**QUESTIONNAIRE**

**“NON-DISCRIMINATION AND EQUALITY WITH REGARD TO THE RIGHT TO HEALTH AND SAFETY”**

In accordance with its mandate, the UN Working Group on the issue of discrimination against women in law and practice (hereinafter “the Working Group”) has developed this questionnaire to gather information on how laws and practices discriminate against women with regard to the right to health and to safety. Additionally, this questionnaire has the objective of highlighting good practices and lessons learned in advancing equality between women and men with regard to the right to health and safety.

The questionnaire focuses on the prevention of gender discrimination in the enjoyment of the right to health and safety (I), on diagnosing and counteracting possible gender discrimination in practice in the area of health and safety (II) and on good practices in these areas (III).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes the State obligation to take “all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning” as well as to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation”. [[1]](#footnote-1) It also establishes the obligation to ensure on an equal basis for men and women “the right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction”. [[2]](#footnote-2)

Recognizing the broad scope covered by the concept of safety, the Working Group intends to focus particularly on the impact of safety in the context of women’s health, both physical and mental. This may include violence against women in the public space and in closed institutions as well as women’s access to justice to secure their right to health and security.

The Working Group wishes to thank all stakeholders for responding to this questionnaire **by 15 August 2015.**

**Questionnaire**

1. **Prevention of sex discrimination in the enjoyment of the right to health and safety**
2. ***Health***
3. **Does your country have regulations (in the Constitution, legislation or in other legal codes) that guarantee:**

*(Please specify in the space provided for this purpose "yes" or "no")*

(Yes) the right to equal access for women and men to all forms of healthcare, at the highest available level, including access to alternative health provisions such as homeopathy, naturopathy, etc.

(Yes) access to sexual and reproductive health services

(Yes) women’s rights to make autonomous decisions regarding their sexual and reproductive lives

1. **Are medical services related to women’s sexual and reproductive life and/or violence against women covered by universal health coverage?**

Yes ( ) No (No)

\*India currently doesn’t have a universal healthcare system for citizens

**If yes, what kind of medical services are free of charge?**

*(Please specify)*

**Are women’s rights to health, including sexual and reproductive health, autonomy and health insurance, applied also to girls under 18?**

Yes ( ) No (No)

*If “yes”, please indicate the legislation regulating these and indicate enforcement mechanisms.*

Note: Reproductive, Maternal, Newborn, Child and Adolescent Health under the National Rural Health Mission contain provisions for Adolescent health care and education but don’t specifically address sexual and reproductive autonomy for girls under 18.[[3]](#footnote-3)

1. **Are there any provisions which restrict women’s access to health services? In particular which:**

*(Please specify in the space provided for this purpose "yes" or "no")*

(No) require the consent of a male relative/husband for a married woman’s medical examination or treatment or access to contraceptives or abortion,

(Yes) require parental consent in case of adolescents’ access to contraceptives or abortion;

* Under the Medical Termination of Pregnancy Act[[4]](#footnote-4), 1971, proviso 4(a) to Section 3 indicates that “No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian.”

(No) allow medical practitioners to refuse provision of a legal medical service on grounds of conscientious objection

(No) prohibit certain medical services, or require that they be authorized by a physician, even where no medical procedure is required; in particular:

(No) IUDs (intrauterine devices) or hormonal contraceptives[[5]](#footnote-5)

(No) Emergency contraceptives, including the morning-after pill[[6]](#footnote-6),

(No) Sterilization on request (please also include information regarding whether non-therapeutically indicated sterilization is allowed for men);

(No) Early abortion (in first trimester of pregnancy) at the pregnant woman’s request[[7]](#footnote-7)

(No) Medically assisted reproduction (e.g., in vitro fertilization)

*If yes, please indicate the relevant legal regulations and indicate the sources.*

1. **Are the following acts criminalized?**

*(Please specify in the space provided for this purpose "yes" or "no")*

(No) transmission of HIV or other venereal diseases by women only

(No) female genital mutilation

\*No specific law governing or recognizing female genital mutilation in India

(Yes) child marriage

(No) home births with an obstetrician or midwife

(No) abortion

**If yes, are there any exceptions to these prohibitions and under what circumstances do exceptions apply?**

* Child Marriage: The Prohibition of Child Marriage Act, 2006[[8]](#footnote-8) (PCMA) prohibits the solemnization of child marriages in India. Under Section 3 of the PCMA a child marriage is voidable at the instance of the contracting party who was a child at the time of the marriage. Ideally, the Act should be amended to make all child marriages null and void from the beginning.

