IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 131 OF 2013

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

In the matter of:

Dr. Narendra Gupta ...Petitioner

Versus

Union of India & Ors. ...Respondents

PAPER BOOK

VOLUME I (Page A1 to 219)

WITH

I.A. No. of 2013: Application for Exemption from Filing Official Translation

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ADVOCATE FOR THE PETITIONER: Jyoti Mendiratta

SYNOPSIS

1. This petition is filed in the nature of Public Interest Litigation and is concerned with the violations of fundamental rights of women and girls by the Governments of Bihar, Chhattisgarh, and Rajasthan and the private hospitals in specific districts of these states and in their failures to provide adequate healthcare and programs consonant with Constitutional, international, statutory, and regulatory obligations. The recent news stories and RTI results showing the high number of hysterectomies being conducted by private hospitals has garnered significant regional and national attention, and highlighted a series of systemic failures that raise serious concerns about the provision of health services for the public at large.

2. By failing to implement Government schemes for those living Below the Poverty Line (BPL), the state governments have placed insurmountable barriers to care. Indeed, women in Bihar, Chhattisgarh, and Rajasthan are being denied their legal entitlements to medical and financial assistance including access to a functioning health centres for examination. Moreover, because the Governments have failed to construct and manage health centres as per the mandate

of the National Rural Health Mission (NRHM), women living in outlying areas are left with no option but to travel hundreds of kilometers to private hospitals to obtain medical care.

3. Once they reach the private hospitals in the districts investigated, medical staff conducts unneeded hysterectomies, violating these women's right to quality healthcare, including bodily integrity and informed consent under the Indian Constitution, the Code of Ethics Regulations, and the Consumer Protection Act.

4. As such, women and girls have suffered, and continue to suffer, egregious violations of their rights in contravention of Article 21 (Protection of Life and Liberty), Article 14 (Right to Freedom from Discrimination) and Article 15 (Right to Equal Protection of the Law) of the Constitution of India. The States have also impermissibly derogated from their legal obligations under binding international human rights treaties to respect, protect and fulfill the reproductive and health rights of women and girls. It is settled law that the right to health is an integral part to the right to life under Article 21 of the Constitution of India, and the Union of India has a constitutional obligation to provide adequate health facilities. *State of Punjab v. Mohinder Singh Chawla,* [1997 (2) SCC 83]. In the groundbreaking judgment, *Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors*, [W.P.(C) Nos. 8853 of 2008],

the Delhi High Court recognized that an "inalienable" component of the right to life is "the right to health, which would include the right to access government (public) health facilities and receive a minimum standard of care." India is also obligated under international human rights law to respect, protect, and fulfill human rights in relation to health.

5. To address India's shamefully high Maternal Mortality Rate (MMR), the Central Government introduced the National Rural Health Mission (NRHM) in 2005 to provide health care to poor women and children and rural populations of India, with a primary focus on addressing India's high rate of maternal and infant mortality.

6. The Central Government also introduced the Rashtriya Swasthya Bima Yojna (RSBY) scheme in 2008. This scheme aims to provide affordable health insurance to people living Below the Poverty Line (BPL). The program intends to protect BPL populations from cost prohibitive health services and heavy debt incurrence for basic health services. It subsidizes health insurance for marginalized people and provides health insurance coverage of up to Rs. 30,000 with only a Rs. 30 registration fee. To accept payment via an RSBY "smart card", public and private hospitals must become officially empanelled under the scheme.

7. Notwithstanding the aforementioned schemes, teams of health activists traveled to all three states to conduct fact-finding investigations after learning of the hysterectomy scams, and found significant gaps in the delivery of healthcare services under the NRHM, leading to the burgeoning rise of private hospitals in each state. Moreover, the team found ubiquitous violations of women's reproductive rights including inadequately staffed and unhygienic rural public healthcare centres that effectively push rural women to seek healthcare in private facilities.

8. The NRHM Public Actions Committee noted its distress in 2011, that

> "a large number of Health Centers at various levels viz. sub-centres, PHCs and CHCs are located in substandard environment such as garbage dumps, cattle sheds, stagnant water bodies, polluting industries and functioning in unhygienic conditions…health centres lacked essential infrastructure viz., water supply and storage tanks, facilities for disposal of sewage and biomedical waste and separate utilities for men and women. The Committee wonders how these health centres would be able to attract patients given their pathetic and

shabby conditions. It is therefore, not surprising that rather than curing diseases such health centres will not only breed and spread diseases to otherwise healthy patients and their attendants but also drive away the patients to private health facilities thereby unwittingly defeating the very purpose of setting up these health centres."

9. The petitioner, Dr. Narendra Gupta explains in his report dated April 2011 that most of the women he interviewed in Rajasthan should not have undergone a hysterectomy, and could have likely been cured with other treatments. Moreover, he explains that a sonography alone is insufficient to determine a need for hysterectomy, and alternative treatments should always be attempted before this invasive surgery is performed.

10. Dr. Gupta's report reveals the stories of the victims of the hysterectomy scams. For example, Guddi underwent a tubal ligation after her last child was born. For 18 months, she experienced abdominal pain, excessive menstrual bleeding, and extreme weakness. She received advice in her village to visit Balaji Hospital in Bandikui, which is run by Dr. Dhalar. On the day of her first visit, she had a sonography and was admitted for hysterectomy, which was performed the next

morning. The doctor told her that her uterus had "spoiled" and may burst or lead to cancer. She said she was not given anaesthesia for the surgery and she became unconscious. Her family paid for the surgery out of their savings. She received no relief from the surgery, and still experiences pain.

11. There is also Sunita, who is 28 years old and has three children ages 6, 7, and 9. She underwent a tubal ligation one year after the birth of her last child, when she began to experience abdominal pain and an irregular menstrual cycle. In October 2009, she attended a free consultation camp held by Dr. Madaan in Bandikui, where she was advised that she needed a sonography. The very same day, Dr. Madaan took her to Madaan Hospital, where she had a sonography. She was told her uterus was "decaying", and she was admitted for hysterectomy that same day at 7:00 p.m. She and her husband wanted to seek another consultation, but Dr. Madaan insisted on immediate hospitalization. Her family borrowed money to pay Rs. 20,000 for the surgery. She experienced no relief from the surgery and was forced to seek additional medical consultations every 10-15 days. She continues to experience abdominal pain and regularly takes medication.

12. Sita is 28 years old, and she has three children ages 2, 3, and 12 years. For two months, she suffered from abdominal pain and excessive menstrual bleeding. In September 2010,

she visited Madaan Hospital where she had a sonography and was told that she had "bad patches" on her uterus that could lead to cancer. She was admitted and underwent the hysterectomy on the same day as her initial appointment. After the operation, her stitches became infected, and she experienced a lot of pain and vomiting. Her family borrowed money to pay Rs. 20,000 for the surgery. She still experiences abdominal pain and nausea.

13. The fact-finding mission in Dausa district of Rajasthan revealed that the government hospitals were unclean, understaffed, and underequipped. The District Hospital reportedly has not performed a surgery in over five years, often referring patients to private hospitals as far away as Jaipur, approximately 60 kilometres away. These conditions demonstrate why many patients must go to private facilities, where unlawful activities are taking place.

14. News stories from Chhattisgarh reveal that the condition of public healthcare is as dire as in Rajasthan and that illegal hysterectomies are rampant throughout the state. The Indian Express reports that many of the women who seek hysterectomies are not well informed about the side effects of the operation, and think of a hysterectomy as any easy cure to stop menstruation, child birth, and abdominal ailments. The doctors are not educating the women, they do not get

informed consent for the hysterectomies, and they are performing this invasive surgery on a request basis in gross violation of the ethics regulations.

15. A fact-finding team spoke with victims of the hysterectomy scam in Chhattisgarh. One woman, Dharhakanandi, is 35 years of age and has three children. Four years ago, she began experiencing severe abdominal pain and she was prescribed medicine for treatment. The medicine did not relieve her pain, so she visited Soni Multispecialty Hospital, where the doctor told her that her uterus was swollen and she had four tumors, leaving her with no other option but to have a hysterectomy. She does not remember undergoing any medical exams at Soni before the surgery. Two weeks later she had a hysterectomy, and she paid Rs. 35,000 of her own money for the surgery.

16. The fact-finding team also found that private hospitals under investigation in Chhattisgarh recently visited former hysterectomy patients to coercively convince them that they had accented to the surgery of their own volition. Vishwakarma Hospital went as far as to temporarily abduct a former patient in order to convince her that there was nothing wrong with her surgery.

17. In Bihar, the fact-finding mission revealed that several women had undergone hysterectomies at private hospitals on the same day as their initial hospital consultations. The women had only had sonographies – no additional tests were performed. Many of the women received no paperwork from the private hospitals regarding the surgeries, and many of the BPL women paid out-of-pocket costs that were not covered by the smart card insurance. The fact-finding team also found that there is illicit recruiting ongoing in the villages, involving "middlemen" who convince women to go to private hospitals and use their smart cards for care. Fraud committed by the private hospitals has also come to light, with physical examinations of former patients revealing that some of the surgeries never took place.

18. The pervasive nature of the illegal hysterectomies in Bihar is illustrated by The Times of India news story, which reports that, in the three blocks of Kishanganj district, 374 BPL women have undergone hysterectomies in the last two years, with 116 hysterectomies in one block alone.

19. As the petitioner makes clear in his report, women should usually undergo several tests and alternative treatments before a hysterectomy is performed. Many of the women interviewed in Bihar, Chhattisgarh, and Rajasthan were misled into believing that there was an emergency and that the

surgery was urgent. They were made to believe that they might get cancer if they did not comply with the doctors' advice. Yet, the doctors did not conduct any testing that could lead to the conclusion of a need for an emergency hysterectomy.

20. The doctors withheld essential information from the women, such as information about which tests are required to determine a need for hysterectomy, and thus could not have obtained informed consent. If the women had been aware of the risks and side effects of a hysterectomy, which include long-term medication therapy for premature menopause and increased risk of cancer, they would have been unlikely to undergo the surgery. Furthermore, if counseled and treated properly by their doctors, the women's ailments could have been cured using medication or lifestyle change, rather than invasive surgery.

21. In *Samira Kohli v. Dr. Prabha Manchanda and Anr.,* [Appeal (Civil) 1949 of 2004], this Hon'ble Court quoted the findings of the consulting doctor, Dr. Puneet Bedi, regarding the side effects of a hysterectomy:

> "…removal of uterus results in abrupt menopause. In natural menopause, which is a slow process, the body gets time to acclimatize to the low level of

hormones gradually. On the other hand when the ovaries are removed, there is an abrupt stoppage of natural hormones and therefore Hormone Replacement Therapy is necessary to make up the loss of natural hormones...But hormone replacement therapy has side effects and complications."

22. This Hon'ble Court detailed informed consent in *Samira Kohli*, holding that the

> "…doctor has to seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that: the patient should have the capacity and competency to consent; his consent should be voluntary; and his *consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what he is consenting to.*" (emphasis added)..

