



know your rights



A SIMPLIFIED GUIDE TO STERILISATION AND YOUR RIGHTS



WOMEN'S LEGAL CENTRE

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Written by: Jody-Lee Fredericks
Edited by: Jody-Lee Fredericks
Layout and Design by: Cassandra Pireu
Printing by: Salty Printers

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The Women's Legal Centre

The Women's Legal Centre is a non-profit, independently funded law Centre, started by a group of lawyers. It is an independent law Centre that seeks to achieve equality for women in South Africa. As access to justice is largely inaccessible to poor women, particularly black women, the Women's Legal Centre plays an important role in litigating in their interest and providing them with access to free legal advice.

7th Floor
Constitution House
124 Adderley Street
Cape Town
8000

2nd Floor
Braamfontein Centre
23 Jorissen Street
Johannesburg
2001

Tel: 021 424 5660
Fax: 021 424 5206
Email: info@wlce.co.za
Web: <http://www.wlce.co.za>

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Part 1 - How to use this booklet





What is this booklet for?

This booklet is part of a series of booklets designed by the Women's Legal Centre to help women and girls to understand the laws which can help them to protect their rights.

This booklet focuses on the laws regarding sterilisation. It explains the meaning of "sterilisation" and the legal rights that you have to protect yourself if you are experiencing sterilisation.





What can I learn from this booklet?

You can use this booklet to:

-  Understand the meaning of "sterilisation".
-  Learn about your legal rights that can protect you from sterilisation.
-  Understand the legal processes that you need to follow to protect your rights.
-  Help others learn about their rights if they are experiencing sterilisation.

Why is it important to know my rights?

If you know your rights, then you can:

-  Know when the way others treat you is against the law.
-  Know how the law can help you if your rights are violated.
-  Know where to enforce your rights and get legal help.
-  Create community awareness and educate your family, friends and community members about their rights.

Use these pictures as your guides through this book:

Comment:



You will see this picture next to information that is important, useful to note or may seem hard to understand.

Definition:



You will see this picture near legal terms and words that may be difficult to understand.

Part 2 - Introduction

Sexual and reproductive health rights are key to every woman's health. Far too often sexual and reproductive issues are seen to be too personal and private for people to discuss. However, it is important for women to have access to information in matters relating to their sexual and reproductive health in order for women to make informed decisions relating to their sexual and reproductive health.

This booklet aims to inform people of their rights around sterilisation to enable them to be empowered in order for them to assert their rights. This booklet also aims to provide information which is accessible and understandable to all persons.

Sterilisation is governed by the Sterilisation Act no.44 of 1998. This Act recognises the rights of all persons to be informed of and to have access to safe, effective, affordable and acceptable methods of sterilisation.

This Act also recognises everyone's right to bodily and psychological integrity, including the right to make decisions concerning reproduction and the right to security in and control over their bodies.

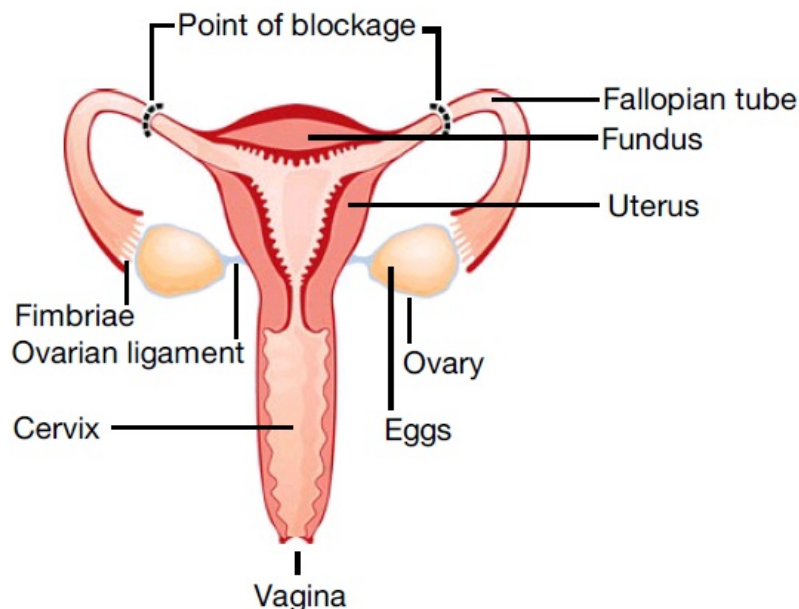
What is sterilisation?

