
(2014) 09 AHC CK 0240

In the Allahabad High Court

Case No : Misc. Bench Nos.-11289 of 2013 and 7157 of 2014

Sameer Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Clinical Establishments (Registration and Regulation) Act, 2010 — Section 10, 11, 12, 14, 15
Constitution of India, 1950 — Article 21, 226, 239, 249, 250
Indian Medical Council Act, 1956 — Section 20-A, 33(m), 33(n)
Medical Termination of Pregnancy Act, 1971 — Section 5
Right to Information Act, 2005 — Section 3, 4

Citation : (2014) 8 ADJ 742 : (2014) 6 ALJ 629

Hon'ble Judges : Devi Prasad Singh, J;Arvind Kumar Tripathi (II), J

Bench : Division Bench

Advocate : Piyush Chandra Agarwal, Manish Kumar Srivastava and Rakesh Kumar Yadav, Advocate for the Appellant; G.K. Srivastava, Prahlad Maurya Salil K. Srivastava and Krishna Chandra, Advocate for the Respondent

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—In both the writ petitions, common question of law and facts are involved. Hence with the consent of parties counsel, we decide these writ petitions by the present common judgment.

2. The question of public importance involved in the present writ petitions, relates to supply of copy of "medical records" to the patients or their authorised attendants during the course of treatment or after the treatment. The factual matrix on record shows that in the State of U.P., the Government hospitals, nursing homes or even medical colleges or hospitals run by the Government and private persons ordinarily, do not provide medical record to patients or their authorised agent. In consequence, the citizens suffer from medical negligence may not be able to file complaint for damages or prosecute the guilty.

The factual matrix of writs are discussed hereinafter:-

Writ Petition No. 11289 (M/B) of 2013

3. The mother of the petitioner Sameer Kumar, late Usha Agarwal (in short the patient) was admitted in Ford Hospital, Lucknow, the opposite party No. 4 which according to the petitioner, is the Unit of Nova Hospital Limited, Lucknow. She was under treatment of a doctor namely, Dr. K.P. Chandra. It is alleged that the doctor had not recommended any generic medicine but treated the patient with large quantities of costly antibiotic "Doripenum" without getting the culture test of the patient.

4. On the insistence of the petitioner, the culture test was done and according to a report dated 29.4.2012, it was borne out that the infection of the patient was resistant to the antibiotic named as "Meropenem" which is an antibiotic of the class of antibiotic known as "Carbopenem" and the antibiotic "Doripenum" which is also an antibiotic of class "Carbopenem" was being given to the patient which was similar to the aforesaid antibiotic "Meropenem" which was reported to be resistive to the patient in the culture report. Copies of medical receipts have been filed as Annexure No. 2 and 3 to the writ petition. In spite of culture report, Doctor continued administering the above drug. The petitioner also obtained opinion of one Dr. Ravi Kumar Memon which seems to be contrary to the opinion expressed by the doctor who provided treatment in the Ford Hospital. In consequence thereof, according to the petitioner's counsel, on account of incorrect treatment, the mother of the petitioner expired on 4.5.2012.

5. The petitioner demanded copy of medical report on 8.10.2013 through a letter contained in Annexure No. 8 to the writ petition followed by another letter dated 17.10.2013 contained in Annexure No. 9 to the writ petition, in pursuance of the Regulation No. 1.3.2 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (in short the Regulation). When the record was not provided, the petitioner forwarded the copy of the letter to the different authorities but no one turned up to help him.

According to petitioner's counsel, under Regulation 1.3.2., it was obligatory on the part of the respondent No. 4 to provide copy of the medical record.

Writ Petition No. 7157 (M/B) of 2014

6. Smt. Vimla Devi, the petitioner has approached this Court under Article 226 of the Constitution of India with the grievance that respondent No. 3 Trauma Ventilator Unit, Trauma Centre, King George Medical University Lucknow, have failed to provide medical record in violation of the aforesaid Regulation. According to the petitioner's counsel late Sri Ram Niwas Yadav while driving a car bearing No. UP-32 DS-5685 in Telibagh, Lucknow along with his children namely, Swapnil and Prakhya alias Tanushree met with accident on 21.10.2012 from another vehicle, which was coming towards Bangla Bazar with Roadways Bus of Rae Bareilly Depot namely, Bus No. UP-33 T-4321 driven by the driver Lal Bahadur Yadav. The petitioner's husband and children were admitted to Trauma Centre (supra) (O.P. No. 2 to 4). On the advice of Trauma Centre and reference

made therein, the petitioner's husband late Ram Niwas Yadav was admitted to Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow, where he died on 23.11.2012 during the course of treatment.

7. An application was moved by the petitioner under Right to Information Act, 2005 (RTI Act) to provide the copy of medical record for treatment provided by the Trauma Centre from 21.10.2012 to 10.11.2012. The petitioner also informed that in view of the interim order passed by the Division Bench of this court in the Writ Petition No. 11289 (M/B) of 2013, Sameer Kumar Vs. State of U.P. and others, the medical records should be provided within 72 hours. The copy of the application dated 27.3.2014 has been filed as Annexure No. 1 to the writ petition.

8. It is stated that Critical Care Unit of Emergency Department of the O.P. No. 2 and 3, vide their letter dated 3.5.2014 communicated the information to the O.P. No. 2 with regard to treatment provided to the petitioner's husband. The certificate of Critical Care Unit has been filed as Annexure No. 4 to the writ petition. Through an application dated 19.6.2014 (Annexure No. 7 to the writ petition), the petitioner prayed for a copy of the medical record but it appears that the same has not been provided. Though the Critical Care Unit has provided the record but the Trauma Ventilator Unit, Trauma Centre, King George Medical University Lucknow has not provided. Hence the petitioner approached this Court under writ jurisdiction.

9. In pursuance of the interim order dated 6.12.2013, passed in Writ Petition No. 11289 (M/B) of 2013, the respondent No. 4 i.e., Ford Hospital, Lucknow, has provided copy of the medical record. During the course of pendency of writ petition, Smt. Vimla Devi has also been provided copy of the medical record.

10. It appears that in spite of undertaking, given before this Court, incorporated in the interim order dated 6.12.2013 passed by this Court in the present writ petitions, for some unforeseen reasons, the Government has not framed rules and regulations to regulate the functioning of the clinical establishments. The interim order dated 6.12.2013 (supra) is reproduced as under:-

"Hon"ble Devi Prasad Singh, J.

Hon"ble Ashok Pal Singh, J.—Learned Chief Standing Counsel has accepted notice on behalf of opposite parties no. 1 and 6.