**And who is criminally responsible?** *(Please circle the appropriate answer)*

**The woman, the doctor, other persons directly or indirectly related with the pregnancy and/or the abortion.**

*Please give legal references.*

1. ***Safety***
2. **Does your country have regulations (in the constitution, legislation or in other legal codes) that guarantee:**

*(Please specify in the space provided for this purpose "yes" or "no")*

(Yes) Special protection against gender based violence

(Yes) Equal access for women to criminal justice

1. **Are the following acts criminalized?**

*(Please specify in the space provided for this purpose "yes" or "no")*

(Yes) adultery

Section 497 of the Indian Penal Code[[9]](#footnote-9) criminalizes Adultery and provides that:

“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.”

(Yes) prostitution

(If yes, who is criminally responsible – please circle the appropriate answer: the sex worker, **the procurer** and/or **the customer**)

The Immoral Trafficking Prevention Act, 1956,[[10]](#footnote-10) is the main statute dealing with sex-work in India. The Act does not criminalize prostitution or prostitutes per se, but provides for criminalization of acts by third parties facilitating prostitution like brothel keeping, living off earnings and procuring, even where sex-work is not coerced.

(Yes) sexual orientation and gender identity (homosexuality, lesbianism, transgender, etc.)

\*Sec. 377 of the Indian Penal Code which talks about “Unnatural Offences” makes sexual intercourse with a person of the same gender a punishable offence. [[11]](#footnote-11)

(No) violations of modesty or indecent assault (e.g. not following dress code)

*Please give legal references and provisions.*

1. **Are there any provision in criminal law that treat women and men unequally with regard to:**

*(Please specify in the space provided for this purpose "yes" or "no")*

(Yes) Procedure for collecting evidence

* Section 20 of the Criminal Amendment Act of 2013 has inserted an exception to Section 273, Evidence to be taken in presence of Accused of the Code of Criminal Procedure, 1973[[12]](#footnote-12), which states;

“Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.”

* Section 26 of The Criminal Amendment Act of 2013 substitutes Section 114A of the Indian Evidence Act, 1872[[13]](#footnote-13) which provides for presumption of absence of consent in certain prosecution for rape.

“114A. Presumption as to absence of consent in certain prosecutions for rape.—in a prosecution for rape under clause(a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.]”

(Yes) Sentencing for the same offence, especially capital punishment, stoning, lashing, imprisonment, etc.

* Section 416 of the Code of Criminal Procedure, 1973[[14]](#footnote-14) provides for postponement of capital sentence on pregnant women which reads as under;

“If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if thinks fit commute the sentence to imprisonment for life.”

(No) So called “honor crimes” (are they tolerated in order for the perpetrator to avoid prosecution or to be less severely punished if the woman is killed?)

1. **Diagnosing and counteracting possible sex discrimination in practice in the area of health and safety**
2. ***Health***
3. **Are there legal obligations to provide health education in school?**

Yes ( ) No (No)

If yes, does it cover: *(Please specify in the space provided for this purpose "yes" or "no")*

( ) prevention of sexually transmitted diseases

( ) prevention of unwanted pregnancies

( ) promotion of a healthy lifestyle, including prevention of dietary disorders of teenage girls, including anorexia and bulimia

( ) psychological/psychiatric training on self-control of aggression, including sexual aggression

*Please indicate any relevant legal regulation or programs regarding to the above mentions.*

*Note:* Though there is no legal obligation to provide health education in schools, the National Rural Health Mission includes provisions for Adolescent health education through community based interventions and services.

