

***Devika Biswas v. Union of India & Ors.* [WP (C) 95/2012], Hon'ble Supreme Court of India**

SYNOPSIS

The irresponsible and target driven practice of 'sterilization camps' in India have resulted into an incident which completely violated the women's right to life as we witness in the case, *Devika Biswas v. Union of India & Ors.* In January, 2012, a sterilization camp was conducted in the Arharia district of Bihar sterilising 53 women within 2 hours in unhygienic and cruel conditions. This camp was organized in a government school by Jai Ambe Welfare Society and authorised by Bihar state.

The petition highlights the wrong practices employed by the state to achieve sterilization targets, which is discouraged by the SC and the National Population Policy 2000. It also brings about how sterilisation is viewed as a 'population control and stabilisation measure' by the healthcare personnel rather a way of safeguarding a woman's reproductive rights. The petition sought monetary compensation, directions for safety of patients, guidelines for terms of operations etc.

STATUS

A majority of the 34 respondents have made submissions in reply to the original petition. Most of these fail to provide concrete evidence and documentation to support generic and sweeping statements that the Centre's guidelines are being implemented. The Petitioner has filed additional documents as well as rejoinder affidavits in reply to the Respondents. The case is likely to be listed on July 10, 2015.

DATE	ORDER
30/01/2015	Supreme Court asked the State for payments to be made to the victims under Family Planning Indemnity Scheme.
14/08/2015	Supreme Court ordered for bi monthly high level meetings to inform of guidelines of the Government of India and the policy decisions that get modified from time to time. It also ordered for the state to implement the decisions taken in the meeting in the Secretary in the Ministry of Health and Family Welfare on 15 th May' 2015

DESCRIPTION

On January 7, 2012, a single surgeon sterilised 53 women in Bihar's Araria district in a middle school in between 8:00 and 10:00 p.m. Jai Ambe Welfare Society, authorised by the Bihar government, conducted the camp. The women, in absence of any adequate facilities, were lying on the benches of the classroom while getting operated by Dr. A. K. Chowdhary, who had no trained medical team to assist him.

He spent mere 2-3 minutes on each woman which medical experts say is impossible and did not change gloves or disinfect the equipment. The anaesthesia was not administered properly as a consequence of which a number of women reported that they were conscious and in pain when they were being cut into. The surgeon even being aware of the condition did not stop the surgeries. One of the women, Jitni Devi, was found to be pregnant during the procedure and the surgeon told her relatives that she would deliver the baby and then never give birth. She miscarried after 19 days.

After the procedure, the women were left lying on straw mats, brought by their families, on the ground 'like dead bodies'. The Hindu reported that there was even no one to attend to them when they woke up in pain and drenched in blood. A few relatives approached the Superintendent of Police, Mr. Lande, when they discovered that the Nimesulide medicine was expired. He raided the NGO's offices and found forged stamps, videos and photographs. Subsequently, the Principal Secretary of Health for Bihar, Mr. Amarjit Sinha, the District Magistrate and Civil Surgeon issued statements that the camp was conducted according to the Government of India guidelines and lauded the NGO and doctor for a job well done.

In consonance with the *Ramakant Rai* judgement, the Centre has issued guidelines that must be followed in sterilisation procedures all over India:

- a) Quality Assurance Manual for Sterilisation Services (2006)
- b) Standards for Female and Male Sterilisation (2006)
- c) Standard Operating Procedures for Sterilization Services in camps (2008)

The guidelines give explicit instructions regarding the place where the camp must be conducted, the timings of the camp, number of procedures a surgeon is allowed to do in a day, the pre-operative screening tests that must be done, selection criteria of the women, steps to maintain a hygienic and sterile environment and post-operative mandates, checklists to be maintained and forms to be explained to the women.

The Petitioner's fact-finding reports and the submissions of the Respondents' stand as testament that while the Union of India believes that issuing guidelines is where its responsibility ends, the States openly disregard them and the consequences include a country which accounts for 20% of the Maternal deaths in the world and a public healthcare system that is fast approaching a failed state.

