

## LAW AND INDUSTRIAL RELATIONS IN SHOPS AND ESTABLISHMENTS WITH SPECIAL REFERENCE TO ANDHRA PRADESH : A BRIEF STUDY

By

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### Introduction :

The Andhra Pradesh Act has been passed in the year 1966. Before the Act The Andhra Pradesh (Andhra Area) Shops and Establishments Act, 1947 and the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1951, were in force in Andhra and Telangana Area of the State of Andhra Pradesh respectively. With a view to have uniform law on the subject of shops and establishments throughout the State, the Government have decided to bring a unified legislation on the subject applicable to the whole of the State of Andhra Pradesh. There were many Labour Welfare Legislations existed like Industrial Disputes Act 1947, Payment of Gratuity Act, Minimum Wages Act, Factories Act, Payment of Wages Act, *etc.*, with a view to provide welfare measures to the employees working in the shops and establishments some of the important provisions of Labour Welfare existed in other enactments are included in this Act *i.e.*, Andhra Pradesh Shops and Establishments Act, 1988.

The Shops and Establishments are many existing in both urban and rural areas. In which many types of workers or employees are working. The main object of this Act is to consolidate and amend the law relating to regulation of conditions of work and employ in shops, commercial establishments and other establishments and for matters connected therewith. In order to implement this Act and changed conditions in labour relations it has become very essential to provide some more measures for protecting the interest of the employees. Therefore, a new law has been provided repealing of the 1966 Act. Therefore, it has been decided to (1) make provision of some more conditions to be complied with by employers in cases of

termination of services of employees. (2) entrust the functions of judicial authorities under the Act to the Department Officers to render speedy relief to the employees under the provisions of the Act; and (3) provide for more stringent punishment to the offending employers to Act as deterrent to prevent abuse of the various welfare provisions of the enactments”.

### Scope of the Act :

The Scope of the A.P. Shops and Establishment Acts, is to consolidate and amend the laws relating to the regulation of conditions of work and employment in shops, commercial establishments, restaurants, theatres and other establishments and to provide for matters connected therewith. The scope of this Act is similar to that of the Factories Act, 1948, which was to consolidate and regulate the law relating to labour in factories. The Act deals with the conditions of work include hours of work, safety, payment of wages and security of tenure of service, *etc.* The Act created certain rights and prescribed the procedure for taking disciplinary action for violation of the provision of the Act. Does it can be said that it is a beneficial legislation and requires liberal interpretation. This Act is aimed for ameliorating and improving the working conditions of employees. The provisions of the Act are applicable to all the shops and establishments in Andhra Pradesh.

The Act has defined some important terms such as apprentice, child, commercial establishment, employee and employer, establishment, shop, theatre, wages *etc.*

The Shops and Establishments Act deals with many aspects of the employees such as recruitment, working conditions, payment of

wages, Gratuity and disciplinary actions *etc.* This Act is very important which covers majority of workers working in the organized and unorganized sectors (Rural and Urban). There is a wide disparity between the regard to providing welfare measures working in the urban and rural areas.

The author of this Article identified to study the Industrial relations in shops and establishments. In Andhra Pradesh, it is found that many of the shops and establishments are unable to implement the provisions relating to welfare scrupulously. Because of various reasons such as involvement of political parties ineffective Labour Administrators. It can be said that the workers working in the shops and establishments are being exploited by the Government. The researcher keeping in view the sufferings of the employees as in claimed to make a study on this problem.

The Act defines the term employee means a person wholly or principally employed in and in connection with any establishment and includes an apprentice and any clerical or other staff of a factory or an industrial establishment who fall outside the scope of the Factories Act, 1948 (Central Act 63 of 1948); but does not include the husband, wife, son, daughter, father mother, brother or sisters of an employer or his partner, who is living with and depending upon such employer or partner and is not in receipt of any wages.

The expression '*Clerical or other staff*' is not defined in the Act or the Factories Act, 1948. It was held in one case<sup>1</sup> by the Court that an Accountant keeping accounts in a factory was doing work incidental to the manufacturing process is treated as worker within the meaning of Factories Act, 1948. In case<sup>2</sup> It has been decided that the work connected with the distribution or transport of an article after it is manufactured is not manufacturing process and the employees in such work would not fall within the definition of worker.

1. *Abdul Latif v. Kharmath Ali*, 1962 (2) LLJ 335.

