REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 95 OF 2012

Devika Biswas ….Petitioner

versus

Union of India & Ors. ….Respondents

J U D G M E N T

Madan B. Lokur, J.

1. This public interest petition raises very important issues concerning the entire range of conduct and management, under the auspices of State Governments, of sterilization procedures wherein women and occasionally men are sterilized in camps or in accredited centres. The issues raised also include pre-operation procedures and post-operative care or lack of it. A sterilization surgery does not appear to be complicated and yet several deaths have taken place across the country over the years. Undoubtedly, this needs looking into by the Government of India and the State Governments and remedial and corrective steps need to be taken. Persons who are negligent in the performance of their duties must be held accountable and the victims and their family provided for. It is time that women and men are treated with

respect and dignity and not as mere statistics in the sterilization program.

2. The petitioner Devika Biswas is a public spirited individual of Araria district in Bihar. She is a health rights activist with extensive professional experience in the development and health sectors. She has worked in Uttar Pradesh, Delhi, Jharkhand and Bihar in her capacity as a health rights activist. She has also been associated with the Integrated Child Development Scheme in Bihar and has published articles and books in her field of specialization.

3. Sometime in 2005 the issue of sterilization procedures for females and males under the Population Control and Family Planning program or the Public Health program of the Government of India came up for consideration before this Court in a petition filed by Ramakant Rai. The petition was substantially decided by this Court on 1st March 2005 by passing several directions. The directions are reported as ***Ramakant Rai (I) & Anr. v. Union of India & Ors***.[1]

4. Pursuant to the directions given by this Court, the Government of India published a Quality Assurance Manual for Sterilization Services (in 2006); Standards for Female and Male Sterilization (in 2006); and Standard Operating Procedures for Sterilization Services in Camps (in 2008). These manuals really form the procedural and substantive basis for conducting sterilization procedures both of females and males in the country under the population control and family planning program or the

[1] (2009) 16 SCC 565

public health program.

5. What seems to have provoked Devika Biswas in filing a writ petition under Article 32 of the Constitution in this Court is that on 7th January 2012 as many as 53 women underwent a sterilization procedure in a camp in highly unsanitary conditions in Kaparfora Government Middle School, Kursakanta, Araria district in Bihar between 8 p.m. and 10 p.m. through a single surgeon. In fact, some of the broad issues concerning the sterilization camp held on 7th January 2012 as found on investigation by Devika Biswas, included an absence of pre-operative tests on the women or proposed patients; they were not given any counseling of any kind at all; they had no idea about the potential dangers and outcomes of the sterilization procedure; the sterilization procedures were carried out in a school and not in a government hospital or a private accredited hospital; running water was not available at the site; the sterilization procedures were carried out under torch light with the women being placed on a school desk; the surgeon did not have any gloves or at least did not change the gloves available with him; no emergency arrangements were made etc. etc. Essentially, the entire camp was conducted in unsanitary conditions, in an unprofessional and unethical manner. What is worse is that the camp was conducted under the auspices of an NGO called Jai Ambey Welfare Society who had been granted accreditation by the District Health Society only a few months

earlier that is on 29th November, 2011 apparently without following any formal and transparent procedure.

6. As a result of the sterilization camp, many women who were operated upon underwent tremendous physical pain and anguish and were traumatized. Consequently, a series of complaints were filed and they were registered at Kursakanta Police Station on 8th January 2012 being S.DE No.135/12, 136/12, 137/12 and 144/12. Some of these complaints were inquired into by the State authorities and it was found that the sterilization camp was a success except that an expired medicine had been given to the women. On the other hand, the study and the investigations carried out by Devika Biswas along with a journalist called Francis Elliott concluded that the sterilization camp did not meet any of the requirements laid down by this Court or by the Government of India and that this was confirmed by the women who were operated upon as well as their relatives.

7. Devika Biswas then felt compelled to file a public interest litigation in this Court to ensure that sterilization procedures nationwide are conducted in accordance with accepted legal norms, medical procedures and the provisions of the manuals and that those women and men who suffer due to the failure or complications in implementing the norms, procedures and provisions are given adequate compensation. That is really the core issue raised by Devika Biswas and that such instances

are not repeated.

8. In this context, Devika Biswas says in her writ petition that on 9th February 2008 the State Health Society in Bihar issued a memorandum to the Civil Surgeon in each district in the State. The result of this memorandum was that sterilization procedures could now be conducted in accredited private health facilities also in a camp mode. The memorandum also mentioned that the State Government would provide funds to the private facilities and the motivators as per the Government of India norms for conducting sterilization procedures. However it was made clear that extra funds for camp management, transportation etc. would not be provided by the Government to the accredited private facilities.

9. This was followed by another memorandum dated 9th February 2009 regarding sterilization procedures carried out at government institutions by empanelled private doctors. The memorandum issued by the State Health Society of Bihar to the Civil Surgeon in all districts stated that an empanelled private doctor might also be permitted to carry out family planning sterilization procedures in government institutions. The Quality Assurance Committee of the district was entitled to employ private doctors including contractual doctors whose term had expired for carrying out the sterilization procedures.

10. The petition filed by Devika Biswas goes on to say that in 2010 a

Non Government Organization (NGO) called the Centre for Health and Social Justice released a report concerning the quality of care and consequences of female sterilization procedures in Bundi district of Rajasthan in 2009-10. According to the report 749 women (mainly underprivileged) were sterilized at Public Health Centres, Community Health Centres or Camps. They were interviewed by researchers who found that a significant number of them were not counseled about the permanent nature of the sterilization procedure and almost 88% of them told the researchers that they did not receive any information about potential complications, failures or side effects of the sterilization procedure. The report indicated that while the internationally accepted failure rate is 0.5% the failure rate in Bundi district in Rajasthan was 2.5% that is 5 times the acceptable international standard.

11. Similarly, in February 2012 a Fact Finding Mission by a social activist reported that sterilization procedures carried out in three districts in Maharashtra, that is, Nagpur, Chandrapur and Gadchiroli found that sterilization camps were routinely conducted in unsanitary and unsafe facilities.

12. Again in February 2012 a sterilization camp in Madhya Pradesh was conducted in Balaghat district without following any of the established procedures and tribals were lured into sterilization camps by motivators who collected a substantially large amount over and above the

financial norms fixed by the Government of India.

13. In Kerala also a similar story was repeated in July 2011 highlighting that sterilization procedures were not conducted in accordance with the prescribed requirements of law or the procedures laid down by the Government of India. In paragraph 40 of the writ petition, Devika Biswas submits that "In July 2011, a local journalist in Wayanad and the Chief of the Kattunayakan tribe, who serves as the President of the Primitive Tribal Association, met with health workers in Kerala. They shared stories of men and women who were told by the government health workers that it was compulsory to undergo sterilization. The Chief is concerned about government coercion and compulsion in sterilization and its effect on the tribe's population."

14. In this background, Devika Biswas prayed for a series of directions including setting up a committee to investigate the facts relating to the sterilization camp held on 7th January 2012 and to initiate departmental and criminal proceedings against those who were involved in the sterilization camp. It is also prayed that the guidelines given in the manuals prepared by the Government of India should be scrupulously adhered to so that such incidents do not recur in any part of the country and if they do, additional compensation should be paid to the women in distress.

