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ANDHRA PRADESH LEGISLATION* TO REGULATE HEALTH CARE ORGANISATIONS - A CRITICAL STUDY

By

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The Act provides for the registration and regulation of private medical care establishment including corporate Hospitals, which are administered and maintained by "professionally qualified" persons. This legislative measure is intended to have control over medical care establishments and bring about greater awareness to comply with rules and regulations. The need of the hour is to check malpractices in hospitals and curb several ills in the administration of hospitals. The Act does not apply to hospitals constituted by statutes by Central, State or other Local authorities¹. In other words, these hospitals enjoy immunity from the control of authorities constituted by it. There is no denial of the fact that the some of the hospitals established by Government or local authorities also witnessed cases of negligence or irregularities and malpractices which need control and supervision under the Act. It would have been better to provide for registration of these hospitals as well, and they could have been exempted from payment of registration fees.

The Act provides that 'no person shall establish, keep or carry on any private care establishment, unless it has been registered under the Act². It is nearly 8 years or so from the year of enactment of this law, which many hospitals are being run without registration.

The Act provides for prosecution and punishment for the contravention, which may extend to three years or fine which may extend to Rs.10,000/-. For the second and subsequent offences, the punishment may extend to (7) years or a fine which may extend to Rs.20,000/-. Despite this stringent punishment provided under the Act, there has been a considerable amount of breach. The neglect on the part of the administration to enforce this law is inexcusable. An urgent inspection may be necessary to take action against defaulting health care organizations in order to ensure compliance with the provisions of the Act, as otherwise the very object of this Act gets frustrated and the law-makers would have merely made an exercise in futility.

The Act provides³ that the application for registration shall be made within three months from the date of commencement of the Act in respect of health

* Refers to Andhra Pradesh Private Medical Care establishments (Registration & Regulation) Act 2002, hereinafter referred to as 'Act' throughout this study.

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¹ See Section 2 of the Act for details

² See Sec 3 for details

³ See Sec 11 of the Act for details

care organizations in existence. In other words, all the health care organizations⁴ require registration for carrying on health care services.

For the purposes of carrying out various functions or purposes of the Act, Andhra Pradesh Private medical care establishment authority is constituted – different authorities in different areas⁵. The authorities have been conferred with several powers which include issuance of certificate of registration and refusal, inspection powers and various other powers⁶. The certificate of registration is valid for 5 years and needs renewal for a further period of 5 years at a time. It is worthwhile to grant a permanent certificate at the end of 5 years, if the conditions laid down by the authorities are substantially fulfilled. This can be done on the analogy of 'life certificate' issued for motor vehicles.

In cases of complaint against health care organizations, if found to be true, the provision is made for cancellation of certificate of registration and once it takes place, no person shall be admitted in the said establishment either as an in-patient or out-patient, and persons already undergoing treatment can be continued to be treated until the last of such persons is discharged and thereafter the hospital shall be closed⁷. There are no valid reasons for persons already undergoing treatment to continue to receive treatment, despite the registration being cancelled. Why these persons should be subjected to poor quality treatment or not satisfactory treatment. It would be better, if they are shifted to the nearest hospitals and the fees shall be ordered to be refunded to the patients, so that they do not suffer monetarily and physically.

Sec 10 of the Act provides the appeal remedy by way of an appeal to the Appellate Board constituted under the Act and states that the orders of the appellate authority shall be final. This finality clause has no force, when it comes to the exercise of writ jurisdiction by the High Courts under Art 226 of the Constitution of India.