23. The Government has failed to adhere to its legal obligations to protect women's fundamental rights as enshrined in Articles 14, 15, and 21, related human rights treaties, and domestic laws and schemes. As such, judicial intervention is necessary to redress the continuous violations experienced by women living in these states and the

surrounding areas. Urgent and immediate relief is requested from this Hon'ble Court to ensure that women's dignity, equality, and humanity is restored *in toto*.

24. Hence this Petition praying for the following:

a) For an order directing Respondents to provide adequate compensation for the egregious constitutional violations of the women who have undergone unnecessary hysterectomies in private hospitals in Bihar, Chhattisgarh, and Rajasthan in the past two years.

b) For an order directing Respondents to reimburse all costs accrued in the receipt of medical care, including but not limited to, costs associated with transport, surgical procedure, and purchase of medicine and food.

c) For an order directing Respondents to implement monitoring, inspection, and accountability mechanisms for the private healthcare industry, including public reporting of findings.

d) For an order directing Respondents to establish an independent monitor for the functioning of the RSBY scheme within their respective states, and inspect and monitor the hospitals empanelled under the scheme.

e) For an order directing the Respondent states to investigate healthcare infractions and common medical ailments at the village level and undertake counteracting health education programs.

f) For an order directing Respondents to plan and implement improvements in infrastructure, personnel, and monitoring for government healthcare facilities in rural areas, including the incorporation of preventative healthcare at the village level.

g) For an order requiring the suspension of the involved private doctors by the Indian Council of Medicine.

h) For an order imposing criminal liability on the involved doctors for engaging in fraudulent healthcare practices.

i) For any other order/direction that this Hon'ble Court may deem fit.

LIST OF DATES AND EVENTS

10.4.79 The Government of India ratifies the International Covenant on Civil and Political Rights (ICCPR), which includes the right to be free from torture or cruel, inhuman or degrading treatment (article 7)

and equal protection before the law (article 3).

10.4.79 The Government of India ratifies the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantees the right to the highest attainable standard of health (article 12).

13.1.81 *Francis Coralie Mullin v. Union Territory of Delhi & Ors*, [1981 SCR (2) 516]. This Hon'ble Court holds that the right to protection against torture and cruel, inhuman or degrading treatmentis implicit in Article 21 of the Indian Constitution.

24.12.86 The Government of India enacts the Consumer Protection Act to protect consumers' rights in the course of transactions.

28.8.89 *Pt. Parmanand Katara v. Union of India & Ors.,* [1989 SCR (3) 997]. This Hon'ble Court holds that Article 21 of the Constitution casts the obligation on the State to preserve life.

27.1.95 *Consumer Education and Research Centre v. Union of India,* [1995 SCC (3) 43]. This Hon'ble Court holds that Article 21 of the Constitution of India includes a fundamental right to health, and that this right is a "most imperative constitutional

goal."

13.11.95 *Indian Medical Association vs. V.P. Shantha and Ors.*, [(1995) 6 SCC 651]. This Hon'ble Court holds that medical care falls under the definition of "service" in the Consumer Protection Act.

6.5.96 *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* 36, [1996 (4) SCC 37]. This Hon'ble Court holds that failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in a violation of his right to life guaranteed under Article 21.

20.1.99 *Apparel Export Promotion Council v. Chopra*, [AIR 1999 SC 625]. This Hon'ble Court holds that gender equality is one of the "most precious Fundamental Rights guaranteed by the Constitution of India."

25.9.01 *Smt. Vinitha Ashok v. Lakshmi Hospital*, [(2001) 8 SCC 731]. This Hon'ble Court holds that where it has not been established to the court's satisfaction that a medical opinion relied on is reasonable or responsible, a doctor will be liable for negligence in respect of diagnosis and

	treatment in spite of a body of professional opinion approving his conduct.
6.4.02	The Medical Council of India promulgates the Code of Ethics Regulations.
16.1.08	In *Samira Kohli v. Dr. Prabha Manchanda and Anr.,* [Appeal (civil) 1949 of 2004], this Hon'ble Court established the obligations of doctors in obtaining informed consent for medical procedures.
April 2008	The MOHFW issues the District Level Household and Facility Survey (DLHS-3) 2007-2008, Fact Sheet: Rajasthan.
September 2010	The RTI results are released to Akhil Bharatiya Grahak Panchayat following its RTI request for records regarding hysterectomies in Dausa, Rajasthan.
April 2011	A list of news stories related to hysterectomies in Dausa, Rajasthan is compiled.
April 2011	Petitioner Dr. Narendra Gupta and HRLN issue a fact-finding report on hysterectomies in Dausa, Rajasthan.
10.6.11	The state-formed hysterectomy investigation

	committee writes a letter with investigation summary to the Dausa District Magistrate.
Late 2011	The Dausa District Collector writes a letter to the Chief Minister of Rajasthan regarding the hysterectomy investigation committee's investigation results.
17.7.12	Hindustan Times publishes the article, "Chhattisgarh docs remove wombs to claim insurance."
18.7.12	The Times of India publishes the article, "Doctors in Chhattisgarh 'illegally removed' wombs from poor women."
25.7.12	The Indian Express publishes the article, "How 'surgical fraud' counts vary."
7-11.8.12	HRLN issues the fact-finding report on healthcare in Raipur, Chhattisgarh.
9.8.12	The Hindu publishes the article, "Insurance does not cover the wombs woes."
16.8.12	Health Watch Forum Bihar issues the fact-finding report on hysterectomies in Samastipur, Bihar.
25.8.12	Dainik Jagaran publishes the article, "1,700 young

women's wombs were taken out."

27.8.12 The Indian Express publishes the article, "16,000 'illegal' hysterectomies done in Bihar for insurance benefit."

1.9.12 The Times of India publishes the article, "374 hysterectomy in 3 Kishanganj blocks."

13.9.12 The Indo Asian News Service publishes the article, "Bihar cancels nursing home licenses after uterus scams."

6.2.2013 BBC World Service publishes the article, "The Indian women pushed into hysterectomies"

.2.2013 Hence, this petition

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2013

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

In the matter of:

Dr. Narendra Gupta,

A-64, Bapu Nagar,

Senthi,

Chittorgarh – 312001. Petitioner

VERSUS

1. Union Of India,

   Through The Secretary,

   Ministry Of Health & Family Welfare,

   Govt. Of India, Nirman Bhawan,

   C-Wing, New Delhi – 110001 Respondent No.1

2. The State Of Bihar

   Through The Chief Secretary,

   Govt. Of Bihar,

   Old Secretariat,

Patna-800015, Bihar Respondent No.2

3. State Of Rajasthan

Through The Chief Secretary,

Government Of Rajasthan,

Secretariat,

Jaipur-302005, Rajasthan Respondent No.3

4. State Of Chhattisgarh

Through The Chief Secretary,

Government Of Chhattisgarh,

D.K.S. Mantralaya,

Chhattisgarh - 492001 Respondent No.4

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING DIRECTIONS AGAINST THE RESPONDENTS

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

& HIS LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE

PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the present petition has been filed in the nature of Public Interest Litigation, under Article 32 of the Constitution of India, and arises from an influx of news stories and Right to Information (RTI) results in the states of Bihar, Chhattisgarh, and Rajasthan regarding unlawful hysterectomies and related insurance scams. The petition, *inter alia*, prays for a writ of mandamus or any other writ, order or direction in the nature of mandamus, directing the respondents to implement monitoring, inspection, and accountability mechanisms for the private healthcare industry, including public reporting of findings, for a writ in the nature of mandamus directing the respondents to establish an independent monitor for the functioning of the RSBY scheme within their respective states, and inspect and monitor the hospitals empanelled under the scheme, and further for directing respondents to provide adequate compensation for the egregious constitutional violations of the women who have undergone unnecessary hysterectomies in private hospitals in Bihar, Chhattisgarh, and Rajasthan in the past two years.

1A. That the issues raised in the present petition are based on the violations of well recognized fundamental rights of

women on part of the respondents and also various healthcare schemes and programs of the government, information regarding which violations has been received under the Right to Information Act and such violations have also been documented in numerous newspaper reports and fact-findings conducted by the petitioner and other organizations. Thus, the petitioner has approached this Hon'ble Court under Article 32 of the Constitution of India and has not approached the concerned authorities for the reliefs prayed for in this petition.

2. That the petitioner Dr. Narendra Gupta is a trained medical doctor. He has been working for the protection and promotion of health status of rural poor tribal community in Rajasthan since 1979. During this 33 years long span, the petitioner has designed and implemented community based health care programs for the most disadvantaged rural community in many areas. He has been carrying out research to understand the effect of different economic and health policies on the health status of different communities with focus on rural and urban poor.

3. That the respondent no.1 is the Union of India represented through the Secretary, Ministry of Health and Family Welfare

is the nodal ministry for the planning, promotion and implementation of policies, schemes and programmes relating to health and family welfare.

4. That respondent nos.2, 3 and 4 are the States of Bihar, Rajasthan and Chhattisgarh represented through their respective Chief Secretaries. These states have violated the fundamental rights of women and girls in their failures to provide adequate healthcare and programs consonant with Constitutional, international, statutory, and regulatory obligations.

5. That the factual and legal position leading to the filing of the present petition is narrated hereinbelow.

6. That specifically, the RTI results show that between the months of April and October 2010, three private hospitals in Bandikui in the Dausa District of Rajasthan conducted 286 hysterectomies out of 385 total operations. The news stories reveal similar incidents in Bihar and Chhattisgarh. The alarming news and RTI results spurred multiple fact-finding investigations, and revealed a medical phenomenon grossly violative of Constitutional and human rights obligations. In fact, women who complained of stomach pains were

recommended to undergo hysterectomies with nearly all of the women admitted for removal of their uterus the same day as the initial consultation.

7. Through interviews of women, review of medical records, and a medical assessment by Dr. Narendra Gupta, a leading expert doctor in the public health field, the hysterectomies were shown to be largely unnecessary. Furthermore, many of the women continue to experience pain and swelling to this day, which the hysterectomies provided no relief for. In these situations, private hospitals are in fact not only failing to provide healthcare services, but actually engaging in unethical and exploitative practices that violate patients' rights to informed consent, bodily integrity, and basic reproductive health. The petition concerns violations of human rights and reveals the lack of health services for women in Bihar, Chhattisgarh, and Rajasthan as required by the Constitution, binding international law, case law, and governmental schemes.