15. In this writ petition, we are primarily concerned with the

affidavits of the Union of India, the States of Bihar, Kerala, Madhya Pradesh, Maharashtra and Rajasthan since allegations have been made in respect of sterilization camps held in these States only. However, during the course of hearing of this writ petition, allegations surfaced with regard to sterilization camps conducted in Bilaspur district, Chhattisgarh [between 8th and 10th November 2014] and so we are also concerned with the allegations made in respect of the camps conducted in that State as well.

16. What was brought to our notice with regard to the sterilization camps conducted in Bilaspur district was that as many as 137 women were subjected to a sterilization procedure and unfortunately 13 of them died. Many others complained of problems such as vomiting, difficulty in breathing, severe pain etc. They were taken to nearby hospitals and discharged after necessary treatment. It appeared that some women who had not undergone a sterilization procedure also had similar complaints and some of them died thereby increasing the number of deaths to over 13. Undoubtedly, this was a matter of great concern brought to our notice during the pendency of the writ petition.

Orders passed by this Court

17. Notice in the writ petition was issued on 2nd April 2012 and thereafter the petition was taken up for active consideration only on 30th January 2015 when the Social Justice Bench of this Court was seized of

this matter and after completion of pleadings and instructions received by the learned Additional Solicitor General from the Union of India.

18. On 30th January 2015 after hearing learned counsel, a request was made by us to the learned Solicitor General to ensure that a chart be prepared giving the status of implementation of each direction given in ***Ramakant Rai (I)***. Details with regard to the implementation of the Family Planning Indemnity Scheme, 2013 were also sought particularly with regard to the release and utilization of funds under the said Scheme.

19. During the hearing, the events in Bilaspur, Chhattisgarh (mentioned above) also came up for consideration and so the State of Chhattisgarh was required to file an affidavit stating the steps taken to ameliorate the conditions of the persons who had faced the recent tragedy. The State Government was also required to indicate the action taken against the doctors involved and steps taken to educate the people in Chhattisgarh with regard to the sterilization procedure and its impact.

20. The petition was then taken up for consideration on 20th March 2015 when it was noted that even though Chhattisgarh had filed an affidavit dated 19th February 2015, it had not given sufficient particulars and details with regard to the action taken subsequent to the mishap in the sterilization camp. Chhattisgarh was therefore required to file a proper and detailed affidavit including a copy of a sample FIR, post mortem report and charge sheet filed, if any.

21. With regard to an affidavit filed by the Union of India in relation to the implementation of the Family Planning Indemnity Scheme, 2013 it was noted that the manner of utilization of funds was not indicated. The learned Solicitor General assured this Court that full details in this regard would be furnished and also an audit would be conducted to ensure that the funds are utilized for the purpose for which they have been given by the Government of India to the State Governments. Unfortunately, these details have not yet been furnished and we have only the figures giving the budget approved as well as the expenditure incurred by the State Governments and Union Territories.

22. On 17th April 2015 the writ petition was again taken up for consideration and as an interim measure the Secretary in the Ministry of Health and Family Welfare of the Government of India was directed to hold a meeting with his counterparts in the States and the Union Territories to arrive at a consensus on the effective implementation of the various schemes relating to sterilization [of females and males], the Family Planning Indemnity Scheme, 2013 and the directions given in ***Ramakant Rai (I)***.

23. Chhattisgarh was also required to file a Status Report on the progress made by a Commission set up by it (the Ms. Anita Jha Commission) to look into the tragedy that had occurred in the sterilization camps held in Bilaspur.

24. The learned Advocate General appearing for the State of Chhattisgarh stated that he would look into the issue of taking action against the manufacturer of the drug used in the sterilization camps and the feasibility of filing a charge sheet against the offenders and to step up efforts to arrest the absconding persons or if necessary to declare them proclaimed offenders.

25. In the hearing on 14th August 2015 it was noted that the Secretary in the Ministry of Health and Family Welfare had held a meeting, as earlier directed, on 15th May 2015. It was noted that one of the suggestions given in that meeting was that similar high level meetings should be conducted every six months. Accordingly, we expected the Secretary in the Ministry of Health and Family Welfare to conduct a similar meeting after six months that is on or about 15th November 2015.

26. As far as Chhattisgarh is concerned, it was noted that it had filed an affidavit and the learned Advocate General stated that the Ms. Anita Jha Commission submitted its report on 10th August 2015 and that the report was likely to be considered by the State Cabinet in the next couple of weeks.

27. The learned Advocate General informed us that two charge sheets had been filed in connection with the tragedy and that no FIR was pending investigation. He further stated that some scientific reports were expected from a Forensic Science Laboratory and a supplementary charge

sheet would be filed, if necessary, immediately thereafter.

28. With regard to two absconding persons concerned with the tragedy, it was stated by the learned Advocate General that they had been declared proclaimed offenders and a reward had also been announced for their whereabouts.

29. In the hearing on 4th December 2015 we were informed that the report given by Ms. Anita Jha had since been accepted by the State Cabinet. Subsequently, on 29th March 2016 we were informed that an Action Taken Report on the Ms. Anita Jha Commission Report had been placed before the Legislative Assembly.

30. Since the proceedings in this case were not adversarial in nature we requested the learned Additional Solicitor General appearing in the matter as well as the learned Senior Counsel to sit down and give suggestions on how to implement the Standard Operating Procedures and the Guidelines laid down by the Union of India in the matter of sterilization procedures.

31. On 4th August 2016 when we heard the writ petition, we were informed that a meeting was in fact held between the learned Additional Solicitor General, learned Senior Counsel for Devika Biswas and officials of the Ministry of Health and Family Welfare of the Government of India and that an affidavit in this regard had also been filed. We then heard learned counsel for the parties and reserved judgment.

Affidavits filed by the Union of India

32. The Ministry of Health and Family Welfare of the Government of India has filed as many as 10 (ten) affidavits. It is not necessary to traverse each of them in detail. However, it is necessary to highlight the broad submissions made. These are:

(i) It is admitted that the Union of India received a complaint with regard to the sterilization camp held on 7th January 2012 and a report had been called for in this regard. A report has since been received from the concerned authorities in the State of Bihar and Dr. Abhay Kumar Chowdhary, a contract physician at the Primary Health Centre had since been dismissed and it had further been ordered that he may not be employed in any government work in future. First Information Reports (FIRs) were lodged in respect of the events of 7th January 2012, investigations have concluded and charge-sheets filed.

(ii) The Government of India has published several Manuals for the guidance of the State Governments and Union Territories in respect of sterilization procedures and conducting such camps. These are:

(a) Standards for Female and Male Sterilization, 2006;

(b) Quality Assurance Manual for Sterilization Services, 2006;

(c) Standard Operating Procedures for Sterilization Services in Camps, 2008;

(d) Fixed Day Static Approach for Sterilization Services, 2008;

(e) Family Planning Insurance Scheme;

(f) Compensation Scheme for Acceptors of Sterilization (revised on 31st October 2006 and improved with effect from 7th September 2007);

(g) Standards and Quality assurance in Sterilization Services, 2014 including Standard Operating Procedure for camps;

(h) Reference manual for Female Sterilization, 2014;

(i) Reference Manual for Male Sterilization, 2013;

(j) Manual for Family Planning Indemnity Scheme, 2013 (updated in 2016) ;

(k) Frequently Asked Questions, 2016.