2. *Rakalansham Fagesbar v. Bombay Gas Co.*, 1961 (1) LLJ 38.

Such employees are brought into the preview of this Act. Besides clerks there are supervisors and other official who are not vested with all the powers of management and such employees fall under this definition. The object of this sub-section is to extend benefits of this Act to all such employees who are excluded by the Factories Act, 1948. In one case<sup>3</sup> it has been decided that a Bank Watchman is covered under this definition.

"The concept of employment involves three ingredients :

- (1) Employer
- (2) Employee and
- (3) The contract of employment"

The employer is one who employs, *i.e.*, one who engages the services of other persons. The employee is one who works for another for here. The employment in the contract of service between the employer and employee, whereunder the employee agrees to serve the employer subject to his control and supervision. The Supreme Court examined the concept of relationship of master and servant in *Dharangadhara* case<sup>4</sup>

The Factories Act, 1948, defined the term worker means "A person employed, directly or through any agency, whether for wage or not". Thus payment of wages is not essential requirement. The definition of "Person employed" in the old Acts, also did not contemplate "employment for hire or reward or wages". Thus under the present definition a salesmen appointed by an establishment for promoting sales on commission may become an employee though he is not paid anything like wages. A domestic servant provided by the management to officers to work in their houses is not an employee under Sec 2(6) of the U.P. Shops Act, 1971.

The Supreme Court<sup>5</sup> laid down the following tests to establish the relationship of

3. 1966 (2) 22 LLJ 25.

4. *Dharangadhara Ltd. v. State of Saurashtra*, 1957 (1) LLJ 477 = AIR 1957 SC 264.

5. (23) FLR 129.

employer and employee in one case<sup>6</sup> The right to control the manner of work is not the exclusive test for determining the relationship of employer and employee. It is also to be considered as to who provides the equipment. It might be that little weight can now-a-days be put upon the provisions of tools of minor character as opposed to plant and equipment a large scale. But so far tailoring is concerned the fact that sewing machines on which the workers do the work generally belongs to the employer is an important consideration for deciding that the relationship is that of master and servant. Apart from this when the employer has a right to reject the end product if it does not conform to the instructions of the employer and direct the worker to restrict it, the element of control is also involved. The fact the employees take up the work from the tailoring firms and do that work in the shop in which they generally attend for work and that they are not obliged to work for the whole day do not mitigate against their being employees of the proprietor of the shop where they attend for work. The Supreme Court further laid down that the test in whether the employee in doing the work connected with the employer. In addition to the tests already existing this decision added a new dimension.

The definition clearly shows that there must be employer, employee relationship. The employee should have the capacity to oblige and undertake the instructions of the employer and the employer also must have control over the employee to dictate his terms or instructions. Thus for any dispute or difference in claiming the benefits the Courts will have to examine very carefully and take a suitable decision.

The Shops and Establishment Acts, under Sec. 2(9) defines the term 'employer' means a person having a charge of or owning or having ultimate control over the affairs of an establishment and includes the Manager, Agent or other person acting in the management or control of an establishment.

6. *Silver Jubilee Tailoring Work v. Chief Inspector, Shops and Establishments*, A.P. AIR 1974 SC 37.

This definition was considered by the Supreme Court in one case and held that the control or<sup>7</sup> management, which is associated with persons falling under the definition of employer, is the general management or control of the said establishment. It is a kind of overall management or control and not management or control of sections or departments or sub-sections or sub-divisions that function under the establishment.

The Shops and Establishments Act defined the term 'the establishment' means a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and such other establishment as the Government may by notification, declare to be an establishment for the purposes of this Act.

The term 'Industrial establishment' is defined in the payment of Wages Act and also Industrial Employment (Standing Orders) Act, 1946. These definitions defined in these Act reveals that they are intended to serve the particular enactment in which they are embodied. In the Bombay Shops and Establishments Act the definition in Sec. 2(8) is the same as one in this Act. The scope of the definition was examined and considered by the Supreme Court in a case<sup>8</sup> and observed that the definition of establishment is very sick and does not purport to be purport to be exhaustive because it empowers the State Government to include within its purview by notification, any other establishments not specified in it. This definition is similar to the Bombay Act.

