

ANNEXURE-III

UTTAR PRADESH STATE LAW COMMISSION

MODEL

DRAFT

OF

THE UTTAR PRADESH

PRIVATE CLINICAL ESTABLISHMENTS

(REGISTRATION AND REGULATION)

ACT, 2009

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MODEL DRAFT OF
THE UTTAR PRADESH PRIVATE CLINICAL
ESTABLISHMENTS (REGISTRATION AND REGULATION)
ACT, 2009

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**MODEL LAW
ON**

**THE UTTAR PRADESH PRIVATE CLINICAL ESTABLISHMENTS
(REGISTRATION AND REGULATION) BILL, 2009**

**A
BILL**

to provide for the registration and regulation of private clinical establishments in the State and for matters connected therewith or incidental thereto.

WHEREAS, it is considered expedient to provide for the registration and regulation of private clinical establishments with a view to prescribe minimum standards of facilities , services and emergency medical care which may be provided by them so that mandate of Article 47 of the Constitution for improvement in public health may be achieved;

It is hereby enacted in the Sixtieth year of the Republic of India as follows:-

**CHAPTER-I
PRELIMINARY**

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| Short title, extent and commencement. | <p>1. (1) This Act may be called the Uttar Pradesh Private Clinical Establishments (Registration and Regulation) Act, 2009.</p> <p>(2) It extends to whole of Uttar Pradesh.</p> <p>(3) It shall come into force on such date as the State Government may, by notification, appoint.</p> |
| Definitions. | <p>2. In this Act, unless the context otherwise requires,-</p> <p>(1)“accident” means any accident giving rise to severe bodily pain or serious injury to human beings who are in emergency medical condition;</p> <p>(2)“ clinical laboratory” means an establishment where tests are carried out for biological, pathological, micro-biological, biochemical, radiological or any other method analogous to any tests carried out for diagnosis or treatment of diseases and health condition.</p> <p>(3)“Central ambulance pool” means the central ambulance pool established under section 69;</p> <p>(4) “Certificate” means certificate of registration issued under section 39;</p> <p>(5) “Clinical establishment” means-</p> <p style="padding-left: 20px;">(i) a hospital, maternity home, nursing home, day care centre, dispensary, clinic, dental clinic/ dental hospital, sanatorium or an institution by whatever name called that offers services or facilities with beds requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine</p> |

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 clause (i), in connection with the diagnosis or treatment of disease where pathological, bacteriological, genetic, radiological, chemical, biological investigations, in- vitro fertilization 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) A Private Trust formed under the Indian Trust Act;
- (b) A society registered under the Society Registration Act, 1860 (Act No. 21 of 1860);
- (c) A private firm formed under the Indian Partnership Act;
- (d) A private Company registered under the Company Act; and
- (e) A single doctor clinical establishment,

but does not include the personal consultation chamber of a doctor and the clinical establishments, hospital or other establishment or premises owned or maintained or controlled or managed by;

- (i) the Armed Forces;
- (ii) the Central or the State Government or any other authority or body constituted by or under any statute of a competent legislature;
- (iii) any hospital establishment or any asylum established or licensed under the Mental Health Act, 1987 (Act No. 14 of 1987); and

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;

- (6)“day care centre” means any premises having less than 10 beds used or intended to be used, for the reception and accommodation of persons suffering from any sickness, injury or infirmity, whether of body or mind and providing of treatment or nursing or both of them.

- (7)“Emergency medical condition” means a medical condition manifesting acute symptoms of sufficient severity (including severe pain) where the absence of emergency medical treatment could reasonably be expected to result in;

- (i) death of the person, or
- (ii) serious jeopardy in the health of the person
(or in the case of a pregnant woman, in her health and the health of the unborn child), or
- (iii) serious impairment of bodily functions, or
- (iv) serious dysfunction of any bodily organ or part.

Explanation: In the case of a pregnant woman who is having contractions, an ‘emergency medical condition’ shall be deemed to exist where

- (i) there is no adequate time to effect a safe transfer of the person to another hospital before delivery, or
 - (ii) the transfer may pose a threat to the health or safety of the woman or her unborn child.
- (8) ‘emergency medical treatment’ means the action that is required to be taken, after screening of a person injured in an accident or who is in an emergency medical condition, as to the stabilization of the person and the rendering of such further treatment as may, in the opinion of the hospital or medical practitioner be necessary for the purpose of preventing aggravation of the medical condition of the person or his death and in the case of a pregnant woman, for the purpose of a safe delivery and safeguarding the life of the woman and the child.
- (9) ‘hospital’ means any premises having more than thirty beds, where specialized facilities are sufficiently available for treatment of sick and used for their reception or stay with necessary infrastructure, emergency management during day and night.
- (10) ‘maternity home’ means an establishment or premises where women are usually received or accommodated or brought for providing ante-natal and post-natal medical or health care service in connection with pregnancy and child birth or anything connected therewith;
- (11) ‘notification’ means a notification published in the Official Gazette;
- (12) ‘nursing home’ means any establishment or premises having more than 10 beds and less than 30 beds used or intended to be used, for the reception and accommodation of persons suffering from any sickness, injury or infirmity, whether of body or mind and providing of treatment or nursing or both of them.
- (13) ‘physio-therapy establishment’ means an establishment where physical therapy, electro-therapy, hydro-therapy, remedial gymnastics or similar processes are usually carried on, for the purpose of treatment of diseases or of infirmity or for improvement of health, or for the purpose of relaxation or for any other purpose whatsoever, whether or not analogous to the purposes herein before mentioned in this clause;
- (14) ‘prescribed’ means prescribed by Rules made under this Act;
- (15) ‘qualified dentist’ means a person possessing qualification recognised by the Dental Council Act and his name has been entered in the State/Central register maintained under the Act.
- (16) ‘qualified medical practitioner’ means a person who possesses medical qualification as prescribed in the Indian Medical Council Act, 1956,(Act. No. 102 of 1956), the Indian Medicine Central Council Act, 1970(Act. No. 48 of 1970), and the Homeopathic Central Council Act 1973(Act. No. 59 of 1973 and who has been registered as a medical practitioner in the register as provided in the aforesaid Act.

- (17) “qualified mid-wife” means a mid-wife or an auxiliary nurse and mid-wife who possesses any of the qualifications recognized by the Indian Nursing Council Act, 1947 (Act no, 48 of 1947), and who is enrolled as a mid-wife or an auxiliary nurse-mid-wife in a State.
- (18) “qualified nurse” means a nurse who possesses any of the qualifications recognized by the Indian Nursing Council Act, 1947(Act.No . 48 of 1947) and who is enrolled as a nurse under any law for the time being in force.
- (19) “recognised system of medicine” means Allopathy, Ayurveda, Homoeopathy, Sidha and Unani, Yoga and Naturopathy, systems of medicines or any other system of medicine as may be recognized by the Central Government or State Government;
- (20) “register” means the register maintained by the registering authority and the State Registrar under sections 48 and 49 respectively of this Act containing the number of private clinical establishments registered and the expressions “ registered” and “ registration” shall be construed accordingly;
- (21) “registering authority” means the district registering authority designated under section 20;
- (22) “registrar of the clinical establishment” means Registrar of Clinical Establishment as designated under section 18 ;
- (23) “registrar of the tribunal” means registrar of the Tribunal appointed under section 8;
- (24) “registration” means to register under section 22 and the expression registration or registered shall be construed accordingly;
- (25) “rules” means rules made under this Act;
- (26) “schedule” means Schedule to this Act;
- (27) “standards” means conditions that the State government may prescribe under section 23, for the registration of private clinical establishments; and
- (28) ‘stabilize’ means, with respect to an emergency medical condition
- (i) 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 facility, or
 - (ii) to provide, with respect to a pregnant woman who is having contractions, for the safe delivery of the child (including the placenta), and the word ‘stabilized’ shall be understood accordingly.
- (29) “State Government” means the Government of Uttar Pradesh;