(iii) Public Health is a State subject occurring in Entry 6 of List II of the Seventh Schedule of the Constitution. The Government of India only plays a supportive and facilitative role in achieving health welfare schemes and it is essentially the State Government that is in the best position to monitor the quality of services in accordance with agreed benchmarks.

(iv) The following funds have been approved and utilized (in lakhs) by the States under the Family Planning Indemnity Scheme,

2013:

Approval 2013-14	Expenditure 2013-14	Approval 2014-15	Expenditure 2014-15 (till end of 3rd quarter)
1566.69	675.59	1485.80	828.19

At this stage it may be mentioned that the coverage under the Family Planning Indemnity Scheme is as follows:

Section	Coverage	Limits
1.	Death following sterilization (inclusive of death during process of sterilization operation) in hospital or within 7 days from the date of discharge from the hospital	Rs. 2 lakh
2.	Death following sterilization within 8-30 days from the date of discharge from the hospital	Rs. 50,000/-
3.	Failure of sterilization	Rs. 30,000/-
4.	Cost of treatment in the hospital and upto 60 days arising out of complication following sterilization operation (inclusive of complication during process of sterilization operation) from the date of discharge	Actual not exceeding Rs. 25,000/-
5.	Indemnity per doctor/health facilities but not more than 4 in a year	Up to Rs. 2 lakh per claim

The Union of India has given no clear-cut answer regarding audit of disbursal of the amounts, except to say that the States and the Union Territories are required to follow the financial management system and are required to submit statutory audit reports, utilization certificates, quarterly summary on concurrent audits etc. Whether this is being adhered to by the States and the Union Territories is not mentioned. It is also not clear whether the accounts of the various organizations involved in sterilization procedures are in fact open for inspection by the sanctioning authority and audit including the Comptroller and Auditor

General of India and the internal audit of the Ministry of Health and Family Welfare of the Government of India.

(iv) The Union of India has issued an advisory to all the States and Union Territories on 30th December 2014 to adhere to the standard operating procedures at all levels to prevent and pre-empt incidents that might adversely affect the health of clients due to sterilization procedures.

(v) In the high level meeting held on 15th May 2015 (pursuant to orders passed by this Court) the following key action points were agreed upon:

(α) Sterilization services must be provided in a client friendly manner in a conducive environment after taking informed consent. Safety of those who opt for it should be ensured.

(β) A mechanism be put in place wherein service providers or managers are not victimized or arrested without instituting a proper enquiry by the district/State quality assurance committees.

(χ) All States to conduct workshops on quality in sterilization services orienting its programme managers and service providers both at the State and district level on the updated manuals on standards, male and female sterilization and family planning indemnity scheme.

(δ) All Government of India guidelines to be strictly adhered by the States.

(ε) A periodic assessment of all the facilities and fixed day camps by 1-2 members of the sub-committees under the SQAC/DQACs [State Quality Assurance Committee/District Quality Assurance Committee] on implementation of the infection prevention protocols as well as the efficacy of the services provided, should be carried out (as laid down in the Manuals).

(ϕ) The issue of shortage of pool of providers for sterilization could be addressed by resorting to compulsory training of MBBS medical officers when they join government service.

(γ) Onsite Training/mentoring be initiated by identifying high caseload facilities (first) to undertake sterilization trainings. This will ensure the service provider is available at the facility to undertake their primary task of providing services to the clients in addition to provide training to prospective trainees.

(η) Retraining of providers who are either short on confidence or have high failure rates.

(ι) There should be more thrust on Minilap Sterilization as it leads to fewer failures and complications.

(φ) The scope of increasing the basket of contraceptive choices like injectables/implants and weekly pills like 'Saheli' be explored urgently to provide more choice.

(κ) The idea of mobile teams or clinical outreach teams needs to be encouraged to address the issue of shortage of surgeons.

(λ) Every case of sterilization death must be audited as per format laid down and reported to the Government of India.

(μ) Line listing of deaths and failures to be undertaken district/facility wise and surgeon wise. Disbursal of claims for deaths, failures and complications should be computerized.

(ν) To address the issue of sterilization failures, sterilization certificates should be issued after at least one month in case of female sterilization and after three months in case of male sterilization.

(ο) States to take urgent steps to rejuvenate the Family Planning Programme with the ultimate aim of reducing the maternal and infant mortality and morbidity in addition to achieving population stabilization.

(π) Government of India to conduct high level meeting like the instant one with all States to acquaint them with the latest policies and programmes of the Government of India on a yearly basis.

(vi) In the high level meeting held on 17th November 2015 (pursuant to orders passed by this Court) the following key priority areas were shared with the State Governments and Union Territories:

> (a) Uniform consent forms should be available in all facilities which should be duly filled in and the consent of the client should be taken prior to the procedure in all cases.
> (b) State Quality Assurance Committee (SQAC)/District Quality Assurance Committee (DQAC) and State Indemnity Sub Committee (SISC)/District Indemnity Sub Committee (DISC) to be constituted as per the GOI guidelines.
> (c) All the Family Planning guidelines should be printed and disseminated at the State/district as well as facility level.
> (d) State/District level orientation of all the program managers and providers for the guidelines and protocols to be completed in all States.
> (e) Members of SQAC and DQAC should conduct periodic supportive supervision visits as per quality protocols. The findings of the same are to be documented and corrective actions should be taken.
> (f) Training calendar for training newly recruited doctors is to be prepared and updated in each State.
> (g) Line listing of all the sterilization providers needs to be prepared and periodically updated by all States.
> (h) Every death attributable to sterilization should be audited.
> (i) Sterilization certificates should be issued as per existing guidelines.

The aforesaid meeting was held through video-conferencing. The representative of Uttar Pradesh could not attend due to a State holiday and since the office of the National Informatics Centre in the State was closed. It may be mentioned that this is somewhat odd and suggests that responsible officers in the State of Uttar Pradesh seem to give more importance to State holidays rather than issues relating to Family Planning. This is most unfortunate, to say the least.

(vii) A National Summit on Family Planning was held on 5th and 6th April 2016. As a result of several workshops and summits held from time

to time on issues relating to family planning and the directions given by the Court from time to time the following practical and pragmatic measures were proposed by the Government in addition to the new guidelines proposed to be undertaken:

> (a) Conducting annual review workshops of the programme in all States of India with the State and district programme managers and service providers.
> (b) Monthly monitoring of at least 2 public health facilities and 1 accredited private/NGO facility by SQAC/DQAC.
> (c) Replacement of operational 'Camps' by regular 'Fixed day services' over the next three years.
> (d) Further Strengthening of the State Quality Assurance Committee (SQAC) and District Quality Assurance Committee (DQAC) mechanism.
> (e) Close monitoring, reviewing and collection of reports of deaths attributable to sterilization by the Government of India.
> (f) Conducting Client exit interviews of 10% cases as per the prepared checklist.
> (g) Feedback from beneficiaries by Maternal and Child Health Tracking Facilitation Centre (MCTFC).

(viii) Our country has adopted a comprehensive RMNCH+A (Reproductive, Maternal, Neonatal, Child and Adolescent Health) strategy under which the Family Planning program is being emphasized to promote reproductive health and reduce maternal, infant and child mortality and morbidity.