Vakalatnama filed by Shri Prahlad Maurya on behalf of opposite parties no. 4 and 5 is taken on record. His name shall be printed in the cause list.

Shri G.K. Srivastava learned counsel appeared on behalf of the opposite party no. 2. Shri Salil Kumar Srivastava has accepted notice on behalf of opposite party no. 3.

In pursuance to order passed by this Court, Chief Medical Officer, Lucknow is present in person to assist the Court.

While approaching this Court under Article 226 of the Constitution of India the petitioner has pleaded that the petitioner's mother was admitted in the hospital of respondent nos. 4 and 5 from 19.4.2012 to 4.5.2012. During the course of treatment in the said hospital, petitioner's mother died.

2. According to Shri P.C. Agarwal, learned counsel for the petitioner entire payment was made in lieu of treatment provided by respondent no. 4 and 5. However, petitioner had asked to supply the records of medical treatment provided to his mother, late Smt. Usha Agarwal, but the respondent no. 4 and 5 declined to provide the same. Feeling aggrieved, the petitioner has approached this Court.

During the course of hearing the Court has been apprised by the learned counsel for the petitioner and learned Standing counsel that there is no regulatory procedure provided by the State Government in the form of guidelines as to "what is to be done and what not to be done" by the hospital including government nursing and private clinics, Medical Colleges, Clinical establishments, Nursing Homes etc.

Shri S.N.S. Yadav, Chief Medical Officer, Lucknow, invited attention towards a format which contains 23 informations which are sought to be provided by established Hospitals including Nursing Homes for their registration. It is submitted that the process of registration has been initiated in pursuance to earlier judgment of this Court and Apex court. However, Chief Medical Officer, Lucknow admits that in the absence of any regulatory procedure, the Government feels handicapped to direct the registered Hospitals to do certain thing or not to do other things.

On the basis of instructions received from the Chief Secretary, Chief Medical Officer submits that rules and regulations are likely to be framed within a period of two months and shall be notified accordingly.

Right to life as well as quality of life are the fundamental rights granted by Article 21 of the Constitution of India. By catena of judgment Hon'ble Supreme Court from time to time emphasized that in civilized society the citizens have got right for proper treatment and dignified behavior from the Hospitals. Accordingly, it shall always be incumbent upon the State Government to frame regulatory provision bearing constitutional responsibility.

Shri P.C. Agarwal, learned counsel for the petitioner has invited attention towards notification dated 11.3.2002 issued by Medical Council of India which has got statutory force being issued in pursuance to power conferred by Medical Council of India Act 1956 which contains code of conduct with regard to physicians and maintenance of good medical practice as well as maintenance of medical records.

3. So far as maintenance of medical records are concerned, Clause 1.3 as contained in notification of Medical Council of India is reproduced as under:-

"1.3 Maintenance of medical records:-

1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.

1.3.2 If any request is made for medical records either by the patients/ authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.

1.3.3 A registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/she shall not omit to record the signature and/ or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.

1.3.4 Effort shall be made to computerize medical records for quick retrieval."

4. The condition contained in the notification dated 11.3.2002 has got statutory force and it shall always be incumbent upon the medical practitioners, hospitals, Nursing Homes whether they are government or private to abide by notification dated 11.3.2002. Accordingly, it shall be incumbent upon the medical practitioners, hospitals, Nursing Homes or Clinical Establishments to provide a copy of medical records to the patients or their nominee within a period of 72 hours as and when request is made. In case, records are not supplied, it shall be punishable and make out a case for rejection of registration of such Hospital, Medical practitioner or Nursing Home by the competent authority. Prima facie, it was incumbent upon the respondent nos. 4 and 5 to supply document as demanded in terms of Clause 1.3 of the aforesaid notification.

5. Subject to aforesaid factual material on record, we issue ad interim mandamus to the State Government to frame regulations/rules after taking into account the notification dated 11.3.2002 issued by Medical Council of India. While granting registration to any medical practitioner to run Clinic, Nursing Home or Hospital or a clinical establishment the condition provided in notification dated 11.3.2002 must be made part and parcel of the registration certificate. Whether it is government or private Hospital, Nursing Home or Clinics while issuing registration certificate State Government must ensure that conditions given in the notification dated 11.3.2002 issued by Medical Council of India be complied with and also incorporated as condition of licence.

6. While framing regulation State Government shall further ensure that Supervising Officer be designated who may ensure that conditions discussed hereinabove or in regulation/rules framed are complied with by Medical Practitioners, Hospitals and Nursing Homes whether they are private or the government. The government Hospitals including SGPGI or other post graduate institution shall also comply with condition no. 1.3 and provide a copy of entire

medical records to the patients or their nominee within the aforesaid period of 72 hours after discharge from the respective hospitals.

7. Needless to say that while dealing with private dispute this Court may also look into public interest in view of earlier Division Bench judgment of this court reported in Devendra Pratap Singh and Others Vs. Union of India, which has been affirmed by Hon"ble Supreme Court. Hence, we issue interim mandamus to secure public interest. We further direct respondent no. 4 and 5 to provide the petitioner copy of records in terms of regulation of Medical Council of India (supra) within a week from the date of production of certificate copy of the present order.

8. Apart from direction contained in the aforesaid notification of Medical Council of India, we further direct the respondents while framing regulations and issuing certificate for registration to provide therein that all Hospitals shall also maintain their record of each and every patient on the website starting from registration of the patient to the date of discharge.

9. Subject to aforesaid, we admit the writ petition and permit the respondents to file counter affidavit within a period of six weeks, rejoinder affidavit within two weeks.

While filing counter affidavit the State Government shall also place on record as to how and under what manner direction issued hereinabove have been complied with while proceeding with the registration of Hospitals, Nursing Homes, Medical and Clinical institution etc.

List immediately after two months for peremptorily hearing of the matter.

We hope and expect that rules/regulation shall be prepared and notified keeping in view the undertaking given before this court and observation made hereinabove within a period of two months.

Personal appearance of Chief Medical Officer, Lucknow is exempted subject to compliance of direction issued by this Court.

The direction shall be enforced with regard to Government Hospitals as well as registered Hospitals or clinical establishment by the State or its authorities with immediate effect."

11. However, learned counsel for the petitioner as well as respondents including learned Additional Chief Standing Counsel submitted that to check such recurrence i.e., denial of medical record to citizens by the private hospitals, nursing homes, or clinics, the writ petitions may be decided on merit and appropriate directions may be issued.