It is a procedure whereby a person can be **permanently** rendered incapable of fertilisation or reproduction. Sterilisation is a permanent form of birth control which is performed on women who choose to no longer have children.

What is the procedure for a sterilisation?

It is a surgical procedure which prevents the female eggs from reaching the sperm and becoming fertilised. This is done by blocking or sealing the fallopian tubes. The fallopian tubes link the ovaries to the womb (uterus). The female eggs will still be released from the ovaries as normal but will not reach the womb in order to be fertilised. The female eggs will be absorbed naturally into the women's body.

Diagram of a sterilisation:



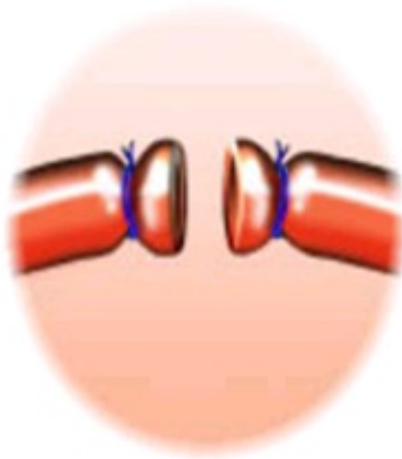
Part 2 - Introduction

There are several ways to do this:

- 1) Cutting or tying the tubes- tubal ligation.
- 2) Applying clips, clams and rings.
- 3) Removing a small piece of tube and tying of the cut ends.
- 4) By inserting metal coils into the tubes which causes scarring and blocks the tubes.



Cutting the tubes



Removing a small piece of tube and tying the cut ends.



Applying clips, clams or rings

It can be done under local anaesthetic or general anaesthesia. Once a sterilisation is performed on a woman she no longer will be able to have children.



Sterilisation is commonly called 'tying of the tubes'

What is fertilisation?

Fertilisation is the moment when the sperm and egg join together, and the genes from the woman and the man combine to form a new life.

What is infertility?

It is the inability to create a new life after regular unprotected sex.

What is a surgical procedure?

A surgical procedure is when the doctor has to cut into you or insert something in order to operate on you.

Part 2 - Introduction

When is sterilisation recommended?

Sterilisation is normally recommended when women are certain that they no longer want to have any more children.



Sterilisation is normally recommended when women are certain that they no longer want to have any more children.

What is a hysterectomy?

A hysterectomy is an operation to remove a women's uterus (womb).

What is the difference between a hysterectomy and a sterilisation?

With a hysterectomy, a women's uterus (womb) is being removed and as a result a women will no longer menstruate. Whereas with a sterilisation no uterus is being removed. It is only the women's fallopian tubes which are being closed and a women will continue to menstruate.

Many women confuse a hysterectomy with a sterilisation procedure. In both a hysterectomy and sterilisation women are unable to have children.

Where can a sterilisation take place?

Sterilisations are carried out in hospitals or clinics with surgical units that are designated for that purpose.

Part 3 - Different methods of contraception

Methods of contraception which do not cause infertility:

1) Oral contraception

This form of contraception is commonly called the pill. Oral Contraception are pills that come in packets of 28 and must be taken once daily at the same time.

These are free of charge at clinics and hospitals, and can also be bought at pharmacies but you may be asked for a prescription.