8. The facts surrounding the excessive number of hysterectomies and absolute lack of action taken by the states' Chief Medical Officers to investigate or follow-up on the high number of procedures sufficiently proves that the states of Rajasthan, Chhattisgarh, and Bihar have failed to

safeguard and provide for the general and reproductive health of women. Furthermore, these states have failed to ensure the rights detailed in this Hon'ble Court's ruling in *Samira Kohli v. Dr. Prabha Manchanda and Anr.,* [Appeal (civil) 1949 of 2004], where the Court mandated the guidelines for informed consent. True copy of the decision of this Hon'ble Court in *Samira Kohli v. Dr. Prabha Manchanda and Anr.,* [Appeal (civil) 1949 of 2004], dated 16.01.2008 is annexed hereto and marked as **ANNEXURE P-1** (**Pages .....).**

CASES FROM RAJASTHAN

9. The state of maternal healthcare in Rajasthan is dire. As of the third District Level Household and Facility Survey (DLHS-3) of 2007-2008, only about half of all women had "safe deliveries," which is defined by the DLHS-3 as an institutional delivery or a home delivery with a skilled attendant. Most shockingly, only 6.6% of women had full government-mandated antenatal care, which includes three antenatal check-ups, one tetanus toxoid (TT) injection, and 100 iron/folic acid (IFA) pills or the equivalent amount of syrup. Furthermore, only 21.8% of married women ever received counselling by health personnel regarding family planning, and only 47.3% of women have heard of sexually

transmitted infections (STIs). The data also shows that the healthcare facilities are lacking in personnel and services: only 6.2% of primary health centres (PHCs) had lady medical officers; only 50.4% of Sub-centres where an auxiliary nurse midwife (ANM) lives on the premises; only 31.5% of PHCs offered referral services for pregnancies/deliveries; and only 29.9% of community health centres (CHCs) had obstetricians or gynaecologists. True copy of the relevant excerpts of the DLHS-3, issued by the MOHFW, and dated April 2008 is annexed hereto and marked as **ANNEXURE P-2 (Pages .....).**

10. As a result of reports of unnecessary and costly hysterectomies sweeping the state of Rajasthan, the consumer rights NGO, Akhil Bharatiya Grahak Panchayat, filed a Right to Information (RTI) request to obtain details regarding these surgeries in five hospitals within one kilometer of Bandikui in Dausa district. Of the five hospitals listed in the RTI, three hospitals- Madaan Nursing Hospital, Sri Balaji Hospital, Vijay Hospital- complied with the request. The RTI revealed that in the six-month period of April to October 2010 out of 385 surgeries performed on women in these three hospitals, 286 were uterus removals. As a result of the operations carried out in women in these private hospitals, an astonishing 74% were hysterectomies. True

copy of the information under RTI issued by Madaan Nursing Home Pvt. Ltd. dated 09.12.2010 and issued by Shri Balaji Hospital dated 01.12.2010 are annexed hereto and marked as **ANNEXURE P-3 (Colly) (Pages .....).**

11. The uterus removal patients come from the villages outlying Bandikui. These women are members of Other Backward Castes (OBC), Scheduled Castes (Dalits), and Scheduled Tribe classes within the age group of 20 to 35 years. According to the fact-finding, the hysterectomies followed a similar pattern wherein doctors operated on the same day or with very little time between the initial consultation at the hospital and the surgical procedure itself.

12. In some cases, government healthcare facilities did not provide adequate treatment, if any at all, for women who came to the hospital for stomach pains. Subsequently, agents of private hospitals coaxed them to seek treatment at private hospitals.

13. Typically, a woman experiencing abdominal pain or gynecological symptoms would submit to a series of diagnostic tests before a hysterectomy is authorized by a doctor as medically necessary. The pre-operation tests

should include several of the following: a pelvic examination, pap smear (lab test for abnormal cells), laparoscopy (surgical insertion of a small camera to view inside the abdomen), sonography, or biopsy of the uterus or cervix (lab test for cancer). Usually, a course of medication will be given before a hysterectomy is performed. Ethically, a doctor is also obligated to explain the consequences of the surgery, offer alternatives, and allow time for a patient to seek a second opinion before scheduling a surgery. As with any major surgery, the patient requires post-surgical recovery care, instructions for self-care and mitigation of side-effects. The precautions are necessary because of the risks related to any major surgery, the side effects of a hysterectomy, and the long-term consequences, namely loss of fertility.

14. Women who had operations at the private hospitals in Bandikui, shared incredibly similar experiences of their hysterectomies. In each case, the medical professionals did not follow safe and ethical standards of care. In almost every case, the doctors conducted just one minimal physical examination and usually one diagnostic sonogram. Some women were even diagnosed with problems of the uterus without any tests. The doctors or medical staff would then inform the women and their husbands that their

examination indicated a great risk of cancer or that their uterus was "destroyed" and immediate removal of the uterus was required. The most common diagnoses indicated in the medical charts of the women were pelvic inflammatory disease (PID) with "bulky uterus"; PID with dysfunctional uterine bleeding (DUB); prolapsed uterus; fibroid uterus; and DUB "bulky uterus." The women were rushed into surgery and required to pay between Rs 7,000 and 20,000 for the procedure and medications required afterward. Most of the women complained that their stomach pains remained and that the surgery provided little relief. True copy of compilation of selected media articles, issued by various newspapers, dated nil, is annexed hereto and marked as **ANNEXURE P-4 (Pages .....).**

15. To better understand the conditions in Bandikui and the surrounding areas, health activists conducted a fact-finding in April 2011. The purpose was to ascertain whether unnecessary hysterectomies were being carried out in private hospitals. Health activists met with the private doctors in the hospitals in Bandikui, as well as independent physicians. The fact-finding team also met with affected women to obtain personal stories as to the facts surrounding the hysterectomies. True copy of the fact-finding report, issued by Dr. Narendra Gupta and HRLN,

dated April 2011, is annexed hereto and marked as **ANNEXURE P-5 (Pages .....).**

16. The fact-finding report, prepared by Drs. Narendra Gupta and Kirti Iyengar, contains a detailed analysis reporting that:

> "Testimonies of the women and examination of case papers show that utmost haste was observed in performing hysterectomies while there were no emergent medical indications for doing so. The problem of pain abdomen, back ache and menstrual irregularities is common amongst women especially those living in villages, have given birth, suffer with anaemia & undernutrition and engaged in a lot physical work. Painful heavy bleeding, also called dysmenorrhoea and menorrhea, can happen to women for no particular reason or due to abnormal pathology. But in several instances, it can also occur owing to infections and other illnesses not necessarily of uterus. Therefore, ruling out of all the causes which may be responsible for pain abdomen and painful irregular menstruation through different tests before performing hysterectomy should have been done which according to the testimonies was not done. Diagnosing pre-cancer stage based on

sonography of the uterine area cannot be a conclusive reason for hysterectomy."

17. Interviews with family members and findings from the fact-finding of the hospital and surrounding areas are provided below in paragraphs 8-12. Because of the deplorable condition of the government health facilities, these women were compelled to seek healthcare through private institutions.

18. Kamod is 24 years-old and has one son. She experienced abdominal pain and irregular menstruation for two years, so she went to a hospital in Alwar and then to Madaan Hospital. Dr. Madaan told her that her uterus was "damaged" based on the sonography, and that she needed a hysterectomy. She and her husband wanted to seek another consultation, but the doctor insisted that it was an emergency and delay could lead to cancer. The hysterectomy was performed in June 2010, and she stayed in the hospital for seven days. The cost of the surgery was Rs. 20,000. Kamodhas continued to have pain since the surgery, and her family spends about Rs. 1000 every month for medications.

19. Kailash is 25 years old and has two children, ages 8 and 10.

She underwent tubal ligation six years ago. She experienced excessive menstrual bleeding and abdominal pain for one year before she sought medical treatment. She went to Madhur Hospital in Bandikui where they performed a sonography and recommended a hysterectomy. On 5 December 2010, the same day as her initial visit, the operation took place. Her family paid Rs. 20,000 for the surgery. She continues to experience abdominal pain, and takes medication regularly.

20. Sita is 28 years old, and she has three children ages 2, 3, and 12 years. For two months, she suffered from abdominal pain and excessive menstrual bleeding. In September 2010, she visited Madaan Hospital where she had a sonography and was told that she had "bad patches" on her uterus that could lead to cancer. She was admitted and underwent the hysterectomy on the same day as her initial appointment. After the operation, she stayed in the hospital for seven days before discharge. Her stitches became infected, and she experienced a lot of pain and vomiting. Her family borrowed money to pay Rs. 20,000 for the surgery. She still experiences abdominal pain and nausea.

21. Sunita is 28 years old and has three children ages 6, 7, and 9. She underwent a tubal ligation one year after the birth of

her last child. Then she began to experience abdominal pain and an irregular menstrual cycle. In October 2009, she attended a free consultation camp held by Dr. Madaan in Bandikui, where she was advised that she needed a sonography. She was taken to Madaan Hospital the same day by Dr. Madaan, where she had a sonography. She was told her uterus was "decaying", and she was admitted for hysterectomy that same day at 7:00 p.m. She and her husband wanted to seek another consultation, but Dr. Madaan insisted on immediate hospitalization. Her family borrowed money to pay Rs. 20,000 for the surgery. She experienced no relief from the surgery and was forced to seek additional medical consultations every 10-15 days. She continues to experience abdominal pain and regularly takes medication.

22. Guddi has two sons and two daughters ages 3, 5, 7, and 8. She underwent a tubal ligation after her last child was born. For 18 months, she experienced abdominal pain, excessive menstrual bleeding, and extreme weakness. She received advice in her village to visit Balaji Hospital in Bandikui, which is run by Dr. Dhalar. On the day of her first visit, she had a sonography and was admitted for hysterectomy, which was performed the next morning. The doctor told her that her uterus had "spoiled" and may burst or lead to cancer. She

said she was not given anaesthesia for the surgery and she became unconscious. Her family paid for the surgery out of their savings. She received no relief from the surgery, and still experiences pain.

23. The aforementioned summaries only represent a fraction of the reproductive rights violations experienced by women in Bandikui and the outlying areas.

24. In addition to these individual interviews conducted by Dr. Gupta's team, HRLN's fact-finding team visited a village near Bandikui. The team met several women in one small village who had all undergone hysterectomies in the past two years, but continued to experience pain. The fact-finding team then visited two private hospitals- Madaan and Madhur Hospitals- which were each bustling with patients. On the way to the hospital, the team observed several advertisements for the private hospitals on the roadside. At the private hospitals, the team spoke to hospital staff regarding staffing and infrastructure, and learned that the facilities have a gynaecologist, anaesthesiologist, and paediatrician on-site. Madaan hospital sees approximately 90 to 120 patients per day, carrying out 2,522 deliveries last year. (See Annexure P-5).

25. The fact-finding team then visited the local PHC in Bandikui, which is located near the private hospitals, but is significantly less populated. The fact-finding team also visited another village where a number of women had undergone hysterectomies. The team visited the local sub-centre near this second village which was closed. The hours listed were 8:00a.m.-12:00p.m. and 5:00p.m.-7:00p.m. Locals pointed out the room where family planning procedures take place which had cracked glass all over the floor. In addition, the fact-finding team visited a local PHC. While there were a significant number of staff members, including one on-site doctor and four other staff members, the labour room was filthy with fresh blood stains on the delivery bed and the floor.