A club like catholic centre having the right to restrict membership carrying on the activities of club with games, a reading room, a hostel without mess attached to it, a library, an auditorium for lectures and conferences a theatre for dramatic performances and academy providing amusements and entertainments was held to be not an establishment or

7. *T. Prem Sagar v. Standard Vacuum Oil Co.*, AIR 1956 SC 111.

8. *B.P. Hira v. C.M. Pradhan*, AIR 1959 SC 1226.

commercial establishment by the Madras High Court reported in *Catholic Central Staff Union v. Archbishop of Madras* and reported in 1962 (2) LLJ 115. But in this judgment, it was held that if a hostel was engaged in supplying food to inmates it will be a shop or establishment their Lordships observed that the meaning of definition of industry given in the Industrial Disputes Act, 1947 cannot be imported to the meaning of establishment or commercial establishment in the Shops Act.

There are many types of establishments functioning and also many types of workers or employees working in these establishments. Commercial establishments are many and which gives a scope for employment of technical persons and also workers of semi-skilled or manual in one case<sup>9</sup>

It has been held by the Court that the dispensary of private medical practitioner does not fall within the definition of commercial establishment under the Act, and his dispensary is not registerable under it.

It is to be specified that the lodging house was not included in the definition of commercial establishment of old Acts, but in the new Act, the lodging house is included. The word lodging is not defined it can be understood that lodging house in place where facilities of lodging are arranged without facilities of boarding. The repealed Acts, defined the term 'Residential Hotel' meaning any premises in which business is taken up for providing accommodation and meals on payment of some amount to traveller or any member of the society. The definition of 'Establishment' in this Act, while including 'Residential Hotel' included lodging house also.

The term any other establishment must be legally understood. The specific words preceding the general words are shop, restaurant, eating house, residential hotel, lodging house, theatre, or any place where public amusement or entertainment following these specific words are 'Any other establishment'

'shop' is defined in this Act as any premises where any trade or business is carried or where services are rendered to the customers.

In one case<sup>10</sup> it was held by the A.P. High Court that a canteen run by the employees which is open to the employees only but not to outsiders and run without any profit motive is not an 'Establishment' within the meaning of the Act. In an unreported judgment in W.P. No.2425 of 1974 dated 13.11.1975 Justice *Gangadhar Rao*, decided that the Nizam Club does not satisfy the requirements of the eating house in view of the fact that the public are not admitted and the food is not prepared or supplied or sold for consumption of profit or gains of the club.

The term 'wages' has been defined in the Act. The Industrial Dispute Act has also defined the term wages as 'all remuneration capable of being expressed in terms of money which would, if the terms of employment, expressed or implied, were fulfilled be payable to a workman in respect of his employment or work done in employment and includes -

- (i) such allowances include (Dearness Allowance) as the working man is for the time being entitled to
- (ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service, or of any concessional supply of food grains, or other articles;
- (iii) Any travelling concession but does not include—
  - (a) Any bonus,
  - (b) Any contribution paid or payable by the employer to any pension fund, provident fund or for the benefit of the workmen, under any law for the time being in force.
  - (c) Any gratuity payable on the termination of his service

9. *Dr. J. Venkateshwar Rao v. Special Munsiff Magistrate, Vijayawada*, (1986) APLJ 1010 S.N.

10. *Public Prosecutor v. Chandra Mohan*, 1980 (1) APLJ 71.



The definition under this Act is virtually adopted from the Payment of Wages Act, 1936 with the exception in clause (vi) excepting the gratuity payable under this Act under Sec.47.

The definition is virtually the same in the repealing Acts. The Shops and Establishments Act, under Chapter II provides Registration of Establishment from Sec. III to IV, the Chapter III of the Act, deals with the important aspects such as opening and closing hours of shops, prohibition of outside selling before opening or after closing of hours of shops, daily and weekly house of work in shops, interval for rest *etc.*, the Chapter IV of the Act, deals with establishments other than shops, Chapter V deals with employment of women, children and young persons. Chapter VI is devoted for health and safety relating to cleanliness, ventilation, precautions for the safety of employees and maximum permissible load Chapter VII provides leave, holidays with wages and Insurance for this Scheme Chapter VIII provide provision relating to wages, conditions for termination of services, appeals, suspension and terminal benefits. This chapter specifically deals with fixation of wages, payment of wages, deductions from wages for various purposes such as imposition of fines, absence from duty, for damage or loss, negligence *etc.*, the Act also deals with penalty for offences.