2) Contraceptive injection

There are two types: Nur-Isterate, which is given every two months (eight weeks) and DMPA (Depo Provera or Petogen) which is given every three months (12 weeks). This form of contraception is injected into your body once every 2 months or once every three months depending on the type of contraception injection you choose. This is provided free of charge at clinics and hospitals.

3) Intrauterine Device (IUD)



A IUD is a small plastic and copper device that is put into a women's uterus (womb) by a specially trained health worker (nurse or doctor). An IUD can prevent pregnancy for at least five years.

Women are required to go to the clinic for a check-up six weeks after the IUD has been inserted. It is also advisable to go for a check-up every year to ensure that the IUD is still in the correct place as it can shift. The IUD can be removed at anytime.



This is commonly known as the loop. Many women confuse sterilisation with the IUD.

4) Emergency Contraception

This method can be used by women who want to prevent pregnancy because they have had unprotected sex, been raped or they suspect that the contraception they used during sexual intercourse did not work properly.



This is commonly known as the morning after pill.

Emergency contraceptive pills can be taken 72 hours (three days) after unprotected sex to prevent unwanted pregnancy, but the earlier the pills are taken the better they work. Pills are free of charge at clinics and hospitals and can also be bought without prescription at pharmacies.

Part 3 - Different methods of contraception

Methods of contraception which do not cause infertility (Cont.):

5) Condoms

Female and male condoms are the only single method of contraception that offers dual protection from both unwanted pregnancy as well as Sexually Transmitted Infections including HIV/AIDS. Male and female condoms are free of charge at clinics and some public venues. Condoms are also sold cheaply at most pharmacies and shops.

6) The Implant



The implant is a small plastic rod the size of a matchstick, which is inserted under the skin of the upper arm by a trained healthcare provider (usually a nurse). The implant slowly releases a low dose of hormone that provides protection against pregnancy for 3 or 5 years, depending on the model.

The main difference between sterilisation and the other methods of contraception is:

Sterilisation results in a woman not being able to bear children again. Therefore it is a permanent form of contraception. While with the other methods of contraception a woman is able to bear children again once she stops using that form of contraception.

A sterilisation procedure can only be performed by a doctor whereas other methods of contraception can be given or performed by other health care workers (usually a nurse).

Part 4 - What does the law say about consent?

Do I have a choice to be sterilised?

Yes, in terms of the law a doctor cannot perform a sterilisation without your informed consent. Therefore the choice to have a sterilisation rests solely on you.

Do I require my partners consent to be sterilised?

No, a woman does not require her partner or husband's permission to have a sterilisation.

When can I consent to a sterilisation?

The law states that a person can only consent to a sterilisation when they **18 years** or older and are capable of consenting.






Can a person under the age of 18 years consent to a sterilisation?

No, a person under the age of 18 years cannot consent to a sterilisation.

What does consent mean?

Consent means to give permission freely and voluntarily without any inducement.

The law states that consent can only be given on condition that the woman has been **informed** of the following:

-  A clear explanation of the sterilisation procedure.
-  The consequences and risks of the sterilisation procedure.
-  The reversible or irreversible nature of the sterilisation procedure.
-  Be given advise that the consent may be withdrawn anytime before the treatment.
-  The woman must sign the consent form.



Consent is only valid once **all** of the above has been fulfilled.

Part 4 - What does the law say about consent?

Who is not capable of giving consent?

The following groups of people have been deemed, by the state, incapable of consenting to the sterilisation process:



A minor (a person below the age of 18 years)



A person with a mental disability



Mental disability:

A range of functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self-care and requiring constant aid and supervision.

Can a sterilisation be performed on a minor or mentally disabled person?

Minor: No, a sterilisation cannot be performed on a minor unless failure to do so will endanger the person's life or seriously impair the person's physical health.

Mentally disabled person: A sterilisation can only be performed if the person is mentally disabled to such an extent that such a person is incapable of;

- Making his or her own decision about contraception or sterilisation
- Developing mentally to a sufficient degree to make an informed judgement about contraception and sterilisation and;
- Fulfilling the parental responsibility associated with giving birth.