26. In addition, the team visited the District Hospital which is the highest referral facility in Dausa and serves BPL patients within a 30 km radius. The hospital suffers from critical deficiencies in accessibility, availability, and equality of health care. The team visited the site on a Sunday which was deemed a 'holiday', and there was only one doctor on-site. There was one main labour room, which only contained two beds. Most of the local private doctors we spoke to in Dausa and Bandikui stated that the District Hospital had not conducted a surgery in the past five

years, with referrals being made to private hospitals or to SMS hospital in Jaipur. However, since the media attention regarding the RTI results concerning private hospitals in Bandikui, surgeries had purportedly begun to take place in the District Hospital.

27. A three member committee comprised of the Chief Medical Health Officer (CMHO), block CMHO, and *tehsildar* was formed by the state to investigate the hysterectomies. The Committee called forty previous patients, but only interviewed twenty, a significantly low number given the hundreds that have been affected. Furthermore, the Committee has failed to divulge the full results of its findings. The remaining private doctors in Bandikui went on strike to express solidarity with the hospitals under scrutiny. The Central Government suspended the Janani Surakshna Yojana (JSY) licenses of the private hospitals in question. True copy of the letter of the investigation committee addressed to the Collector, District Dausa (Rajasthan) dated 10.06.2011 is annexed hereto and marked as **Annexure P-6 (Pages …….).**

28. The letter submitted to the Chief Minister of Rajasthan by the District Collector (DC) details the concerns regarding the committee's investigation. First, the committee only

interviewed women the managers of the hospitals under investigation brought in, indicating pressure from the hospitals on the former patients. Secondly, according to the DC, the committee released a statement to the media saying that only women over age 35 had undergone hysterectomies, yet the RTI results indicate that the largest age group to undergo hysterectomies is 18-25. Third, the committee left important facts out of its letter and failed to investigate at the village level. Finally, the DC also wrote that the full medical records were never seized by the committee. True copy of the District Collector's letter, dated nil, is annexed here and marked as **Annexure P-7 (Pages .....).**

29. In Rajasthan, it is clear that the government health facilities are failing to provide comprehensive healthcare services, and many people are forced to seek care at private facilities. Several sources show that the private hospitals and doctors are abusing patients' rights and treating BPL women in a inhuman and degrading manner by subjecting them to unnecessary hysterectomies. The government's actions to investigate these illicit hysterectomies were weak, and more must be done to stop these surgeries and protect this vulnerable population.

30. Reports show that similar illegal hysterectomies are occurring in other states across India, including Bihar and Chhattisgarh.

CASES FROM CHHATTISGARH

31. Several newspapers report that women in Chhattisgarh had their uteruses illegally removed at hospitals that sought to gain on insurance claims through the RSBY scheme.

32. On 17.07.2012, the Hindustan Times reported that the state of Chhattisgarh initiated action against 22 of 34 nursing homes where it found evidence of surgeries being performed without legitimate medical reasons. One girl, only 18 years old, had her uterus removed to cure abdominal pain. Two other women had their uteruses removed to cure their back pain. Many women reported that they were coerced into getting hysterectomies when their doctors told them that not getting a hysterectomy would lead to cancer and other complications. Dr. Jain of Jan Swasthya Sahyog told the paper,

> "RSBY is inherently flawed as it tempts the unregulated private sector to do medical procedures that are not needed."

The state health director, Kamal Preet Singh, noted that,

> "People lack awareness and do not question doctors or seek a second opinion. Besides, there is no effective regulatory and monitoring system available."

True copy of this article "Chhattisgarh docs remove wombs to claim insurance", published by Hindustan Times and dated 17.07.2012, is annexed hereto and marked as **ANNEXURE P-8 (Pages .....).**

33. On 18.07.2012, the Times of India quoted Chhattisgarh's Health Minister, Amar Agrawal, saying, "The women were deliberately ill-advised by doctors who removed their uterus [sic] to get money." Many of the 1,800 hysterectomies under investigation are believed to be illegal. True copy of this article, "Doctors in Chhattisgarh 'illegally removed' wombs from poor women", published by The Times of India, and dated 18.07.2012 is annexed hereto and marked as **ANNEXURE P-9 (Pages .....).**

34. On 25.07.2012, the Indian Express reported that the government of Chhattisgarh established 22 fraudulent cases of illegal hysterectomies, which include nine doctors, and thousands more cases have been alleged. These nine doctors were suspended, because they performed hysterectomies without following proper procedure, meaning that the hysterectomy was probably not medically necessary. Some doctors admitted that "some tests were dispensed with," and the doctors exercised their "personal discretion" and "clinical judgment." The article also notes that many of the women who seek hysterectomies are not well informed about the side effects of the operation, and think of it as any easy cure to stop menstruation, child birth, and abdominal ailments. The doctors do not get informed consent from the women for the procedure and perform hysterectomies by request based on the patient's misunderstanding of the medical issues. For some private hospitals, hysterectomies make up as much as one third of surgeries, which is said to be more than enough to cause suspicion. Furthermore, the Indian Express reports that many of the medical conditions that cause women to seek hysterectomies are treatable with non-invasive and less expensive means. True copy of this article, "How 'surgical fraud' counts vary", published by The Indian Express,

dated 25.07.2012 is annexed hereto and marked as **ANNEXURE P-10 (Pages .....).**

35. In light of these media reports, HRLN conducted a fact-finding mission from 7-11 August 2012 in Raipur District of Chhattisgarh. The fact-finding report uncovers myriad stories of unnecessary or dubious hysterectomies and reveals the deplorable conditions and treatment in public facilities. True copy of this fact-finding report, issued by HRLN, dated 7-11 August 2012, is annexed hereto and marked as **ANNEXURE P-11 (Pages .....).**

36. Healthcare in Chhattisgarh is failing, especially for the ST and SC population. According to the 2001 Census, the Maternal Mortality Ratio (MMR) for the state was 335, far higher than India's overall ratio of 254. The MMR measures the number of women who die in pregnancy, child birth, or post-delivery complications out of 100,000. Experts agree that most of these deaths are preventable with adequate pre-natal, delivery, and post-natal care. There is a severe shortage of nurse/midwives, and only 18.1 % of women give birth in institutions. Moreover, only 58% of pregnant women in Chhattisgarh had antenatal check-ups by a

professional, and only 26.7% had a check-up in their first trimester.(See Annexure P-12).

37. Records show that over 7,000 hysterectomies have been performed in the last two and a half years, while another source reports closer to 50,000 hysterectomies. Data shows that most of the unnecessary hysterectomies were performed by a few private hospitals near Raipur. Although 34 private medical facilities have been accused of performing unnecessary hysterectomies, the major perpetrators include Gupta Hospital, Ojavsi Hospital, Soni Multispecialty Hospital, and Sewa Sadan Mata Rani Hospital. (See Annexure P-12).

38. The fact-finding team visited health facilities in Raipur, Abhanpur, Tilda, and Dharsiwa blocks as well as Mana village within Raipur city limits. All of the villages visited are rural and most are several kilometres from Raipur.

39. In Abhanpur, the team visited the Abhanpur Community Health Centre (CHC), the Manikchori PHC, the Manikchori Sub-centre, the Uparwara PHC, the Dongatarai Sub-centre, and the private Soni Multispecialty Hospital. All of the facilities were found to be generally unclean, underequipped and understaffed, with a lack of space and

testing facilities. The Manikchori PHC was still under construction, and there was no Dongatarai Sub-centre. The staff of the health facilities reported that the major health issues in these communities are Pelvic Inflammatory Disease (PID), Sexually Transmitted Infections (STIs), human immunodeficiency virus (HIV), hepatitis, human papilloma virus (HPV), Medical Termination of Pregnancy (MTP), and vaginal discharge.

40. The staff of the Manikchori SC stated that 40-50 women from the village have had hysterectomies, and they were sure of the number because of a recent government-requested survey. The SC's records only indicated 15-17 hysterectomies. The staff stated that the discrepancy could be the result of the lack of follow-up at CHCs, and/or because the private hospitals often lose records. Some of the women had their hysterectomies at Soni Multispecialty Hospital, a private facility. Many women have lost their surgery paperwork and do not know that they had hysterectomies. The three most recent hysterectomies in the SC's records were all performed at Soni Multispecialty Hospital.

41. The team visited the homes of the three women who had the most recent hysterectomies: Anju Bai, Pancho Bai, and

Dela Bat. The women were unavailable, but the family members of Anju Bai and Pancho Baiwere able to provide some information.

42. The fact-finding team spoke with the sister-in-law of Anju Bai. Shockingly, the sister-in-law reported that after the hysterectomy scandal broke, staff from Vishwakarma Hospital, where Anju Bai's hysterectomy was performed, had visited her home and taken her for 24 hours. The hospital staff took Anju Bai to convince her that she had gotten the hysterectomy of her own free will. Anju Bai initially sought medical treatment because she began experiencing severe abdominal pain after undergoing a tubectomy. Since the hysterectomy, Anju Bai has suffered from weakness.

43. Pancho Bai's in-laws reported that Pancho Bai had a tubectomy at a family planning camp after the birth of her three year old child. She was never informed about other family planning options. After the tubectomy, she experienced abdominal pain and swelling for a year before she sought treatment at Nayapara SC, which referred her to Vishwakarma Hospital in Raipur. Pancho Bai had her hysterectomy at Vishwakarma Hospital in 2010 using the

Smart Card insurance plan, but she paid Rs. 13,000 of her own money for additional medical expenses.

44. The team also spoke with the village ASHA, Osilya Bai. She has worked for the Manikchori SC for a year, and her income is based on government incentives for specific activities, such as accompanying women to the hospital for delivery and bringing women to family planning camps for sterilization. She did not know any women in the village who had hysterectomies, but she had one herself in 2003 at the Rajim CHC in Manouckchowree. The doctor who performed the hysterectomy did not conduct any pre-surgery tests, and he did not explain any of the potential risks of the surgery. The consent form was signed by her husband. After the surgery, she had to take medication for two years, and she still suffers from abdominal pain, general weakness, and weight loss.

45. The fact-finding team spoke with women in the village near the Uparwara PHC. One woman, Phool Bai, is 35 years of age and has four children. She had a tubectomy after she gave birth to her youngest child. She later began to experience abdominal pain, and when ayurvedic treatment did not palliate her condition, she had a

hysterectomy at Swami Narayan hospital in 2010. She was told that her options were either an expensive course of medicine or the hysterectomy. She could not afford the course of medication, so she opted to pay Rs. 20,000 for the hysterectomy. She complained about the lack of care at the Uparwara PHC, and said she prefers visiting private hospitals.

46. The team also spoke with Sakun Bai Gowswami, who is about 33 years of age and has two children. She reported that she had a tubectomy after the birth of her youngest child. Three years after the tubectomy, she began to experience severe abdominal pain. For two years, she took medicines prescribed by a doctor at the SC in Rajim. An ANM told her that she should have a sonography, and later she had a hysterectomy at Swami Narayan Hospital. She signed a consent form and paid Rs. 9,000 of her own money. Sakun said she feels less pain after the hysterectomy, but she still suffers from weakness.