* The Reproductive, Maternal, Newborn, Child and Adolescent Health (RMNCH+A) programme under the National Rural Health Mission includes a scheme titled Rashtriya Kishor Swasthya Karyakram (RKSK) which was launched by the Ministry of Health and Family Welfare in 2013.[[15]](#footnote-15)
* The RKSK programme expands the scope of adolescent health programming in India - from being limited to sexual and reproductive health, it now includes in its ambit nutrition, injuries and violence (including gender based violence), non-communicable diseases, mental health and substance misuse.
* The delivery mechanism of the RKSK Programme is through implementation of community based services including a Peer Educator Programme and Adolescent Friendly Health Clinics.[[16]](#footnote-16)

1. **Are there any statistical data disaggregated by age and/or sex (collected over the last 5 years) regarding :**

*(Please specify in the space provided for this purpose "yes" or "no")*

(No) malnutrition

(Yes) maternal mortality[[17]](#footnote-17)

(No) maternal morbidity, including obstetric fistula

(Yes) adolescent childbearing[[18]](#footnote-18)

(No) health consequences of physical, psychological, sexual and economical gender-based violence

(Yes) incidence of HIV/AIDS and sexually transmitted diseases[[19]](#footnote-19)

(No) drug abuse

(No) alcohol addiction

(Yes) legal abortions[[20]](#footnote-20)

Note: A comprehensive compilation of abortion statistics from India (using official states statistics has been accessed from an external source not an official Indian government website.

(No) death resulting from legal abortions

(No) illegal abortions

(No) death resulting from illegal abortions

(Yes) use of contraceptives, including mechanical and hormonal (including emergency contraceptives)[[21]](#footnote-21)

(Yes) sterilization on request[[22]](#footnote-22)

*If “yes”, please provide for data and sources.*

1. **Are there any statistical data and/or estimations regarding the number of reported and/or unreported cases and convictions for :**

*(Please specify in the space provided for this purpose "yes" or "no")*

(No) female genital mutilation

\* No specific law governing or recognizing female genital mutilation in India

(No) illegal voluntary abortion

(No) forced abortions

(No) forced sterilizations

\*Though there have been reported cases of forced or coercive sterilization under the Family Welfare Programme (Five Year Plans) no official data collection on the issue has taken place.

(No) malpractices in cosmetic medicine

(No) obstetric violence

*If “yes”, please give further references.*

1. **Is the gender perspective included in national health-related policies:**

Yes (Yes) No ( )

**In particular:** *(Please specify in the space provided for this purpose "yes" or "no")*

(Yes) in planning the distribution of resources for health care

(No) in medical research on general diseases, with proper and necessary adaptations to the different biological make-up of women and men

(No) in geriatric service provision

(No) in state custodial decisions to institutionalize children between 0-3 years old

**Explanation**: *The need for a gender-based approach to public health is connected with the necessity to identify ways in which health risks, experiences, and outcomes are different for women and men and to act accordingly in all health related policies.*

1. ***Safety***
2. **Are there any national policies regarding women’s safety in public spaces?**

Yes (Yes) No ( )

*If “yes”, please give references.*

* The Criminal Amendment Act, 2013[[23]](#footnote-23)

1. **Have there been any public opinion research polls on the fear of crime among women and men (over the last 5 years)?**

Yes (Yes) No ( )

*If “yes”, please give references and the outcomes of such research polls.*

* we at [www.safecity.in](http://www.safecity.in) are documenting sexual violence in public spaces in India and providing monthly reports of trends to police in Mumbai, Delhi and Goa.
* Dalberg did a survey of women commuters on BEST buses in Mumbai <http://www.dnaindia.com/mumbai/report-women-commuters-in-mumbai-still-get-a-raw-deal-reveals-survey-1484062>

- A survey by the Associated Chambers of Commerce and Industry of India (ASSOCHAM), released in December 2012, showed that 92 percent of working women in India said they felt insecure, especially at night, in all major economic centers across the country, [Inter Press Service reported](http://www.ipsnews.net/2012/12/fear-of-rape-stalks-indian-women/). The random survey of women in the Delhi National Capital Region, Mumbai, Kolkata, Bangalore, Hyderabad, Ahmedabad, Pune and Dehradun found that 100 percent of women respondents feel that the problem of women’s insecurity is bigger than any other challenge currently facing India. The key issues that contribute to women feeling “unsafe or uncomfortable” are poor lighting, no access to emergency assistance and inadequate police security.