12. From the perusal of the order dated 25.8.2014 passed by this Court, it appears that the State Government has chosen not to file any response and the learned Additional Chief Standing Counsel fairly submits that it is not adversarial litigation against the State Government and the controversy may be decided on

merit. The private respondents have filed their affidavits.

We appreciate the action of State Government and cooperation extended for adjudication of the controversy on merit.

STATUTORY PROVISIONS

13. Article 47 of the Constitution of India of Part IV (Directive Principles of State Policy) cast duty on State to raise the level of nutrition and the standard of living of the people and improve the public health as among its primary duty. For convenience, Article 47 is reproduced as under:-

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

14. Apart from Article 47, Article 21 of the Constitution secures and protects the quality and dignity of life including different facets of life, vide *Kapila Hingorani Vs. State of Bihar*,

15. The Indian Medical Council Act, 1956 (in short the Act), confers wide power on the Medical Council of India to maintain the standard of hospitals, medical colleges, clinics, etc. Section 33(m) provides that Medical Council of India may frame regulations to maintain the standards of professional conduct and etiquette and the code of ethics to be observed by medical practitioners. For convenience, Section 33(m) of the Act is reproduced as under:-

(m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and]

Section 33(n) of the Act further empowers the Medical Council of India to frame regulations for any other purpose.

16. In pursuance of the power conferred by Section 20-A read with Section 33(m) of the Act, the Medical Council of India framed regulations namely, the "Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002". Regulation 1.1.1 and 1.1.2 expects that a medical practitioner shall uphold the dignity and honour of profession and prime object of the medical profession is to render service to humanity, reward or financial gain is a subordinate consideration. For convenience, Regulation 1.1.1 and 1.1.2 of the Regulation, are reproduced as under:-

"1.1.1 A physician shall uphold the dignity and honour of his profession.

1.1.2 The prime object of the medical profession is to render service to humanity; reward or financial gain is a subordinate consideration. Who-so-ever

chooses his profession, assumes the obligation to conduct himself in accordance with its ideals. A physician should be an upright man, instructed in the art of healings. He shall keep himself pure in character and be diligent in caring for the sick; he should be modest, sober, patient, prompt in discharging his duty without anxiety; conducting himself with propriety in his profession and in all the actions of his life."

17. Regulation 1.2.1 further provides that the physician shall render service to humanity with full respect for the dignity of profession and man. Regulation 1.3 further provides that every physician shall maintain the medical records with regard to his/her indoor patients for a period of 3 years and shall provide copy of medical record within 72 hours as and when demanded. Regulation 1.5 further provides that every physician should, as far as possible, prescribe drugs with generic names and he/she shall ensure that there is a rational prescription and use of drugs. Regulation 1.6 and 1.7 extend the highest quality assurance in patient care. A physician shall be duty bound to expose without fear or favour, incompetent or corrupt, dishonest or unethical conduct on the part of members of the profession and under Regulation 1.8 priority shall be given to interest of patient. Under Regulation 1.9, a physician shall not be evasive to legal restrictions. For convenience, Regulation 1.2.1; 1.3, 1.5, 1.6, 1.7, 1.8 and 1.9 are reproduced as under:-

1.2 Maintaining good medical practice:

1.2.1 The Principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion. Physicians should try continuously to improve medical knowledge and skills and should make available to their patients and colleagues the benefits of their professional attainments. The physician should practice methods of healing founded on scientific basis and should not associate professionally with anyone who violates this principle. The honoured ideals of the medical profession imply that the responsibilities of the physician extend not only to individuals but also to society.

1.3 Maintenance of medical records:-

1.3.1 Every physician shall maintain the medical records pertaining to his/her indoor patients for a period of 3 years from the date of commencement of the treatment in a standard proforma laid down by the Medical Council of India and attached as Appendix 3.

1.3.2. If any request is made for medical records either by the patients/ authorised attendant or legal authorities involved, the same may be duly acknowledged and documents shall be issued within the period of 72 hours.

1.3.3 A Registered medical practitioner shall maintain a Register of Medical Certificates giving full details of certificates issued. When issuing a medical

certificate he/she shall always enter the identification marks of the patient and keep a copy of the certificate. He/She shall not omit to record the signature and/or thumb mark, address and at least one identification mark of the patient on the medical certificates or report. The medical certificate shall be prepared as in Appendix 2.

1.3.4 Efforts shall be made to computerize medical records for quick retrieval.

1.5 Use of Generic names of drugs: Every physician should, as far as possible, prescribe drugs with generic names and he/she shall ensure that there is a rational prescription and use of drugs.

1.6 Highest Quality Assurance in patient care: Every physician should aid in safeguarding the profession against admission to it of those who are deficient in moral character or education. Physician shall not employ in connection with his professional practice any attendant who is neither registered nor enlisted under the Medical Acts in force and shall not permit such persons to attend, treat or perform operations upon patients wherever professional discretion or skill is required.

1.7 Exposure of Unethical Conduct: A Physician should expose, without fear or favour, incompetent or corrupt, dishonest or unethical conduct on the part of members of the profession.

1.8 Payment of Professional Services: The physician, engaged in the practice of medicine shall give priority to the interests of patients. The personal financial interests of a physician should not conflict with the medical interests of patients. A physician should announce his fees before rendering service and not after the operation or treatment is under way. Remuneration received for such services should be in the form and amount specifically announced to the patient at the time the service is rendered. It is unethical to enter into a contract of "no cure no payment". Physician rendering service on behalf of the state shall refrain from anticipating or accepting any consideration.

1.9 Evasion of Legal Restrictions: The physician shall observe the laws of the country in regulating the practice of medicine and shall also not assist others to evade such laws. He should be cooperative in observance and enforcement of sanitary laws and regulations in the interest of public health. A physician should observe the provisions of the State Acts like Drugs and Cosmetics Act, 1940; Pharmacy Act, 1948; Narcotic Drugs and Psychotropic substances Act, 1985; Medical Termination of Pregnancy Act, 1971; Transplantation of Human Organ Act, 1994; Mental Health Act, 1987; Environmental Protection Act, 1986; Pre-natal Sex Determination Test Act, 1994; Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954; Persons with Disabilities (Equal Opportunities and Full Participation) Act, 1995 and Bio-Medical Waste (Management and Handling) Rules, 1998 and such other Acts, Rules, Regulations made by the Central/State Governments or local Administrative Bodies or any other relevant Act relating to the protection and promotion of public health."

The standard prescribed by the Regulations (supra), in case are followed in letter and spirit, there appears to be no quarrel that the professionals shall use the generic name of drug and also provide copy of medical record to the patients or their attendants.

