

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (C) NO. 308 OF 2014**

IN THE MATTER OF :

Mrs. X & Mrs. Y ...Petitioners

Versus

Union of India & Ors. ... Respondents

**COUNTER ON BEHALF OF THE RESPONDENT
NO. 4/ "LIFE FOR ALL"**

**PAPER BOOK
(FOR INDEX, KINDLY SEE INSIDE)**

ADVOCATE FOR THE RESPONDENT NO.4: JOSEPH ARISTOTLE S.,

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WRIT PETITION (CIVIL) NO. 308 of 2014

1. The present Counter is being filed by the Respondent No. 4, in response to the above-mentioned Writ Petition, filed by the Petitioners.
2. The Petitioners have filed the present Writ Petition under Article 32 of the Constitution of India challenging the constitutional validity of section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971 ("**1971 Act**") to the extent that it stipulates a ceiling of 20 weeks for an abortion to be done under section 3 of the 1971 Act and have prayed for a declaration that the rational ceiling under Section 3 of the 1971 Act be treated as 26 weeks.
3. That the Petitioners have also sought quashing of section 5(1) of the 1971 Act, to the extent that it restricts abortions

under section 5 to a restricted field where it is immediately necessary to save the life of the pregnant woman and have sought a declaration that the expression "*save the life of the pregnant woman*" in section 5 of the 1971 Act, includes "*the protection of the mental and physical health of the pregnant woman*", and includes situations where serious abnormalities in the foetus are detected after the 20th week of pregnancy.

4. Respondent No. 4 is a registered trust by the name of "Life For All", having its office at Jeevalaya Campus, Rayaruthupathi, Naickenpalayam, Coimbatore-20, Tamil Nadu, which aims to defend and promote the value of human life. Respondent No. 4 was impleaded by this Hon'ble Court, in the present Petition, as a Respondent vide Order dated 28 September 2016. A copy of the order dated 28 September 2016, is annexed herewith as **ANNEXURE R-1 (Page No. 37 to 38)**.

5. It is submitted at the outset, that the Respondents deny each and every averment, contentions and allegations made by the Petitioner in the present petition unless the same is specifically admitted herein under. The Petitioner reserves the right to file a detailed and additional counter

if so required at any time. It is further submitted that, the Respondent does not seek to traverse the facts mentioned in the Petition Para by Para, for the sake of brevity. The Respondent does not admit anything stated in the Petition which are not specifically admitted herein. However, no part of the Petition may be deemed to be admitted solely by reason of non-traverse, and it may be deemed that every averment in the Petition has been specifically set out in-seriatim and traversed. The Respondent denies everything which is in the Petition and contrary to the say of the answering Respondent herein.

PRELIMINARY OBJECTIONS:

6. That the prayers (a), (b), (c) and (e) sought by the Petitioners in the present writ petition, seeks to de-humanise and de-sensitize citizens of India including children, pregnant women, the disabled, and even the role of parents. If this Hon'ble Court grants the reliefs sought by the Petitioners, it will set an abhorrent constitutional precedent of law, morality and jurisprudence for future laws and amendments and will suppress and demonise the sensitivities and morality of public society.

7. That the legislature in its own wisdom has incorporated very strict conditions for carrying out abortions keeping in mind that the State is morally and duty bound as the guardian of its citizens and has the *parens patriae* power to safeguard the life of the child in the womb after it has attained the stage of viability. ??
8. That the circumstances and situations as that of the Petitioners are extremely rare and are rightly decided on a case to case basis. The Petitioner's prayer for this Hon'ble Court to carve out and provide blanket provisions for abortions available to all are completely misplaced and may be countenance by this Hon'ble Court. The Petitioners are seeking to make abortions beyond 20 weeks a norm rather than an exception.