A fact-finding in Rajasthan's Bundi district found that 42% of the women were not counseled about the permanency of the operation and 88% were not told about the complications and chances of failure. The sterilisation failure rate in India is 2.5% which is high when compared to the international rate of 0.5%.

The Petition also brings to light the instances of illegal sterilisation in Orissa where 6% of the physically disabled and 8% of the mentally challenged women were forcefully sterilised.

Sterilisation Drives

Madhya Pradesh appears to be replicating Sanjay Gandhi's sterilisation drive with the main thrust coming from the Chief Minister Shivraj Singh Chauhan. Government health workers are known to lure,

threaten and kidnap people for sterilisation. In January 2012, the Times of India reported that the M.P. govt. pressured health workers in Indore to perform 3,500 procedures in 3 months. A 16 year old boy who had gone to the hospital because he had a fever was injected with something that made him lose consciousness and when he woke up, he had been sterilised. The state has set a target of sterilising 10% of the population. In Jabalpur, 3 people who had already been sterilised in 2011 were forced again in 2012.

Sterilisation targets are wrapped beneath a bureaucratic veil by calling them "Expected Levels of Achievement". The women who are the targets of these sterilisation drives are either from rural, semi-rural areas or slums in the cities with ASHAs and Multi Purpose Health Workers being their interface with the health centres. The ASHAs and Multi Purpose Health Workers do not have a fixed salary system and are paid on the basis of per delivery or per surgery; so they are under paid and have uncertainty of job as well. In Madhya Pradesh, workers are given the incentive of winning a Nano if they get 500 people sterilised, a fridge for 50 people and a 10 gm gold coin for 25 people. Under their uncertain circumstances it is easy that they get lured by such offers and mobilize women to achieve their sterilization targets, without giving them information of other available contraceptives. Due to poor state of government health facilities people also prefer to choose these camps.

An ASHA in Khurda district, Orissa gives the game away when she innocently exclaims, "There are no more women left to sterilise in my village, I don't know how I will reach my sterilisation target for next year!" (Women Feature Service)

Tamil Nadu follows sterilisation-centric family planning schemes. There is a pattern of using institutional deliveries to convince women to get sterilised while they are in labour.

Southern states such as Kerala and Tamil Nadu are constantly shielded from criticism and pushing for improvement in health care practices as they are regarded as forward due to good Maternal Mortality Ratio, sex ratio and Fertility Rate. However, doctors here regularly sterilise women between 18 and 21 which is in violation of the Government of India guidelines. The state has monopoly on maternal reproductive health care. In one instance, a woman only discovered that an IUD had been inserted in her after 20 years.

Non-Access of Information

India is a signatory of ICPD, committed to "voluntary and informed choice and consent". But how will it get realized if the relevant information and education does not reach individuals. Constitutionally too it is the right of an individual to have access to sexual and reproductive health education and family planning information. Doctors and nurses freely admit that they do not counsel women. The apathy displayed by medical personnel is abhorrent. Temporary forms of contraception such as oral pills are not introduced to people as they assume that their instructions will not be complied with. People believe that condoms are used only for prevention of HIV/AIDS and are also not informed that sterilisation does not prevent STDs.

Workers frequently use inhumane language such as 'we can't encourage these women' and 'we must decrease the population'. Saroj, a resident of Delhi, explicitly stated "I don't want to do this" right before the procedure but she was quickly administered an injection that rendered her unconscious. Perhaps this is because page 9 of the Standards for Female and Male Sterilisation Services which deals with General Anesthesia states "it may be required...in case of a non-cooperative patient". Non-cooperative may be used synonymously with non-consensual and robs a patient of the right to say 'no'.

Additionally, the contraceptive and family planning needs of young widows and separated and divorced women are ignored. Contraceptive and spacing methods are also not available to couples outside marriage.

In 2003, India's Youth Policy recognised that 'information in respect of the reproductive health system should form part of the educational curriculum'. However, sex education still remains a topic that is talked about in whispers in India.

Burden on Women

Even after so many years the most used method of contraception has remained to be female sterilization. As men feel that getting sterilised challenges their masculinity. The Annual Health Survey, 2012, confirms the dark side of the state's family planning programme: female sterilisations account for 30.1 per cent of all contraceptives used.