47. The team spoke with Kaushalya Bai, who is between 50 and 55 years of age and has several grandchildren. She had a tubectomy some years ago and recently began experiencing abdominal pain. She had a sonography that showed her uterus was healthy, but shockingly she elected

to have a hysterectomy two weeks before speaking with the team to solve the problem of irregular menstruation. She signed a consent form and paid Rs. 17,000 for the sonography and Rs. 18,000 for the hysterectomy. She never returned to the hospital to have the stitches removed because she has no more money to pay for the medical services. The fact-finding team was shocked to learn that doctors had acquiesced to Kaushalya Bai's decision to have a hysterectomy, a procedure no competent doctor would categorize as elective. Kaushalya Baialso complained about the poor conditions and apathetic attitudes at the government hospital.

48. In Dongatarai, three men approached the team and said that the village had recently held a meeting regarding hysterectomies where several women gave testimonies about their experiences. The men provided the team with the names of thirteen women.

49. The fact-finding team spoke with Dorpradi, a woman who had a hysterectomy in 2011 at Achal Hospital, a private hospital in Rajim. Five months after the birth of her second child, Dorpradi had a tubectomy at a camp in Gujarat Hospital and received Rs. 100 as an incentive. An ASHA

took her to the camp and explained the surgery, but Dorpradi did not know she had other family planning options. Four to five years after her tubectomy, she began to experience severe abdominal pain. In 2011, Dorpradi visited Dr. Sonali Jain at Achal Hospital, because there is no public facility near her village. The doctor who performed the hysterectomy did not explain the potential risks of the surgery and no biopsy was performed. Despite the lack of pre-surgical testing, the discharge receipt says that Dorpradi had tumors. Achal Hospital is empanelled under the RSBY scheme and accepts Smart Cards. Dorpradi's receipt shows that her surgery cost Rs. 12,500. She stayed in the hospital for six days but was given no counseling or information regarding follow-ups. She now suffers from general weakness. When hysterectomies in Raipur received media attention, the hospital staff visited Dorpradi and told her there was no problem with her hysterectomy, and she underwent the surgery on her own free will.

50. The team also spoke with Bagohnti, who has no children and underwent a hysterectomy in early 2012. She suffered from severe abdominal pain and got no relief from medicines. She went to a private hospital and requested a hysterectomy. The doctor told her that her uterus was

swollen. She signed a consent form in Hindi, but she did not understand what it said. Since her hysterectomy, she has suffered from general weakness and pain. Bagohnti was also visited by hospital staff, after the press reported the scandal, to remind her that she agreed to have the hysterectomy because of her abdominal pain.

51. The team spoke with Mrs. X (who wanted to remain anonymous), who has been experiencing pain for five to six years and is considering having a hysterectomy. She learned about hysterectomies from other women in the village and from the Anganwadi worker. She has four children and had a tubectomy at Abhanour Hospital in 2007. She has experienced pain since her tubectomy, and medicines do not relieve her pain. She said that other women in the village have experienced abdominal pain after having tubectomies.

52. Only two of the four women that the team spoke with had Smart Cards under the RSBY scheme. The women knew nothing about temporary forms of contraception, such as birth control pills and the Copper-T.

53. The fact-finding team also visited Soni Multispecialty Hospital and met with Dr. Gupti. She said that the major

medical issues in the village are exacerbated by early marriages, multiple sex partners, polygamy, poor hygiene, lack of yearly check-ups, and faulty tubectomies. Many women do not have access to sanitary napkins, washrooms, or clean water. Most women suffer from severe anemia due to poor nutrition and viral vaginal discharge caused by poor hygiene.

54. Dr. Gupti claims that the hospital does not advertise hysterectomies in the villages, but the hospital does perform hysterectomies mostly to treat abdominal pain and also for prolapsed uteruses. She said that many of the women have had tubectomies at government hospitals and have gotten infections due to the poor sanitation at government facilities. These infections cause the abdominal pain up to three years after the surgery. Dr. Gupti also claims that she prescribes medication and then antibiotics for the pain before she resorts to performing a hysterectomy, although this hospital is part of the group being investigated for performing an unusually large number of hysterectomies.

55. In Tilda, the team visited the Tilda CHC, Bangoli PHC, Kharora CHC, Sankara Sub-centre, Evangelical Mission Hospital, and Jyoti Private Hospital. All of the health

facilities were generally unclean, underequipped and understaffed, with stray animals roaming the interiors and a lack of lab facilities. The Bangoli PHC was found closed and locked, and no staff ever appeared at the locked Kharora CHC. According to the facilities' staff, the most pervasive health issues seen in the area include STIs, PID, and abdominal pain in women

56. Dr. Agrawan reported that the Tilda CHC conducts daily family planning camps, except during peak agricultural times, and it usually meets the state government target of 20 tubectomies per day. In the past, the CHC performed three to four hysterectomies per month, but it no longer performs this surgery. Women in Tilda have to visit a private clinic or the District Hospital for screening tests and operations.

57. Dr. Jyotiof Jyoti Private Hospital reported that the hospital performs 5-8 hysterectomies per month. The hospital previously accepted the Smart Card but stopped accepting it because of payment problems, which given the scheme's purpose does not make sense. Dr. Jyoti claims that women come to the hospital seeking hysterectomies and will sometimes go to several hospitals asking for the surgery.

Dr. Jyoti said she frequently sees patients with anemia, and obstructed labor.

58. Dr. Jinwanwallof Evangelical Mission Hospital explained that the hospital performs 3-5 hysterectomies per month, and the surgery costs between Rs. 14,000 and 15,000. Many patients pay with their Smart Cards and many of the patients undergoing hysterectomies are over 40 years of age. Dr. Jinwanwall said that there has been an increase in the number of patients with abdominal pain, and he sees many prolapsed uterus cases. The hospital has a lab for basic tests, including pap smears and biopsies, but samples are sent to Raipur for processing at a cost to the patient. The hospital also offers sonographies for a cost of Rs. 200.

59. In Dharsiwa, the team visited the Labhandi Sub-centre and the Cherikhedi Sub-centre. The two facilities were generally unclean and understaffed with a lack of space. Both of the facilities were closed when the team arrived.

60. The SC staff member said that many women come to the SC with abdominal pain. The ANM will counsel them and then the SC refers the patients to Raipur Medical College.

The SC's field worker reported 22 hysterectomies in the villages.

61. The team also conducted interviews with a few women from the village. One woman, Devanti, said she has four children, and the first three were born at home. She received a JSY payment for the institutional delivery of her youngest child. Devanti had a tubectomy at Raipur Medical College and received an incentive payment of Rs. 600. She said that she was not aware of other forms of contraception and she thought that she had to have the surgery because she had four children and is a woman. Devanti says she has had abdominal pain since her tubectomy.

62. The team interviewed Sushila, who has three children. She had a tubectomy three years ago and has had abdominal pain ever since. She was prescribed medicine for the pain, but it has been ineffective.

63. The team also interviewed Dharhakanandi, who is 35 years of age and has three children. Four years ago, she began experiencing severe abdominal pain and she was prescribed medicine for treatment. The medicine did not

relieve her pain, so she visited a hospital and the doctor told her she had a massive tumor and referred her to Soni Multispecialty Hospital, a private facility. At Soni Multispecialty Hospital, the doctor told her that her uterus was swollen and she had four tumors, leaving her with no other option but to have a hysterectomy. She does not remember undergoing any medical exams at Soni before the surgery. Two weeks later she had a hysterectomy, and she paid Rs. 35,000 of her own money for the surgery.

64. The fact-finding team spoke with Jamanadi, who is 25 years of age and has three children. She had a tubectomy two years ago and received Rs. 600 as an incentive. She was discharged just one and a half hours after the surgery. She said that she was unaware of any other forms of contraception. Ever since she had the tubectomy, she has experienced severe abdominal pain when she menstruates. She also complains that it burns when she urinates, and she was told by a doctor that her symptoms stem from weakness.

65. The team also visited the Cherrikhedi Sub-centre in Dharsiwa. The Multi Purpose Worker (MPW) informed the team that the SC serves three villages, and performs 2-3 deliveries per month. The MPW stated that hysterectomies

are performed locally by private hospitals, but he could think of only two or three cases in the village. He also stated that there was an influx of private hospitals in the area, and he had heard of private hospitals forcing women to undergo hysterectomies. The MPW said that the SC had started a hysterectomy awareness program, and the number of hysterectomies has decreased.

66. In Raipur, the team visited the Mana Sub-centre. The team found the facility closed, and decided to visit an anganwadi centre nearby. The workers at the centre reported that up to 80% of the female population has complained of abdominal pain. Many of the women have had tubectomies and many have also had hysterectomies.

67. The key areas of concern that arise from the team's fact-finding mission are as follows:

68. Nearly all of the facilities visited in Abhanpur, Tilda, Dharsiwa, and Raipur were severely unhygienic and poorly kept. The conditions in the villages reflected the conditions of the facilities, especially in the lack of clean water sources for drinking and bathing. Many women were using cloth rags during menstruation instead of the sanitary

napkins they should be receiving from mitanins (village health workers). The lack of hygiene in the villages plays an integral role in the health problems of women, particularly in regards to PID, STIs, and abdominal pain.

69. The access to acceptable healthcare is inadequate. The conditions in most of the public and private facilities are deplorable and many facilities lack basic hygiene and amenities. These conditions create an unsafe environment for patients, exposing them to additional illnesses. Furthermore, the human dignity of women giving birth is routinely violated by hospital staff who deny the patients privacy and treat them with cruelty and disrespect. The team also observed that there are villages without medical facilities, forcing the women to rely on mitanins who seldom visit. This leaves women with no choice but to visit private facilities at higher costs.

70. There is a lack of awareness regarding contraceptives and other issues affecting women's health. Most of the women interviewed by the team were only aware of tubectomies and hysterectomies to control their fertility and abdominal pain respectively. The incentives received by field workers along with the government targets for tubectomies, create

an environment where women are routinely denied information about their reproductive choices.

71. The high prevalence of women experiencing abdominal pain following tubectomies is especially troubling. There is clearly a correlation between tubectomies and subsequent abdominal pain that later leads many women to undergo hysterectomies. Doctors reported that they see infections and anatomical problems caused by faulty tubectomies performed at camps or in government facilities. Many health facilities reported that the major health issue they saw in the female population was severe abdominal pain. The facility staff stated that they believed the cause of the abdominal pain is lack of hygiene and unhygienic tubectomies. This leads women to actively seek hysterectomies.

72. Although many facilities reported a low number of hysterectomies, there has been a documented and unnatural spike in the number of hysterectomies performed under the RSBY scheme. Many women who the fact-finding team spoke with said they had a hysterectomy using their Smart Card, and they knew other women who had done the same. The discrepancy in numbers and

reports exposes what seems to be an effort to withhold accurate information from public records.

