme Court with the same story of state apathy and the indifferent and callous attitude of medical authorities.

Hakim Seikh, whose harrowing story of running from hospital to hospital we read earlier, was a member of the Paschim Banga Khet Mazdoor Samity, an organisation of agricultural labourers. Hakim, along with the Samity moved the Supreme Court alleging that the denial of treatment by several state-run hospitals amounted to a violation of his right under Article 21 of the Constitution.



A VIOLATION OF HAKIM'S CONSTITUTIONAL RIGHT

The facts of the case and assertions made by Hakim were not disputed by the State Government. Noting this, the court observed that...



"The Government discharges its obligation of securing the welfare of people by running hospitals and health centres. Preservation of human life is of paramount importance. Failure on the part of government hospitals to provide timely medical treatment to a person in need of treatment results in the violation of their right to life under Article 21 of the Constitution."

"Whatever necessary financial resources are needed to fulfil this Constitutional obligation, should be made available. Just like legal aid cannot be denied to the poor for lack of resources, medical aid - even more importantly - cannot be denied."

"By way of relief for violation of a fundamental right, we direct that Hakim Seikh be compensated with a sum of Rs. 25,000."

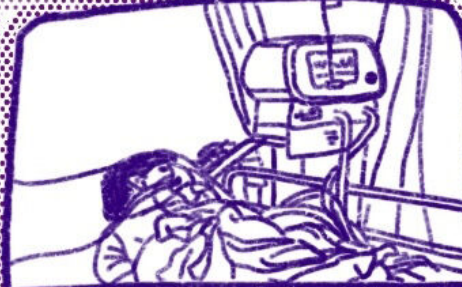
"The State cannot avoid its constitutional obligation under Article 21 to provide healthcare on account of financial constraints."

THE RULING ON REMEDIAL MEASURES FOR THE FUTURE

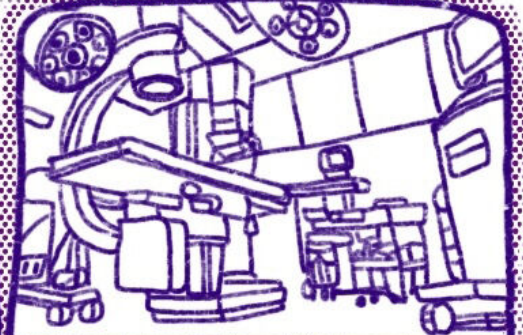
During the proceedings, the West Bengal Government constituted a committee to inquire into why Hakim had to go through the ordeal of being moved from hospital to hospital. The committee provided a series of recommendations to handle such situations. In addition to those, the court in its order of 6 May 1996 formulated the following specific guidelines to ensure that:



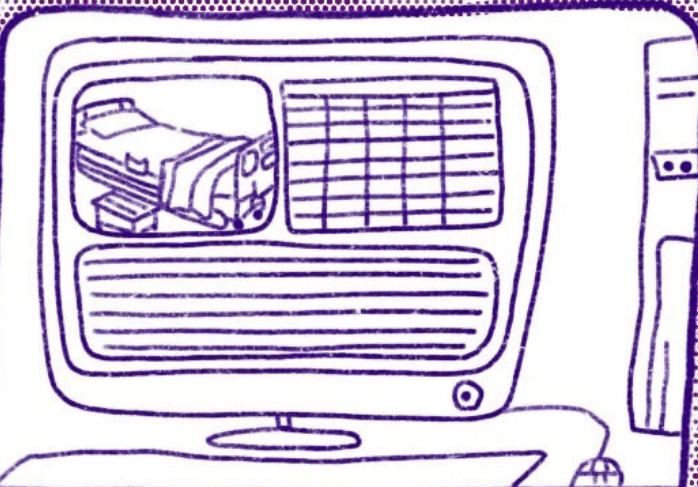
Adequate facilities are available at the Primary Health Centres where patients can be given immediate primary treatment so as to stabilize their condition.