- (30) “state regulatory authority” means the Uttar Pradesh Private Clinical Establishment State Regulatory Authority, established under section 10;
- (31) ‘transfer’ means the movement (including the discharge) of an individual outside the clinical establishment facilities at the direction of any designated medical practitioner employed by it but does not include an individual who has been declared dead or leaves the facility without the permission of the doctor attending on him.
Explanation: ‘designated medical practitioner’ means any practitioner employed by the hospital for directing transfer outside a hospital’s facility and includes any other medical practitioner temporarily discharging the functions of such designated medical practitioner.
- (32) “tribunal” means the Uttar Pradesh Private Clinical Establishment Tribunal , established under section 3 ;

CHAPTER- II

THE UTTAR PRADESH PRIVATE CLINICAL ESTABLISHMENT TRIBUNAL

Constitution of the Tribunal

- 3.(1) With effect from such date as the State Government may, by notification, appoint in this behalf, there shall be constituted for the purposes of this Act, a Tribunal to be called the Uttar Pradesh Private Clinical Establishment Tribunal .
- (2) The Uttar Pradesh Private Clinical Establishment Tribunal shall consist of;
- (a) a Chairperson who has been a Chief Justice of a High Court .
 - (b) two Members who have been Judge of a High Court.
- (3) The Chairperson and the Members of the Tribunal shall be appointed by the Governor on the recommendation of a Selection Committee referred to in Section 4.
- (4) the Head Quarter of the Tribunal shall be at Lucknow;
- (5) If the office of the Chairperson or a Member becomes vacant, or if the Chairperson or a member is by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, such duties, shall until some other person appointed under section 3 enters upon such office or, as the case may be, until the Chairperson or such member resumes his duties, be performed;
- (a) where the office of the Chairperson becomes vacant or where he is unable to perform the duties of his office, by such Member as the State Government may by order direct;
 - (b) where the office of a Member becomes vacant or where he is unable to perform the duties of his office, by the Chairperson himself, or if the Chairperson so

directs, by the other Member or , as the case may be, such one of the other Members as may be specified in the direction.

**Constitution
of Selection
Committee
by State
Government**

4. (1) The State Government shall, for the purpose of selecting the Chairperson and Members of the Uttar Pradesh Private Clinical Establishment Tribunal, constitute a Selection Committee consisting of:-
- (a) The Chief Minister, -----Chairperson.
 - (b) The leader of Opposition in the Legislative Assembly-----Member.
 - (C) A Cabinet Minister to be nominated by the Chief Minister ----- Member.

Explanation: For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

- (2) Two third of the total number of the Selection Committee shall constitute the quorum.
- (3) Majority decision of the Selection Committee shall be final.
- (4) If any Member of the Selection Committee, inspite of due notice to him, does not participate or avoid to participate in the meeting for this or that reasons for two consecutive dates, his absence shall not vitiate the proceedings of the Selection Committee and if selection of any Member including Chairperson is made in that meeting it shall not be invalid merely by reason of absence of any Member of the Selection Committee.
- (5) No appointment of a Member including Chairperson shall be invalid merely by reason of any vacancy in the Selection Committee.
- (6) The State government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal and six months before the superannuation or end of tenure of any Chairperson or a Member, make a reference to the Selection Committee for filling up of the vacancy.
- (7) The Selection Committee shall finalise the selection of the Member, within one month from the date on which the reference is made to it.
- (8) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.
- (9) Before recommending any person for appointment as a Member or Chairperson, the Selection Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as a Member or Chairperson.

Term of office, salary and allowances and other conditions of service of Chairperson and Members of the Tribunal

5. (1) The Chairperson or a Member of the Tribunal shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf an oath or affirmation according to the form set out for the purpose in the First- Schedule.
- (2) Every person appointed as the Chairperson or a Member of the Tribunal shall hold office for a term of six years from the date on which he enters upon his office, or up to the date of his attaining 68 years of age, whichever is earlier.
- (3) There shall be paid to the Chairperson or a Member of the Tribunal such salaries as may be prescribed.
- (4) The allowances and pension, if any, payable to, and other conditions of service of, the Chairperson or a Member of the Tribunal shall be such as may be prescribed.

Provided that in prescribing the salary allowances and pension payable to, and other conditions of service of:-

- (a) the Chairperson of the Tribunal, regard shall be had to the allowances and pension payable to and other conditions of service, of the Chief Justice of the High Court ;
- (b) the Members of the Tribunal, regard shall be had to the allowances and pension payable to, and other conditions of service of a Judge of a High Court;

Provided further that if the Chairperson or a Member at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chairperson or a Member as the case may be, shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided also that the salary, allowances and pension, if any, payable to, and other conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after his appointment;

- (5) The status and administrative powers of the Chairperson and the Members of the Tribunal shall be such as may be prescribed.

Resignation and removal of Chairperson or a Member of the Tribunal

6. (1) The Chairperson or a Member of the Tribunal may, by notice in writing under his hand addressed to the Governor, resign his office.
- (2) Subject to the provisions of sub- section (3), Chairperson or any Member of the Tribunal shall only be removed from his office by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on reference being made to it by the Governor, has, on inquiry, held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such Member, as the case may be, ought on any such ground to be removed;

- (3) The governor may suspend Chairperson or Member of the Tribunal from office, and if deem necessary prohibit also from attending the office during inquiry in respect of whom a reference has been made to the Supreme court under sub-section (2), until the governor has passed orders on the receipt of the report of the Supreme court on such reference.
- (4) Notwithstanding anything contained in sub-section (2), the Governor may by order remove from office, if the Chairperson or a Member, as the case may be:-
- (a) has been adjudged an insolvent ; or
 - (b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Governor, involves moral turpitude; or
 - (c) is unfit to continue on office by reason of infirmity of mind or body; or
 - (d) Engages during his term of office in any paid employment out side the duties of the office; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (5) If the Chairperson or a Member of the Tribunal in any way, concerned or interested in any contract or agreement made by or on behalf of the government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a Chairperson or a Member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Power and Function of the Tribunal

7. The Uttar Pradesh Private Clinical Establishment Tribunal shall perform the following function namely:-
- (1) hear the appeals against the order of the State Regulatory Authority .
 - (2) adjudicate upon the dispute between the Registering Authority and the State Regulatory Authority.
 - (3) any other function as may be prescribed by the State Government .
 - (4) the order of the Tribunal shall be final .

Registrar of the Tribunal

- 8.(1) There shall be a Registrar of the Tribunal who shall be a sitting Additional District Judge to be appointed by the State Government in consultation with the Chief Justice of the High Court of Judicature at Allahabad.
- (2) The Registrar shall be the Drawing and Disbursing Officer with respect to the Establishment of the Tribunal and shall assist the Chairperson and Members of the Tribunal in all respect.
 - (3) The Registrar shall also perform such other functions as may be prescribed.
 - (4) The terms and conditions of service and administrative powers of the Registrar shall be such as may be prescribed.

Staff of the Tribunal

- 9.(1)The Registrar shall with the approval of the State Government appoint, such officers and other employees to assist the Tribunal in the discharge of its functions under this Act as the Chairperson of the Tribunal considers necessary:

Provided that nothing in this sub-section shall be construed to prevent any person who holds a post under the Central or any other State Government from being appointed on deputation with the consent of the State Government.