(ix) The States of Tamil Nadu, Maharashtra, Sikkim and Goa have already phased out the holding of sterilization camps. During the course of submissions we were informed by the learned Advocate General for Chhattisgarh that that State has also phased out such camps. As far as the Union of India is concerned, it proposes to ensure the

phasing out of such camps over the next three years.

(x) Several improvements have been made in the Family Planning program and sterilization procedures. They are:

(a) Decline in deaths following sterilisation from 140 in 2014-15 to 89 in 2015-16 (as per data available on the web based HMIS till 31.3.2016);
(b) Decline in the number of failures from 5928 in 2014-15 to 2093 in 2015-16 (as per data available on the web based HMIS till 31.3.2016);
(c) The empanelled list of providers is available in every district;
(d) Surgeons are not performing more than 30 cases per day;
(e) Camps are being held only in public health facilities or accredited private/NGO facilities.
(f) Workshops relating to Family Planning programme have been held in 28 out of 29 States (as on 21st July, 2016). Unfortunately, no such workshops were held after 24th August, 2015.
(g) The number of deaths attributable to sterilisation procedures in 2014-2015 was 140 but it has come down in 2015-2016 to 113.
(h) In 2015-2016 clients exit interviews have been conducted in respect of 1,06,055 persons.
(i) Monitoring and supervision of facilities by SQAC/DQAC in 2015-2016 in regard to public facilities is as high as 12,044 and with regard to private accredited facilities it is as high as 2,984.
(j) The amount allotted for quality improvement which includes training, family planning equipments, other service delivery activities, human resource cost, infrastructure share, planning and monitoring (including quality assurance) and family planning commodities is as follows:

Year	**2013-14**	**2014-15**	**2015-16**
Amount in Crores	1000.7	1648.07	1243.9

The sum and substance of the affidavits is that it is not as if the Ministry of Health and Family Welfare of the Government of India is sitting idle and not taking adequate interest in the success of the Family Planning program and particularly in sterilization procedures in public and private health facilities. While deficiencies and faults have been pointed out, there has also been considerable improvement in an ongoing exercise of

national importance.

Affidavits filed by the State of Bihar

33. The State of Bihar has filed two affidavits, a Status Report and Written Submissions.

34. The broad allegations made by Devika Biswas have been accepted and it is accepted that a sterilization camp was conducted by Jai Ambey Welfare Society (NGO) late in the evening of 7th January 2012 in violation of the orders of the concerned Civil Surgeon. An FIR has been lodged against the NGO not only for violating the directives but also for distributing expired medicine to the beneficiaries of the family planning camp.

35. It is further stated that the NGO has since been blacklisted and steps have been taken for giving compensation to some of the women who had developed complications during the surgeries.

36. The blacklisting is confirmed by respondent No. 4, that is, Kumar Nath Choudhary, Secretary of Jai Ambey Welfare Society who filed an affidavit on 14th January 2013 in which it is stated that hue and cry was made about the sterilization camp by anti-social elements and as a result three FIRs, namely, Kursakanta P.S. Case No.03/2012, Case No.05/2012 and Case No.14/2012 have been lodged against the NGO.

37. Two charge-sheets have been filed in respect of Kursakanta P.S. Case No.03/2012 and Case No.05/2012.

38. As regards Kursakanta P.S. Case No.03/2012, Charge Sheet bearing No. 23 of 2012 dated 09.03.2012 and supplementary Charge Sheet No. 167 of 2012 dated 31.12.2012 have been submitted. Cognizance of the offence has been taken and thereafter Revision Application No. 44/369/12 has apparently been filed by the accused persons and that is pending in the District Court in Araria.

39. As regards Kursakanta P.S. Case No.05/2012, Charge Sheet No. 24 of 2012 dated 12.03.2012 and supplementary Charge Sheet No. 87 of 2013 have been submitted. Cognizance of the offence has been taken on 28.06.2012 and a Revision Petition has apparently been filed by the accused bearing No. 31/226/13 which is pending in the District Court in Araria.

40. As regards Kursakanta P.S. Case No.14/2012 is concerned, the details are not available on record.

41. We have also been told that an FIR has been filed against the NGO Jay Ambey Welfare Society for distributing expired medicines to the beneficiaries of the Family Planning camp held on 7th January 2012. A Charge Sheet has been filed in this regard and cognizance of this offence has also been taken by the Trial Court, but again the details are not available.

42. It is also admitted by the State of Bihar that inquiries into the events that took place on 7th January 2012 have been concluded and show

cause notices have been issued to the Medical Officer in charge in the Primary Health Centre in Bausa, Purnia as well as Kursakanta, Araria and also to the Civil Surgeon, Purnia.

43. That the situation in Bihar has not improved is clear from the fact that in Saran district the accreditation of Gunjan Maternity and Surgical Clinic at Chhapra to conduct sterilization procedures was cancelled on 4th March 2012, just a few months after the incident in Araria district.

Affidavit filed by the State of Kerala

44. The State of Kerala has filed a Statement of Facts through a letter dated 15th March 2013. The Statement of Facts is not accompanied by an affidavit and the first page of the Statement of Facts is not on the record of this case. However, the letter states, *inter alia*, that "In Kerala sterilization camps are conducted only in well equipped centres (usually in first referral units and above hospitals) where there are operation theatre facility, lab facility, referral facility are in place." It is also stated that "sterilization procedures are carried out in hygienic, well equipped hospitals under the control and supervision of qualified empanelled doctors." This is reiterated in an affidavit dated 1st July 2013 filed by the State of Kerala.

45. In response to the submission made in the writ petition, the State of Kerala states in paragraph 11 of its affidavit:

> "[The] tribal population of Kerala State is accorded special consideration for its dealing members. There is no compulsion of

> promotion of sterilization as part of Government policy. At the same time family planning services are not denied to this segment of the population if demanded. Felt need of the community is assessed by the Health Worker and various options are put before them explaining the merits and demerits of each method and encouraging to make right choice."

There is therefore no specific denial of the submission made by Devika Biswas in her writ petition.

Affidavit filed by the State of Madhya Pradesh

46. The State of Madhya Pradesh has filed only one affidavit dated 7th August 2013 and the allegations made by Devika Biswas have not been denied in that affidavit.

47. However, the State of Madhya Pradesh denies coercive sterilizations and asserts that sterilization is undertaken only after informed consent of the patient. The State further submits:

> "The State Government has issued instructions for taking due precautions for sterilization operations. The State Government has formed Quality Assurance Committee in each District of the State which is headed by the Chief Medical and Health Officer of the district. The function of the Quality Assurance Committee is to review all types of cases where there is some complication and take necessary steps to rectify the same."

There is no specific denial of the events in Balaghat district.

Affidavit filed by the State of Maharashtra

48. The State of Maharashtra has filed only one affidavit dated 14th August 2012 in which it is generally stated that the family planning program is being conducted satisfactorily and a large number of statistics have been given in support of this submission. However, with regard to

the sterilization camp held in Nagpur, Chandrapur and Gadchiroli districts it is stated as follows:

> "It is respectfully submitted that in the light of facts submitted in the Petition by the Petitioner, detailed report has been called from the Civil Surgeon, Gadchiroli, Chandrapur and Nagpur District which is marked and annexed as Annexure-1. However, keeping in view the gravity of such instances reported, State has taken immediate corrective action and instructions have already been issued to all the District Health Officers and Civil Surgeons to perform the family planning operations as per the standards prescribed by Govt. of India in hygienic conditions."

