

“Legislative Policy - Executive Empathy and Judicial Sympathy on Women Health”

Dr. K. Sita Manikyam, Asst. Professor

**Dr. B R Ambedkar College of Law,
Andhra University, Visakhapatnam.**

Mobile. 9440084024

[Email-sitakonala@gmail.com](mailto:sitakonala@gmail.com)

Scheme of the Presentation

- **Legislative Policy**
- **Executive Empathy**
- **Judicial Sympathy**

Scheme of Presentation in Detail

- Establishing healthy society- a state obligation
- Health care of women - Working, non-working, etc.,
- Treatment to the Rape victims, women prisoners

Statutory medical protection of women

- Surrogacy Law
- Maternity Benefit Act
- Factories Act
- Medical Termination of Pregnancy Act, 1971
- PC PNDT Act, 1994

Maternity Benefit Act, 1961

Objects

- To ensure Social Justice
- To regulate the employment of women
- Benefits provided before and after child birth

Main Provisions

- Women are prohibited to work during certain period 6weeks immediately following the date of delivery, miscarriage or Medical Termination of Pregnancy
- Right to payment maternity benefit(Average daily wage for the period of 6 weeks)
- Leave with wages for tubectomy (2weeks)
- Leave for illness arising out of pregnancy (1 month)
- Nursing breaks – 2breaks until the child attains age of 15months

Maternity Benefit Act, 1961

2017 Amendment Dt.1/4/2017 with effect from 1/7/2017

- **Increase in the duration of paid maternity leave:** From 12 weeks (of which not more than 6 weeks shall precede the expected date of delivery) to 26 weeks (of which not more than 8 weeks shall precede the expected date of delivery). A new provision has also been introduced, providing that a woman with two or more surviving children will receive only 12 weeks of paid maternity leave. Such a provision restricting the benefit available based on the number of children was present in a few States, under the Shops and Establishments Acts. This is now being made a part of the central legislation as well.
- **Surrogacy leave:** Paid surrogacy leave of 12 weeks from the date when the child is handed over. This leave can only be availed by a commissioning mother who uses her egg to create an embryo to be implanted in another woman.
- **Adoption Leave:** Paid adoption leave of 12 weeks from the date when the child is handed over, provided the child is less than 3 months old.

- ***Work from Home option:*** The MB Amendment Act has also introduced an enabling provision relating to "work from home" for women, which may be exercised after the expiry of the 26 weeks' leave period. Depending upon the nature of work, women employees may be able to avail this benefit on terms that are mutually agreed with the employer.
- ***Crèche facility:*** The MB Amendment Act makes crèche facility mandatory for every establishment employing 50 or more employees. Women employees would be permitted to visit the crèche 4 times during the day.
- ***Employee awareness:*** The MB Amendment Act makes it mandatory for employers to educate women about the maternity benefits available to them at the time of their appointment.

Factories Act, 1948

Special Provisions for women

- Sec. 19 - Toilets and Urinals,
Sec. 27 - Prohibition of employing women and children near cotton openers.
Sec. 48 – Creches, Time and intervals for feeding
Sec. 66 - Further restrictions on employment of women - no flex on working hrs, no change of shifts except after holiday.

Executive Empathy

- Treatment with the Rape victims
- Treatment of the Women Convicts

Treatment of the Rape Victims

- Examination of a case of rape shall be conducted by a **registered medical practitioner (RMP)** employed in a hospital run by the government or a local authority and in the absence of such a practitioner, by any other RMP.
- Examination to be conducted without delay and a reasoned report to be prepared by the RMP.
- Record consent obtained specifically for this examination.
- Exact time of start and close of examination to be recorded.
- RMP to forward report without delay to **Investigating Officer (IO)**, and in turn IO to Magistrate

- The Criminal Law Amendment Act 2013, in Section 357C Cr.PC says that both private and public health professionals are obligated to provide treatment. Denial of treatment of rape survivors is punishable under Section 166 B IPC with imprisonment for a term which may extend to one year or with fine or with both. Health professionals need to respond comprehensively to the needs of survivors.
- Survivors may access a hospital before going to the police. The Supreme Court of India has clarified in a judgment in 2000 that a police requisition is not required in order to conduct a medical examination.

- **The controversial “Two Finger Test” of sexual assault victims is slowly falling out of practice:** This is a test that until recently was performed widely in cases of sexual assault. Fingers are inserted into the vagina of a sexual assault victim to see whether she is habituated to sexual intercourse. (The easy insertion of two fingers is a “positive” test).
- The procedure is degrading and medically legally and scientifically irrelevant and there have been recent national policies not only discouraging but condemning the performance of this exam

Treatment of Women Convicts

- Women convicts mental care
- Sexual abuse
- Educating and vocational treatment
- Family relationships and responsibility
- Children of women prisoners
- Regular health check up to be conducted

Governmental Policies / schemes

- Arogya sri
- Janani Suraksha yojana scheme
- Sukhibhava scheme
- GST committee recommendations
- SEHAT (Social Education & Health Advocacy Training) project in Amritsar Prison in collaboration with the United Nations Office on Drugs and Crime (UNODC).

Judicial sympathy

Perhaps the most important requirement of the judicial function (is to) be seen to be applying existing, recognized rules and principles of law even when it creates law in the sense of developing, adapting, modifying, filling gaps, interpreting or even branching out in a new direction.

Robert Jennings. J

- ***Consumer Education & Research Centre and Others v. Union of India and Others***, the Court held that the right to life meant a right to a meaningful life, which is not possible without having right to healthcare. The Court while dealing with the right to healthcare of persons working in the asbestos industry read the provisions of Articles 39, 41 and 43 into Article 21

- ***Paschim Banga Khet Majdoor Samity and Others v. State of West Bengal and Another***, the Supreme Court not only declared right to health as a fundamental right but enforced that right by asking the State to pay compensation for the loss suffered and also to formulate a blueprint for primary healthcare with particular reference to the treatment of patients during emergency.

Vincent Panikurlangara v. Union of India.

- It is State's obligation to preserve life and professional obligation of all doctors, of government and private hospitals to extend medical aid to the injured persons immediately.

- ***S.C. Legal Aid Committee v. State of Madhya Pradesh***, directions regarding administration, control and management of Gwalior Manasik Arogyashala were issued.
- In a Public Interest Litigation to enforce the fundamental rights of workmen employed in asbestos industries affected by asbestosis and becoming prone to lung cancer and related ailment, the Supreme Court held that the right to health and medical aid of workers during service and thereafter is a fundamental right. Court can give directions in appropriate cases to State or its undertakings/instrumentalities, company or private employer to make the right meaningful and to pay compensation to affected workmen

- ***Common Cause v. Union of India***, directions were issued by Supreme Court for establishing a National Council of Blood Transfusion as well as State Councils to issue licences for blood banks and taking steps to regulate, collect, process, storage, distribution and transportation of blood and operation of blood banks.
- Self preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law.

- ***Surjit Singh v. State of Punjab***, the Supreme Court held that in view of the claimant's fundamental right of self-preservation and the delaying process involved in the meeting of the Medical Board and in getting admission to the AIIMS, his claim to reimbursement of medical expenses incurred at the Escorts rates as per the policy regarding reimbursement of medical expenses framed by State of Punjab was fair and just.

- ***Kirloskar Brothers Ltd. v. E.S.I. Corporation***, the Court held that the object of the E.S.I. Act is to provide certain benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. In expanding economic activity in liberalised economy, Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workmen and to provide facilities and opportunities for health and vigour of the workman.

***Journey is not over...
struggle continues in bringing justice for
women in protecting her right to health...***

THANK YOU