- (2) the number and categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Registrar shall be such as may be prescribed .

CHAPTER- III **THE STATE REGULATORY AUTHORITY**

**Establishment
of State
Regulatory
Authority**

- 10.(1) With effect from such date as the State Government may, by notification, appoint in this behalf, there shall be established for the purposes of this Act, a State Regulatory Authority to be called the Uttar Pradesh Private Clinical Establishment State Regulatory Authority.
- (2) The Uttar Pradesh Private Clinical Establishment State Regulatory Authority shall consist of;
- (a) a Chairperson shall be a person of ability, integrity and standing with adequate experience in dispensation of justice, has wide knowledge of management, administration and governance and who has held the status not below the rank of Chief Secretary to the State Government or any other post under the Central or the State Government equivalent thereto .
 - (b) one Permanent Member shall be a person of ability, integrity and standing with wide knowledge and has adequate experience in medical and health, management, administration and governance and who has held the status not below the rank of Director General of Medical and Health to the State Government or any other post under the Central or the State Government equivalent thereto.
 - (c) one Permanent Member shall be a Retired District Judge/ Retired Member of the Uttar Pradesh Higher Judicial Service of Selection Grade Scale and above having at least 25 years of Judicial Experience.
 - (d) an officer not below the rank of Joint Director Medical and Health, Ex officio----- Secretary.
 - (e) one representative each to be nominated as Member by the-
 - (i) the Uttar Pradesh Dental Council constituted under Section 21 of Dentist Act, 1948 ;
 - (ii) the Uttar Pradesh State Medical Faculty
 - (iii) the Bhartiya Chikitsa Parishad of Uttar Pradesh representing the Ayurveda, Siddha and Unani systems of medicine constituted under section 3 of the United Provinces Indian Medicine Act, 1939 ;
 - (iv) the Homeopathic Medicine Board of Uttar Pradesh;
 - (f) the State Government may nominate as Member not more than three eminent representatives of recognized system of medicine ;
 - (g) one representative each to be nominated as Member by the;

- (i) State branch of the Indian Medical Association
 - (ii) Association of AYUSH system of medicine;
 - (iii) State branch of Homeopathic association
- (3) The Chairperson and the permanent Members of the State Regulatory Authority as under clause (a), (b) and (c), shall be appointed by the Governor on the recommendation of a Selection Committee referred to in section 4.
- (4) the nominated members as under clause (e), (f) and (g) shall be appointed by the State Government.
- (5) The status and administrative powers of the Chairperson and the permanent Members of the State Regulatory Authority shall be such as may be prescribed.
- (6) The State Government shall provide the State Regulatory Authority with such secretariat and other staff as it considers necessary to carry out the purposes of this Act;
- (7) The State Regulatory Authority shall meet at such time and place, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.
 Provided that the State Regulatory Authority shall meet at least once in a month.
- (8) One third of the total number of the members of the State Regulatory Authority shall constitute the quorum.
- (9) The State Regulatory Authority may constitute sub- committees and may appoint such sub- committees, as it deems fit, consisting of members who are not members of the State Regulatory Authority for such periods, not exceeding one year, for the consideration of particular matters.
- (10) The functions of the State Regulatory Authority may be exercised notwithstanding any vacancy therein.
- (11) The Head Quarter of the State Regulatory Authority shall be at Lucknow.

Term of office, Salary and allowances and other conditions of service of Chairperson and Permanent Members of the State Regulatory Authority

11. (1) Every person appointed as a Chairperson or a permanent Member of the State Regulatory Authority shall hold office for a term of five years from the date on which he enters upon his office, or up to the date of his attaining 65 years of age, whichever is earlier.
- (2) There shall be paid to the Chairperson or a permanent Member of the State Regulatory Authority such salaries as may be prescribed.
- (3) The allowances and pension, if any, payable to, and other conditions of service of, the Chairperson or a permanent Member of the State Regulatory Authority shall be such as may be prescribed.
 Provided that if the Chairperson or a permanent Member of the State Regulatory Authority at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service

under the government of India or under the Government of a State, his salary in respect of the service as the Chairperson or a permanent Member as the case may be, shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that the salary, allowances and pension, if any, payable to, and other conditions of service of the Chairperson or a permanent Member of the Regulatory Authority shall not be varied to his disadvantage after his appointment.

**Resignation
and removal
of Chairperson
or a permanent
Member
of the State
Regulatory
Authority**

12. (1) The Chairperson or a permanent Member of the State Regulatory Authority may, by notice in writing under his hand addressed to the Governor, resign his office.
- (2) Subject to the provisions of sub-section (3), Chairperson or any permanent Member of the State Regulatory Authority shall only be removed from his office by order of the Governor on the ground of proved misbehaviour or incapacity after the State Government, has, on inquiry, reported that the Chairperson or such permanent Member as the case may be, ought on and such ground to be removed;
- (3) The governor may suspend Chairperson or a permanent Member of the State Regulatory Authority from office, and if deem necessary prohibit also from attending the office during inquiry by the State Government under sub-section (2), until the governor has passed orders on the receipt of the inquiry report of the State Government on such matter.
- (4) Notwithstanding anything contained in sub-section (2), the Governor may by order remove from office, if the Chairperson or a permanent Member as the case may be:-
- (a) has been adjudged an insolvent ; or
 - (b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Governor, involves moral turpitude; or
 - (c) is unfit to continue on office by reason of infirmity of mind or body; or
 - (d) Engages during his term of office in any paid employment out side the duties of the office; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (5) If the Chairperson or a permanent Member of the State Regulatory Authority in any way, concerned or interested in any contract or agreement made by or on behalf of the government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising there from otherwise than as a Chairperson or a permanent Member and in common with the other members of an

incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Term of office, 13. Honorary and allowances and other condition of service of nominated members of State Regulatory Authority

- (1) The nominated members of the State Regulatory Authority shall hold office for a period of two years and they shall not be eligible for re-nomination.
- Provided that a nominated Member shall hold office for so long as he holds appointment of the office by virtue of which he was nominated to the State Regulatory Authority.
- (2) The honorarium and allowances, if any, payable to, and the other terms and conditions of service of, the nominated Members of the State Regulatory Authority shall be such as may be prescribed by the State Government.

Resignation and removal of a nominated Member of the State Regulatory Authority

14. (1) A nominated member of the State Regulatory Authority may, by notice in writing under his hand addressed to the Chief Minister, resign his office.
- (2) Subject to the provisions of sub-section (3), any nominated member of the State Regulatory Authority shall only be removed from his office by order of the State Government on the ground of proved misbehaviour or incapacity after the State Government, has, on inquiry, reported that such nominated Member, ought on any such ground to be removed;
- (3) The State Government may suspend a nominated Member of the State Regulatory Authority from office, and if deem necessary prohibit also from attending the office during inquiry by the State Government under sub-section (2), until the State Government has passed orders on the receipt of the inquiry report on such matter.
- (4) Notwithstanding anything contained in sub-section (2), the State Government may by order remove from office, if a nominated Member:-
- (a) has been adjudged an insolvent ; or
 - (b) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Governor, involves moral turpitude; or
 - (c) is unfit to continue on office by reason of infirmity of mind or body; or
 - (d) Engages during his term of office in any paid employment outside the duties of the office; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest.