No detailed report has been annexed and no further affidavit was filed by the State of Maharashtra regarding any action taken against any officer responsible for the mishap, any compensation paid or any further action taken in this regard.

Affidavit filed by the State of Rajasthan

49. The State of Rajasthan in its affidavit filed on 23rd November 2012 does not specifically contradict the contents of the report relating to the sterilization procedures carried out in Bundi district but only affirms that the standard operating procedures are being followed and that the failure rate is in conformity with the failure rate prescribed by the Government of India.

50. The State of Rajasthan maintains that the proposed patients are sufficiently instructed and advised with respect to both the sterilization itself as well as post-sterilization care. The State further mentions that continuous efforts are made by the health employees "to motivate

females to take up sterilization surgery". The failure rate at Bundi district "is in conformity to the failure rate prescribed by the Government of India". The State submits that sufficient steps have been taken for implementation of the directions in ***Ramakant Rai (I)*** as well as the guidelines of the Government of India.

Affidavits filed by the State of Chhattisgarh

51. The State of Chhattisgarh has taken up the issue of mismanagement of the sterilization camps in Bilaspur district with due promptitude and seriousness and has filed detailed affidavits that not only specify the ameliorative steps taken but also the preventive steps against recurrence of a similar tragedy.

52. Chhattisgarh has confirmed that sterilization camps were organized in Sakri village of Bilaspur district on 8th November 2014 and in Gorela, Pendra and Marwahi in Bilaspur district on 10th November 2014. In all 137 operations were conducted and many of those operated upon complained of vomiting, pain and difficulty in breathing. Consequently, all of them were admitted in nearby hospitals for treatment. Unfortunately, 13 deaths took place despite relief measures including bringing in a team of doctors from the All India Institute of Medical Sciences in New Delhi.

53. Apart from these 137 persons, 37 persons who were not operated upon also had similar complaints and 5 (five) of them died thereby

bringing the total number of deaths to 18. It appears that the cause of death of these 5 (five) persons was not related to the sterilization procedure but was due to consumption of Ciprocin 500 tablet.

54. By way of monetary compensation, the State Government has given Rs. 4 lakhs to the families of those who died and Rs. 50,000/- to those who were discharged from medical institutions. The children of the deceased have been adopted by the State Government which has taken the responsibility of providing them free education and health care till they are 18 years of age. The State Government has also put in an amount of Rs. 3 lakh in a fixed deposit for children of the persons who died in the tragedy. The children would be entitled to the amount on attaining the age of 18 years.

55. Departmental action has been taken against the doctors involved in the sterilization camps. Two of them have been dismissed from service while two others have been suspended pending a departmental enquiry. The Licensing Authority has also been suspended.

56. A Judicial Commission of Inquiry headed by a retired District Judge Ms. Anita Jha was set up to give its findings on the criminal culpability and accountability of the persons concerned. The report given by the Ms. Anita Jha Commission has been accepted by the State Government and also acted upon.

57. Criminal proceedings in the form of Charge Sheet No.19/2015

dated 15th February 2015 has been filed in the Court of Judicial Magistrate, First Class at Bilaspur against Dr. R.K. Gupta, Ramesh Mahawar, Sumit Mahawar (manufacturers of Ciprocin 500 tablets), Rajesh Khare, Rakesh Khare and Manish Khare (suppliers of Ciprocin 500 tablets). Rakesh Khare and Manish Khare have since been declared proclaimed offenders and their property attached and a reward for their arrest and information of their whereabouts has also been announced.

58. As regards measures taken to prevent the recurrence of such an incident, Chhattisgarh has begun placing greater emphasis on spacing measures which will be more effective in population control. Greater emphasis is being placed on vasectomy for gender equity. An advisory has been issued that Ciprocin 500 should not be consumed and efforts are being made to educate people about the importance, benefits, methods and availability of services in health facilities. A mass awareness campaign has also been launched and several other pro-active measures have been taken.

59. All in all, the State of Chhattisgarh has reacted positively to the tragedy and has not sought to hide inconvenient facts under the carpet.

Further submissions of Devika Biswas

60. Devika Biswas has pointed out in various affidavits filed during the pendency of this writ petition that the campaign for sterilization is effectively a relentless campaign for female sterilization. The web portal

of the Ministry of Health and Family Welfare of the Government of India provides statistics on the number of sterilization procedures conducted in the country for 2012-13. The portal indicates that 97.4% of all sterilization procedures during this period were of women.[2] Devika Biswas alleges that the entire family planning program of Chhattisgarh focuses on female sterilization and the National Health Mission Project Implementation Plan sets targets for female sterilization and allocates 85% of the family planning budget exclusively to female sterilization.

61. More or less confirming the allegations made by Devika Biswas, the affidavits filed by Madhya Pradesh, erstwhile Andhra Pradesh and Goa reflect the fact that the over-whelming number of sterilization procedures is targeted towards women and there is virtually no attention paid to male sterilization.

62. Devika Biswas has also pointed out that data released by the Ministry of Health and Family Welfare during the period 2010-13 shows that at least 363 people have died as a result of sterilization procedures, a very large number of such procedures have failed and that there have been severe complications in respect of several persons who underwent a sterilization procedure. This has resulted in payment of compensation of at least Rs. 50 crores.[3]

63. The principal problem pointed out by Devika Biswas is with

[2] This has now gone up to 98.1% for 2014-15

[3] This information is in fact not very clear from the data on the website of the Ministry but is available at: http://pib.nic.in/newsite/PrintRelease.aspx?relid=106949; Press Information Bureau, Government of India, Ministry of Health and Family Welfare, 18.07.2014.

regard to the implementation of the various processes and guidelines issued by the Government of India from time to time. Mere issuance of guidelines by the Government of India does not guarantee their implementation. It is pointed out (for example) that the list of empanelled doctors is not readily available; consent forms are not available in the local language except in the Union Territory of Puducherry; unrealistic targets have been set for sterilization procedures with the result that non-consensual and forced sterilizations are taking place, including of persons who are physically or mentally challenged. Some young persons have been sterilized to meet targets and by and large illiterate persons are sterilized. Devika Biswas is opposed to setting of targets and says that she has the support of the Government of India in this regard, but unfortunately State Governments and Union Territories are still setting informal targets for sterilization.

64. It is further pointed out that there is inadequate monitoring of sterilization camps and facilities. There is little or no monitoring in most camps and health centres, accountability measures are not in place and the rights of thousands of women who undergo sterilization procedures are violated. It is not enough for the Government of India to show that it is merely playing a supportive and facilitative role since the campaign is a national campaign and if it is not properly implemented, it merely leads to passing the buck with the State Government blaming the Government

of India and *vice versa*.

65. The strengthening of the Quality Assurance Committees (QAC) and the District Quality Assurance Committees (DQAC) is crucial to the success of a family planning program of which sterilization procedures is one of the elements. Details of the constitution of QACs and DQACs are not available on the website of the Ministry of Health and Family Welfare. There is also no indication of the steps and decisions taken by them or the minutes of their meetings or reports submitted by them. In other words, vital information is simply not available. Devika Biswas doubts whether these Committees meet on a regular basis although it would be appropriate for them to have at least quarterly meetings if not meetings every six months.