PARAWISE REPLY:

9. It is reiterated that the contents of the present Writ Petition filed by the Petitioners are wrong and denied, save and except, where specifically admitted hereunder.
10. The contents of Para 1 of the Petition, relating to the relief prayed by the Petitioners in the present Petition are liable to be rejected. It is denied that the expansion of the term "save the life of the pregnant woman" would eliminate the

mental anguish or trauma suffered by women who are forced to carry fetuses with serious abnormalities that are detected after the twentieth week. It is clarified that several studies have repeatedly found that even in cases where serious abnormalities were detected after the twentieth week, pregnant women who chose to carry the pregnancy to term were able to better cope with the loss, mental anguish and trauma as compared to women who chose to terminate the pregnancy. It is denied that such revisions would eliminate the severe mental anguish and trauma suffered by the Petitioners and women who are forced to carry fetuses with serious abnormalities that are detected after the 20th week.

11. The contents of para-1A of the Petition do not require any response.
12. The contents of para 2 of the Petition in so far as they relate to the background of the Petitioner No. 1 requires no response. It is submitted that modern technology has made it possible to detect foetal abnormalities such as anencephaly prior to 20 weeks. It is submitted that the Respondent has found in their experience that providing palliative care to parents from the time of diagnosis to

delivery and beyond in cases where foetal abnormalities are detected, helped the parents to cope better with the mental anguish and trauma involved.

13. The contents of para 3 of the Petition in so far as they relate to the Respondent/union of India require no response. It is however clarified that the reliance sought to be placed by the Petitioners on their right to reproductive autonomy does not outweigh the interest of the state in protecting the life of the foetus in the womb, especially from the point of viability, i.e. from the period of 20 weeks onwards. It is a settled law that personal freedom or choice of an individual cannot curtail the freedom or choice of other individuals, specially the most vulnerable and persons who are defenceless. Unborn child cannot protect itself from the harm designed by his/her very own mother. 23

14. That the contents of para 4 to 10 of the Petition are denied. The Petitioners have relied on several studies to support their argument with regard to extending the ceiling cap of 20 weeks. It is denied that the ceiling of 20 weeks prescribed in the 1971 Act, jeopardises the mental health of the Petitioners or is without any basis. It is

reiterated that the legislature in its collective wisdom prescribed the ceiling of 20 weeks under the 1971 Act, after much deliberations and discussions. Furthermore the ceiling of 20 weeks is prescribed in the 1971 Act, because inter-alia the foetus is viable from the said period. That the reliance sought to be placed on the studies is erroneous, misleading and hence denied. It is reiterated that advancement in technology, has made it possible to detect foetal abnormalities even prior to 20 weeks. That several studies have found that even in cases where foetal abnormalities were detected, carrying the pregnancy to term helped mothers cope better with the loss and anguish, as they felt that they had done everything within their power to give the child a chance of survival and access to the best medical treatment available. It is also clarified that India's high MMR is on account of woman seeking unsafe abortions beyond the prescribed ceiling * of 20 weeks when no foetal abnormalities are detected. It is clarified that the ratio of foetal abnormalities detected in children is extremely rare and hence the same cannot be attributed as the reason for India's high maternal mortality rate. It is pertinent to mention that foetal abnormalities such as an anencephaly

and Dandy Walker syndrome are extremely rare and are detected 1.3 in 1000 and 1 in 30,000 live births respectively. The Petitioner seeks to manipulate data and conceal material facts from this Hon'ble Court which are designed to only appeal to the emotions and not intellect.

15. The contents of Para 11, 12 and 13 of the Petition relating to the background of Petitioner No. 1 require no response. It is clarified that the Petitioner admittedly had her first sonography at 26 weeks, when she learned that the foetus in her womb had an abnormality known as an anencephaly. It is most humbly submitted that due to modern technological advancement in prenatal screening, many foetal defects can now be discovered much earlier through genetic testing such as sampling the mother's blood, chorionic villus sampling (CVS), amniocentesis that would lead to the decision to pursue further genetic testing. It is submitted that most mothers are advised to undergo the first sonography test at 10 to 12 weeks. It is also clarified that several studies have held that even abnormality defects such as anencephaly can be detected before 20 weeks, provided the mother undergoes a first sonography at the time of 10 to 12 weeks. It is also submitted that affidavit of Petitioner's

doctor is not on record and Annexure P-10 does not corroborate the version of Petitioner No. 1 insofar as abortion after 20 weeks being safe.