73. Furthermore, many women reported that they underwent hysterectomies without having any tests to determine if the hysterectomy was necessary or even safe. The public facilities lack the infrastructure necessary to perform diagnostic tests, and the appropriate medical staff, so women are forced to seek these services at private facilities that strive to make as much money as possible. The team's fact-finding revealed that private hospitals quickly perform hysterectomies to solve abdominal pain without considering other treatments.

74. The burden of the failings of the healthcare system falls disproportionately on BPL families. BPL women have limited options for healthcare due to their socioeconomic status. The state government has control over the healthcare options for BPL women. Thus, the government campaigns to increase the number of tubectomies affect BPL communities more than others. This power dynamic leaves BPL women uninformed and vulnerable to unnecessary and invasive procedures. With the introduction of the Smart Card program, BPL families are able to receive care at private facilities, but reports show

that private facilities are also performing unnecessary surgeries for profit on women who are not aware of their options. The fact-finding team noted that all of the patients who underwent tubectomies at family planning camps, suffered from abdominal pain, and many subsequently underwent hysterectomies at private facilities were BPL women.

75. Furthermore, an article written by The Hindu on 9 August 2012, reports that the hysterectomies in Chhattisgarh have been almost exclusively linked to the RSBY scheme. This article also implicates the same gender biases that drive violence against women and sex selective abortion in the rise in hysterectomies. According to the article, women look to hysterectomies to avoid menstruation, and the associated taboos, and the hardship created by the lack of sanitary napkins. These women do not understand the potential complications associated with the surgery.

76. Moreover, many women suffer from persistent gynecological ailments, for which there is virtually no treatment at the local level in private or public care. The Hindu reports that in most states, healthcare providers in rural areas do not perform pap smears, routine exams or first-line surgical procedures. When women seek care, it is

usually when their medical problem has become acute. In other words, there is virtually no preventative medical care for people living in rural areas. Also, the prohibitive cost of traveling to receive care, and for the follow-up care and medications required for long-term treatment, prevents many indigent women from seeking alternative, less invasive procedures than the hysterectomy. According to The Hindu, the key changes that must be made are: improved monitoring and regulation of public and private healthcare providers; improving access to basic gynecological care within primary care; and changing the gender-biased view towards women's bodies and health. True copy of this article, "Insurance does not cover the wombs woes", published by The Hindu, dated 09.08.2012 is annexed hereto and marked as **ANNEXURE P-12 (Pages .....).**

CASES FROM BIHAR

77. On 16.08.2012, a fact-finding team investigated newspaper reports of RSBY hysterectomy scams in Samastipur. The team visited the victims of the scams, and spoke to their families. True copy of this fact-finding report on hysterectomy scam in Samastipur, issued by Health

Watch Forum Bihar, and dated 16.08.2012, is annexed hereto and marked as **ANNEXURE P-13 (Pages .....).**

78. Out of ten women interviewed, seven had their hysterectomies performed by Mahamuni Hospital, two by Krishna Hospital, and one by Ram Jyoti Hospital, all private hospitals. Only three of these women had prescription reports related to these operations. Eight of the ten women were experiencing abdominal pain prior to their hysterectomy, and two had prolapsed uteruses. All but one hysterectomy were performed on the same day as the first visit to the hospital. All of the women used the Smart Card to have the cost of surgery and hospitalization covered by the RSBY scheme.

79. One woman, Rina Devi, reported that she was told by the doctor at Ram Jyoti Hospital that she needed a hysterectomy, and she asked for the abdominal surgery. Her operation paperwork shows that she received a vaginal surgery. She was also told, without any diagnostic testing, that she had "stones" that needed to be removed from her abdomen. She continued to experience the symptoms of a prolapsed uterus after the hysterectomy,

but when she went to the hospital for a follow-up appointment, she was turned away.

80. There is evidence that the women were referred to the private hospitals by "middlemen" who told the women that their ailments could be cured by having hysterectomies. The women were advised that they could receive free operations at specific facilities. The families of the victims were unwilling to speak about who referred them or how they found out about the acceptance of the Smart Card at certain facilities.

81. According to experts and local media, the institutions accredited to perform hysterectomies do not fill minimum Indian Public Health Standard requirements of infrastructure, facilities, equipment, and qualified personnel. Some of the institutions were blacklisted in the past, but continue to provide medical services and submit claims for reimbursement.

82. There is evidence that the medical institutions are influencing the probe into the hysterectomy scams by contacting former patients. Fewer victims have come forward for deposition, although it is clear that some of the operations were never actually performed and money was

claimed fraudulently. For the operations that were never performed, physical exams revealed that some women who believed they had undergone a hysterectomy had not, and some insurance claims were submitted for people who never underwent surgery and whose Smart Cards were in possession of the hospital.

83. On 25 August 2012, Dainik Jagaran reported that 1,700 hysterectomies came to light in the district of Saran. Some of the surgeries were performed in private hospitals where there are no surgeons. The District Magistrate (DM), Vinay Kumar, instituted a probe committee to investigate the hysterectomies. The committee will investigate all hysterectomy and potentially false insurance claims. This new probe comes after the state government already instituted a probe in the district of Samastipur. In Saran, the women who underwent hysterectomies will now undergo a physical verification of the surgery at Saran Hospital. The committee has the signatures and registration numbers of the doctors who performed the surgeries. The victims and their families will give depositions regarding the surgery, including whether they had the surgery by choice. Dainik Jagaran also reported that there were bogus doctors who performed hysterectomies. True copy of this article, "1,700 young

women's wombs were taken out", published by Dainik`Jagaran, dated 25.08.2012 is annexed hereto and marked as **ANNEXURE P-14 (Pages .....).**

84. On 27.8.2012, The Indian Express reported that there were over 16,000 mostly unnecessary hysterectomies performed in the last year in Bihar. Out of these procedures, 10,000 were performed in the three districts of Samastipur, Madhubani, and Chhapra. Samastipur found 1,300 hysterectomies that are suspicious, and Chhaprais investigating 1,700 cases. Most of the hysterectomies performed in Chhapra were on women under the age of 30. The Labour Resources Department, which implements the RSBY scheme, has asked for reports from 38 districts. True copy of this article, "16,000 'illegal' hysterectomies done in Bihar for insurance benefit", published by The Indian Express, dated 27.08.2012 is annexed hereto and marked as **ANNEXURE P-15 (Pages .....).**

85. On 1.9.2012, The Times of India reported that in the three blocks of Kishanganj district, 374 BPL women have undergone hysterectomies in the last two years, with 116 hysterectomies in one block alone. The district administration is investigating this large number of hysterectomies. Sources reveal that many women who

underwent hysterectomies did not give their permission for the procedure. True copy of this article, issued by The Times of India, dated 1 September 2012, "374 hysterectomy in 3 Kishanganj blocks", published by The Times of India, dated 01.09.2012 is annexed hereto and marked as **ANNEXURE P-16 (Pages .....).**

86. On 13.9.2012, the Indo Asian News Service reported that the licenses of eight private nursing homes were revoked because the nursing homes performed unnecessary hysterectomies in order to claim insurance money. State officials are conducting further investigations into the practices of nursing homes and hospitals regarding hysterectomies. True copy of this article, "Bihar cancels nursing home licenses after uterus scams", published by The Indo Asian News Service (Hindustan Times), dated 13.09.2012, is annexed hereto and marked as **ANNEXURE P-17 (Pages .....).**

87. On 06.02.2013, the BBC reported that an extraordinarily high number of women from Indian states, including Rajasthan, Bihar, Chhattisgarh and Andhra Pradesh, were being pushed into having their wombs removed. Women complaining of heavy periods and period pain, bladder

infections and backache are being advised frequently by private doctors to have hysterectomies, and are told that their uteruses are cancerous, after only an ultrasound, and delay in removal of their uterus or non-removal would be fatal. Many of such women were below the age of 40. Private doctors had made this an easy way to earn some fast income. It was also reported that the RSBY scheme, in some states, appears to be encouraging unnecessary hysterectomies, as unethical private clinics exploit the vulnerable poor, using them as a means to tap into government funds. In Samastipur, a district in the northern state of Bihar, initial figures suggested that more than a third of operations carried out under the scheme were hysterectomies. The district magistrate, Kundan Kumar, became so concerned about these figures that he invited women who had had the operation to attend a government medical camp last August, where they received an independent evaluation from government doctors. The report from the camp suggests that of 2,606 women who were examined, 316 - about 12% - had had their uteruses removed unnecessarily.

True copy of the article, "The Indian women pushed into hysterectomies", BBC World Service dated 06.02.2013 is

annexed hereto and marked as **Annexure P-18 (Pages .....).**

VIOLATIONS

88. That the Respondents have failed through their acts and omissions to adhere to Constitutional obligations to protect women's reproductive rights as enshrined in Article 21's right to life and health, and the rights to equality and nondiscrimination in Articles 14 and 15. Moreover, Respondents have impermissibly derogated from their legal obligations under binding international human rights treaties to respect, protect, and fulfill the human rights of pregnant women. Immediate action is necessitated from this Hon'ble Court to ensure that reproductive health care is accessible and administered in a dignified, humane, equitable, and gender-focused manner.

RESPONDENTS HAVE VIOLATED WOMEN'S FUNDAMENTAL RIGHT TO HEALTH

89. That Article 21 of the Constitution states "No person shall be deprived of his or her life or personal liberty except

according to procedure established by law." This right includes a fundamental right to health. This Hon'ble Court held that Article 21 of the Constitution includes a fundamental right to health, and that this right is a "most imperative constitutional goal." *Consumer Education and Research Center v. Union of India,* [1995 SCC (3) 43].

90. That furthermore, Article 47 of the Constitution requires states to "…regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..." The Respondents have been ineffective in accomplishing this goal due to their neglecting to regulate the practices of private hospitals, insure the rights of the most vulnerable people, and provide affordable, comprehensive and quality government healthcare alternatives. In light of the failings and abuses of healthcare demonstrated in this petition, this constitutionally mandated duty of the states has clearly not been met.

91. That in *Pt. Parmanand Katara vs. Union of India & Ors.,* [1989 SCR (3) 997], the Supreme Court of India held that Article 21 of the Constitution casts the obligation on the State to preserve life, and there can be no second opinion

that preservation of human life is of paramount importance. The Court specifically held that every doctor, whether at a Government hospital or otherwise, has the professional obligation to extend his services with due expertise for protecting life, and that no law or State action can intervene to avoid or delay the discharge of the paramount obligation cast upon members of the medical profession. Recognizing that this obligation to preserve life is "total, absolute and paramount," laws of procedure that "interfere with the discharge of this obligation cannot be sustained and must, therefore, give way."

92. That India is signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which, in Article 12, requires states to: "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights (CESCR) further clarifies the right to health, explaining that: "The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom".