66. According to her, unless these existing institutions function effectively and efficiently or are made to function effectively and efficiently, it is very unlikely that any meaningful progress will be made in the family planning program of the Government of India, of which sterilization is an important component.

67. With regard to the Family Planning Indemnity Scheme, it is pointed out that regular reviews are not carried out; the utilization of funds made available under the Scheme are mere figures since the details of disbursements in case of death, failure, complication etc. are simply not available anywhere. There is no indication of the number of claims

filed, the number of claims rejected and the reasons for the rejection and the amount provided to each successful claimant. The Scheme requires a death audit to be carried out but that is more or less missing in every instance. It is stated that specialists who are conversant with the Scheme are not available at sterilization camps and health centres to explain the Scheme in detail so that there is no difficulty or complication faced in the event of an unfortunate mishap. It should be the duty of such a specialist to ensure that each person proceeding to undergo a sterilization procedure has a copy of all the required documents so that there is no difficultly faced later on. This will also ensure that each person gives an informed consent to the sterilization procedure in a language that he or she understands. In fact, all information that is disseminated with regard to the sterilization procedure should be made available in the local language at all Government health facilities and accredited private facilities.

68. It is high time, according to Devika Biswas, for the Government of India to look at the quality of care made available to persons post a sterilization procedure. As is clear from various documents on record including the Ms. Anita Jha Commission Report, after-care facilities in terms of counseling, assistance, follow-up etc. are totally absent.

Is it a public health issue?

69. The fundamental error that the Union of India is making (and it has repeated that in its affidavits) is by asserting that the effective

implementation of the sterilization program is the concern of each State since it is a "Public health" issue covered by Entry 6 of List II in the Seventh Schedule (the State List) of the Constitution. Apart from the fact that the various entries in the Seventh Schedule relate to legislative power, the error made by the Union of India is in completely overlooking the more appropriate Entry in the Concurrent List that is Entry 20A which is "Population Control and Family Planning". This was inserted by the Constitution (Forty-second) Amendment Act, 1976. If the sterilization program is intended for population control and family planning (which it undoubtedly is) there is no earthly reason why the Union of India should refer to and rely on Entry 6 of the State List and ignore Entry 20A of the Concurrent List. Population control and family planning has been and is a national campaign over the last so many decades. Therefore, the responsibility for the success or failure of the population control and family planning program (of which sterilization procedure is an integral part) must rest squarely on the shoulders of the Union of India. It is for this reason that the Union of India has been taking so much interest in promoting it and has spent huge amounts over the years in encouraging it. It is rather unfortunate that the Union of India is now treating the sterilization program as a Public Health issue and making it the concern of the State Government. This is simply not permissible and appears to be a case of passing the buck.

70. As regards Entry 20A of the Concurrent List, the Justice Sarkaria Commission had this to say in Chapter II titled Legislative Relations in paragraph 2.21.08:

> "Only one State Government has suggested that this Entry should be transferred to the State List. According to them family planning facilities should be an integral part of the health facilities which is a State subject and the present dichotomy between the two facilities hampers their adequate integration. Population control and family planning are a vital part of the national effort at development. This Entry was inserted by the Forty-second Amendment to the Constitution recognising the importance of this matter. It is well known that a significant part of the fruits of development is neutralised by the high growth in population. With more mouths to feed, less savings are available for development. Large addition to the population has its impact on every aspect of the nation's life. Many of the ills of the society can be traced back to large numbers who are unable to find a rewarding employment. It is necessary to recognise this inter-dependence between family planning and other sectors. We are, therefore, of the view that Population Control and Family Planning is a matter of national importance and of common concern of the Union and the States."

Notwithstanding the view of that one State Government, the Union of India did not transfer Entry 20A to the State List, thereby making its intentions quite clear and obvious.

71. When the Union of India formulates schemes of national importance such as family planning, their implementation is undoubtedly dependent on the State Governments since they have the requisite mechanism for implementing the schemes and can also take into account the needs that are particular to the State and its people. In this manner, the cooperation of the Union of India and all State Governments is indispensable to the success of such national programs. Adverting to the

provisions of the Constitution that allow for such coordination between the Union and States, the Justice Sarkaria Commission held that these provisions are not repugnant to but instead further the principle of federalism.

72. In the same manner, it is imperative for both the Union of India and the State Governments to implement schemes announced by the Union of India in a manner that respects the fundamental rights of the beneficiaries of the scheme. Given the structure of cooperative federalism, the Union of India cannot confine its obligation to mere enactment of a scheme without ensuring its realization and implementation.

73. Apart from anything else, by not giving the sterilization program the importance it deserves (apart from other methods of population control and family planning) and trying to pass the buck to the State Governments, the Union of India is attempting to find an excuse for failure in its duty of effectively monitoring a program of national importance. This game of passing the parcel and treating a national program as a public health issue has to stop and somebody must take ownership of the Population Control and Family Planning program.

Draft National Health Policy

74. To compound the problem, and it is much more than a pity, our country does not seem to have any health policy. The draft of a National

Health Policy, 2015 was put up on the website on the Ministry of Health and Family Welfare of the Government of India in December 2014 for comments, suggestions and feedback but even after more than one and a half years, the website of the said Ministry shows that the National Health Policy has not been finalized.

75. The draft National Health Policy states that its primary aim is to "…inform, clarify, strengthen and prioritize the role of the Government in shaping health system in all its dimensions…" The draft recognizes the correlation between health and development and also recognizes the high inequity in access to health care.

76. With respect to sterilization, it states that sterilization related deaths are a direct consequence of poor health care quality and is a preventable tragedy. It also recognizes that female sterilizations are safest if performed in an operation theatre which is functional throughout the year and by a professional team with support systems which are in constant use. Camp mode for such operations itself becomes a reason for unsatisfactory quality. More monetary and human resource investment is required for the National Rural Health Mission.

77. Increase in the proportion of male sterilization in the total sterilizations from the existing 5% to at least 30% is stated to be another policy imperative under the health policy. Coercive methods are not justified and are not even effective in meeting the goals of population

control. Improved access, education and empowerment should be the aim.

78. Under the head of 'Governance' the draft National Health Policy states:

> "One of the most important strengths and at the same time challenges of governance in health is the distribution of responsibility and accountability between the Center and the States. Though health is a State subject, the Center has accountability to Parliament for central funding – which is about 36% of all public health expenditure and in some states over 50%. Further it has its obligations under a number of international conventions and treaties that is a party to. Further, disease control and family planning are in the Concurrent list and these could be defined very widely. Finally though State ownership has been used by some states to become domain leaders and march ahead setting the example for others, the Center has a responsibility to correct uneven development and provide more resources where vulnerability is more."

Surely, someone should be concerned that we do not have a national health policy or is it that we do not need a national health policy and ad hoc measures are good enough?