16. The contents of para 14 of the Petition, where reliance is sought to be placed upon an article published by the Hindu is misplaced and hence denied. It is denied that medical termination of pregnancy is the only alternative in anencephaly cases. It is stated that in several cases pregnant mothers despite knowing that child was diagnosed with anencephaly chose to carry the pregnancy to term as the joy of spending a few hours with your child far outweighed the sorrow of losing the child and further helped them to cope better with the loss. It is submitted that in 2009 Nicholas Coke, a child born in Colorado with anencephaly, survived for three years despite being born with the defect. The child proved to be a source of great strength and joy to the family, despite the family being fully aware that the child would have a short life. Several studies have repeatedly shown that mothers prefer a child with extremely severe disabilities than a dead child.
17. The contents of para 15 and 16 of the Petition insofar as they relate to the condition of the Petitioner No. 1 at the

time of giving birth require no response. It is clarified that although the Petitioner No. 1 has stated in her affidavit that mental anguish would have been significantly reduced had she been permitted to terminate the pregnancy as the foetus was diagnosed with a severe abnormality, the same cannot be the ground for extending the ceiling to 26 weeks. It is humbly submitted that several studies have held in cases where palliative care and support was provided to families from the time of diagnosis to delivery, the same significantly helped families cope with the loss, mental anguish and trauma. It is not known whether the doctors providing the treatment chose to provide palliative support and care to the Petitioner No. 1 and her husband to better deal and cope with the mental anguish. As an analogy, it is submitted that even self-determination is not a right since a person cannot kill himself just because he is of the opinion that he is going to die anyway in future. Similarly, the Petitioner in effect has stated that since the child was likely to die in future, therefore it should have died in her womb before delivery instead. It is absolutely abhorrent and legally unjustifiable for this Hon'ble Court to sanction murder of a child (unborn) who is viable.

18. The contents of para 17 of the Petition, wherein reliance has sought to be placed on an article published by the Australian Medical Journal is erroneous, misplaced and denied. The entire premise of the purported article published by the Australian Medical Journal is erroneously based on the conclusion that only children born without defects have a right to life and delaying the inevitable death would extend the suffering of the family.
19. The contents of para 18 of the Petition, wherein reliance is sought to be placed on a study by the American psychological Association task Force on mental health and abortion is misplaced and denied. The Petitioners have not filed the copy of the purported study and hence any reliance sought to be placed on the same is liable to be rejected.
20. The contents of 19 to 22 of the Petition which pertains to the background of* the Petitioner No. 2 require no response. That however the Petitioner's claim that only a mother has the privilege and joy of raising a child with serious health impairments is completely wrong and presumptuous. The Respondent reiterates that such kind of selective abortions would be legally and morally

abhorrent, unreasonable and unjustifiable for the Petitioners to demand quality of life by seeking sanction of this Hon'ble Court of law to murder an unborn child who is viable. The Petitioner No. 2's contention regarding being forced to make an ill-informed decision on abortion without a full understanding of the medical facts is liable to be rejected as there is always the possibility that foetal defects are detected even beyond 26 weeks as well. The requirement of full understanding of the medical facts cannot supersede the interest of the state in protecting the life of the unborn, at least when once the child becomes viable.

21. The contents of 23 and 24 of the Petition, wherein reliance has been placed on the study in the American Journal of Obstetrics and Gynaecology and Australian Journal of Medicine are denied. It is clarified that advancement of medical technology has made it possible to detect anomalies even prior to 20 weeks.
22. The contents of para 25 of the Petition, wherein reliance has been sought to be placed upon the case of *Dr Nikhil D Datar vs. union of India and Ors.*, [W.P. (L) 1816/2008] and others, requires no response as the special leave

petition in the said matter is pending adjudication before this Hon'ble court.