93. That despite the Constitutional mandate to ensure access to healthcare and Governmental schemes, such as the National Rural Health Mission, the availability and quality of healthcare in rural areas remains woefully inadequate, as evidenced in the fact-finding reports detailed herein. (See Annexures P-5, P-12, P-14).

94. That a 2002 report from the Health Information of India Central Bureau of Health Intelligence, Directorate General of Health Services, Ministry of Health and Family Welfare reports that the disparities in the allotment of resources between urban and rural areas are blatantly apparent. Urban areas have more than four times the number of hospitals and dispensaries, and seven times the number of beds per 100,000 people.

95. That indeed, the Fifteenth Lok Sabha report, *National Rural Health Mission, Ministry of Health & Family Welfare, Public Actions Committee Report (2010-11), 32nd Report* found significant issues with regards to infrastructure, service delivery and expenditure, noting that out of pocket health costs had not decreased despite implementation of the NRHM. In the Committee's observations and recommendations, it noted that:

"8. The Committee is perplexed to note that the proportion of public expenditure on Health is currently 1.1% of the GDP which is less than 50 percent of the target of 2-3% set under the Mission.

11. …The committee found…the Mission has made no significant impact on reduction of the out of the pocket expenditure [of rural households]. The Committee is of the view that given the huge shortages of funds and manpower and backlog in creation of assets, it would take several long years for the Mission to reduce significantly the out of pocket expenditure of the rural households on health. No wonder, unless there is adequate increase in budgetary outlays the Mission would not be able to achieve the intended objective in this behalf.

12. The Committee is distressed to note that a large number of Health Centers at various levels viz. sub-centres, PHCs and CHCs are located in substandard environment such as garbage dumps, cattle sheds, stagnant water bodies, polluting industries and functioning in unhygienic conditions…health centres

lacked essential infrastructure viz., water supply and storage tanks, facilities for disposal of sewage and biomedical waste and separate utilities for men and women. The Committee wonders how these health centres would be able to attract patients given their pathetic and shabby conditions. It is therefore, not surprising that rather than curing diseases such health centres will not only breed and spread diseases to otherwise healthy patients and their attendants but also drive away the patients to private health facilities thereby unwittingly defeating the very purpose of setting up these health centres."

96. That to fill the growing void of healthcare access, private hospitals have essentially assumed the role of serving as primary healthcare providers. Given the important functions that private hospitals play in the lives of millions of ordinary individuals in India, private hospitals must be held accountable under Article 21 of the Indian Constitution for violations to provide adequate healthcare. In fact, private hospitals in Bihar, Chhattisgarh, and Rajasthan are not only failing to provide healthcare services, but actually engaging in unethical and

exploitative practices that violate patient rights to informed consent, bodily integrity, and basic reproductive health.

RESPONDENTS HAVE VIOLATED WOMEN'S RIGHT TO LIFE

97. That in conjunction with the right to health violation, Respondent has violated Petitioner's right to life as protected by Article 21 of the Constitution of India, and various international treaties.

98. That in the case of *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal* 36, [1996 (4) SCC 37], this Hon'ble Court issued an important judgment, ruling that:

> "…adequate medical facilities for the people is an essential part" of the government's obligation to "safeguard the right to life of every person"…"Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in a violation of his right to life guaranteed under Article 21."

99. That furthermore, this Hon'ble Court has recognized that the right to life includes the right to be free from inhuman and degrading treatment. As described in *Francis Coralie Mullin v. Union Territory of Delhi & Ors*, [1981 SCR (2) 516]: "There is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights (ICCPR)." The unnecessary, invasive surgeries, unsafe sterilizations, and abhorrent medical facility conditions detailed above amount to the inhuman and degrading treatment that has been prohibited.

RESPONDENTS HAVE VIOLATED WOMEN'S RIGHTTO INFORMED CONSENT

100. That in *Samira Kohli vs. Dr. Prabha Manchanda and Anr.,* [Appeal (Civil) 1949 of 2004], a patient had a full hysterectomy where consent was only given by her mother, because the patient herself was unconscious. Petitioner claims that her mother was made to believe that the situation was life threatening and that her mother did not understand exactly what she was consenting to. After an analysis of U.S. and U.K. Standards for informed

consent, this Hon'ble Court held that the surgery was improper and that additional consent was necessary. The Court specifically stated that the consent of both husband and wife is needed for procedures which may result in sterility. The Court outlined the following principles regarding consent:

> (i) A doctor has to seek and secure the consent of the patient before commencing a 'treatment' (the term 'treatment' includes surgery also). The consent so obtained should be real and valid, which means that: the patient should have the capacity and competency to consent; his consent should be voluntary; and his *consent should be on the basis of adequate information concerning the nature of the treatment procedure, so that he knows what he is consenting to.* (emphasis added).
>
> (ii) The 'adequate information' to be furnished by the doctor (or a member of his team) who treats the patient, should enable the patient to make a balanced judgment as to whether he should submit himself to the particular treatment or not. This means that the *Doctor should disclose (a) nature and procedure of the treatment and its purpose, benefits*

and effect; (b) alternatives if any available; (c) an outline of the substantial risks; and (d) adverse consequences of refusing treatment. But there is no need to explain remote or theoretical risks involved, which may frighten or confuse a patient and result in refusal of consent for the necessary treatment. Similarly, there is no need to explain the remote or theoretical risks of refusal to take treatment which may persuade a patient to undergo a fanciful or unnecessary treatment. A balance should be achieved between the need for disclosing necessary and adequate information and at the same time avoid the possibility of the patient being deterred from agreeing to a necessary treatment or offering to undergo an unnecessary treatment. (emphasis added).

(iii) Consent given only for a diagnostic procedure, cannot be considered as consent for therapeutic treatment. Consent given for a specific treatment procedure will not be valid for conducting some other treatment procedure. The fact that the unauthorized additional surgery is beneficial to the patient, or that it would save considerable time and expense to the patient, or would relieve the patient from pain and

suffering in future, are not grounds of defence in an action in tort for negligence or assault and battery. The only exception to this rule is where the additional procedure though unauthorized, is necessary in order to save the life or preserve the health of the patient and it would be unreasonable to delay such unauthorized procedure until patient regains consciousness and takes a decision.

(iv) There can be a common consent for diagnostic and operative procedures where they are contemplated. There can also be a common consent for a particular surgical procedure and an additional or further procedure that may become necessary during the course of surgery.

(v) The nature and extent of information to be furnished by the doctor to the patient to secure the consent need not be of the stringent and high degree mentioned in Canterbury but should be of the extent which is accepted as normal and proper by a body of medical men skilled and experienced in the particular field. It will depend upon the physical and mental condition of the patient, the nature of

treatment, and the risk and consequences attached to the treatment.

101. That the *Samira Kohli* opinion also notes the long-term effects suffered by the young petitioner as a result of her "emergency" hysterectomy that occurred following a simple laparoscopic diagnostic test. The petitioner was required to maintain long-term hormone replacement therapy (HRT) due to symptoms of premature menopause, which include mood swings, hot flashes, incontinence, depression, weight gain, insomnia etcetera. HRT also has side effects that include an increased risk of certain cancers. Of course, this young woman also suffered from the loss of her ability to bear children.

102. That the Code of Ethics Regulations of 2002 state the following regarding norms of ethical conduct and human rights violations:

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

-1.9 Evasion of Legal Restrictions: The physician shall observe the laws of the country in regulating the practice of medicine and shall also not assist others to evade such laws. He should be cooperative in observance and enforcement of sanitary laws and regulations in the interest of public health…

-6. Unethical Acts: A physician shall not aid or abet or commit any of the following acts which shall be construed as unethical:

-6.1 Advertising: Soliciting of patients, directly or indirectly, by a physician, by a group of physicians or by institutions or organizations is unethical…

-6.6 Human Rights: The physician shall not aid or abet torture nor shall he be a party to either infliction of mental or physical trauma or concealment of torture inflicted by some other person or agency in clear violation of human rights.

-7. Misconduct: The following acts of commission or omission on the part of a physician shall constitute professional misconduct rendering him/her liable for disciplinary action:

-7.1 Violation of the Regulations: If he/she commits any violation of these Regulations.

-7.16 Before performing an operation the physician should obtain in writing the consent from the husband or wife, parent or guardian in the case of minor, or the patient himself as the case may be.

-7.19 A Physician shall not use touts or agents for procuring patients."

103. That in *Indian Medical Association vs. V.P. Shantha and Ors.*, [(1995) 6 SCC 651], the Supreme Court stated that medical practitioners are not immune from medical negligence claims, and such claims are independent of the

disciplinary control of the Medical Council of India and/or State Medical Councils disciplinary proceedings.

104. That private doctors in Bihar, Chhattisgarh, and Rajasthan have violated women's right to informed consent, and the state and central governments have failed to regulate these doctors, to implement meaningful accountability measures, to ensure the rights of patients, and to seek out justice for the victims. As the fact-finding reports illustrate, most women who underwent hysterectomies were uninformed about alternatives and side effects. The women, who sought hysterectomies so that they could stop menstruating or cure their abdominal pain, should have been educated by their doctors about the proper treatments or alternative solutions for their ailments. (See Annexures P-5, P-12, P-14).

105. That doctors are obligated under the law and under the rules of ethical conduct to do much more than provide surgeries upon request. Doctors must ensure that each patient is informed of and understands the alternatives to the surgery and any important issues related to the procedure. Women have been denied any opportunity to

consider alternative healthcare options or to pursue alternative medical opinions.

106. That the fact-finding teams spoke to women who clearly did not understand the implications of the hysterectomy. Clearly, doctors misled the patients as to why the surgery was supposedly needed. In many cases, only the women's husbands provided consent for the operation, showing that the women were not necessarily informed, which is a gross violation of the legal standards for informed consent.

107. That moreover, the doctor has an ethical and legal obligation to determine the need for any procedure using the proper diagnostic testing. The fact-finding reports show that most women only received a sonography test, which is insufficient to detect cancer or solely support the decision for hysterectomy. Indeed, with the extremely high prevalence of PID and STIs indicated in the fact-finding reports, the cause for the abdominal pain would likely be cured by the medicinal treatments for those ailments and proper counseling of the patient, thus avoiding invasive, unnecessary, and risky surgery.

108. That given the detailed guidelines set forth by this Hon'ble Court in *Samira Kohli* and the Indian Council Medical Regulations, private doctors have engaged in serious violations of women's rights to be informed and give consent to any medical procedure that they undergo.

RESPONDENT HAS VIOLATED WOMEN'S RIGHTS TO NON-DISCRIMINATION AND EQUALITY

109. That Article 14 mandates that "the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article 15(1) mandates that "the state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them."