1. **Are there any measures and programs undertaken in order to increase women’s safety e.g. in public urban spaces, in public transportation, etc.?**

Yes (Yes) No ( )

* We have a national women’s helpline no 1091 and each state police monitor it. In addition Mumbai railways has its own women helpline numbers 1311/933333111
* The Mumbai police have a system where before a woman boards an auto or taxi she can sms her details and they will track her journey.

*If “yes”, please give references.*

1. **Are there any statistics on crimes amounting to violence against women in public spaces and/or domestic violence?**

Yes (Yes) No ( )

*If “yes”, please give references.*

* The National Crime Records Bureau[[24]](#footnote-24), an attached office of the Ministry of Home Affairs creates, maintains and disseminates a secure national database on crime and criminals for law enforcement agencies and promotes its use for improving public service delivery.

1. **Is the sex of the victim reflected in the police, prosecutors and courts records?**

Yes (Yes) No ( )

*If “yes”, please give references.*

1. ***Health and Safety***
2. **Are there any data and/or results of research on the detrimental influence of the feeling of insecurity and unsafety on women’s mental health?**

Yes ( ) No ( No )

*If “yes”, please give references.*

1. **Are there specific health and safety protective measures for women , and/or with special provisions for mothers with young children, in “closed” institutions including in: *(I am not aware)***

*(Please specify in the space provided for this purpose "yes" or "no")*

( ) prisons (e.g. measures similar to the Bangkok Rules),

( ) police detention cells

( ) psychiatric hospitals,

( ) pre-deportation centers,

( ) camps for displaced women and families (if relevant),

( ) nunneries

( ) women’s shelters

*If “yes”, please provide any information about the protective measures established.*

1. **Are there specific training programs for medical and legal professionals on the issue of gender-based discrimination in the area of health and safety? *(I am not aware)***

Yes ( ) No ( )

Do they cover: *(Please specify in the space provided for this purpose "yes" or "no")*

( ) the issues connected with specific women’s needs in area of health

( ) specific women’s vulnerability to be victims of gender-based violence or specific crimes, covering e.g. the issues of:

( ) the nature of gender-based violence,

( ) its occurrences and symptoms

( ) methods of detection

( ) medical protocols

( ) influence of gender based violence, in particular of sexual violence on the future behaviors of victims (post-traumatic stress symptoms etc.)

1. **Could you please indicate any legislative reform, policy or practice, that you consider “good practice” regarding health and safety for women in your country?**

**If yes, please indicate on which criteria your definition of “good practices” is based.**

The Prevention of Sexual harassment of women at the workplace act, 2013 is a step forward because it clearly defines the aggrieved woman, the kinds of harassment and the redressal procedure to be followed. It lays emphasis on the employer to provide safety and security for a woman at the workplace and this includes domestic workers.