18. Apart from the aforesaid provisions, the Parliament enacted Clinical Establishments (Registration and Regulation) Act, 2010 (in short 2010 Act). Section 2(a)(i) and (ii) defines the authority and place where medical treatments are provided and maintained by any person or body of person whether incorporated or not. For convenience, Section 2 of the 2010 Act is reproduced as under:-

2. Definitions. -

In this Act, unless the context otherwise requires,-

- (a). "authority" means the district registering authority set-up u/s 10;
- (b). "certificate" means certificate of registration issued u/s 30;
- (c). "clinical establishment" means-
 - (i). a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine established and administered or maintained by any person or body of persons, whether incorporated or not; or
 - (ii). a place established as an independent entity or part of an establishment referred to in sub-clause (i), in connection with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, established and administered or maintained by any person or body of persons, whether incorporated or not, and shall include a clinical establishment owned, controlled or managed by-
 - (a). the Government or a department of the Government;
 - (b). a trust, whether public or private;
 - (c). a corporation (including a society) registered under a Central, Provincial or State Act, whether or not owned by the Government;
 - (d). a local authority; and
 - (e). a single doctor, but does not include the clinical establishments owned, controlled or managed by the Armed Forces. Explanation.-For the purpose of this clause "Armed Forces" means the forces constituted under the Army Act, 1950, the Air Force Act, 1950 and the Navy Act, 1957;

(d) "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) of such a nature that the absence of immediate medical attention could reasonably be expected to result in-

(i). placing the health of the individual or, with respect to a pregnant women, the health of the woman or her unborn child, in serious jeopardy; or

(ii). serious impairment to bodily functions; or

(iii). serious dysfunction of any organ or part of a body;

(e). "National Council" means the National Council for clinical establishments established u/s 3;

(f). "notification" means a notification published in the Official Gazette;

(g). "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;

(h). "recognised system of medicine" means Allopathy, Yoga, Naturopathy, Ayurveda, Homoeopathy, Siddha and Unani System of medicines or any other system of medicine as may be recognised by the Central Government;

(i). "register" means the register maintained by the authority, State Government and the Central Government under sections 37, 38 and 39 respectively of this Act containing the number of clinical establishments registered;

(j). "registration" means to register u/s 11 and the expression registration or registered shall be construed accordingly;

(k). "rules" means rules made under this Act;

(l). "Schedule" means the Schedule appended to this Act;

(m). "standards" means the conditions that the Central Government may prescribe u/s 12, for the registration of clinical establishments;

(n). "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution; and

(o). "to stabilise (with its grammatical variations and cognate expressions)" means, with respect to an emergency medical condition specified in clause (d), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a clinical establishment."

19. In view of the aforesaid definitions u/s 2 of 2010 Act, every medical professional whether working individually or through nursing homes, hospitals, medical universities or under any names whatsoever may be, is obliged to follow the provisions contained in the Act. Section 3 of the Act requires establishment

of National Council and u/s 8 State Council is to be established with regard to establishment of clinical establishments. u/s 11 of the 2010 Act, no person shall run clinical establishment unless it has been duly registered in accordance with the provisions of this Act. Conditions for clinical registration have been provided. For convenience, Section 11 and 12 are reproduced as under:-

11. Registration for clinical establishments. -

No person shall run a clinical establishment unless it has been duly registered in accordance with the provisions of this Act.

12. Condition for registration. -

(1). For registration and continuation, every clinical establishment shall fulfill the following conditions, namely:-

- (i). the minimum requirement of personnel as may be prescribed;
- (ii). provisions for maintenance of records and reporting as may be prescribed;
- (iii). such other conditions as may be prescribed.

(2). The clinical establishment shall undertake to provide within the staff and facilities available, such medical examination and treatment as may be required to stabilise the emergency medical condition of any individual who comes or is brought to such clinical establishment."

20. u/s 33 (supra) it shall be obligatory to the authority concerned to inspect the clinical establishments and u/s 34, the authority or the officer authorised under the Act, shall be entitled to enter the premises of clinical establishment. Section 37 makes it mandatory to register clinical establishments within two years. Further u/s 38, State government is expected to maintain registers with regard to clinical establishments. u/s 39, there shall be maintenance of National Registers with regard to clinical establishments. For convenience, Section 37, 38 and 39 are reproduced as under:-

"37. Register of clinical establishments. -

1. The authority shall within a period of two years from its establishment, compile, publish and maintain in digital format a register of clinical establishments, registered by it and it shall enter the particulars of the certificate so issued in a register to be maintained in such form and manner, as may be prescribed by the State Government.

2. Each authority, including any other authority set-up for the registration of clinical establishments under any other law for the time being in force, shall supply in digital format to the State Council of clinical establishments a copy of every entry made in the register of clinical establishments in such manner, as may be prescribed to ensure that the State Register is constantly up-to-date with the registers maintained by the registering authority in the State.

38. Maintenance of State Register of clinical establishments. -

1. Every State Government shall maintain in digital and in such form and containing such particulars, as may be prescribed by the Central Government a register to be known as the State Register of clinical establishments in respect of clinical establishments of that State.

2. Every State Government shall supply in digital format to the Central Government, a copy of the State Register of clinical establishments and shall inform the Central Government all additions to and other amendments in such register made, for a particular month by the 15th day of the following month.

39. Maintenance of National Register of clinical establishments. -

The Central Government shall maintain in digital format an All India Register to be called as the National Register of clinical establishments that shall be an amalgam of the State Register of clinical establishments maintained by the State Governments and shall cause the same to be published in digital format."