110. That this Hon'ble Court describes gender equality as one of the "most precious Fundamental Rights guaranteed by the Constitution of India." *Apparel Export Promotion Council v. Chopra*, [AIR 1999 SC 625].This Hon'ble Court reaffirmed the government's obligation to "gender sensitise its laws" and placed the judiciary "under an obligation to see that the message of the international instruments is not allowed to be drowned." *Id.* Citing CEDAW, the Beijing Declaration,

and the ICESC, the Court held that the international instruments "direct all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women is loud and clear." *Id.*

111. That with a desire to gain private profit at the expense of poor women, private doctors in Bihar, Chhattisgarh, and Rajasthan are engaging in an astonishing kind of gender discrimination against women. By performing unneeded hysterectomies, these doctors are targeting women to be the victims of physical trauma, and denial of reproduction. The doctors' fraudulent actions in performing hysterectomies amount to preying upon a vulnerable population of women for which the Government has recognized a need to empower and protect.

112. That specifically, the failure in care disproportionately affects members of minority communities. Moreover, rural government health facilities are lacking in equipment and services that pertain more to women's healthcare, namely labs for gynecological tests. This makes women from vulnerable groups especially susceptible to the targeted discrimination of the private hospitals.

RESPONDENTS HAVE GROSSLY VIOLATED THE CONSUMER PROTECTION ACT OF 1986 BY CONDUCTING UNNECESSARY HYSTERECTOMIES AND FAILING TO ADEQUATELY ADDRESS THE UNDERLYING MEDICAL CONDITION FOR WHICH TREATMENT WAS SOUGHT

113. That the Consumer Protection Act, 1986 was enacted by the Indian Government in order to protect consumers in the course of transactions they participate in.

114. That in *Indian Medical Association vs. V.P. Shantha and Ors.*, [(1995) 6 SCC 651], this Hon'ble Court held that medical services fall under this definition of services in the Consumer Act, specifically stating that "[s]ervices rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act."

115. That also in *Indian Medical Association*, this Hon'ble Court held that the correct approach of the courts is to require

that professionals should possess a certain minimum degree of competence and that they should exercise reasonable care in the discharge of their duties. In general, a professional owes to his/her client a duty in tort as well as in contract to exercise reasonable care in giving advice or performing services.

116. That in the aforementioned *Samira Kohli* case, which involved an unscheduled hysterectomy performed with the uninformed consent of the patient's mother, the Court found a violation under the Consumer Protection Act Sections 2(1)(g) because of a deficiency in service. This Hon'ble Court held that the "Performance of AH-BSO surgery was an unauthorized invasion and interference with Appellant's body which amounted to a tortious act of assault and battery and therefore a deficiency in service."

117. That in *Vinitha Ashok v. Lakshmi Hospital*, [(2001) 8 SCC 731], this Hon'ble Court stated that where it has not been established to the Court's satisfaction that such opinion relied on is reasonable or responsible, a doctor will be liable for negligence in respect of diagnosis and treatment in spite of a body of professional opinion approving his conduct.

118. That the level of service expected from medical practitioners is further described in medical regulations. The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 sets forth standards for physicians practicing medicine in India. By committing unnecessary hysterectomies on women who sought treatment for stomach pain, private doctors have violated basic duties to provide sufficient medical care. Specifically, these private doctors are bound by the following regulations regarding patient care:

> "- 1.2 Maintaining good medical practice: The Principal objective of the medical profession is to *render service to humanity with full respect for the dignity of profession and man*. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion. Physicians should try continuously to improve medical knowledge and skills and should make available to their patients and colleagues the benefits of their professional attainments. The physician should practice methods of healing founded on scientific basis and should not associate professionally with anyone who violates this

principle. The honoured ideals of the medical profession imply that the responsibilities of the physician extend not only to individuals but also to society.(emphasis added).

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

-1.8 Payment of Professional Services: The physician, engaged in the practice of medicine shall give priority to the interests of patients. *The personal financial interests of a physician should not conflict with the medical interests of patients.*(emphasis added).

-2.1 Obligations to the Sick: Though a physician is not bound to treat each and every person asking his services, he should not only be ever ready to respond to the calls of the sick and the injured, but should be mindful of the high character of his mission and the responsibility he discharges in the course of his professional duties. In his treatment, he should never forget that the health and the lives of those entrusted to his care depend on his skill and attention.

- 2.3 Prognosis: *The physician should neither exaggerate nor minimize the gravity of a patient's condition.* He should ensure himself that the patient, his relatives or his responsible friends have such knowledge of the patient's condition as will serve the best interests of the patient and the family. (emphasis added)

-2.4 The Patient must not be neglected: A physician is free to choose whom he will serve. He should, however, respond to any request for his assistance in an emergency. Once having undertaken a case, the physician should not neglect the patient, nor should

he withdraw from the case without giving adequate notice to the patient and his family. Provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care."

119. That the petitioner's recent medical assessment of 16 women in the Rajasthan fact-finding report revealed there was only one possible case which may have been suitable for a hysterectomy, while the remaining 15 women did not possess symptoms that warranted a hysterectomy. The doctors told these victims of fraud that they could eventually be diagnosed with cancer and that an immediate hysterectomy was necessary even in the presence of conflicting, minimal or no diagnostic test results. The women in Rajasthan all paid approximately Rs.20,000/- for their surgeries and medications. Although several of the women interviewed from Chhattisgarh and Bihar had the costs of the surgery and hospitalization paid for by RSBY insurance, most eventually paid some out-of-pocket costs related to their surgeries. (See Annexures P-5, P-12, P14).

120. That the unusually high number of hysterectomies performed, and the evidence that these procedures were performed without need or proper diagnostic testing at private hospitals in Bihar, Chhattisgarh, and Rajasthan, demonstrates clear violations of the standards of care that are expected when patients pay practitioners for medical services.

121. That moreover, the private doctors who performed these hysterectomies have failed to uphold the regulatory ideals of maintaining respect and dignity for the profession and the patient, and avoiding the conflict of financial gain and the best interests of the patient.

122. That the respondents have failed to adhere to their Constitutional obligations to protect women's reproductive rights as enshrined in Article 21's right to health and right to be free from cruel, inhuman and degrading treatment, and Article 14 and 15's rights to equality and non-discrimination. The Respondents have impermissibly derogated from their legal obligations under binding international human rights treaties to respect, protect, and fulfil the civil, political, social, economic, and cultural rights of women in India.

123. That hence, the petitioner has filed the present petition on the following amongst other grounds which are taken without prejudice to one another:

GROUNDS

A. BECAUSE Respondents' failure in providing and regulating constitutionally mandated reproductive healthcare to women has resulted in thousands of unnecessary hysterectomies upon women living in Bihar, Chhattisgarh, and Rajasthan in violation of their rights to health, bodily integrity, and informed consent.

B. BECAUSE women from the Respondent states have been blatantly misled by private practitioners into undergoing invasive and unnecessary surgeries to the detriment of their health.

C. BECAUSE it is evident that doctors in the Respondent states have actively recruited patients for unnecessary surgeries for the purpose of financial gain, in violation of Indian law and medical regulations.

D. BECAUSE BPL families are being further impoverished by the out-of-pocket costs of unnecessary hysterectomies.

E. BECAUSE the true medical conditions of the female patients seeking care are not being addressed by the private doctors, leaving patients to continue to suffer from the same symptoms even after undergoing hysterectomies.

F. BECAUSE young women are fraudulently being denied their natural human right to bear children.

G. BECAUSE Respondents have failed to monitor and regulate the private medical field, which has led to violations of fundamental health rights and medical regulations.

H. BECAUSE, in violation of this Hon'ble Court's order in *Samira Kohli*, the Respondents have failed to ensure that doctors obtain full and informed consent for family planning operations and hysterectomies.

I. BECAUSE the Respondents have violated the Constitutional rights to health and life guaranteed by

Article 21, by subjecting women to life-threatening and life-altering surgeries when there is no medical need.

J. BECAUSE the deplorable conditions of government and private medical facilities, in conjunction with the subjection of women to unnecessary surgeries amounts to cruel, inhuman, and degrading treatment, which has been forbidden by this Hon'ble Court under Article 21 of the Constitution.

K. BECAUSE the rights to equality and to be free from discrimination have been violated, since the unlawful practice of performing unnecessary hysterectomies only directly affects women.

L. BECAUSE the rights to equality and to be free from discrimination have been violated, since the burden of grossly inadequate healthcare facility conditions and of the unlawful hysterectomies falls disproportionately on the poor, marginalised communities of the Respondent states.

M. BECAUSE the government health facilities in the Respondent states are unhygienic, inaccessible, understaffed, and ill-equipped.

N. BECAUSE despite several reports reflecting the malfunction of current policies, the Respondents have derogated from their duties under Indian law by failing to institute reforms or invest human and financial resources to improve healthcare, particularly maternal healthcare in rural areas.

O. BECAUSE the Respondents have failed to provide proper health services to women per the concrete Service Guarantees of the NRHM and JSY.

P. BECAUSE the Respondents are in violation of the intent and purpose of the National Rural Health Mission, which is to "improve the availability of and access to quality health care by people, especially for those residing in rural areas, the poor, women and children."

Q. BECAUSE Respondents are in clear violation of binding international treaties and conventions (ICESCR, ICCPR, and CEDAW).

124. That the petitioners crave leave of this Hon'ble Court to add, alter or amend any of the above grounds and to file additional affidavits at a later stage if so advised.

125. That it is submitted that the petitioners have no other efficacious remedy except before this Hon'ble Court to seek the reliefs as prayed for herein.

126. That it is submitted that petitioners have filed no other petition of a similar nature in this Hon'ble Court or in any other court.

127. That the present petition is made bonafide and for the ends of justice.

PRAYER

Therefore, in light of the facts and circumstances narrated above, the Petitioner prays that this Hon'ble Court may graciously be pleased to:

a. Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents Nos. 1 to 4 to implement monitoring, inspection, and accountability mechanisms for the private healthcare industry, including public reporting of findings.

b. Issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents Nos. 2 to 4 to

establish and independent monitor for the functioning of the RSBY scheme within their respective states, and inspect and monitor the hospitals empanelled under the scheme.

c. Pass an order directing Respondents Nos. 2 to 4 to provide adequate compensation for the egregious constitutional violations of the women who have undergone unnecessary hysterectomies in private hospitals in Bihar, Chhattisgarh, and Rajasthan in the past two years.

d. Pass an order directing Respondents Nos. 2 to 4 to reimburse all costs accrued in the receipt of medical care, including but not limited to, costs associated with transport, surgical procedure, and purchase of medicine and food.

e. Pass an order directing the Respondent Nos. 1 to 4 states to investigate healthcare infractions and common medical ailments at the village level and undertake counteracting health education programs.

f. Pass an order directing Respondents Nos. 1 to 4 to plan and implement improvements in infrastructure, personnel, and monitoring for government healthcare facilities in rural

areas, including the incorporation of preventative healthcare at the village level.

g. Pass an order requiring the suspension of the involved private doctors by the Indian Council of Medicine.

h. Pass an order imposing criminal liability on the involved doctors for engaging in fraudulent healthcare practices.

i. Pass any other and further order/direction that this Hon'ble Court may deem fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

Petitioner

Through

Delhi
Dated:

Jyoti Mendiratta,
Advocate for the Petitioner