23. The contents of para 26 of the Petition, wherein reliance is sought to be placed upon article published by the Australian Medical Journal is incorrect and denied. The Petitioners have not filed the purported article published by the said medical Journal and hence any reference to the same is misleading and hence denied.
24. The contents of Para 27 of the Petition are incorrect, wrong and denied. It is denied that the 1971 Act, encourages women to seek out unsafe abortions from untrained medical personnel after the twentieth week. It is clarified that foetal abnormalities, even those detected after the twentieth week are minuscule and no nexus whatsoever can be made with the maternal deaths occurring in India. The fact of illegal abortions being the third leading cause of maternal deaths in India and accounting for 13% of maternal deaths worldwide has no nexus whatsoever with the abortions only being performed in cases where foetal abnormalities are detected. The Petitioners have sought to mislead this Hon'ble court in this regard. It is denied that expanding

the exceptions allowed under the 1971 Act, would eliminate maternal deaths.

25. The contents of para 28 of the Petition are admitted to the extent that inadequate access to health care and poor quality services contributes to India's high MMR. It is however denied that the abortion restrictions in India are either outdated or that the same have any bearing on India's MMR. It is clarified that as highlighted hereinabove the Petitioners have not been able to show that maternal deaths resulted in cases where the women were seeking to terminate the pregnancy on account of foetal abnormalities having been detected. It is submitted that a high rate of maternal deaths, occur on account of termination of pregnancy performed after 20 weeks or performed without the opinion of medical practitioners.
26. The contents of para 29 of the Petition, insofar as reliance is sought to be placed upon the article published by Times of India is incorrect and denied. It is clarified that the Petitioners have erroneously presumed that all unsafe abortions and maternal deaths occur on account of foetal abnormalities having been detected after 20 weeks. It is furthermore submitted that the MTP Act along with rules

and regulation seeks to address this very issue of high maternal deaths since opinion in good faith of registered medical practitioner/s is mandatorily required before performing abortion which many women do not seek.

27. The contents of para 30 of the Petition are misplaced and hence denied. The reliance sought to be placed on the report of the Special Rapporteur is misplaced and hence denied. It is clarified that the 1971 Act specifically permits termination of pregnancy in certain cases specified under section 3 (2)(b). It is clarified that certain parameters have been laid down in the Act and the ceiling of 20 weeks has been prescribed as the foetus is viable after this period and hence the state has the right to protect the life of the unborn. The reliance ought to be placed on the proposed amendments to the 1971 Act, were merely in the form of recommendations and deliberations and hence no response is required to the same.
28. The contents of para 31 of the Petition, insofar as reliance is sought to be placed upon the article published in The Hindu on 2 April 2013, are incorrect and hence denied. It is clarified that section 5 of the 1971 Act permits termination of pregnancy, notwithstanding the length of

the pregnancy when the same is necessary to save the life of the pregnant woman. The parallel sought to be drawn with respect to the Indian law is misplaced and is liable to be rejected.

29. The contents of para 32 of the Petition pertaining to the petition filed by a 26 week pregnant woman in the El Salvador Supreme Court for termination of the pregnancy on the ground that the foetus was diagnosed with anencephaly and the refusal of the court to grant her an abortion requires no response. The case in question involved a pregnant 22-year-old woman, identified as "*Beatriz*". On May 30, 2013 El Salvador's Health Ministry gave doctors permission to perform a caesarean section. The foetus was delivered, placed in an incubator and provided fluids. It lived for five hours. Beatriz was able to recover and leave the hospital. It is submitted that the El Salvador Supreme Court's decision prevented the killing of a baby through an abortion. Rather, it facilitated the performance of an induction on Beatriz, saving her life as well as her baby's.
30. The contents of para 33 of the Petition, insofar as reliance is sought to be placed on the article by Dr. Anne Davies is

misplaced and hence denied. It is clarified that the aforesaid article is extremely general and vague and furthermore does not specifically relate to abortion laws in India. It is denied that the extant exceptions for the health and life of the mother are *insufficient* to safeguard the life of the mother. It is submitted that on the contrary, they ensure that the health and life of the mother are preserved at all costs.