21. Various powers have been conferred to the authorities under the Act for maintenance of standard and compliance of its orders. Section 54 confers power to State Government to make rules which do not fall within the Central Government u/s 52 of the Act. For convenience, Section 54 of the Act is reproduced as under:-

54. Power of State Government to make rules. -

1. The State Government may, by notification, make rules for carrying out in respect of matters which do not fall within the purview of section 52(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a). the proforma and the fee to be paid for registration under subsection (1) of section 14;

(b). the form and details of application under sub-section (3) of section 14;

(c). the particulars and information contained in certificate of provisional registration u/s 15;

(d). the manner of publication of all particulars of the clinical establishments proposed to be registered under sub-section (2) of section 16;

(e). the fees to be paid to issue a duplicate certificate u/s 19;

(f). the change of ownership or management to be informed by the clinical establishment to the authority under sub-section (2) of section 20;

(g). the manner in which the authority shall publish the names of the clinical establishments whose registration expired u/s 21;

(h). the enhanced fees to be charged for renewal after expiry of the provisional

registration u/s 22;

(i). the form of the application and fees to be charged by the State Government u/s 24;

(j). the manner of submitting evidence of the clinical establishments having complied with the minimum standards u/s 25;

(k). the manner of displaying information of the clinical establishments having complied with the minimum standards for filing objection u/s 26;

(l). the expiry of period specified in section 29;

(m). the form and particulars of the certificate of registration u/s 30;

(n). the period within which an appeal shall be preferred under clause (a) of sub-section (3) of section 32;

(o). the manner of entry and search of clinical establishment u/s 34;

(p). the fees to be charged by the State Government for different categories of clinical establishments u/s 35;

(q). the manner and the period within which an appeal may be preferred to the State Council under sub-section (1) of section 36;

(r). the form and the fee to be paid for an appeal under sub-section (2) of section 36;

(s). the form and the manner in which the register to be maintained under sub-section (1) of section 37;

(t). the manner of supply to the State Council in digital format the entry made in the register of clinical establishment under sub-section (2) of section 37;

(u). the manner of holding an inquiry by the authority under subsection (3) of sections 41 and 42;

(v). the manner of filing the appeal under sub-section (7) of sections 41 and 42;

(w). the manner and the time within which the information is to be furnished to the authority or the State Council or the National Council as the case may be, u/s 48;

(x). any other matter which is required to be or may be prescribed by the State Government."

The Rules framed by the State Government shall be placed before each House of the Legislature in pursuance of mandate u/s 55 of the 2010 Act.

22. The 2010 Act provides that it may be adopted by the States through the Resolution of each house of Legislature in pursuance of the power conferred by Article 252 of the Constitution. For convenience, Article 252 of the Constitution is

reproduced as under:-

"252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.- (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State."

In pursuance of power conferred by Article 252 of the Constitution, certain States like State of Arunachal Pradesh, Himachal Pradesh, Mizoram and Sikkim have passed resolution and accordingly, Parliament enacted 2010 Act has been made applicable to the respective States. But State of U.P., seems to have not adopted the aforesaid public welfare legislation, resulting in great hardships to citizens to avail copy of medical records.

23. It shall be appropriate for the State Government to place before the State Legislature to consider the applicability of 2010 Act for the State of U.P. And rules may be framed in pursuance of power conferred by Section 54 of the 2010 Act.

NECESSITY OF MEDICAL RECORDS

24. With the growing population and increasing negligence and misconduct committed by the medical professionals, the citizens suffer and in absence of any remedial measure to check such menace, irreparable loss and injury may be caused to the patients and their attendants in due course of time. Otherwise also, there are number of statutes which confer statutory right to citizens to claim damages/compensation and punish the guilty medical professionals. To avail the benefit of statutory provisions and prosecute the medical professionals in the event of negligent, it is necessary to provide medical record to patients or their attendants as the case may be.

25. Under Right to Information Act, 2005, every citizen has got right to obtain copy of medical records. The democracy requires an informed citizenry and transparency of information. The RTI Act recognises the rights of citizens to secure the information under the control of public authority in order to promote transparency and accountability in the working of every public authority. However, statutory remedy requires copy of medical records from private and

Government hospitals.

26. Section 3 of the RTI Act confers right to information to all the citizens and corresponding obligation u/s 4 on every public authority to maintain record so that the information sought for, be provided vide T.S.R. Subramanian and Others Vs. Union of India (UOI) and Others, Subramanyam and others. Vs. Union of India and others. In the case of T.S.R., Subramanyam (supra), their lordships of Hon"ble Supreme Court settled that nothing should be done by oral instructions and the practice of giving oral directions and directions by administrative superiors and public executives, would defeat the object and purpose of RTI Act and shall give room for favouritism and corruption. In view of the above, every decision taken for the purpose of treatment of a patient or instruction issued by the doctors to their subordinates, must be converted in writing indicating the name of doctors.

27. u/s 5 of the Medical Termination of Pregnancy Act, 1971, misconduct is punishable. Under the different provisions of Indian Penal Code and other statutory provisions, medical professionals may be punished or they may be directed to pay damages/compensation.

28. Under the Consumer Protection Act, burden lies on the shoulders of patients or their attendants to establish that the medical professional has committed negligence while providing treatment hence compensation may be awarded. Under the Consumer Protection Act, citizens may claim damages from the medical professionals, hospitals, nursing homes, medical colleges, universities and other alike clinical establishments who are involved in providing medical treatment.

29. In Kusum Sharma and Others Vs. Batra Hospital and Medical Research Centre and Others, Hon"ble Supreme Court observed as under:-

66. This court in a landmark judgment in Jacob Mathew Vs. State of Punjab and Another, while dealing with the case of negligence by professionals also gave illustration of legal profession.

The court observed as under:-

"18. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skill or skilled persons generally. Any task which is required to be performed with a special skill would generally be admitted or undertaken to be performed only if the person possesses the requisite skill for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he professes to possess shall be exercised and exercised with reasonable degree of care and caution. He does not assure his client of the result. A lawyer does not tell his client that the client shall win the case in all circumstances. A physician would not assure the patient of full recovery in every

case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him he would be exercising his skill with reasonable competence. This is all what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices. In *Michael Hyde and Associates v. J.D. Williams & Co. Ltd.*, [2001] P.N.L.R. 233, CA, Sedley L.J. said that where a profession embraces a range of views as to what is an acceptable standard of conduct, the competence of the defendant is to be judged by the lowest standard that would be regarded as acceptable. (*Charles worth & Percy*, *ibid*, Para 8.03)"

67. In *Jacob Mathew*'s case, this court heavily relied on the case of *Bolam*. The Court referred to the opinion of *Mc Nair, J.* defining negligence as under:-

"19...."[W]here you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on the top of a Clapham omnibus, because he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

68. In *Eckersley v. Binnie*, *Bingham, L.J.* summarized the *Bolam* test in the following words:-

"From these general statements it follows that a professional man should command the corpus of knowledge which forms part of the professional equipment of the ordinary member of his profession. He should not lag behind other ordinary assiduous and intelligent members of his profession in knowledge of new advances, discoveries and developments in his field. He should have such an awareness as an ordinarily competent practitioner would have of the deficiencies in his knowledge and the limitations on his skill. He should be alert to the hazards and risks in any professional task he undertakes to the extent that other ordinarily competent members of the profession would be alert. He must bring to any professional task he undertakes no less expertise, skill and care than other ordinarily competent members of his profession would bring, but need bring no more. The standard is that of the reasonable average. The law does not

require of a professional man that he be a paragon combining the qualities of polymath and prophet." (Charles worth & Percy, *ibid*, Para 8.04)

69. The degree of skill and care required by a medical practitioner is so stated in Halsbury's Laws of England (4th Edition, Vol. 30, Para 35):-

"35 Degree of skill and care required.--The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence, judged in the light of the particular circumstances of each case, is what the law requires, and a person is not liable in negligence because someone else of greater skill and knowledge would have prescribed different treatment or operated in a different way; nor is he guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art, even though a body of adverse opinion also existed among medical men.