Their targets are usually women who have had two children who are both male or at least one that is male as there is a strong son-preference in India. This also affects the sex ratio adversely. One ASHA working in Khurda region put it this way, "We are required to motivate and bring in couples for sterilisation, and we try our best to do this. We do not persuade those clients who have daughters to consider this option but prefer to focus on those who have already given birth to boys. They are much more receptive to the message. Sometimes we even motivate the woman's mother-in-law to send her across for sterilisation and she immediately agrees because she too does not want granddaughters." (Women Feature Service)

Two child norm

As the petition highlights that sterilisation should not be looked as a population control measure alone. In a similar fashion the aim of family-planning programme must be to enable couples and individuals to make informed choices and availability of safe and effective methods. The two child norm, which is promoted as a family planning policy, robs an individual's freedom to reproductive choices and is discriminatory. As its non compliance prevents an individual to participate in local self-governance and hold government jobs. This also leads to implications such as forced abortions, forced sterilization, sex-selective abortions, divorce, desertions and disowning of the third child. This has an adverse affect on the sex ratio as well. As in the want of a male child, more sex selective abortions are carried.

The counter-affidavits submitted by the Respondents are universally generic, lack substantive evidence and ignore facts presented in the petition. The Union of India claims no responsibility for atrocities committed at sterilization camps and in hospitals throughout the country, fails to address the crisis and insists that states are ultimately responsible for health issues. The Union of India tells the Court that it ‘asks states to take action’ in case of violations, but the affidavit fails to provide any evidence of requests or of action taken.

The Bihar response assumes that merely blacklisting the NGO is enough while no action is taken against the doctor and others involved. It fails to recognize that the entire system is faulting in implementing the standard procedures and guidelines given by the Supreme Court. Assam’s reply makes sweeping conclusions while Delhi’s reply refers to annexure that have not been attached. Delhi also states that it has never taken any punitive action and uses the word ‘right’ within quotation marks.

Sikkim reported no deaths, which is not even statistically realistic given the death rates and Jammu & Kashmir said that it has ‘taken constructive steps’ to implement *Ramakant Rai* which is not enough after 7 years since the *Ramakant Rai* guidelines.

Under the Government of India guidelines, each state is also required to compensate people for deaths due to sterilisation and failed sterilisations. However, most people who go through sterilisation do not know this and health workers neglect to inform them. Also, the long list of documents required to file for a claim is near impossible to procure given the sorry state of the public health system.

Date	Event
2000	The National Population Policy emphasises the need for informed consent and the elimination of setting targets for sterilisation.
2003	<i>Ramakant Rai</i> guidelines are issued by the Hon’ble Supreme Court. regulate health-care providers who perform sterilization procedures, and to compensate women who suffer complications due to sub-standard practices.
2006	The Quality Assurance Manual for Sterilisation Services and the Standards for Female and Male Sterilisation are issued by the Centre.
2008	The Standard Operating Procedures for Sterilization Services in camps is issued by the Centre
March 2011	International Federation of Gynaecology and Obstetrics (FIGO) issued its guidelines on Female Contraceptive Sterilisation.
January 7, 2012	53 women are sterilised in appalling conditions in a camp held in a middle school in Araria district of Bihar.
March 12, 2012	HRLN files the PIL on behalf of Devika Biswas (Civil Writ Petition) in the Supreme Court at Delhi under Article 32 of the Constitution of India.
January 31, 2015	Supreme Court asked the State for payments to be made to the victims under Family Planning Indemnity Scheme.
August 14, 2015	Supreme Court ordered for bi monthly high level meetings to inform the

	state officials of guidelines of the Government of India and the policy decisions that get modified from time to time. It also ordered for the state officials and implement the decisions taken in the meeting of the Secretary in the Ministry of Health and Family Welfare on 15 th May' 2015
November 10, 2014	A sterilisation camp in Chhattisgarh which was conducted in conditions similar to the January 2012 camp in Bihar leaves 15 dead. The Petitioner subsequently prays that the state of Chhattisgarh also be added to the list of Respondents. The government blames the drugs.