31. The contents of para 34 of the Petition, are incorrect and hence denied. It is denied that the 1971 Act does not provide for exceptions to protect the health of the mother or that the law violates the Petitioner's fundamental right to life, health and dignity. It is most humbly submitted that Section 5 of the 1971 Act, carves out an exception and specifically provides that, notwithstanding the length of the pregnancy, termination of the pregnancy can be carried out when it is necessary to save the life of the pregnant woman. The 1971 Act also recognizes the fundamental rights of the unborn child by restricting abortion till 20 weeks.

32. The contents of para 35 of the Petition pertaining to the proposed amendment to Section 3(2)(b) requires no response.
33. The contents of para 36 of the Petition are incorrect and hence denied. The Petitioners have deliberately sought to confuse this Hon'ble court by seeking to place reliance on international laws and contending that several international countries do not include absolute time limits in their abortion laws on account of respecting woman's right to life quality and health. It is most humbly submitted that section 5 of the 1971 Act, specifically does not include any time limit for termination of pregnancy in cases where the termination of pregnancy is necessary to save the life of the pregnant woman. The intention of the legislature has been to protect the life of the pregnant woman and hence no specific time limit has been prescribed in the 1971 Act for termination in such exceptional circumstances. The reliance sought to be placed on international laws is to no avail and hence the same is liable to be rejected.
34. The contents of para 37 of the Petition, wherein Article 21 of the Constitution of India has been reproduced requires no response.

35. The contents of para 38 of the Petition, wherein reliance is sought to be made on the interpretation of the judgement of this Hon'ble court in *Pt. Parmanand Katara vs. UOI & Others.*, [1989 SCR (3) 997], is misplaced, erroneous and hence denied. It is humbly submitted that while the Hon'ble Supreme Court held in the aforesaid judgement that the obligation on the state to preserve life is total, absolute and Paramount, no specific reference was made to the provisions contained in the 1971 Act nor were the provisions considered by the Hon'ble Supreme Court in the aforesaid judgement.
36. The contents of para 39 of the Petition are incorrect and hence denied. It is denied that there is no exception created under the 1971 Act to protect the health and welfare of the pregnant mother. The Petitioners have deliberately ignored the provisions of Section 5 of the 1971 Act. The Petitioners have erroneously contended that the 1971 Act encourages women to seek unsafe abortions from untrained medical personnel.
37. The contents of para 40 to 44 of the Petition, centers around the International community's and the laws under ICCPR to ensure protection against inhumane and

degrading treatment and torture. It is submitted that the state has an obligation under article 21 to preserve the lives of its citizens, including the defenceless child in the womb, especially after a period of twenty weeks. The Petitioner's reliance in K.L. vs. Peru is misplaced and hence denied. It is clarified that the woman in question became pregnant in March 2001 and sought an abortion on July 24th. She was thus denied an abortion before 20 weeks of gestation, when the foetus had still not reached the stage of viability, even though there was a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. It is submitted that the 1971 Act takes into account such scenarios and allows medical termination of pregnancies at such periods and in cases where there is such risk.

38. The contents of para 45 of the Petition, wherein reliance is sought to be placed on the judgement of this Hon'ble Court in *Consumer Education and Research Center v. Union of India* [1995 SCC (3) 43] is incorrect, misplaced and denied. The aforesaid judgment of the Hon'ble Supreme Court has no relevance to the issues involved in the present matter.