Female versus male sterilization

79. A perusal of the various affidavits on record indicates that the sterilization program is virtually a relentless campaign for female sterilization. This is more or less confirmed from the figures available on the website of the Ministry of Health and Family Welfare of the Government of India which indicate the following:

YEAR	2013	2014
Female sterilizations	1,57,431	1,49,262
Male sterilizations	8130	5085
Total sterilizations	1,65,561	1,54,347

% Female sterilizations	95.09%	96.7%
%Male sterilizations	4.91%	3.29%

80. The issue of male versus female sterilizations was debated and discussed during the course of the hearings and it was conceded by all the learned counsel that the sterilization program cannot be targeted primarily towards women but must also actively include the sterilization of men as well. It appears to us, without going into the merits and demerits of the incentives given for undergoing the sterilization procedure, the documents on record indicate that the incentive given to males for undergoing a sterilization procedure is less than it is for females and that may perhaps be one of the reasons why the percentage of males being sterilized is so remarkably low as compared to females. This is an area that the Union of India must address itself to, if nothing else then at least for reasons of gender equity.

Right to life

81. The manner in which sterilization procedures have reportedly been carried out endanger two important components of the right to life under Article 21 of the Constitution – the right to health and the reproductive rights of a person.

(i) Right to health

82. It is well established that the right to life under Article 21 of the Constitution includes the right to lead a dignified and meaningful life and

the right to health is an integral facet of this right. In ***C.E.S.C. Limited and Ors. v. Subhash Chandra Bose and Ors***[4] dealing with the right to health of workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to which India is a party. Similarly, the bare minimum obligations of the State to ensure the preservation of the right to life and health were enunciated in ***Paschim Banga Khet Mazdoor Samity v. State of W.B.***.[5]

83. In ***Bandhua Mukti Morcha v. Union of India & Others***[6] this Court underlined the obligation of the State to ensure that the fundamental rights of weaker sections of society are not exploited owing to their position in society.

84. That the right to health is an integral part of the right to life does not need any repetition.

(ii) Right to reproductive health

85. Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person. Reproductive health has been defined as "the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods,

[4] (1992)1SCC 441
[5] (1996) 4 SCC 37.
[6] (1984) 3 SCC 161.

facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour."[7] The Committee on Economic, Social and Cultural Rights in ***General Comment no. 22 on the Right to Sexual and Reproductive Health*** under Article 12 of the International Covenant on Economic, Social and Cultural Rights[8] observed that "The right to sexual and reproductive health is an integral part of the right of everyone to the highest attainable physical and mental health."[9]

86. This Court recognized reproductive rights as an aspect of personal liberty under Article 21 of the Constitution in ***Suchita Srivastava v. Chandigarh Administration***.[10] The freedom to exercise these reproductive rights would include the right to make a choice regarding sterilization on the basis of informed consent and free from any form of coercion. The issue of informed consent in respect of sterilization programs was considered by the **Committee on the Elimination of Discrimination Against Women in *A.S. v. Hungary***[11], where the Committee found Hungary to have violated Articles 10(h), 12 and 16,

---

[7] WHO, Sexual Health, Human Rights and the Law (2015) *cited from* Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), May 2, 2016, E/C.12/GC/22 at paragraph 6, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/089/32/PDF/G1608932.pdf?OpenElement

[8] India ratified this Convention on April 10, 1979.

[9] General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/089/32/PDF/G1608932.pdf?OpenElement

[10] (2009) 9 SCC 1.

[11] Ms. A. S. v. Hungary, CEDAW/C/36/D/4/2004, UN Communication No. 4/2004, Committee on the Elimination of Discrimination against Women, Thirty-sixth session, 7-25 August 2006, available at http://www.un.org/womenwatch/daw/cedaw/protocol/decisions-views/Decision%204-2004%20-%20English.pdf

paragraph 1(e) of the Convention on the Elimination of Discrimination Against Women[12] by performing a sterilization operation on A.S. while she was brought in for a caesarean by making her sign a consent form that she did not fully understand. The Committee found that it was not plausible to hold that, in the brief period of 17 minutes commencing from her admission in the hospital to the completion of the surgical procedures, that the hospital personnel provided her with sufficient counselling and information about sterilization, as well as alternatives, risks and benefits, to ensure that she could make a well-considered and voluntary decision to be sterilized. The Committee held:

> "Compulsory sterilization ... adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children." The sterilization surgery was performed on the author without her full and informed consent and must be considered to have permanently deprived her of her natural reproductive capacity."

87. It is necessary to re-consider the impact that policies such as the setting of informal targets and provision of incentives by the Government can have on the reproductive freedoms of the most vulnerable groups of

[12]**Article 10**: States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women - (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 12: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 16: 1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women - (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

society whose economic and social conditions leave them with no meaningful choice in the matter and also render them the easiest targets of coercion. The cases of ***Paschim Banga Khet Mazdoor Samity*** and ***Bandhua Mukti Morcha*** have emphasized that the State's obligation in respect of fundamental rights must extend to ensuring that the rights of the weaker sections of the community are not exploited by virtue of their position. Thus, the policies of the Government must not mirror the systemic discrimination prevalent in society but must be aimed at remedying this discrimination and ensuring substantive equality. In this regard, it is necessary that the policies and incentive schemes are made gender neutral and the unnecessary focus on female sterilization is discontinued.

Supplementary directions

88. On the basis of the submissions before us, we have highlighted some key issues that need active consideration. In addition, our attention was repeatedly drawn to the guidelines given by this Court in ***Ramakant Rai (I)*** and while it is generally the case of the Union of India and all the States that the guidelines are being followed, we find that at least in respect of some of them, there is still much more that needs to be done for their effective implementation not only in letter but also in spirit. Some fine-tuning is also necessary in view of the passage of time, change in circumstances and the need to use technology to the optimum.

Accordingly, we find it necessary to issue the following supplementary directions:

1. The State-wise, district-wise or region-wise panel of doctors approved for carrying out the sterilization procedure, must be accessible through the website of the Ministry of Health and Family Welfare of the Government of India as well the corresponding Ministry or Department of each State Government and each Union Territory. The list should contain all necessary particulars of each doctor and not merely the name and designation. This exercise should be completed on or before 31st December, 2016 and thereafter the list be updated every quarter that is by 31st March, 30th June, 30th September and 31st December of every year.

2. The contents of the checklist prepared pursuant to the directions given in ***Ramakant Rai (I)*** should be explained to the proposed patient in a language that he or she understands and the proposed patient should also be explained the impact and consequences of the sterilization procedure. This can be achieved by (a) ensuring that the checklist is in the local language of the State; (b) it should contain a certificate duly signed by the concerned doctor that the proposed patient has been explained the contents of the checklist and has understood its contents as well as the impact and consequences of the sterilization procedure; (c) in addition to the certificate given by the doctor, the checklist must also contain a certificate given by a trained counselor

(who may or may not be an ASHA worker) to the same effect as the certificate given by the doctor. This will ensure that the proposed patient has given an informed consent for undergoing the sterilization procedure and not an incentivized consent.

Sufficient breathing time of about an hour or so should be given to a proposed patient so that in the event he or she has a second thought, time is available for a change of mind.

The checklist prepared pursuant to the direction given in ***Ramakant Rai (I)*** with the aforesaid modifications should be prepared in the local or regional language on or before 31st December, 2016.

3. The Quality Assurance Committee (QAC) as well as the District Quality Assurance Committee (DQAC) has been set up in every State and District in terms of the directions given in ***Ramakant Rai (I)***. However, it is only the designation of its members that has been made available. The details and necessary particulars of each member of the QAC and DQAC should be accessible from the website of the Ministry of Health and Family Welfare of the Government of India as well the corresponding Ministry or Department of each State Government and each Union Territory on or before 31st December, 2016 and thereafter updated every quarter.