The refusal of certificate of registration can be on the following grounds:-

- (1) Applicant or any person employed by him has been convicted of an offence; This requires suitable modification that the conviction for a minor offence or technical offence shall not be a bar. It should deal with grave offences or offences involving moral turpitude. In the case of an employee having been convicted of an offence, the registering authority can insist on his immediate removal, rather than denying registration.
- (2) No financial capacity to maintain the health care institution; This provision also requires modification like a fixed deposit of a substantial amount as may be considered necessary to be deposited jointly in the name of the authority

⁴ Health care organization include a body, group of association of individuals, an organization, a firm or company or society or trust whether registered or not (see Section 3)

⁵ Ibid Note 4

⁶ See Sec 5,6,7 of the Act

⁷ See Sec 9 of the Act for details

and the organization, as is being done in the case of chit fund organizations or educational institutions;

- (3) No infra-structure and other essential medical equipment and other requirements;
- (4) No qualified medical, para-medical staff and other staff as provided;
- (5) Lack of standards of sanitation and hygiene as prescribed; and
- (6) On any other ground prescribed.

One of the additional grounds, where concessions have been availed by the organization under any scheme formulated by Govt., of India or State Govt., the organisation's failure to comply with this condition, by not implementing the schemes.

Section 8 of the Act provides for inspection and enquiry by the authorities. The inspecting team consists of two officers (one will be a medical officer duly authorized by the authority). In order to ensure a decision by majority, it would be advisable to have a three-member committee of which two shall be medical officers, as medical officers know very well about the requirements of health care organizations. Further, power of search and seizure are also provided. There searches and seizures shall be in accordance with the provisions of code of criminal procedure and therefore, police assistance shall be mandatorily provided in carrying out these functions, more so when the offences under the Act are treated as 'cognizable' i.e., where the police officers have the power to arrest and investigate without a warrant or an order from a magistrate.⁸

Section 11 of the Act also provides that any person knowingly serves in a medical care establishment, which is not duly registered under the Act, is guilty of an offence for which he may be punished with imprisonment which may extend to (6) months or with a fine which may extend to Rs.1000/- or with both. In order to make this provisions to fall in line with the requirements of justice and to protect the rights of innocent persons, Sec 11 may be amended as follows:-

"All medical care institutions which are registered shall conspicuously display the registration number and the year of registration in all the sign boards affixed or displayed by the organization concerned, and a failure to comply with this provision shall be a specific offence and the persons in charge of the organization shall be liable for prosecution and punishment in the same manner, which has been provided for a person doing or serving an unregistered medical care organization".

⁸ See Sec 11 of the Act for details (already referred to)

In conclusion, the following recommendations made in this study are summarized as following:-

- (i) All the Govt., hospitals including those of local authorities shall also be registered and they may be exempted from registration fee;
- (ii) Immediate inspection shall be conducted of all hospitals to find out whether they have been registered or not, and to take appropriate legal action in respect of unregistered medical care establishments;
- (iii) The validity period of registration shall be on a permanent basis after the initial period of (5) years, if they fulfill the conditions prescribed, instead of renewal provision after every five years;
- (iv) In cases, where registration is cancelled, it shall be closed immediately and the persons undergoing treatment be shifted to the nearest hospital. The fees paid by them, shall be refunded;
- (v) The orders of the appellate authority shall be final. However, it shall not affect the writ jurisdiction of the High Courts under Art.226 of the Constitution of India;
- (vi) In cases of refusal of registration on account of an employee being convicted of an offence, the organization may be granted registration, after they remove the employee from the hospital services;
- (vii) In order to ensure that the health care organization possess the requisite financial capacity a joint fixed deposit of a specified amount be insisted to be made in the name of the authority and the organization, on the analogy of chit fund companies or educational institutes;
- (viii) All the health care organizations should implement the Govt. schemes, as part of health care services to public at large;
- (ix) The inspection team shall consist of three persons, out of which two shall be medical officers, in order to ensure a majority decision and that the decision is based on medical needs;
- (x) All the offences under the Act being cognizable, the search and seizure powers may be exercised in accordance with the provisions of code of criminal procedure. Police shall invariably assist in these functions to be carried out by the authorities;
- (xi) All the health care organizations shall display on the sign boards, the registration number and the year of registration, and a failure to do shall be a specific offence under the Act, and
- (xii) A similar law on the basis of Andhra Pradesh Act, may be enacted in other States of the Country, whenever such a law is not in existence.