Deviation from normal practice is not necessarily evidence of negligence. To establish liability on that basis it must be shown (1) that there is a usual and normal practice; (2) that the defendant has not adopted it; and (3) that the course in fact adopted is one no professional man of ordinary skill would have taken had he been acting with ordinary care."

72. The ratio of Bolam's case is that it is enough for the defendant to show that the standard of care and the skill attained was that of the ordinary competent medical practitioner exercising an ordinary degree of professional skill. The fact that the respondent charged with negligence acted in accordance with the general and approved practice is enough to clear him of the charge. Two things are pertinent to be noted. Firstly, the standard of care, when assessing the practice as adopted, is judged in the light of knowledge available at the time (of the incident), and not at the date of trial. Secondly, when the charge of negligence arises out of failure to use some particular equipment, the charge would fail if the equipment was not generally available at that point of time on which it is suggested as should have been used.

79. The Privy Council in *John Oni Akerele v. R.* dealt with a case where a doctor was accused of manslaughter, reckless and negligent act and he was convicted. His conviction was set aside by the House of Lords and it was held thus:-

(i) That a doctor is not criminally responsible for a patient's death unless his negligence or incompetence went beyond a mere matter of compensation between subjects and showed such disregard for life and safety of others as to amount to a crime against the State.; (AIR p. 75a-b)

(ii) That the degree of negligence required is that it should be gross, and that neither a jury nor a court can transform negligence of a lesser degree into gross negligence merely by giving it that appellation.... There is a difference in kind between the negligence which gives a right to compensation and the negligence

which is a crime. (AIR p. 75b-c)

(iii) It is impossible to define culpable or criminal negligence, and it is not possible to make the distinction between actionable negligence and criminal negligence intelligible, except by means of illustrations drawn from actual judicial opinion....The most favourable view of the conduct of an accused medical man has to be taken, for it would be most fatal to the efficiency of the medical profession if no one could administer medicine without a halter round his neck. (AIR p. 75 d-e)"

(emphasis supplied)

In the said case, their Lordships refused to accept the view that criminal negligence was proved merely because a number of persons were made gravely ill after receiving an injection of Sobita from the appellant coupled with a finding that a high degree of care was not exercised. Their Lordships also refused to agree with the thought that merely because too strong a mixture was dispensed once and a number of persons were made gravely ill, a criminal degree of negligence was proved.

86. In Jacob Mathew's case (supra), conclusions summed up by the court were very apt and some portions of which are reproduced hereunder:- (SCC p. 32. Para 48)

"48. (1) Negligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: "duty", "breach" and "resulting damage".

(2) Negligence in the context of medical profession necessarily calls for a treatment with a difference. To infer rashness or negligence on the part of a professional, in particular a doctor, additional considerations apply. A case of occupational negligence is different from one of professional negligence. A simple lack of care, an error of judgment or an accident, is not proof of negligence on the part of a medical professional. So long as a doctor follows a practice acceptable to the medical profession of that day, he cannot be held liable for negligence merely because a better alternative course or method of treatment was also available or simply because a more skilled doctor would not have chosen to follow or resort to that practice or procedure which the accused followed...

(3)... The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary competent person exercising

ordinary skill in that profession. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly skilled professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on indictment of negligence.

87. To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent.

88. In a relatively recent case in Dr. C.P. Sreekumar, M.S. (Ortho) Vs. S. Ramanujam, this court had an occasion to deal with the case of medical negligence in a case in which the respondent was hit by a motor-cycle while going on his by-cycle sustained a hairline fracture of the neck of the right femur. Pre-operative evaluation was made and the appellant Dr. Sreekumar, on considering the various options available, decided to perform a hemiarthroplasty instead of going in for the internal fixation procedure. The respondent consented for the choice of surgery after the various options have been explained to him. The surgery was performed the next day. The respondent filed a complaint against the appellant for medical negligence for not opting internal fixation procedure. This court held that the appellant's decision for choosing hemiarthroplasty with respect to a patient of 42 years of age was not so palpably erroneous or unacceptable as to dub it as a case of professional negligence.

89. On scrutiny of the leading cases of medical negligence both in our country and other countries specially United Kingdom, some basic principles emerge in dealing with the cases of medical negligence. While deciding whether the medical professional is guilty of medical negligence following well known principles must be kept in view:-

I. Negligence is the breach of a duty exercised by omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

II. Negligence is an essential ingredient of the offence. The negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.

III. The medical professional is expected to bring a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case is what the law requires.

IV. A medical practitioner would be liable only where his conduct fell below that

of the standards of a reasonably competent practitioner in his field.

V. In the realm of diagnosis and treatment there is scope for genuine difference of opinion and one professional doctor is clearly not negligent merely because his conclusion differs from that of other professional doctor.

VI. The medical professional is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure. Just because a professional looking to the gravity of illness has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

VII. Negligence cannot be attributed to a doctor so long as he performs his duties with reasonable skill and competence. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession.

VIII. It would not be conducive to the efficiency of the medical profession if no Doctor could administer medicine without a halter round his neck.

IX. It is our bounden duty and obligation of the civil society to ensure that the medical professionals are not unnecessary harassed or humiliated so that they can perform their professional duties without fear and apprehension.

X. The medical practitioners at times also have to be saved from such a class of complainants who use criminal process as a tool for pressurizing the medical professionals/hospitals particularly private hospitals or clinics for extracting uncalled for compensation. Such malicious proceedings deserve to be discarded against the medical practitioners.

XI. The medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the patients. The interest and welfare of the patients have to be paramount for the medical professionals."

30. For availing the benefit of Consumer Protection Act (supra), from the medical professionals on account of negligence committed by them, the patients or their attendants shall require the copy of medical record to prove negligence. Statutory benefits available to citizens by the Act of parliament or State Legislature, cannot be put to red tapism under the garb of technicalities depriving the citizens of availing the copy of medical records.