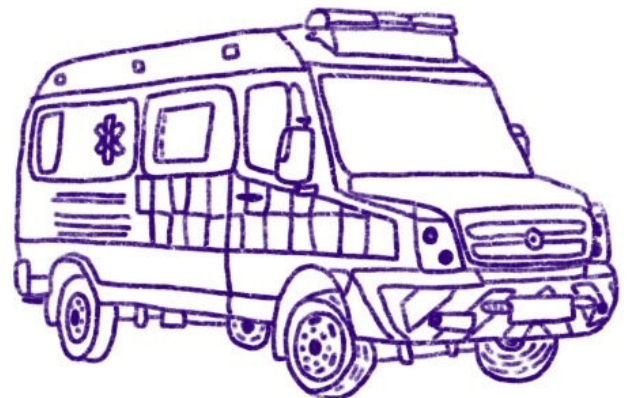
Hospitals at the district and sub-division level should be upgraded so that serious cases can be treated there.



Facilities for giving specialist treatment are increased.



A centralised communication system be set up for availability of beds.



Proper arrangement of ambulance is made for transfer of patient from the Primary Health Centre to the district or sub-division hospitals.

Both the cases, read together, make it evident that in case of an emergency, medical care cannot be denied. While in one case, the Court reiterated the obligations upon doctors in the country, in the other, the obligations of the State were clarified.

The two cases have worked together to establish the crucial right to emergency medical aid in India.

ACTIONABLE POINTS

These cases also became the basis for the 201st Law Commission Report released in 2006 which recommended a model law to deal with emergency medical aid in India and extended the same to women in labour.

With the foundations of the right to health laid thus, in the face of the COVID-19 pandemic, emergency medical aid became crucial.

In what ways did the Courts mobilise the right to health under Article 21 in this context?

On 30th April 2021, the Supreme Court of India in a detailed judgment directed the Central Government to:

Formulate a **national policy for hospital admissions** to supplement the existing National Plan, 2019.

Revisit the vaccine policy and ensure that it is in compliance with Articles 14 (Right to Equality) and 21 (Right to Life) of the Constitution

Ensure the **supply of essential drugs** as well as monitor pricing.

A 12th June 2020 judgment of the Supreme Court directed the Ministry of Health and Family Welfare to constitute an **Expert Committee** to inspect, supervise and issue necessary directions to all Government hospitals housing COVID patients.

THE RIGHT TO HEALTH IN THE FACE OF A GLOBAL PANDEMIC...

Different High Courts around the country also took on varied aspects of the right to health:

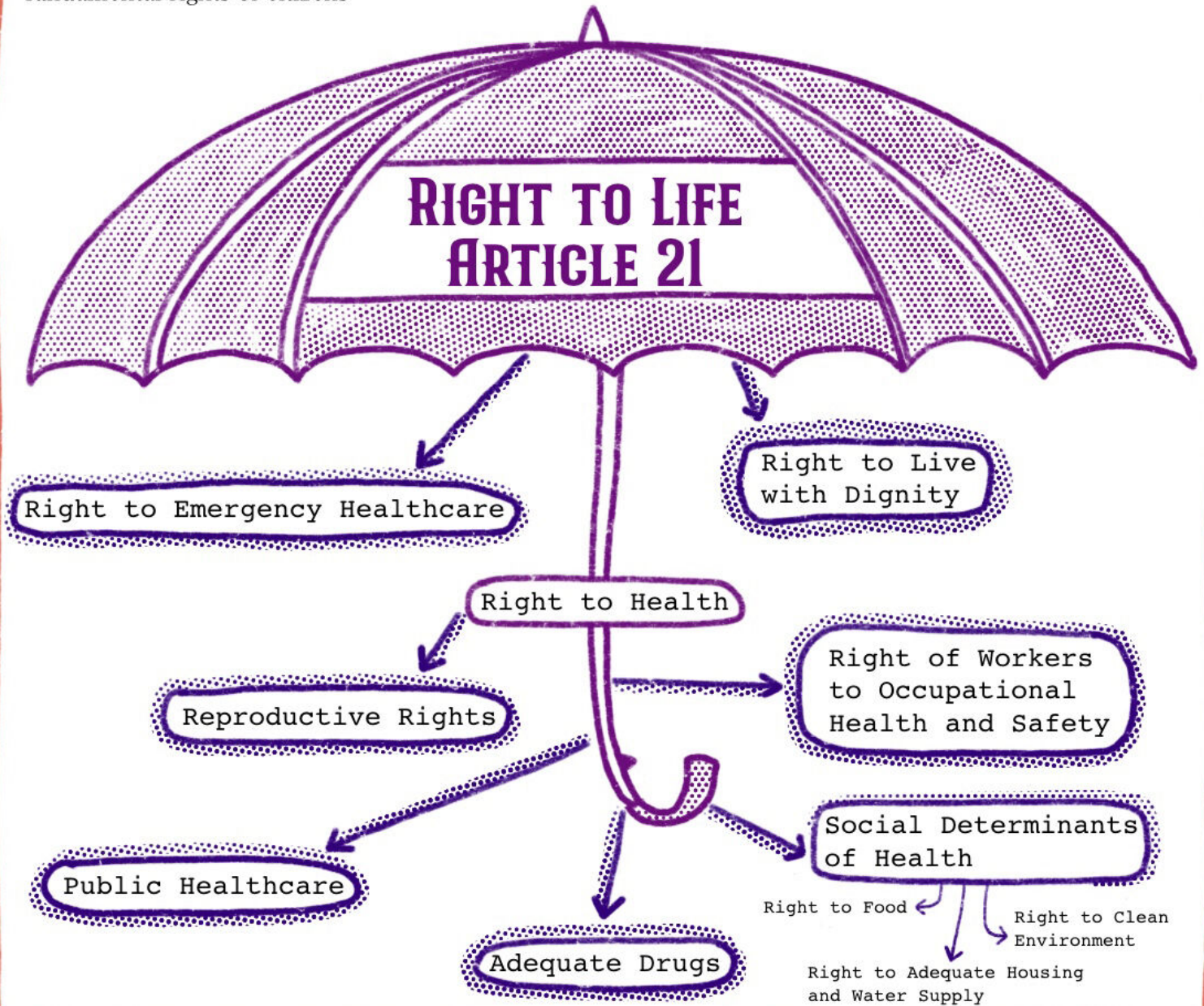
State government responses specifically in relation to **expenditure of public finances in responding to COVID-19.**(Manipur High Court)

Sufficient **equipment and testing for healthcare workers**, supply of ventilators and ambulances across public and private hospitals and a database for citizens' right to information on availability of healthcare goods, services and facilities. (Bombay High Court)

Prioritising persons with disabilities in vaccination and ensuring vaccination centres to be disability friendly. (Madras High Court)

THE FUTURE OF THE FUNDAMENTAL RIGHT TO HEALTH UNDER ARTICLE 21

While the Indian Constitution does not expressly guarantee the fundamental right to health, the Supreme Court's reading of it into Article 21 has made it an inseparable part of the right to life. This significant reading has paved the way for the many facets of the right to health that continue to be recognised as fundamental rights of citizens...

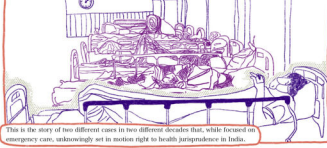
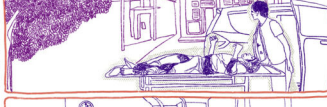


THE RIGHT TO HEALTH IN EMERGENCY SITUATIONS

Using the foundation for a fundamental right to health.

Based on the Supreme Court judgments in **Dr. Parmanand Katara v. Union of India** and **Ore. (1989) 4 SCC 246** and **Prachin Bansa Prast Madhoo Prasth and Ors. v. State of West Bengal and Ors. (1991) 1 SCC 21**

GIRDA 1000:
A profusely bleeding scooterist knocked down by a speeding car is picked up by a Samaritan who takes him to the nearest hospital. The doctor refuses to attend to the injured and tells the man that he should take the patient to a nearest different hospital located 20 kilometers away as that was the hospital authorized to handle medico-legal cases. The good Samaritan carries the victim, but before he can reach, the victim succumbs to the injuries. A leading newspaper carries the story with the title "The Law Helps the Injured to Die".



