**Annex D – India**

***This information was compiled by Shanta Memorial Rehabilitation Centre, Women with Disabilities India Network, and Women Enabled International.***

*Violations of Sexual and Reproductive Rights*

Women with disabilities worldwide face a wide range of unique human rights abuses in sexual and reproductive health care settings, due to both their gender and disability. Stereotypes about women with disabilities mean they are disproportionately subjected to practices such as forced or coerced sterilization, contraception, and abortion.[[1]](#endnote-1) In its General Comment No. 3 on women with disabilities, the CRPD Committee recognized that “[i]n practice, the choices of women with disabilities, especially women with psychosocial or intellectual disabilities are often ignored, [and] their decisions are often substituted by third parties, including legal representatives, service providers, guardians and family members.”[[2]](#endnote-2) When women with disabilities are deprived of legal capacity, this can “facilitate forced interventions, such as: sterilisation, abortion, [and] contraception…”[[3]](#endnote-3) These practices are frequently based on false and discriminatory assumptions about the sexuality and ability of women with disabilities to parent or are based on the desire to control their menstrual cycles[[4]](#endnote-4) and are also considered severe human rights violations, including forms of torture or ill-treatment.[[5]](#endnote-5)

Although in rare cases it may be reversible, female sterilization is considered a permanent form of contraception, meaning that women who undergo sterilization will not be able to have children.[[6]](#endnote-6) In India, women with disabilities have historically been subjected to forced or coerced sterilization, due to disability-based stereotypes as well as state population policies, and forced sterilization of women with disabilities within institutions and by family is still common in India, even though it has been recognized as a human rights violation.[[7]](#endnote-7) For instance, there are several reports from the 1990s of women and girls undergoing forced sterilizations in institutions in India.[[8]](#endnote-8) Furthermore, as recently as 2008, the government of Maharashtra supported a policy of forcibly sterilizing “mentally challenged” women and girls in institutions as a means of ensuring “menstrual hygiene” or the elimination of periods.[[9]](#endnote-9) There is no existing legal provision that prohibits non-consensual sterilization, and in recent years, sterilization methods using certain drugs has been tested on a large scale instead of teaching women with disabilities to manage menstrual hygiene and ensuring that they are protected from rape.[[10]](#endnote-10) Indeed, although the CEDAW Committee recognized in its 2014 review of India that “women with intellectual disabilities can be sterilized without their consent,” in violation of CEDAW, India has not yet remedied this violation.[[11]](#endnote-11)

In 2006, the Ministry of Health issued guidelines for the sterilization of all men and women in India.[[12]](#endnote-12) Under these guidelines, for sterilization to be performed, the guidelines provide that women must be “of sound state of mind so as to understand the full implications of sterilization,” and women with psychosocial disabilities “must be certified by a psychiatrist, and a statement should be given by the legal guardian/spouse regarding the soundness of the client’s state of mind.”[[13]](#endnote-13) However, abuses may still result when women with disabilities, particularly intellectual and psychosocial disabilities, are stripped of legal capacity or otherwise denied reasonable accommodations. Concerning informed consent, the guidelines indicate that the client must sign a consent form before surgery, and that spousal consent is not needed for sterilization, though the guidelines do not comment on guardian consent. While the “informed consent” form requires confirmation that information about the procedure has been read out and explained to the person concerned in their preferred language, it does not require confirmation that support and reasonable accommodation has been given to persons with disabilities in order to ensure their full and informed consent.[[14]](#endnote-14) In the absence of guarantees for reasonable accommodations and a specific bar on substituted decision-making, it may still be possible for women and girls with disabilities to be sterilized without their consent and with only the consent of a guardian or parent, a situation that does not conform to international medical ethics standards from the International Federation of Gynecology and Obstetrics (FIGO).[[15]](#endnote-15)

Additionally, under the Medical Termination of Pregnancy Act, 1971 (as amended in 2002), guardians can consent to abortions for women with psychosocial disabilities, leading to forced abortions.[[16]](#endnote-16) Although the Supreme Court of India in 2009 found that guardians of women with “mild to moderate” intellectual disabilities cannot similarly provide consent to abortion on behalf of their wards, the Court did not strike down the provisions of the Medical Termination of Pregnancy Act, 1971, that allow for forced abortion of women with psychosocial disabilities. The Court in fact distinguished between psychosocial and intellectual disabilities, stating that, as per the law, a guardian could still provide consent for terminating pregnancies of women with psychosocial disabilities.[[17]](#endnote-17)

1. UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*,**¶¶** 28 & 36, U.N. Doc. A/67/227 (2012). [↑](#endnote-ref-1)
2. CRPD Committee, *General Comment No. 3: Article 6: Women and girls with disabilities*, **¶ 44**, U.N. Doc. CRPD/C/GC/3 (2016). [↑](#endnote-ref-2)
3. *Id.* [↑](#endnote-ref-3)
4. UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*,**¶¶** 28 & 36, U.N. Doc. A/67/227 (2012). [↑](#endnote-ref-4)
5. CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, **¶** 22, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law,* U.N. Doc. CRPD/C/GC/1 (2014); Human Rights Committee, *Concluding Observations: Czech Republic*, **¶** 11, U.N. Doc CCPR/C/CZE/CO/3 (2013); CAT Committee, *Concluding Observations: Czech Republic*, **¶** 12, U.N. Doc. CAT/C/CZE/CO/4-5 (2012); Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, **¶** 48, U.N. Doc. A/HRC/22/53 (2013). [↑](#endnote-ref-5)
6. World Health Organization, et al, *Eliminating forced, coercive or otherwise involuntary sterilization: An interagency statement* 1 (2014), *available at* http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325\_

eng.pdf. [↑](#endnote-ref-6)
7. For instance, a 2004 survey of violence against women with disabilities in Orissa, India, found that about 6% of women with physical disabilities and about 8% of women with intellectual and psychosocial disabilities had been forcibly sterilized (Dr. Sruti Mohapatra and Mr. Mihir Mohanty, *Abuse and Activity Limitation: A Study on Domestic Violence against Disabled Women in Orissa, India* 16 (2004), *available at* http://swabhiman.org/userfiles/file/Abuse%20and%20Activity%20Limitation%20Study.pdf). These sterilizations were often the result of fears from family members that women with disabilities would be raped and become pregnant, as well as assumptions about whether women with disabilities could consent to sex and whether they could be good parents (*Id. at* 16). This was also a major point of discussion at the Regional Meeting of the WwD India Network organized in Hyderabad on Feb. 23-24, 2013. [↑](#endnote-ref-7)
8. *See, e.g.*,Rajeswari Sundar Rajan, *Beyond the Hysterectomies Scandal: Women, the Institution, Family, and State in India*, in The Pre-occupation of Post-Colonial Studies (ed. Khan & Seshadri) 200, 201 (2000). [↑](#endnote-ref-8)
9. Ashika Misra, *Is hysterectomy the final solution?,* DNA India, Jan. 30, 2008, http://www.dnaindia.com/mumbai/

report-is-hysterectomy-the-final-solution-11482. [↑](#endnote-ref-9)
10. Women with Disabilities India Network, *Meeting in Bangalore*, Feb. 4, 2012. [↑](#endnote-ref-10)
11. CEDAW Committee, *Concluding Observations: India*, **¶** 36, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014). [↑](#endnote-ref-11)
12. For instance, these guidelines indicate that women in India who undergo sterilization should be between the ages of 22 and 49—meaning that girls with disabilities should not be subjected to sterilization (Ministry of Health and Family Welfare, *Standards for Female and Male Sterilization Services* 3-4 (2006), *available at* http://nrhm.gov.in/images/pdf/guidelines/nrhm-guidelines/family-planning/std-for-sterilization-services.pdf.). [↑](#endnote-ref-12)
13. *Id.* at 3-4. [↑](#endnote-ref-13)
14. *Id.* at 6. [↑](#endnote-ref-14)
15. International Federation of Gynecology and Obstetrics (FIGO), *Female Contraceptive Sterilisation*, **¶** 7 (June 2011), *available at* http://www.figo.org/sites/default/files/uploads/wg-publications/ethics/English%20Ethical%

20Issues%20in%20Obstetrics%20and%20Gynecology.pdf (“Only women themselves can give ethically valid consent to their own sterilisation. Family members – including husbands, parents, legal guardians, medical practitioners and, for instance, government or other public officers – cannot consent on any woman’s or girl’s behalf.”). [↑](#endnote-ref-15)
16. Medical Termination of Pregnancy Act, 1971, § 3(4)(a) (1971) (India). [↑](#endnote-ref-16)
17. Supreme Court of India, *Suchita Srivastava & Anr vs Chandigarh* (2009), *available at* https://indiankanoon.org/

doc/1500783/. [↑](#endnote-ref-17)