1. Article 12, UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979 (AG Resolution 34/180) and entered into force on 3 September 1981. [↑](#footnote-ref-1)
2. *Ibid* art. 11, (f). [↑](#footnote-ref-2)
3. Reproductive, Maternal, Newborn, Child and Adolescent Health, National Rural Health Mission. <http://nrhm.gov.in/images/pdf/RMNCH+A/RMNCH+A_Strategy.pdf> Accessed on August 14, 2015 [↑](#footnote-ref-3)
4. Medical Termination of Pregnancy Act of 1971, Sec. 3 proviso 4(a). [http://tcw.nic.in/Acts/MTP-Act-1971.pdf Accessed on August 14](http://tcw.nic.in/Acts/MTP-Act-1971.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-4)
5. Reproductive, Maternal, Newborn, Child and Adolescent Health, National Rural Health Mission. <http://nrhm.gov.in/images/pdf/RMNCH+A/RMNCH+A_Strategy.pdf> Accessed on August 14, 2015 [↑](#footnote-ref-5)
6. Ibid [↑](#footnote-ref-6)
7. Medical Termination of Pregnancy Act of 1971. [http://tcw.nic.in/Acts/MTP-Act-1971.pdf Accessed on August 14](http://tcw.nic.in/Acts/MTP-Act-1971.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-7)
8. The Prohibition of Child Marriage Act, 2006. [http://wcd.nic.in/cma2006.pdf Accessed on August 14](http://wcd.nic.in/cma2006.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-8)
9. The Indian Penal Code of 1860, Sec 497, Adultery. [http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf Accessed on August 14](http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-9)
10. The Immoral Traffic (Prevention) Act of 1956. <http://tcw.nic.in/Acts/Immoral_Traffic_Prevention_Act_(ITPA)_1956.pdf> Accessed on August 14, 2015 [↑](#footnote-ref-10)
11. The Indian Penal Code of 1860, Sec. 377, Unnatural Offences. [http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf Accessed on August 14](http://ncw.nic.in/acts/THEINDIANPENALCODE1860.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-11)
12. The Criminal Amendment Act of 2013, Section 20, Amendment of Sec. 273 of the Code of Criminal Procedure, 1973. [http://indiacode.nic.in/acts-in-pdf/132013.pdf Accessed on August 14](http://indiacode.nic.in/acts-in-pdf/132013.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-12)
13. Ibid, Section 26, Substitution of Sec. 114A of the Indian Evidence Act, 1872. [http://indiacode.nic.in/acts-in-pdf/132013.pdf Accessed on August 14](http://indiacode.nic.in/acts-in-pdf/132013.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-13)
14. The Code of Criminal Procedure, 1973, Section 416, Postponement of Capital Sentence on Pregnant Women. [http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf Accessed on August 14](http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-14)
15. National Rural Health Mission, Rashtriya Kishor Swasthya Karyakram. [http://nrhm.gov.in/nrhm-components/rmnch-a/adolescent-health-rksk/rksk-background.html Accessed on August 14](http://nrhm.gov.in/nrhm-components/rmnch-a/adolescent-health-rksk/rksk-background.html%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-15)
16. National Rural Health Mission, Rashtriya Kishor Swasthya Karyakram. [http://nrhm.gov.in/images/pdf/programmes/RKSK/RKSK\_Implementation\_Guideline\_05.03.2015.pdf Accessed on August 14](http://nrhm.gov.in/images/pdf/programmes/RKSK/RKSK_Implementation_Guideline_05.03.2015.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-16)
17. Ministry of Health and Family Welfare, Government of India, Maternal Mortality Ratio (MMR) estimates 2014. [https://nrhm-mis.nic.in/SitePages/HMIS-PeriodicReport.aspx Accessed on August 14](https://nrhm-mis.nic.in/SitePages/HMIS-PeriodicReport.aspx%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-17)
18. State of the World Population Report 2013, United Nations Population Fund. [http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP2013-final.pdf Accessed on August 14](http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP2013-final.pdf%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-18)
19. Department of AIDS Control Ministry of Health and Family Welfare Government of India, State Fact Sheets, March 2014. [http://naco.gov.in/upload/2014%20mslns/State%20Fact%20Sheet%202013-14.pdf](http://naco.gov.in/upload/2014%2520mslns/State%2520Fact%2520Sheet%25202013-14.pdf) Accessed on August 15, 2015 [↑](#footnote-ref-19)
20. India abortions and live births by state and territory, 1971-2014, compiled by Wm. Robert Johnston. [http://www.johnstonsarchive.net/policy/abortion/india/ab-indias.html Accessed on August 14](http://www.johnstonsarchive.net/policy/abortion/india/ab-indias.html%2520Accessed%2520on%2520August%252014), 2015 [↑](#footnote-ref-20)
21. Statistics Division Ministry of Health and Family Welfare Government of India, Family, Family Welfare Statistics in India, 2011. [http://mohfw.nic.in/WriteReadData/l892s/3503492088FW%20Statistics%202011%20Revised%2031%2010%2011.pdf](http://mohfw.nic.in/WriteReadData/l892s/3503492088FW%2520Statistics%25202011%2520Revised%252031%252010%252011.pdf) Accessed on August 14, 2015 [↑](#footnote-ref-21)
22. Ibid [↑](#footnote-ref-22)
23. The Criminal Amendment Act, 2013 [http://indiacode.nic.in/acts-in-pdf/132013.pdf Accessed on August 15](http://indiacode.nic.in/acts-in-pdf/132013.pdf%2520Accessed%2520on%2520August%252015), 2015 [↑](#footnote-ref-23)
24. National Crime Records Bureau http://ncrb.gov.in/ Accessed on August 15, 2015 [↑](#footnote-ref-24)