This is the story of two different cases in two different decades that, while focused on emergency care, ultimately act in motion right to health jurisprudence in India.

GIRDA 1000:
Hakim Sahib falls off a train at a station in West Bengal suffering serious head injuries and a brain hemorrhage. He is taken to the nearest Primary Health Centre where he is directed to approach a state hospital for want of facilities. After an examination and recommendation for immediate admission by the state hospital, Hakim is turned away due to unavailability of a vacant bed. The same reason is given by an other government hospital through the night. Hakim finally gets admitted in a private hospital the next morning after 16 hrs.

THE EARLY DERIVATIVES OF A FUNDAMENTAL RIGHT TO HEALTH

In the late 1980s and the early 1990s, the Supreme Court laid the foundation for the Fundamental Right to Health to be read into Article 21 of the Constitution of India.

But first, what does Article 21 of the Constitution say?

ARTICLE 21 of the Constitution of India states that no person will be deprived of their right to life and personal liberty, except according to procedure laid down by the Law.

The starting point of this discourse was the Court holding that a denial of emergency medical aid would be a violation of one's right to life.

While one case dealt with the denial of aid on the basis of the case being "backlogged" to admit, the other related to a denial on the basis of non-availability of facilities in a government hospital.

With these common points, let's delve into the stories of each of these cases.

Read the text on these stories for any help to absorb and make the connections. You can refer to the original text on the internet or use the links provided to get more detailed insights or watch video lectures.

THE STORY IN PARAMANAND KATARVA'S CASE

In August 1989, advocate P. Paramanand Katara approached the Supreme Court of India under Article 32 of the Constitution asking for two things:

A direction to the Indian government that every injured citizen brought for treatment should immediately be given medical aid and thereafter the procedural criminal law should be set in motion in order to prevent negligent death.

In case there is such a negligent death, appropriate action should be taken and compensation be given.



Called to respond on the other side were the Secretary, Ministry of Health and Family Welfare of the Indian government, the Medical Council of India and the Indian Medical Association.

Katara drew the attention of the court to the article carrying news of the tragic death of the scooterist to convey his point.

Article 32 of the Constitution give individuals the right to move the Supreme Court to enforce their fundamental rights.

THE CONSIDERATIONS IN PARAMANAND KATARVA'S CASE

Each of the respondents placed their affidavits before the Court pointing out different facets of the issue...

The Medical Council of India:
There is no prohibition in law justifying the attitude of the doctors. On the other hand, it is part of the professional ethics as provided in clauses 13 and 14 Code of Medical Ethics that a patient cannot be neglected.

The Indian Medical Association:
The Code of Criminal Procedure and the Indian Evidence Act mandate certain legal formalities to be followed in the event of an emergency. In such cases, doctors sometimes are harassed by the police when dealing with such cases.

Indian government:
There is no impediment in the existing law. A Committee formed under the chairmanship of the Director General of Health Services in 1986 had decided that for full medical reports should be prepared and given to the police as soon as the examination is over - the treatment of the patient would not wait for the arrival of the police in the hospital. The investigation will be carried out on such cases are not referred to any other hospitals.

During these submissions, the Court observed that although it appeared that the matter had engaged the attention of the authorities for over a decade, no improvements had been made.

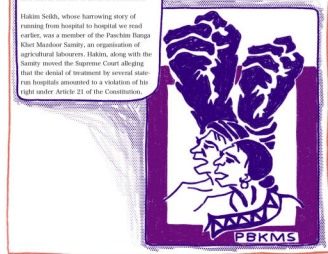
THE BULWARK IN PARAMANAND

On 28 August 1989 the court pronounced a decision with the following key points, applicable throughout the territory of India:

- 21** Article 21 of the Constitution of India casts an obligation on the State to preserve life.
- The life of a patient must be preserved, whether an innocent person or an alleged criminal liable to be prosecuted.
- Every doctor, whether at a government or a private hospital, has the professional obligation to extend their services with due expertise.
- Law of procedure, whether in statute or otherwise which interferes in the discharge of a doctor's obligation must give way.
- Legal regulations and classification cannot operate as fetters.