In addition a sterilisation may only be requested for a minor or a mentally disabled person with the consent of a:



Parent



Spouse



Guardian



Curator

And if there is agreement from a panel which consist of:



A psychiatrist or medical practitioner if no psychiatrist is available;











A psychologist or social worker; and



A nurse

Part 4 - What does the law say about consent?

After considering all the relevant information, including:

-  The person's age.
-  Whether there are other safe and effective alternatives to sterilisation;
-  The person's mental and physical health and wellbeing;
-  The potential effect of sterilisation on the person's mental and physical health well-being;
-  The nature of the sterilisation procedure to be performed;
-  The likelihood that the person will become capable of consenting to sterilisation;
-  Whether the sterilisation is in the best interests of the person to be sterilised; and
-  The benefit which the person may deprive from sterilisation.

What is the difference between forced sterilisation and coerced sterilisation?

Forced sterilisation occurs when the sterilisation procedure is performed on the woman without her knowledge.

Coerced sterilisation occurs when a woman is made to sign a consent form under distress, undue pressure or without proper information and explanation. She is made to feel like she has no choice and that the sterilisation is her only option.

If I have given my consent to be sterilised may I withdraw my consent?

Yes, you may withdraw consent at anytime before the sterilisation procedure.

What are the consequences if a person does not follow the rules in the Sterilisation Act?

The Act makes it clear that anyone who disobeys or fails to comply with the provisions of the Act is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

This means that a healthcare worker that does not comply with the requirements of consent may be found to be guilty of a criminal offence. In addition the Hospital, State and/or the healthcare worker can be held liable civilly.

News press

Women who was sterilised without her informed consent is successful in claiming damages

Ms S our client, who is an HIV positive woman, had gone to hospital to deliver her baby by caesarean section in 2009. She was asked to sign many forms and without knowing that she was also agreeing to be sterilised. She was 28 at the time and was not given any explanation of the nature, risks and consequences of the sterilisation procedure. The WLC took the matter to court to claim damages for the client. The claim was against the Provincial Department of Health and the State Hospital for sterilising our client without her consent.

The Provincial Department decided to settle the case and admitted that the doctors did not get our clients informed consent. They offered the client money. She was given R480 000 for general damages, all future medical costs, costs of psychotherapy and loss of earnings.

Useful Contacts

Institution

Contact Number

Women's Legal Centre - Cape Town	021 424 5660
Women's Legal Centre - Johannesburg	011 339 1099
Her Rights Initiative	031 539 3186
Association for Voluntary Sterilisation South Africa	021 531 1665
Mental Health Information Line	0800 567 567
AIDS Helpline	0800 012 322
Health professionals council of South Africa	012 338 9300

Department of Health Provincial complaints line

Eastern Cape	0800 032 364
Free State	0800 919 191
Gauteng	0800 535 554
KwaZulu-Natal	0800 203 886
Limpopo	033 395 2009
Mpumalanga	0800 204 098
Northern Cape	018 387 5778
Western Cape	021 483 5624

REPUBLIC OF SOUTH AFRICA

STERILISATION ACT

REPUBLIEK VAN SUID-AFRIKA

WET OP STERILISASIE

No , 1998

ACT

To provide for the right to sterilisation; to determine the circumstances under which sterilisation may be performed and, in particular, the circumstances under which sterilisation may be performed on persons incapable of consenting or incompetent to consent due to mental disability; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the Constitution protects the rights to bodily and psychological integrity of persons which includes the right to make decisions concerning reproduction and the right to security in and control over their bodies;

RECOGNISING that both women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation; and

WHEREAS the inability to give consent should not automatically entail the loss of constitutional rights and whereas it is necessary to ensure that mentally disabled persons are able to exercise these rights as far as possible;

THEREFORE, in order to restore, protect and promote the human dignity of persons, in particular those who are incapable of consenting or who are mentally disabled, by ensuring that decisions about sterilisation are made in a manner that is responsible and considerate,