Medical records are not required only to claim certain benefits under the Consumer Protect Act but also in the event of accident, they are required to claim compensation under the Motor Vehicles Act.

31. Apart from the above, rules and regulations framed by the Medical Council of

India, have got statutory force and are binding. It has been settled long way back by majority judgment of constitution bench of Hon''ble Supreme Court in the case reported in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, and has been the consistent view of Hon''ble Supreme Court that the Medical Council of India is the regulatory authority and has power to maintain the standard of education as well as medical professionals. To meet out the requirement, the Medical Council of India may frame rules and regulations which have got statutory force and are mandatory in nature with binding effect, vide Medical Council of India Vs. Rama Medical College Hospital and Research Centre, Kanpur and Another, Medical Council of India Vs. Rama Medical College Hospital and Research Centre, Kanpur and Another, Harish Verma and Others Vs. Ajay Srivastava and Another, : Maharashtra University of Health Sciences represented by Deputy Registrar Vs. Paryani Mukesh Jawaharlal and Others, : State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, State of Madhya Pradesh and Anr. Vs. Kumari Nivedita Jain and Ors..

32. Accordingly, whether it is Government hospital or private, under whatsoever name may be, or the clinical establishments covered by Section 2(c) of 2010 Act or the Medical Council of India Act, shall be liable to maintain the medical record and provide to patient or their attendants. Regulation 1.3 of the Regulations framed by the medical Council of India (supra) requires that medical record shall be provided within 72 hours as and when demanded. The provision contained in Regulation 1.3 is applicable equally to all clinical establishments, private or State sponsored like individual medical professionals, hospitals, medical colleges, nursing homes, universities etc. Even if 2010 Act has not been applied, the definition of clinical establishment contained in 2010 Act, may be borrowed for the purpose of implementation of Regulation 1.3 framed by the Medical Council of India.

33. It is further well settled law that right of life includes, quality and dignity of life. The quality and dignified life means every citizen will have right to avail copy of medical record relating to treatment of patient so that they may approach appropriate forum to ventilate their grievance if required, vide Hinch Lal Tiwari Vs. Kamala Devi and Others, Bangalore Medical Trust Vs. B.S. Muddappa and others,

34. It is further well settled law that while dealing with private interest, courts may deal with public interest and pass appropriate order or direction to secure public interest. While dealing with this issue in a case reported in Devendra Pratap Singh and Others Vs. Union of India, Dr. Devendra Pratap Singh And Ors. Vs. Union of India through Secretary, Health and Family Welfare and others, a Division Bench of this Court of which one of us (Hon''ble Mr. Justice Devi Prasad Singh) was a member, has held as under:-

"32- In the case of Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, the Hon''ble Supreme Court observed as follows:

However, in an appropriate case, although the petitioner might have moved a court in his private interest and for Redressal of personal grievances, the court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice. (See Shivajirao Nilangekar Patil Vs. Dr. Mahest Madhav Gosavi).

33-- This view was further reiterated by the Hon''ble Supreme Court in Ashok Lanka and Another Vs. Rishi Dixit and Others, relevant paragraph 42 of which is being quoted below:

"Furthermore it is well settled that even in a case where a petitioner might have moved the Court in his private interest and for redressal of personal grievances, the Court in furtherance of the public interest may treat it necessary to enquire into the state of affairs of the subject of litigation in the interest of justice (see Guruyayoo Devaswom Managing Committee v. C.K. Rajan, SCC para 50 and Prahlad Singh Vs. Col. Sukhdev Singh,

The same view (supra) was again reiterated by Hon''ble Supreme Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others,

35. It is further well settled principle of law that High Court while exercising power under Article 226 of the Constitution of India or Hon''ble Supreme Court under Article 32, may issue appropriate order or directions to secure public interest in the absence of any statutory provisions dealing with the subject matter to fill up the vacuum with intention to secure public interest, till the Government frame appropriate rules or regulations or legislates law. A Division Bench of this Court of which one of us (Hon''ble Mr. Justice Devi Prasad Singh) was a member, after considering different pronouncements of Hon''ble Supreme court in a case reported in [2006 (24) LCD 1243: Chandrika Prasad Nishad. Vs. State of U.P. and others, held as under:-

"92. The sole purpose of all the three wings of the Government is to secure the people's interest and to serve the people of the country. In case, the other two wings fail to discharge their duties in accordance to constitutional mandate, then this court can not be a moot spectator while discharging extraordinary jurisdiction under Article 226 of the Constitution of India.

93. In the case of D.K. Basu (supra) Hon''ble Supreme Court had proceed to held as under:-

"The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. ? the courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities."

94. According to Latin phrase Ubi jus, ibi remedium means there is no wrong

without a remedy. Law expects that in every case where a man is wronged and endamaged, he must have a remedy. A mere declaration of invalidity of an action shall not be sufficient to meet the constitutional mandate.

95. As held hereinabove, right to life, right to live with dignity, right to equality of life are fundamental rights guaranteed under Article 21 of the Constitution of India. Right to life and right to equality of life with dignity includes a fearless dignified life. The citizens of the country have got right to live with dignity without fear of organised crime or antisocial elements or Mafia.

96. In the event of any difficulty, courts have got power to pass procedural order though specifically not contemplated by a statute. In a case reported in Rakesh Wadhawan and Others Vs. Jagdamba Industrial Corporation and Others, Hon"ble Supreme Court had held as under:-

"Sometimes when a difficult situation arises it may demand such directions being made as would pragmatically meet the needs of the situation and resort can be had to the inherent powers of the court, if need be. Krishna Iyer, J. in Newabganj Sugar Mills Co. Ltd. Vs Union of India held (at SCC p. 123, Para 6) " the difficulty we face here cannot force us to abandon the inherent powers of the Court to do" and he quoted Jim R. Carrigan to say: "The inherent power has its roots in necessity and its breadth is coextensive with the necessity." H.R. Khanna, J. observed in Jaipur Mineral Development Syndicate Vs CIT (SCC p. 511 Para 5)"

It has been held by the Constitution Bench of Apex Court in a case reported in Pratap Singh Vs. State of Jharkhand and Another, that Part 3rd of the Constitution protects substantive as well as procedural rights. Implication, which arises therefrom, must be effectively protected by the judiciary.