- (5) If a nominated Member of the State Regulatory Authority in any way, concerned or interested in any contract or agreement made by or on behalf of the government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a nominated Member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

**Functions
of the State
Regulatory
Authority**

15. The State Regulatory Authority shall –
- (1) lay down minimum standard or upgrade existing standards of Clinical Establishment with the prior approval of the State Government.
 - (2) classify the clinical establishments into different categories with the prior approval of the State Government.
 - (3) shall review and monitor implementation of the Act and Rules made thereunder and recommend to the State Government changes in the said Act and Rules
 - (4) advise the State Government on policy matters relating to use of this Act.
 - (5) Act as supervisory body for monitoring the District Registering Authority. Receiving monthly reports/ statements regarding clinical establishments etc. from the District Registering Authority and giving directives to the District Registering Authority.
 - (6) direct any Clinical Establishment to admit any patient for his examination or treatment where such special facilities for treatment are available provided no such facilities are available in the Government Hospital of the district.
 - (7) A body of the State Regulatory Authority, consisting of Chairperson, permanent Members and one of the other members as an expert member, nominated by the Chairperson of the State Regulatory Authority, shall hear the appeals against the orders of the Registering Authority.
 - (8) perform any other function determined by the State Government, from time to time.

**Power to seek
advice or
assistance**

16. The Chairperson of the State Regulatory Authority may associate with itself any person or body whose assistance or advice it may desire in carrying out any of the provisions of this Act.

**State Regulatory
Authority
to follow
Consultative
process**

17. The State Regulatory Authority shall follow a consultative process for determining the standards and for classification of clinical establishments in accordance with such procedure as may be prescribed.

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CHAPTER –IV

REGISTRATION AND STANDARDS FOR CLINICAL ESTABLISHMENTS

- State Registrar of Clinical Establishments** 18. The State Government shall, by notification, designate any officer not below the rank of Director, Medical & Health as the Registrar of the clinical establishments.
- Responsibility of the Registrar** 19. It shall be the responsibility of the Registrar of clinical establishments to compile and update the State register of clinical establishments and further to send monthly returns in digital format respect of clinical establishment to the State Regulatory Authority and the State Government.
- Authority for registration** 20.(1) The State Government shall, by notification, constitute a Registering Authority to be called the District Registering Authority for each district for registration of Private Clinical Establishments .
- (2) The Registering Authority shall consist of:-
(a) Chief Medical Officer, Ex officio -----Chairman.
(b) Chief Medical Superintendent, Ex officio----- Member.
(c) President/Secretary of district unit of Indian Medical Association (IMA)-----Member
(d) Superintendent of district hospital Ex officio-----Secretary
- Function and powers of the District Registering Authority .** 21 .(1)The District Registering Authority shall perform the following functions, namely:-
(a) to grant, suspend or cancel registration of Clinical Establishments .
(b) to enforce standards prescribed for Clinical Establishments.
(c) to investigate breach of provisions of this Act and rules made thereunder
(d) to supervise implementation of the provisions of this Act and rules made thereunder
(e) to keep record of registration, renewals, inspections, cancellations and other matters pertaining to Act, record of meeting of District Registering Authority
- (2) Power of the District Registering Authority shall be as follows, namely:-
(a) inspections of Clinical Establishments .
(b) summon individual or organization who is in possession of information relating to violation of the Act.
(c) verification of records etc. of the Clinical Establishments .
(d) the District Registering Authority can take legal action against Clinical Establishments on complaints or otherwise brought to its notice.
- Registration for Clinical Establishments** 22. No person shall open and run or carry on a clinical establishment unless it has been duly registered in accordance with the provisions of this Act and the rules made thereunder .

Provided that nothing in this section shall apply in the case of a clinical establishment which is in existence at the date of the commencement of this Act for a period of one month from such date or if an application for registration is made within that period in accordance with the provisions of section 25 until such application is finally disposed of.

Conditions for registration.

23. For registration and continuation, every clinical establishment shall fulfil-
- (i) the minimum standards of facilities and services as may be prescribed;
 - (ii) adequate provisions for maintaining proper biomedical waste management under existing rules;
 - (iii) the minimum qualifications for the personnel as may be prescribed;
 - (iv) provisions for maintenance of records and reporting as may be prescribed;
 - (v) such other conditions as may be prescribed.

Classification of clinical establishments

24. (1) Clinical establishment of different systems shall be classified into such categories, as may be prescribed by the State Regulatory Authority with prior approval of the State Government, from time to time.
- (2) Different standards may be prescribed for classification of different categories referred to in sub- section (1)

CHAPTER – V

PROCEDURE FOR REGISTRATION

Application for provisional certificate of registration.

- 25.(1) For the purposes of registration of the clinical establishment an application in the prescribed proforma along with the prescribed fee shall be furnished to the registering authority atleast one month before the date on which he intends to start or carry on such Clinical Establishment;
- (2) The application shall be furnished in person or by post or online.
- (3) The application shall be made in such form and shall be accompanied by such details as may be prescribed under this Act or rules made there under.
- (4) If any clinical establishment is in existence at the time of the commencement of this Act, an application for its registration shall be made within one month from the date of commencement of this Act.

- (5) If any clinical establishment is already registered under any existing law requiring registration of such establishments, even then it shall apply for registration as referred to in sub-section(1) and sub-section(4).

Provisional Certificate

26. The registering authority shall, within a period of fifteen days from the date of receipt of such application, grant to the applicant a certificate of provisional registration in such form and containing such particulars and such information, as may be prescribed .

No inquiry prior to provisional registration

- 27.(1) The registering authority shall not be required to conduct any inquiry prior to the grant of Provisional Registration.
 (2) Notwithstanding the grant of the provisional certificate of registration, the Registering Authority shall, within a period of thirty days from the grant of provisional registration, cause to be published in such manner, as may be prescribed, all particulars of the clinical establishment proposed to be registered.

Display of the Provisional certificate of registration

28. The provisional certificate of registration shall be kept affixed in a conspicuous place in the Clinical Establishment in such manner s as to be visible to every one visiting such establishment subject to provision of section 32 or cancellation of the provisional registration whichever is earlier.

Duplicate Certificate

29. In case the certificate of registration is lost, destroyed, mutilated or damaged, the registering authority shall issue a duplicate certificate of registration on the request of the clinical establishment and on the payment of such fees, as may be prescribed.

Certificate to be non-transferable.

- 30.(1)The certificate of registration shall be non- transferable;
 (2) In the event of transfer of ownership or management the transferor and the transferee shall jointly communicate the transfer effected to the Registering Authority and the transferee shall make an application for registration in accordance with the provisions of this Act . In case the Establishment ceases to function as a Clinical Establishment, the certificate of registration shall be surrendered to the Registering Authority.
 (3) A person registered under the Act in respect of a Clinical Establishment shall communicate to the Registering Authority any change in his address or in the situation of the Clinical Establishment in respect of which he is registered not later than seventy-two hours after such change. Further in case the status of the Clinical Establishment changes in any manner(increase / decrease in size, facilities etc.) from the time of registration shall inform the Registering Authority and pay the required fees as may be prescribed .