BE IT ENACTED by Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “consent” means the consent contemplated in section 4; (viii) 5
 - (ii) “medical practitioner” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); (i)
 - (iii) “Member of the Executive Council” means a member of the Executive Council responsible for health in a province; (ii)
 - (iv) “Minister” means the Minister of Health; (iv) 10
 - (v) “nurse” means a person registered as such in terms of the Nursing Act, 1978 (Act No. 50 of 1978), and who holds a qualification in psychiatry; (ix)
 - (vi) “prescribed” means prescribed by regulation made under this Act; (x)
 - (vii) “psychiatrist” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); (v) 15
 - (viii) “psychologist” means a person registered as such in terms of the Health Professions Act, 1974 (Act No. 56 of 1974); (vi)

- (ix) “social worker” means a person registered as such in terms of the Social Work Act, 1978 (Act No. 110 of 1978); (iii)
- (x) “sterilisation” means a surgical procedure performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad. (vii) 5

Persons capable of consenting

2. (1) No person is prohibited from having sterilisation performed on him or her if he or she is—
- (a) capable of consenting; and
 - (b) 18 years or above. 10
- (2) A person capable of consenting may not be sterilised without his or her consent.
- (3) (a) Sterilisation may not be performed on a person who is under the age of 18 years except where failure to do so would jeopardize the person’s life or seriously impair his or her physical health.
- (b) Section 3(1)(a) and (2) will apply with the necessary changes. 15

Person incapable of consenting or incompetent to consent due to severe mental disability

3. (1) Sterilisation may be performed on any person who is incapable of consenting or incompetent to consent—
- (a) upon a request to the person in charge of a hospital and with the consent of a— 20
 - (i) parent;
 - (ii) spouse;
 - (iii) guardian; or
 - (iv) curator;
 - (b) if a panel contemplated in subsection (2) after considering all relevant 25
 - information, including the fact that—
 - (i) the person is 18 years of age, unless the physical health of the person is threatened; and
 - (ii) there is no other safe and effective method of contraception except sterilisation, 30
 concurs that sterilisation may be performed; and
 - (c) if the person is mentally disabled to such an extent that such a person is incapable of—
 - (i) making his or her own decision about contraception or sterilisation;
 - (ii) developing mentally to a sufficient degree to make an informed 35
 - judgement about contraception or sterilisation; and
 - (iii) fulfilling the parental responsibility associated with giving birth.
- (2) The person in charge of a hospital contemplated in subsection (1) must upon request, as prescribed for sterilisation, convene a panel which will consist of—
- (a) a psychiatrist, or a medical practitioner if no psychiatrist is available; 40
 - (b) a psychologist or a social worker; and
 - (c) a nurse.
- (3) Where a person to be sterilised is in custodial care, no member of the panel may be an employee of the custodial institution.
- (4) If sterilisation is to be performed in a private health care facility, the members of 45 the panel may not be employees of, or have a financial interest in, that facility.
- (5) The person performing the sterilisation must ensure that the method of sterilisation used holds the least health risk to the person on whom sterilisation is performed.
- (6) Sterilisation may not be performed in terms of subsection (1) unless the person 50 suffers from a severe mental disability.
- (7) For the purposes of this section, “severe mental disability” means a range of functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care

and requiring constant aid and supervision, to severely restrained sensory and motor functioning and requiring nursing care.

Consent

4. For the purposes of this Act, “consent” means consent given freely and voluntarily without any inducement and may only be given if the person giving it has— 5
- (a) been given a clear explanation and adequate description of the—
 - (i) proposed plan of the procedure; and
 - (ii) consequences, risks and the reversible or irreversible nature of the sterilisation procedure;
 - (b) been given advice that the consent may be withdrawn any time before the 10 treatment; and
 - (c) signed the prescribed consent form.