The Act incorporated many of the important concepts of law borrowed from different labour enactments exclusively with a view to provide benefits to the employees or workers working in these shops and establishments. This Act is consolidating and regulating the working conditions and also service conditions the Act, also contains many of rules for each specific concept relating to the workers working in the shops and establishments.

### Conclusion:

Though the Act has been amended many times keeping in view the welfare of the employees or workmen working in the shops and establishments has not been provided

benefit to them because the employers of different establishments are continuing their exploitative techniques by paying lesser wages than the prescribed by the Government with a view to earn more profits the labour administration is also a failure in implementing the shops and establishments because the workers scattered in different rural, urban and tribal areas. The law is unable to extend its arms to these areas due to lack of its will proved the trade unions also failed miserably in organizing and uniting the workers to fight against the exploitation of workers in these establishments.

Recently the Government of India with a view to ensure the welfare and well being of workers, particularly those in the unorganized sector who constitute 93% of work force has taken some important steps and passed a legislation through the Act, and introduced a National common minimum programme providing social security for the unorganized sector. But this may not be exclusively applicable to the workers who are working in these shops and establishments. There is an unemployment is existed in the case of shops and establishments where persons who are having some skills and knowledge are unable to get the employment such as tailors, carpenters, electricians and educated persons of X class upto graduation. The concept of social security benefits will have to be provided to the workers who are in the shops and establishments providing health care, guarantee of employment, payment of suitable wages *etc.* Recently the Government of India has considered the problem of unorganized workers and passed a social security law covering certain contingencies such as sickness and disablement *etc.* It is found that there is no security of employment in these shops and establishments, many times the employers terminate the services of these employer in the name of disciple without following proper procedure. In the absence of good trade unions the workers are also unable to focus their problems. Some political parties are taking up some problems of the workers with a view their political goals.

Therefore there must be good relations between the Labour and Management in these organisations. It can be said that law alone cannot solve the problems of the

employees a systematic education relating to the Labour Management relations will have to be given. Then only we can achieve peace and prosperity in this unorganised sector.

## MEDICAL NEGLIGENCE AND THE LAW

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### I. Abstract :

After the Consumer Protection Act 1986, came into effect, a number of patients have filed cases against doctors. This article presents a summary of legal decisions related to medical negligence, what constitutes negligence in civil and criminal law, and what is required to prove it. This article describes the various laws which govern the medical negligence in India. It highlights that health has always been a matter of universal concern not only in India but also throughout the world. Legal aspects of medical practice have always constituted an important component of medical education. Hence, from the early stage itself, the doctors and medical practitioners are made well-acquainted with the legal issues which are inherent in medical practice.

### II. Introduction :

Public awareness of medical negligence in India is growing. Hospital managements are increasingly facing complaints regarding the facilities, standard of professional competence and the appropriateness of their therapeutic and diagnostic methods. After the Consumer Protection Act 1986 has come into force, some patients have filed cases against doctors and have established that the doctors were negligent in their medical services and have claimed and received compensation. As a result a number of decisions have been made on what constitutes negligence and what is required to prove it.

### III Civil Law and negligence :

*K.K. Srirama Murthy*,<sup>1</sup> has lightly opinioned that, "Negligence is the breach of the legal duty to care". It means carelessness in a matter in which the law mandates carefulness. A breach of this duty gives a patient the right to initiate action against negligence.

Persons who offer medical advice and treatment implicitly state that they have the skill and knowledge to do so, that they have the skill to decide whether to take care, to decide the treatment, and to administer that treatment. This is known as an "implied undertaking" on the part of medical profession. In the case of the *State of Haryana v. Smt. Santa*, the Supreme Court held that ever doctor "has a duty to act with a reasonable degree of care and skill."<sup>2</sup>

Doctors in India may be held liable for their service individually or vicariously unless they come within the exceptions specified in the case of *Indian Medical Association v. V.P. Santha*<sup>3</sup>. The doctors are not liable for their service individually or vicariously if they do not charge fees. Thus free treatment at a Non-Government Hospital, Government Hospital, Health Care Centre, Dispensary or

1. *K.K. Srirama Murthy*, Faculty Member, ICFAL Law School University Dehradun.

2. *State of Haryana v. Smt. Santa*, (2000) 5 SCC 182 = AIR 2000 SC 3335.

3. *Indian Medical Association v. V.P. Santha*, AIR 1996 SC 550.