- Publication of expiry of registration** 31. The registering authority shall also cause to be published in such manner, as may be prescribed, the names of clinical establishments whose registration would be expiring within the next- thirty days.
- Time-limit for provisional registration.** 32. Where clinical establishments in respect of which standards have been notified by the State Government, provisional registration shall not be granted or renewed beyond a period of six month from the date of such notification.
- Application for permanent registration.** 33. Application for permanent registration by a clinical establishment shall be made to the registering authority in such form and be accompanied by such fees, as may be prescribed.
- Verification of application** 34. The clinical establishment shall submit evidence of the clinical establishment having complied with the minimum standards in such manner, as may be prescribed.
- Display of information for filing objections.** 35. As soon as the clinical establishment submits the required evidence of its having complied with the prescribed minimum standards, the authority shall cause to be displayed for information of the public at large and for filing objections, if any, in such manner, as may be prescribed, all evidence submitted by the clinical establishment of having complied with the prescribed minimum standards for a period of thirty days before processing for grant of permanent registration.
- Communication of objections.** 36. If objections are received within the period referred to in the preceding section, such objections shall be communicated to the clinical establishment for response within a period, as may be prescribed.
- Standards for permanent registration.** 37. Permanent registration shall be granted only when a clinical establishment fulfils the prescribed standards for registration by the State Government.
- Allowing or disallowing of registration .** 38. The registering authority shall pass an order immediately after the expiry of the prescribed period and within the next thirty days thereafter either-
 (1) allowing the application for permanent registration; or
 (2) disallowing the application;
 Provided that the registering authority shall record its reasons in writing, if it disallows an application for permanent registration.
- Certificate of permanent registration** 39. The registering authority shall issue a certificate of permanent registration in such form and containing such particulars, as may be prescribed, if the registering authority allows an application.
- Validity and renewal of permanent registration.** 40. (1) The permanent registration shall, subject to the provisions of this Act be enforced and shall be valid for a period of five years from the date of such certificate issued.
 (2) an application for the renewal of registration shall be made every five years, three months in advance before the expiry of the certificate in

prescribed form and shall be accompanied with the prescribed fee to the registering authority. In case of late submission, the Registering Authority shall consider the application on payment of such enhanced fees as may be prescribed.

Display of the Permanent Certificate of Registration

41. The permanent certificate of registration shall be kept affixed in a conspicuous place in the clinical establishment in such manner so as to be visible to every one visiting such establishment.

Fresh application for permanent registration.

42. The disallowing of an application for permanent registration shall not debar a clinical establishment from applying afresh for permanent registration under section 33 and after providing such evidence, as may be required, of having rectified the deficiencies on which grounds the earlier application was disallowed.

Cancellation Of Registration

43. (1) If, at any time after any clinical establishment has been registered, the registering authority on complaint or on otherwise brought to its notice is satisfied that, -
- (a) the condition of the registration are not being complied with;
 - or
 - (b) that any of the ground which would have entitled him to refuse the application for registration, exist; or
 - (c) the person entrusted with the management of the clinical establishment has been convicted of an offence punishable under this Act,

It may issue a notice to it to show cause within fifteen days as to why its registration under this Act should not be cancelled for the reasons to be mentioned in the notice.

- (2) If after giving a reasonable opportunity to the clinical establishment, the registering authority is satisfied that there has been a breach of any of the provisions of this Act or the rules made there under, it may, without prejudice to any other action that it may take against such clinical establishment, cancel its registration and on such cancellation the certificate of registration shall stand withdrawn.

- (3) Every order made under sub- section (1) shall take effect-
- (a) where no appeal has been preferred against such order immediately on the expiry of the period prescribed for such appeal; and
 - (b) where such appeal has been preferred and it has been dismissed from the date of the order of such dismissal:

Provided that the registering authority, after cancellation of registration for reasons to be recorded in writing, may restrain immediately the clinical establishment from carrying on if there is imminent danger to the health and safety of patients and public at large.

- Inspection of Registered clinical establishments.** 44. (1) The registering authority or an officer not below the rank of Deputy Chief Medical Officer authorised by it, shall have the right to cause an inspection of, or inquiry in respect of any clinical establishment, its building, laboratories and equipment and also of the work conducted or done by the clinical establishment, to be made by such person or persons as it may direct and to cause an inquiry to be made in respect of any other matter connected with the clinical establishment and that establishment shall be entitled to be represented thereat.
- (2) The registering authority shall communicate to the clinical establishment the views of that authority with reference to the results of such inspection or inquiry and may, after ascertaining the opinion of the clinical establishment thereon, advise that establishment upon the action to be taken.
- (3) The clinical establishment shall report to the registering authority, the action, if any, which is proposed to be taken or has been taken upon the results of such inspection or inquiry and such report shall be furnished within such time, as the registering authority may direct.
- (4) Where the clinical establishment does not, within a reasonable time, take action to the satisfaction of the registering authority, it may, after considering any explanation furnished or representation made by the clinical establishment, issue such directions, as that registering authority deems fit, and the clinical establishment shall comply with such directions.

- Power to enter, Search and seize** 45. (1) The registering authority or any officer authorised by it may, if there is any reason to suspect that anyone is carrying on a clinical establishment without registration or against the provisions of this Act and Rules made thereunder, enter and search in the manner prescribed, at all reasonable time by night or by day with or without notice with such assistance, if any, as such authority or officer considers necessary and the clinical establishment shall offer reasonable facilities for inspection or inquiry and be entitled to be represented thereat and if such authority or officer finds any objectionable equipment, articles or documents therein, he may seize and seal any such equipment or articles or documents as the case may be, by giving receipt thereof, as he deems necessary for the purpose of examination, analysis, investigation or evidence of the commission of an offence punishable under this Act.
- (2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall, so far as may be, apply to every search or seizure made under this Act.

- Charges of fees for Clinical Establishment** 46. The State Government may charge fees for different categories of Clinical Establishments, as may be prescribed by the State Government.

- Appeal.** 47. (1) Any person, aggrieved by an order of the registering authority may, in such manner and within such period as may be prescribed, prefer an appeal to the State Regulatory Authority.

Provided that the State Regulatory Authority, may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

- (2) Any person, aggrieved by an order of the State Regulatory Authority may, in such manner and within such period as may be prescribed, prefer an appeal to the Tribunal .

Provided that the Tribunal, may entertain an appeal preferred after the expiry of the prescribed period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

- (3) Every appeal under sub- section (1) and sub-section (2) shall be made in such form and be accompanied by such fee as may be prescribed.

CHAPTER – VI

REGISTER OF CLINICAL ESTABLISHMENTS

- Register of Clinical Establishments** 48. (1) The registering authority shall 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 registering 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 Registrar of clinical establishments a copy of every entry made in the register of clinical establishments, within thirty days, 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 districts.
- Maintenance of State register of Clinical Establishments.** 49 .Registrar shall maintain in digital and in such form and containing such particulars, as may be prescribed by the State Government, a register to be known as the State register of private clinical establishments in respect of private clinical establishments of the State.
- General provision for punishment of other offences** 50. Whoever contravenes any provision of this Act or rules made thereunder, if no penalty is expressly provided under this Act, shall on conviction, be punishable for the first offence with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees, for any second offence with imprisonment for a term which shall not be less than three month but which may extend to six month and with fine which shall not be less than twenty five thousand rupees but which may extend to fifty thousand rupees or with both and for any subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years or with fine which shall not be less than two lakh fifty thousand rupees but which may extend to five lakh rupees or with both.

**Penalty
for non-
registration**

51.(1) Whoever carries on a clinical establishment without registration shall, on conviction for first offence, be punishable with a fine which shall not be less than twenty five thousand rupees but which may extend to fifty thousand rupees, for second offence with imprisonment for a term which shall not be less than six month but which may extend to one years or with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees or with both and for any subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years or with fine which shall not be less than two lakh fifty thousand rupees but which may extend to five lakh rupees or with both and in the case of a continuing offence, to a further fine of one thousand rupees for each day for which the offence continuing after conviction.