Place where sterilisation may take place

5. (1) Sterilisation contemplated in section 3(1) may be performed only at a facility designated in writing for that purpose by the member of the Executive Council. 15
- (2) The member of the Executive Council may designate any facility in terms of subsection (1) subject to such conditions and requirements as he or she may consider necessary for achieving the objects of this Act.
- (3) The member of the Executive Council may, if the conditions or requirements contemplated in subsection 2 are not complied with, withdraw any designation under 20 this section after giving reasonable notice of the intended withdrawal to the person in charge of the facility in question.

Keeping of records

6. The person in charge of a facility referred to in section 5 or a person designated for such purpose must be notified as prescribed of every sterilisation performed in that 25 facility and must keep a record of every such sterilisation.

Delegation

7. (1) The member of the Executive Council may in writing, on such conditions as he or she may determine, delegate to the head of a provincial department of health any power conferred upon him or her under this Act. 30
- (2) The member of the Executive Council is not divested of any power delegated by him or her.

Regulations

8. The Minister may, after consultation with the members of the Executive Council, make regulations relating to any matter which he or she may consider necessary or 35 expedient to prescribe for achieving the objects of this Act.

Offences and penalties

9. Any person who contravenes or fails to comply with the provisions of this Act is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not 40 exceeding five years.

Repeal of laws

10. This Act repeals any law relating to sterilisation which applied prior to the commencement of this Act.

Short title and commencement

11. This Act is called the Sterilisation Act, 1998, and comes into effect on a date fixed 45 by the President by proclamation in the *Gazette*.



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 480 Cape Town 22 June 2005 **No. 27702**

THE PRESIDENCY

No. 599

22 June 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 3 of 2005: Sterilisation Amendment Act, 2005



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 18 June 2005.)

ACT

To amend the Sterilisation Act, 1998, so as to substitute a definition; to make provision for a medical opinion in certain circumstances; to provide for additional information to be considered when contemplating sterilisation; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 44 of 1998

1. Section 1 of the Sterilisation Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “sterilisation” of the following definition: 5

“ ‘sterilisation’ means [a surgical procedure performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad] a procedure whereby a person could be permanently rendered incapable of fertilisation or reproduction.” 10

Amendment of section 2 of Act 44 of 1998

-
- (i) consent is given by a person who is lawfully entitled to give consent; and 25

- (ii) an independent medical practitioner who, before a panel is convened in terms of section 3(2), has consulted with the person to be sterilised and has provided a written opinion to the effect that the sterilisation is in the best interest of that person.”.

Amendment of section 3 of Act 44 of 1998

5

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for the heading to section 3 of the following heading:
“Person incapable of consenting or incompetent to consent due to [severe] mental disability”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) if a panel contemplated in subsection (2) after considering all relevant information, including [the fact that]—
- (i) the [person is 18 years of] person’s age[, unless the physical health of the person is threatened; and];
 - (ii) whether there- [is no] are other safe and effective [method] alternatives [of contraception except] to sterilisation;
 - (iii) the person’s mental and physical health and wellbeing;
 - (iv) the potential effect of sterilisation on the person’s mental and physical health and wellbeing;
 - (v) the nature of the sterilisation procedure to be performed;
 - (vi) the likelihood that the person will become capable of consenting to sterilisation;
 - (vii) whether the sterilisation is in the best interests of the person to be sterilised; and
 - (viii) the benefit which the person may derive from sterilisation, concurs that sterilisation may be performed; and”;
- (c) by the deletion of subsection (6); and
- (d) by the substitution for subsection (7) of the following subsection:
“(7) For the purposes of this section, “[severe] mental disability” means a range of functioning extending from partial self-maintenance under close supervision, together with limited self-protection skills in a controlled environment through limited self care and requiring constant aid and supervision, to [severely] restrained sensory and motor functioning and requiring nursing care.”.

Amendment of section 4 of Act 44 of 1998

4. Section 4 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

- “(c) understood and signed the prescribed consent form.”.

Short title

5. This Act is called the Sterilisation Amendment Act, 2004.