THE STORY OF HAZIM BEHZAD

Almost 7 years after Katara's case came another case to the Supreme Court with the same story of state apathy and the indifference and apathetic attitude of medical authorities.



Hazim Behzad, whose harrowing story of roaming from hospital to hospital we read earlier, was a member of the Pakistan Bangla Khud Bhashe Samiti, an organization of agricultural laborers. Hazim, along with the Samiti moved the Supreme Court alleging that the denial of treatment by several state hospitals amounted to a violation of his right under Article 21 of the Constitution.

A VIOLATION OF HAZIM'S CONSTITUTIONAL RIGHT

The facts of the case and assertions made by Hazim were not disputed by the State Government. Noting this, the court stated that:

"The government disavows its obligation of ensuring the welfare of people by ensuring medical and health services. Preservation of human life is a paramount important objective on the part of government hospitals to provide timely medical treatment to a person in need of treatment results in the violation of their right to life under Article 21 of the Constitution."

"By way of relief for violation of a fundamental right, we direct that Hazim shall be compensated with a sum of Rs. 25,000."

"The State cannot avoid its constitutional obligation under Article 21 to provide healthcare on account of financial constraints."

THE BULWARK ON REMEDIAL MEASURES FOR THE FUTURE

During the proceedings, the West Bengal Government constituted a committee to inquire into why Hazim had to go through the ordeal of being moved from hospital to hospital. The committee provided a series of recommendations to handle such situations. In addition to those, the court in its order of 6 May 1990 formulated the following specific guidelines to ensure that:

- Adequate facilities are available at the Primary Health Centres where patients can be given immediate primary treatment so as to stabilize their condition.
- Hospitals at the district and sub-division level should be upgraded so that serious cases can be treated there.
- Facilities for giving specialist treatment are increased.
- A centralized communication system be set up for availability of beds.
- Proper arrangements of ambulance is made for transfer of patient from the Primary Health Centre to the district or sub-division hospital.

ARTHRALB POINTS

Both the cases, read together, make it evident that in case of an emergency, medical care cannot be denied. While in one case, the Court reiterated the obligations upon doctors in the country, in the other, the obligations of the State were clarified. The two cases have worked together to establish the crucial right to emergency medical aid in India.

These cases also became the basis for the **30th Law Commission Report** referred to in 1990 which recommended a model law to deal with emergency medical aid in India and extended the same to members in India.

With the foundations of the right to health laid down, in the face of the COVID-19 pandemic, emergency medical aid became crucial.

In what ways did the Courts analyze the right to health under Article 21 in this context?

- On 30th April 2021, the Supreme Court of India in a detailed judgment directed the Central Government to:
 - Formulate a national policy for hospital admissions to supplement the existing National EM, 2016.
 - Revisit the vaccine policy and ensure that it is in compliance with Article 14 (Right to Equality) and 21 (Right to Life) of the Constitution.
 - Ensure the supply of essential drugs as well as routine pricing.
- A 1200-page 2020 judgment of the Supreme Court directed the Ministry of Health and Family Welfare to constitute an Expert Committee to inspect, supervise and issue necessary directions to all Government hospitals housing COVID patients.

THE RIGHT TO HEALTH IN THE FACE OF A GLOBAL PANDEMIC

- Different High Courts around the country also took on varied aspects of the right to health.
- State government responses specifically in relation to expenditure of public finances in responding to COVID-19 (Madras High Court)
- Sufficient equipment and testing for healthcare workers, supply of ventilators and ambulances across public and private hospitals and a database for citizens' right to information on availability of healthcare services and facilities. (Madras High Court)
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