(2) Whoever knowingly serves in a clinical establishment which is not duly registered under this Act shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty-thousand rupees.

**Disobedience
of order,
obstruction
refusal of
information**

52. (1) Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction, or obstructs any person or authority in the discharge of any functions which such person or authority is required or empowered under this Act to discharge, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years or with fine which shall not be less than two lakh fifty thousand rupees but which may extend to five lakh rupees or with both.

(2) Whoever being required by or under this Act to supply any information wilfully withholds such information or gives information which he knows to be false or which he does not believe to be true, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years or with fine which shall not be less than two lakh fifty thousand rupees but which may extend to five lakh rupees or with both.

**Penalty for
minor
deficiencies**

53. Whoever contravenes any provision of this Act or any rule made there under resulting in deficiencies that do not pose any imminent danger to the health and safety of any patient and can be rectified within a reasonable time, shall be punishable with fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees.

**Contravention
by companies**

54.(1) Where a person committing contravention of any of the provisions of this Act or of any rule made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention

was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

- (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purposes of this section, -

- (a) “Company” means a body corporate and includes a firm or other association of individuals; and
(b) “director”, in relation to a firm, means a partner in the firm.

Cognizance of offences

- 55 . (1) No Court shall take cognizance of an offence under this Act except on complaint made by :-
(a) the Registering Authority or any officer authorised in this behalf by the State Government .
(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Registering Authority, of the alleged offence and of his intention to make a complaint to the Court.

Explanation: for the purpose of this clause, “person” includes a social organisation.

Court Competent To try offences

56. No Court inferior to that of a Metropolitan Magistrate or a Magistrate of First Class shall try any offence punishable under this Act.

Recovery of fine

57. Whoever fails to pay the fine, the Registrar of clinical establishment may prepare a certificate signed by him specifying the fine due from such person and send it to the Collector of the District in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder, as if it were an arrear of land revenue.

CHAPTER- VII
EMERGENCY MEDICAL CARE

Duty of Doctors in Hospitals, Nursing homes, Clinics and Day care centre

58. It shall be the duty of every hospital, nursing home, clinic and day care centre to immediately attend on every person involved in an accident or who is purportedly in an emergency condition, when such a person has come or has been brought to such hospital, nursing home, clinic and day care centre, as the case may be, and screen or transfer such person as stated in section 59. And when the screening reveals the existence of an emergency medical condition, to stabilize or transfer such person as stated in section 60 and afford them, such medical treatment as may be urgently called for, -

- (i) without raising any objection that it is a medico-legal case requiring information to the police authorities,
- (ii) whether or not such a person is immediately in a position to make payment for the screening and emergency medical treatment, and without insisting on payment as a condition precedent.
- (iii) whether or not such a person has medical insurance or is a member of any medical scheme of the person's employer or to a scheme which otherwise provides for medical reimbursement, and
- (iv) without raising any other unreasonable objection.

**Screening
of the person**

- 59.** Whenever such a person referred to in section 58, comes or is brought to the hospital, nursing home, clinic and day care centre it shall be their duty to provide an appropriate medical screening examination within the capability of the hospital, nursing home, clinic and day care centre as the case may be, for the purpose of determining whether or not an emergency medical condition exists.

Provided that if such hospital, nursing home, clinic and day care centre, as the case may be, is not having capability for conducting appropriate medical screening examination, it shall be their duty to arrange for the transfer of the person to a Government hospital or to another hospital, nursing home, clinic and day care centre which in their opinion has the necessary capabilities for such medical screening examination.

**Stabilizing
the person
and transfer**

- 60.** Wherever in respect of a person referred to in section 58, screening as stated in section 59 has been done and it has been determined that an emergency medical condition exists which requires to be urgently treated, it shall be the duty of the hospital, nursing home, clinic and day care centre, as the case may be, either –

- (i) to provide, within the staff and facilities available at the hospital, nursing home, clinic and day care centre, such further medical examination and such medical treatment as may be required to stabilize his medical condition, or
- (ii) where such facilities are not available with the hospital, nursing home, clinic and day care centre, or the person requests for a transfer, arrange for the transfer of the person to a Government hospital or to another hospital, nursing home, clinic and day care centre which in their opinion has the necessary facilities for such further medical examination, stabilization and further medical treatment and then the provisions of section 62 shall apply.

**Restricting
transfer
till person
is stabilized**

- 61.** Where a person referred to in section 58, requests for transfer but is in an emergency medical condition which has not stabilized, the hospital, nursing home, clinic and day care centre, as the case may be, shall not transfer the person if facilities for stabilization are available, unless the transfer is an appropriate transfer as stated in section 60.

Appropriate transfer 62. A transfer to another government hospital or other hospital, nursing home, clinic and day care centre shall be treated as an appropriate transfer if;

- (a) the transferring hospital, nursing home, clinic and day care centre, provides medical treatment within its or his capacity which minimizes the risks to the health of the person and in the case of a pregnant woman in labour, the health of the unborn child during such transfer, and
- (b) the receiving government hospital or other hospital, nursing home, clinic and day care centre, has available space, qualified personnel and infrastructure for providing emergency medical treatment to the person and thereafter, in so far as the stabilization and further medical treatment are concerned, the duties cast under section 58 shall apply to the receiving Government Hospital, hospital, nursing home, clinic and day care centre, .
- (c) the transferring hospital, nursing home, clinic and day care centre, sends to the receiving hospital or nursing home or clinic or day care centre, ;
 - (i) all medical records (or copies thereof), relating to the screening and the emergency medical condition of the person, which are available at the time of such transfer, including records relating to the person's medical condition, observation of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent, if any, and
 - (ii) a certificate of the hospital, nursing home, clinic and day care centre, that, based upon the information available at the time of transfer that the medical benefits reasonably expected from the provision of appropriate medical treatment at the receiving hospital or nursing home or clinic or day care centre, outweigh the increased risks, on account of the transfer, to the person and, in case of a women under labour, to the unborn child.
- (d) the transferring hospital, nursing home, clinic and day care centre, provides necessary medical facilities including life support systems and qualified personnel within the capacity of the transferring hospital, nursing home, clinic and day care centre, , to accompany the person during the period covered by transport to the receiving hospital or nursing home or clinic , or day care centre,
- (e) the transferring hospital or nursing home or clinic or day care centre, has informed, by telephone or otherwise, the hospital or nursing home or clinic or day care centre, to which the person is being transferred that a person is an emergent medical is being transferred and furnish the details of the person's condition,

Provided that where any ambulance or other transport vehicle is not available with the transferring hospital or nursing home or clinic or day care centre, , it shall call for the services of an ambulance or other transport vehicle from the appropriate authority of the central ambulance pool.

Provided further that when any ambulance or vehicle is called for by such hospital or nursing home or clinic or day care centre, as aforesaid, the appropriate authority running the central ambulance pool, shall not raise any objection to provide the ambulance or other transport vehicle on any of the grounds referred to in clauses (i) to (iv) in section 58.

Maintenance of records

63. Every hospital, nursing home, clinic and day care centre, shall maintain a separate register containing the following information:
- (a) name and address of the person injured, date or place of accident as reported, nature of injuries and other relevant details, and the person who brought him,
 - (b) name and address of the person purportedly in emergency medical condition, nature of emergency and nature of medical condition, and the person who brought him,
 - (c) details of the screening tests done and the determination of emergency condition,
 - (d) whether the person is in a position to give informed consent for emergency medical treatment including stabilization or for transfer or if he refused them,
 - (e) whether emergency medical treatment was not given for want of facilities, if so, which facilities,
 - (f) nature of tests done, results thereof, surgery conducted, who attended, time, date and hours of treatment,
 - (g) details of transfer to another hospital or nursing home or clinic or day care centre,
 - (h) details of fee paid to consultants or laboratories,
 - (i) details of expenditure incurred,
 - (j) other particulars to show that the hospital or doctor complied with its or his duties under the Act.
 - (k) Such other particulars as may be prescribed.