4. In addition to the six monthly reports required to be published by the QAC containing of the number of persons sterilized as well as the

number of deaths or complications arising out of the sterilization procedure, as already directed in ***Ramakant Rai (I)***, the QAC must publish an Annual Report (on the website of the Ministry of Health and Family Welfare of the Government of India as well the corresponding Ministry or Department of each State Government and each Union Territory) containing not only the statistical information as earlier directed, but also non-statistical information in the form of a report card indicating the meetings held, decisions taken, work done and the achievements of the year etc. This will have a significant monitoring and supervisory impact on the sterilization program and will also ensure the active involvement of all the members of the QAC and the DQAC.

The first such Annual Report covering the calendar year 2016 should be published on the websites mentioned above on or before 31st March, 2017.

5. As many as 363 deaths have taken place due to sterilization procedures during 2010-2013. This is a high figure. During this period, more than Rs. 50 crores have been disbursed towards compensation in cases of death. Apart from steps taken by Bihar and Chhattisgarh during the pendency of the writ petition to mitigate the sufferings of the patients, we have not been told of any death audit conducted by any State Government or Union Territory in respect of any patient, nor have we been informed of any steps taken against any doctor or anybody else

involved in the sterilization procedure that has resulted in the death of a patient or any failure or any other complication connected with the sterilization procedure. There is a need for transparency coupled with accountability and the death of a patient should not be treated as a one-off aberration. Therefore, it is directed that the Annual Report prepared by the QAC must indicate the details of all inquiries held and remedial steps taken.

6. With regard to the implementation of the Family Planning Indemnity Scheme (FPIS), there does not seem to be any definitive information with regard to the number of claims filed, the claims accepted and in which category (death, failure, complication etc.), claims pending (and since when) and claims rejected and the reasons for rejection. The QAC is directed to include this information in the Annual Report and the Ministry of Health and Family Welfare of the Government of India as well as the State Governments should make this information accessible on the website, including the quantum of compensation paid under each category and to the number of persons.

We have mentioned above that the learned Solicitor General had assured us on 20th March, 2015 that full details of the funds utilized under the FPIS would be furnished but that information has not been given as yet, necessitating the direction that we have passed.

In addition to the direction relating to the FPIS, the Ministry of

Health and Family Welfare should conduct an audit to ensure that the funds given by the Government of India have been utilized for the purpose for which they were given for the period from 2013-14 onwards.

7. The quantum of compensation fixed under the Family Planning Indemnity Scheme (FPIS) deserves to be increased substantially and the burden thereof must be equally shared by the Government of India and the State Government. The State of Chhattisgarh has shown the way in this regard and it would be appropriate if others follow the lead. Every death or failure or complication related to the sterilization procedure is a set-back not only to the patient and his or her family but also in the implementation of the national campaign. We decline to fix the quantum of compensation but would suggest, following the example of the State of Chhattisgarh, that the amount should be doubled and shared equally.

8. The Union of India is directed to persuade the State Governments to halt the system of holding sterilization camps as has been done by at least four States across the country. In any event, the Union of India should adhere to its view that sterilization camps will be stopped within a period of three years. In our opinion, this will necessitate simultaneous strengthening of the Primary Health Care centres across the country both in terms of infrastructure and otherwise so that health care is made available to all persons. The significance of

having well equipped Primary Health Centres across the country certainly cannot be over-emphasized. Therefore, we direct the Union of India to pay attention to this as well, since it is absolutely important that all citizens of our country have access to primary health care.

9. The Union of India should make efforts to ensure that sterilization camps are discontinued as early as possible but in any case within the time frame already fixed and adverted to above. The Union of India and the State Governments must simultaneously ensure that Primary Health Centres are strengthened

10. Although the Union of India has stated that no targets have been fixed for the implementation of the sterilization program, it appears that there is an informal system of fixing targets. We leave it to the good sense of the each State Government and Union Territory to ensure that such targets are not fixed so that health workers and others do not compel persons to undergo what would amount to a forced or non-consensual sterilization merely to achieve the target.

11. The decisions taken in the high level meetings held on 15th May 2015 and 17th November 2015 as well as the National Summit on Family Planning held on 5th and 6th April 2016 should be scrupulously implemented by the Ministry of Health and Family Welfare of the Government of India. The said Ministry should also ensure effective implementation of the decisions taken keeping in mind that the

sterilization program is a part of a national campaign.

12. The Union of India is directed to ensure strict adherence to the guidelines and standard operating procedures in the various manuals issued by it. The Sterilization program is not only a Public Health issue but a national campaign for Population Control and Family Planning. The Union of India has overarching responsibility for the success of the campaign and it cannot shift the burden of implementation entirely on the State Governments and Union Territories on the ground that it is only a public health issue. As the Justice Sarkaria Commission put it "Population Control and Family Planning is a matter of national importance and of common concern of the Union and the States."

13. We are pained to note the extremely casual manner in which some of the States have responded to this public interest petition. What stands out is the response of the States of Madhya Pradesh, Maharashtra, Rajasthan and Kerala in respect of which States allegations were made concerning mismanagement in at least one sterilization camp. None of these States have given any acceptable response to the allegations and we have no option but to assume that the camps that have been referred to in the writ petition were mismanaged as alleged by Devika Biswas. However, the matter should not end here. We direct the Registry of this Court to transmit a copy of this judgment to the Registrar General of the High Court in the States of Madhya Pradesh, Maharashtra, Rajasthan and

Kerala for being placed before the Chief Justice of the High Court. We request the Chief Justice to initiate a *suo moto* public interest petition to consider the allegations made by Devika Biswas in respect of the sterilization camp(s) held in these States (the allegations not having been specifically denied) and any other similar laxity or unfortunate mishap that might be brought to the notice of the Court and pass appropriate orders thereon. We also direct the Registry of this Court to transmit a copy of this judgment to the Registrar General of the Patna High Court for being placed before the Chief Justice of the High Court. We request the Chief Justice to ensure speedy completion of the investigations and proceedings relating to the mishap on 7th January 2012 in the sterilization camp in Kaparfora Government Middle School, Kursakanta, Araria district as well as the mishap in Chhapra in Saran district that led to cancellation of the accreditation of Gunjan Maternity and Surgical Clinic on 24th March 2012.

14. The State of Chhattisgarh is directed to implement the recommendations given in the Ms. Anita Jha Report at the earliest and with all sincerity.

15. We have already expressed our sadness at the fact that the National Health Policy has not yet been finalized despite the passage of more than one and a half years. We direct the Union of India to take a decision on or before 31st December, 2016 on whether it would like to

frame a National Health Policy or not. In case the Union of India thinks it worthwhile to have a National Health Policy, it should take steps to announce it at the earliest and keep issues of gender equity in mind as well.

Conclusion

89. With the above supplementary directions, the writ petition is disposed of. We must record our appreciation for the efforts put in by Devika Biswas in bringing this vital issue to the notice of this Court and to all the learned counsel and concerned officers of the Ministry of Health and Family Welfare of the Government of India in not treating the public interest litigation as an adversarial proceeding but as a collaborative effort to find a remedy to some problems and improve the well being of the citizens of the country.

.....……
(Madan B. Lokur)

…….……
(Uday Umesh Lalit)

New Delhi;
September 14, 2016