

## **The Clinical Establishments (Registration and Regulation) Bill, 2010.- A travesty of Constitutional proportions.**

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The Statesman. Kolkata 13. Jan. "The New Clinical Establishment Act will help to stop the business of unregulated nursing homes **in the country**," Union Health Minister, Mr. Ghulam Nabi Azad said today.

Press Information Bureau, Govt of India, 19/12/2010.-"The Clinical Establishment (Registration & Regulation) Bill, 2010 was passed by both Houses of Parliament and notified on 19th August 2010. The Act aims at providing registration & regulation of Clinical Establishments **in the country** with a view to prescribing minimum standards of facilities and services. **This Act will initially take effect in few States** viz Arunachal Pradesh, Himachal Pradesh, Mizoram, Sikkim and all Union territories."

Reading the above articles one can only appreciate the Central Govts good intentions but the high lighted portions of the Govts posturing reveal that this is an exercise in Legislative activism by the Parliament of India misled by the Executive. Its effect on delivery of Health Care will be adverse but this article will restrict itself to the Constitutional points. If the constitutional understanding of our founding fathers are disregarded it is an affront and detrimental to the federal fabric of our country.

In the seventh schedule of our Constitution, List II- State List clearly enunciates in No. 6 Public health and sanitation; hospitals and dispensaries. Hence Clinical Establishments and related matters do not fall under the Legislative right of the Parliament of India ordinarily since it is a purely State subject. Article 249 and 250 provide with 251 and 252 the procedure for States Legislatures to approach the Parliament of India to legislate on their behalf. This provision allows for States not having expertise in certain fields to benefit from the legislative capacities of Parliament. Once again to protect the federal character the Act has to be demand by a 2/3 majority on the floor of more than 2 respective State Legislative Assemblies (the Constitution protects federalism by underlying that transfer of legislative authority cannot be done by simple majority). Furthermore once the Act is enunciated it will be effective if the respective States once again adopt it, if needed with amendments it feels necessary.

It is in this light that the states of Arunachal Pradesh, Himachal Pradesh, Mizoram and Sikkim approached the Parliament of India to enunciate an Act on Clinical Establishments for their own States. The desire of these states to avail of the expertise at the command of the Parliament is justified. The Parliament entrusted the Executive to place a Bill in this regard (read the Ministry of Health). The Ministry has placed such a Bill that by its own admission (see the comments of the Minister and the Govt of India Press note above) which will be implementable all over India. This admission reveals intention that the Act is not sensitive to the situational reality of the States that requested for such expertise. The glee with which the Central Govt went ahead and promulgated the Act applicable to all Union Territories reveal the

shallow understanding it has of the diversity of India and falls short of the expectation of the requisitioning states. The Ministry of Health Govt of India assumes that the development of the Health Sector and Clinical Establishments (both Govt and private) in Chandigarh and Mizoram will be similar hence a common Act will suffice for all regions of India albeit they have the right to amend it.

The intention of the Govt is revealed by the way the bill was passed in the parliament with a token presentation. Confusion in Parliament is used by the ruling clique as much as the opposition and here it was used to subvert the federal character of the Constitution, revealing that many a time the Govt itself is interested in the pandemonium in Parliament. Numerous Bills are passed in similar such situations.

The cat is let out of the bag when one sees the “**Statement of Objectives and Reasons**”, appended with the Bill. In point 2 it mentions “ Despite many State Legislatures having enacted laws for regulating health care providers, the general perception is that current regulatory process for health care providers in India is inadequate or not responsive to ensure health care services of acceptable quality or prevent negligence.” This is an open admission of appropriating responsibility not permitted by Articles 246-252 and the patronizing attitude of the Ministry challenges the wisdom of the State Legislatures that have enacted respective Clinical Establishment or similar Acts . Beyond being insulting it is also constitutional impropriety. The appeal was made by 4 States, whereas the Bill not focusing its capacities to strengthen the legislative abilities of these states with its expertise has appropriated a pan India role of responsibility with intention. After conducting its brazen attack on the federal structure and burying the seventh schedule as an afterthought it pays lip service in its penultimate point No.7- “Legislation in respect of “Public Health and sanitation; hospitals and dispensaries” are relatable to Entry 6 of List II---State List in the Seventh Schedule to the constitution and Parliament has no power to make a law in the state(apart from provisions of article 249, 250 and 252 of the constitution) ...”, having said so it goes on to dedicate the Act to the people of India with the desire that all States will adopt and implement it.

The Ministry of Health, Govt of India has used the justified request for legislative support to push its own agenda. By doing so it will fail the people of Arunachal Pradesh, Himachal Pradesh, Mizoram and Sikkim Having appropriated an unauthorized Pan India responsibility this Act will have low practical value in the reality of these States. A travesty of Constitutional proportions has been unleashed on the federal structure of our country.

My question is for whose benefit?