Penalties for this chapter

64. (1) Any person managing or responsible for the management of the hospital or nursing home or clinic or day care centre, or appropriate authority of central ambulance pool which refuses to perform all or any of the duties referred to in sections 58 to 63, without justifiable reason, shall be liable for punishment by way of imprisonment for a period which may extend up to six months or for fine which may extend up to rupees ten thousand or for both.
- (2) Any hospital, nursing home, clinic and day care centre, refusing to perform the duties referred to in sections 58 to 63, without justifiable reason, may be proceeded against for cancellation of any of its registration under which it is running the hospital, or nursing home or clinic or day care centre, , in addition to the penalty referred to in subsection (1) that may be

imposed on the persons owning or managing the hospital or nursing home or clinic or day care centre,

- (3) Any medical practitioner attached to a hospital or nursing home or clinic or day care centre, who refuses to perform the duties referred to in sections 58 to 63, without justifiable reason may, in addition to the penalty provided in sub-section (1), be subjected to such disciplinary action as may be determined by the State Medical Council.
- (4) These provisions will be in addition to the penalties prescribed under any other law in force.

CHAPTER VIII

MISCELLANEOUS

- Protection of action taken in good faith** 65. (1) No suit, prosecution or other legal proceedings shall lie against any member of registering authority or any other authority or any officer authorised in this behalf or any member of the State Regulatory Authority or any officer authorized in this behalf or any member of the Tribunal or any officer authorised in this behalf in respect of anything, which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rule made thereunder.
- (2) No suit or other legal proceedings shall lie against the State Government in respect or any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rule made thereunder .
- Furnishing of information, etc** 66. Every clinical establishment shall, within such time or within such extended time, as may be prescribed in that behalf, furnish to the registering authority or the State Registrar such information or the statistic and other information in such manner, as may be prescribed by the State Government, from time to time.
- Power to give directions.** 67. Without prejudice to the foregoing provisions of this Act, the Registering authority shall have the power to issue such directions, including furnishing information, statistics and other information for the proper functioning of clinical establishments and such directions shall be binding.
- Employees of the authority, etc. to be public servants** 68. Every employee of the registering authority, the State Regulatory Authority and the Tribunal shall be deemed to, when acting or purporting to act in pursuance of any of the provisions of this Act, be public servants within the meaning of section 21 of the Indian Penal Code.
- Central Ambulance Pool** 69.(1) The State Government shall establish and properly maintain and regulate the central ambulance pool in every district under the immediate control of an appropriate authority.

- (2)The Central Ambulance Pool shall be managed and supervised by the Registering Authority.
- (3)The ambulances in all the Government hospitals and in other clinical establishment of the district shall form part of such a Central Ambulance Pool.
- (4)Every clinical establishment shall be bound to register the ambulance(s) owned or controlled by it in the Central Ambulance Pool and offer them for emergency services on being requisitioned by the registering authority or any other designated officer.
- (5)Failure to provide an ambulance by any hospital or a clinical establishment, without reasonable cause, will be an offence punishable under the provisions of this Act.
- (6)The expenses in regards to the fuel and other charges shall be borne generally by the patient or his attendant or his relatives.

Provided that in exceptional cases if patient is unable to pay the expenses or any part thereof it shall be paid by the District Registering Authority from the fees collected from the Clinical Establishments, for registration and renewals .

Complaint book

70. (1) Every hospital, nursing home, clinic and day care centre, shall maintain a complaint book in the prescribed form.
- (2) The hospital, nursing home, clinic and day care centre, shall make the complaint book available to the patient, his relative or attendant or to a recognized social organization on request.
- (3) The complaint book shall contain three counterfoils; the second counterfoil shall be given to the complaint and the third shall be sent to the Registering Authority within seven days of the receipt of the complaint.
- (4)The Registering Authority shall take action on the complaint expeditiously and in any case within 30 days of the receipt of the complaint.
- (5) The Registering Authority shall submit to the State Regulatory Authority a report of the complaints received and action taken by the 15th of every month.
- (6) patient, his relative or attendant or a recognized social organisation may also make the complaint to the Registering Authority or the State Regulatory Authority .

Prohibition to detention dead body

71. No hospital or nursing home or clinic or day care centre or medical practitioner, shall detain the body of the patient who has died during treatment for what so ever reasons.

Display of facilities available and name etc of staff in clinical Establishment

72. Every hospital, nursing home, clinic and day care centre etc. shall prominently display at a easily accessible to general public;
- (a) Facilities available
- (b) Names and qualifications of medical practitioner and other paramedical staff dealing with the medical care.
- (c)Name of the duty doctor, paramedical staff and their duty period on every day.
- (d name of all consultants and their fees per visit on every day.

- Prohibition of cross pathy Practice** 73. No qualified medical practitioner shall practice in a system of medicine other than the system for which the medical practitioner is registered in the State / Central register of the Act concerned .
- Prohibition of aiding sex selection** 74. No hospital, nursing home, clinic and day care centre, shall aid or abet in any manner or form pre-natal, pre-conceptual sex selection and elimination of the female foetus thereafter .
- Prohibition of claim of prevention or cure of certain diseases** 75. No hospital, nursing home, clinic, day care centre and such other establishments shall claim prevention or cure of ailments and diseases as described in the schedule of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 .
- Introduction of Medical Health Care Insurance Scheme** 76 (1) The State Government may introduce a Medical Health Care Insurance Scheme for general public of the State. In the first phase the Government may start it from the persons of below poverty line.
 (2) To enforce the scheme under sub-section (1), a separate fund may be created, from the fees collected from the Clinical Establishment for registration and renewals, in such manner and form as may be prescribed
 (3) The fund created under sub- section (2) may be utilized by the State Government to contribute the premium amount to some extent, to the Medical Health Care Insurance Scheme in respect of the individuals who have taken such insurance policy, and to propagate the benefits and aim & objects of such Medical Health Care Insurance Scheme among the general public particularly in rural areas through its district administration and medical machinery, in such manner and form as may be prescribed.
 (4) If any patient requires special treatment for which he has no sufficient means and such treatment is also not available in the Government hospitals, such patient shall be admitted in such clinical establishment where such treatment facilities are available . In such cases all expenses for treatment shall be born by the State Government from the fund created under sub-section (2) .
- Provided ,that where the patient is a member of the Medical Health Care Insurance Scheme under sub-section (1) the amount of such treatment shall be paid by such Insurance Scheme, even after that if any amount remains uncleared such amount shall be paid by the State Government from the fund created under sub- section (2) .
- Prohibition of touts and quacks** 77.(1) No Clinical Establishment shall aid or abet in any manner or form touts. If any such establishment is found indulging in such activities it shall be severely punished under the provisions of this Act.
 (2) No unregistered/ unqualified doctor / quacks shall practice in any manner or form in the State. If any such person found in practising in any manner or form he shall be severely punished, if necessary deterrent punishment may also be made.

Engaging Government servant 78. The keeper or owner of the Clinical Establishment shall not engage any government servant for any work including consultation without express permission of the Government obtained by such a government servants in this behalf and in the event of engagement of any government servant in the Clinical Establishment, the keeper or owner thereof shall furnish to the Registering Authority details of engagement of such government servant on full time/ part time basis along with the emoluments paid to him/ her by the Clinical Establishment.