36. Accordingly, until and unless the State Government exercise power conferred by Section 52 of 2010 Act and adopt provisions contained in 2010 Act (supra), or frame appropriate rules or regulations, it shall be appropriate that appropriate directions may be issued for compliance by the State Government and its authorities. Keeping in view the factual matrix on record to secure public interest for the period till the Government frame its own regulations we propose to issue following directions:-

(1) All clinical establishments as defined by the Clinical Establishments (Registration and Regulation) Act, 2010 (supra) including the Sanjay Gandhi Post Graduate Institute of Medical Sciences, universities (Central) like Banaras Hindu University, Varanasi, Aligarh Muslim University, Aligarh and State Universities, medical colleges, hospitals, nursing homes, medical professionals, private and Government sponsored hospitals of the names whatsoever may be, shall provide the copy of medical records to the patients or their attendants as the case may be at the time of discharge from their respective clinical establishments.

(2) The medical professionals as well as competent authority of the clinical establishment shall maintain the standard of their clinical establishments with

hygienic condition in accordance with the standard prescribed by the Medical Council of India or other medical councils or authority relating to Ayurved, Unani and Homeopath hospitals etc.

(3) Medical record shall be supplied not only by allopathic clinical establishments but also by every medicinal branches like Ayurved, Homeopath, Unani etc., under names and designations whatsoever may be.

(4) The prescription memo of medical professionals or the admission form as the case may be, shall contain a caption, "You are entitled for copy of medical records at the time of discharge/end of treatment."

(5) No clinical establishment (supra) shall work unless they are registered with the State Government by an authority provided for the purpose or Chief Medical Officer of the district concerned as the case may be. The terms and conditions of registration shall be formulated by the Government which shall include supply of medical record to the patient or their attendants at the time of discharge from clinical establishments. In any case, for any compelling reasons, the medical records are not provided at the time of discharge, then it shall be provided within 72 hours as provided by the Regulation 1.3 of the Regulations (supra) framed by the Medical Council of India.

(6) The option be given for online registration and name of all clinical establishments and medical professionals of whatsoever branch may be, shall be placed on website so that peoples may have access to it. The registration should be done at reasonable fees.

Let the registration of all clinical establishments (supra) be completed expeditiously say, within four months from the date of issuance of Government orders/circular.

(7) The State Government shall consider and place before the House of State Legislature to consider for adoption of the Clinical Establishments (Registration and Regulation) Act, 2010 (in short 2010 Act) in pursuance of power conferred by Article 252 of Constitution of India within four months.

(8) In case of any complaint followed by inquiry, it is found that medical record has not been provided at the time of discharge or on demand raised for the purpose within 72 hours, then after appropriate inquiry and show cause, the Government may de-register and seal such clinical establishments to pursue further with activities of medical care and treatment and may also impose penalty.

(9) Chief Secretary of the State of U.P. Shall ensure that appropriate orders or directions/circulars are issued in pursuance of the present judgment and also place before the State Legislature to consider for adoption of 2010 Act (supra).

(10) All existing Government orders and circulars shall be amended/modified forthwith accordingly.

(11) The Registrar, Central as well as State Universities like Benaras Hindu University, Varanasi and Aligarh Muslim University, Aligarh and others, shall also amend their orders and circulars accordingly in the light of the present judgment and submit compliance report by the second week of October, 2014.

37. The newspaper, "Business Standard" in its edition dated 8.9.2014 under the editorial column title as "Ethical Vacuum", rightly commented, to quote:-

"A sequence of recent news stories demonstrates the degree to which cynicism about the nature of institutions has begun to pervade Indian politics. This is not a new development. But it appears to have reached crisis proportions-and, worse, it is showing signs of acceleration. In order to restore credibility to Indian institutions, their decay must be rolled back-and that begins by India's most powerful people showing some respect for their history and traditions."

Medical professionals as well as medical institutions of any branch like Allopathy, Homeopathy, Ayurved, Unani etc., are also commercialised against its ethical values which require immediate corrective measures. The disputes like supply of copy of medical records to the patients and their attendants, should not have come to courts. The clinical establishments and the medical professionals of whatever branch may be, should give the copies of medical record free of cost to the patients and their attendants. Coming such disputes to courts itself indicates that all the clinical establishments are not discharging their obligations fairly and honestly. In consequence thereof, they want to continue with the "veil of secrecy" around their action, decision and professional obligations creating obstructions to the peoples' right to approach for judicial review of their action in pursuance of Constitutional and statutory mandate which is the basic feature of our Constitution.

Keeping in view the factual matrix on record relating to present controversy, even the attendants of dead persons were kept on waiting and not provided their medical records against all canon of justice and morality.

38. While parting with the case, we record our pleasure for the State Government's cooperative attitude raising no objection to the opinion expressed by this Court with regard to supply of medical records by the clinical establishment while passing the interim order dated 6.12.2013. However, we place on record that in spite of statement given before this Court recorded in the interim order dated 6.12.2013 (supra) to the effect that the Government is likely to formulate rules, within two months but till the date of final hearing, the Government has not formulated the rules for registration of clinical establishments. In consequence thereof, we have issued aforesaid directions. Directions issued by the present judgment for supply of medical records shall be applicable with retrospective effect.

39. Accordingly, we allow the writ petition and issue following directions:-

(A) A writ in the nature of mandamus is issued commanding the State of U.P., as

well as Universities to enforce the directions issued by the present judgment (supra) and issue appropriate order or, circular accordingly informing to all concerned within a month. The directions issued by this Court in the present judgment, shall occupy the field till the Government adopt the 2010 Act or frame rules and regulations. While framing rules and regulations, the Government shall also take into account the direction issued by this Court. Existing Government orders and circulars be amended accordingly.

(B) The Chief Secretary, Uttar Pradesh Government, shall file his personal affidavit with regard to compliance of the present judgment by the second week of October, 2014.

(C) We further direct the State Government to publish minimum in four widely circulated newspapers in Hindi and English, the summary of directions issued by the present judgment so that people may be aware with their right. The Principal Secretary, Department of Medical Health and Family Welfare, U.P., Lucknow shall ensure the publication in the news (supra) by 30.9.2014.

(D) The Senior Registrar of this Court shall send a copy of the present judgment and order to the Chief Secretary, Uttar Pradesh Government as well as the Principal Secretary, Department of Medical Health and Family Welfare, U.P., Lucknow for compliance of the present judgment and file compliance report by second week of October, 2014.

The Senior Registrar of this Court shall also send a copy of the present judgment to the Registrar, Banaras Hindu University, Varanasi as well as Registrar, Aligarh Muslim University, Aligarh for compliance of the present judgment and they shall also file their compliance report by second week of October, 2014.

The case shall be listed before this Bench in the third week of October, 2014 for perusal of compliance report.