Where keeper or owner or government servant whosoever contravenes this provision in any manner he shall be guilty of an offence under this Act and shall be punished under section 50.

Maintenance of Records 79. Hospitals, Nursing Homes, Clinics and Day Care Centre etc. treating the patient shall maintain the register for treatment in such form and manner, as may be prescribed. Other such establishments shall also maintain the record in such form and manner as may be prescribed.

Prosecution of the doctors for criminal negligence 80.(1)Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, no doctor working in a hospital, nursing home, clinic and day care centre, shall be arrested on a charge of criminal negligence as medical practitioner, in a routine manner (simply because a charge has been levelled against him) unless such arrest has been sanctioned by the committee appointed by the State Regulatory Authority as per rules.

(2) After the registration of the case, the matter shall be immediately referred to the Committee, mentioned in sub-section (1).

(3)The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain sanction of the committee mentioned in sub- section (1).

(4)The decision of the committee shall be final.

Power to remove difficulties. 81. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature.

Power of State Government to make rules. 82.(1) The State Government may, by notification, make rules for carrying out all or any of the provisions of this Act.

(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:-

- (i) salaries for the Chairperson and the Members of the Tribunal under sub-section (3) of section 5;
- (ii) allowances for the Chairperson and the Members of the Tribunal under sub-section (4) of section 5;
- (iii) administrative power of the Chairperson and the members of the Tribunal under sub-section (5) of Section 5;
- (iv) terms and condition of service of the Registrar of the Tribunal under sub-section (4) Section 8;
- (v) officers and staff ,their salaries, allowances and other conditions of service and administrative powers of the Registrar under sub-section (2) of section 9 ;
- (vi) secretariat and other staff for the State Regulatory Authority and procedure in regard to the transaction of business of the State Regulatory Authority under sub- section (6) and (7) of section 10 ;
- (vii) salary and allowances for the Chairperson and the permanent Members of the State Regulatory Authority under sub-section (2) and (3) of section 11;
- (viii) the determination of standards and for classification of clinical establishments under sub-section (1) and (2) of section 15 ;
- (ix) the conditions for registration under section 23;
- (x) classification of clinical establishment under sub- section (1) of section 24
- (xi) the different standards for classification of clinical establishment under sub-section (2) of section 24;
- (xii) the Proforma and the fee to be paid for registration under sub section (1) of section 25 ;
- (xiii) the form and details of application under sub-section (3) of section 25;
- (xiv) the particulars and information contained in certificate of provisional registration un section 26;
- (xv) the manner of publication of all particulars of the clinical establishment proposed to be registered under sub- section 2 of section 27 ;

- (xvi) the fees to be paid to issue a duplicate certificate under section 29 ;
- (xvii) the manner in which the authority shall publish the names of the clinical establishment whose registration would be expiring under section 31;
- (xviii) the form of the application and fees to be charged for permanent registration by the State Government under section 33 ;
- (xix) the manner of submitting evidence of the clinical establishments having complied with the minimum standards under section 34;
- (xx) the manner of displaying information of the clinical establishments having complied with the minimum standards for filling objection under section 35;
- (xxi) the period within which the objections to be communicated to the clinical establishment under section 36 ;
- (xxii) the minimum standards for permanent registration under section 37 ;
- (xxiii) the expiry of period specified in section 38 ;
- (xxiv) the form and particulars of the certificate of registration under section 39 ;
- (xxv) the enhanced fees to be charged for renewal after expiry of permanent registration under section 40;
- (xxvi) the manner of entry and inspection of clinical establishment under section 45 ;
- (xxvii) the fees to be charged by the State Government for different categories of clinical establishment under section 46 ;
- (xxviii) the manner and the period within which an appeal may be preferred to the State Regulatory Authority under sub-section (1) of section 47;
- (xxix) the manner and the period within which an appeal may be preferred to the Tribunal under sub-section (2) of section 47;
- (xxx) the form and the fee to be paid for an appeal under sub-section (3) of section 47,

- (xxxix) the form and the manner in which the register to be maintained under sub-section (1) of section 48 ;
- (xxxii) the manner of supply to the State Registrar in digital format the entry made in the register of clinical establishments under sub-section (2) of section 48 ;
- (xxxiii) the form and particulars to be contained in the register to be maintained under section 49 ;
- (xxxiv) the form and particulars to be contained in the register to be maintained under section 63;
- (xxxv) the manner and the time within which the information is to be furnished under section 66 ;
- (xxxvi) the manner and the procedure to establish, regulate and maintain the central ambulance pool in every district under sub-section (1) of section 69 ;
- (xxxvii) the format and other particulars to be noted in the complaint book under sub-section(1) of section 70;
- (xxxviii) the manner to introduce a Medical Health Care Insurance Scheme under sub-section (1) of section 76 ;
- (xxxix) to create a separate fund under sub-section (2) of section 76;
- (XL) the manner and procedure to utilize the fund under sub-section (3) of section 76 ;
- (XLI) the form and the manner in which the register is to be maintained under *section 79*;
- (XLII) Procedure to form a committee in every district under sub-section (1) of Section 80;
- (XLIII) any other matter which is required to be or may be prescribed by the State Government.

Laying of Rules **83.** Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature.

THE FIRST SCHEDULE

(See sections 5(1))

**Form of oath or affirmation to be made by the
Chairperson/Member of the Uttar Pradesh
Private Clinical Establishment Tribunal**

“I, ----- A.B. -----,having been appointed Chairperson/
Member of the Uttar Pradesh Private Clinical Establishment
Tribunal do swear in the name of God/ solemnly affirm that I
will bear true faith and allegiance to the Constitution of India, as
by laws established, that I will uphold the sovereignty and
integrity of India that , I will duly and faithfully and to the best of
my ability, knowledge and judgement perform the duties of my
office without fear or favour, affection or ill-will and that I will
uphold the Constitution and the Laws.”

Ra. Vi.Aa./Shodh-04/2009-540
Dated: 27 November ,2009

Dear Chief Minister/ Law Minister,

I have great pleasure in forwarding herewith the **Fourth –Report** of the State Law Commission proposing an enactment by the Legislature of State on “ **The Uttar Pradesh Private Clinical Establishments (Registration & Regulation) Act, 2009**”.

The Ministry of Medical and Health, Government of Uttar Pradesh, vide its D.O. letter no. 528/ 506/09, dated Feb 19, 2009, made a reference, to the Commission to examine the matter and suggest a Model Draft Bill for a suitable legislation by the Legislature of State for registration and regulation of Private Clinical Establishments as it was felt that there is a need to have a legislation prescribing the minimum standards for hospitals, nursing homes and other clinical establishments in the State in view of the large scale proliferation of private clinic /nursing homes all over the State and complaints received from time to time about the quality of service provided by them.

Keeping in view the said terms of reference by the State Government, discussions at various meetings and seminars held by the Commission and the observations of the Hon’ble Supreme Court in its various judgements the Commission thus recommends the enactment of a State Law titled “**The Uttar Pradesh Private Clinical Establishment (Registration and Regulation) Act, 2009.**” The Report contains the proposed legislation in its final chapter having various provisions and also annexed the **Model Law** on the subject with the Report.

With kinds regards.

Yours sincerely,

(Justice V.C. Misra)

**Sushri Mayawati,
Chief Minister/ Law Minister,
Uttar Pradesh.**

Encl: The Report with questionnaire, responses on questionnaire in summarised form and a Model Law on proposed legislation