39. The contents of para 46 to 52 of the Petition are denied. It is clarified that the 20-week limit on abortions provided for in the 1971 Act is not arbitrary. The ceiling of 20 weeks was imposed to safeguard the interests of the pregnant mother as well as the foetus in the womb. It is clarified that beyond 20 weeks, the uterus of an expecting mother does not respond to injections, hence terminations of pregnancy after 20 weeks involve extremely gruesome and inhumane techniques of dismembering a viable foetus. The Petitioners have erroneously sought to place reliance on Article 12 of the International Covenant on Economic, Social and Cultural Rights (*hereinafter referred to as 'ICESCR'*). Para 22 of the ICESCR *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* says that "children with disabilities should be given the opportunity to enjoy a fulfilling and decent life and to participate within their community." A core obligation envisioned by the ICESCR treaty monitoring body is that member states must "*ensure reproductive, maternal (prenatal as well as post-natal) and child health care.*" Furthermore, It is denied that the 1971 Act, results in higher maternal mortality rates. The Petitioners are put to strict proof of the same.

40. The contents of para 53 of the Petition pertaining to the proposed amendment to Section 3(2)(b) requires no response. The suggestions of the NCW have no binding value.
41. The contents of para 54 of the Petition are denied. The reliance sought to be placed on the judgment of the Supreme Court in *Francis Coralie Mullin v. Union Territory of Delhi & Ors*, [1981 SCR (2) 6] is erroneous and misleading. It is clarified the aforesaid judgment has no applicability to the present case are distinct and have no applicability to the facts and issues involved in the present case. It is further clarified that termination of pregnancy has never been recognised as a normal recourse for expecting mothers and in the case of pregnant women there is also a “compelling state interest” in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled.” The 1971 Act thus imposes reasonable restrictions on the exercise of reproductive choices.
42. The contents of para 55 of the Petition, wherein reliance is sought to be placed on Article 21.1 of the ICESCR is misplaced and denied..

43. The contents of para 56 of the Petition are baseless, misleading and hence denied. It is clarified that specific ceiling has been prescribed in the 1971 Act as the state has legitimate interest in protecting the life of the unborn once the foetus becomes viable.
44. The contents of para 57 of the Petition are denied. It is clarified that merely the Petitioner's right to be informed of all facts can never be the criteria for determining the ceiling under the 1971 Act as technology is constantly evolving and there is every possibility that in the future, better information regarding the foetus may only be available after 30 weeks. The same cannot be used as a justification for extending the ceiling for terminating the pregnancy. It is submitted that the 1971 Act provides a valid time limit on abortions based on the fact that a foetus is viable post 20 weeks.
45. The contents of para 58 of the Petition are denied. The reliance sought to be placed on the judgment of this Hon'ble Court is misplaced and hence denied. It is clarified that the right to privacy of procreation is not an absolute right. The State has a compelling interest in protecting the life of the foetus once it has attained the

stage of viability and hence certain safeguards and a ceiling have been laid down under the 1971 Act. It is clarified that the right to not continue with a pregnancy has been granted under specific conditions before the stage of viability and hence the same cannot be claimed as an absolute right.

46. The contents of para 59 of the Petition, in so far as reliance is sought to be placed upon the Articles of the CEDAW have no relevance in the present Petition and hence require no response.
47. The contents of para 60 of the Petition are misleading and hence denied. It is reiterated that as clarified hereinabove, prenatal diagnostic tests are not full proof or 100% accurate. There exists a margin for error. A foetus that has been diagnosed as being likely to suffer from an anomaly cannot be conveniently classified as 'unwanted.' The 1971 Act allows pregnant mothers to exercise their own freewill during the conception of a child and the decision to carry the foetus to the point of viability. It is these rights which are included in the enjoyment of reproductive self-determination and the Act in no way curtails the same. It is submitted that the 1971 Act does

not violate the Petitioners' rights to personal liberty and privacy.

48. The contents of para 61 of the Petition are denied. The Petitioner has erroneously placed reliance on the case of *Samira Kohli v. Dr. Prabha Manchanda and Anr.*, [Appeal (Civil) 1949 of 2004]. It is clarified that the requirement for adequate information is with respect to any and all treatment procedures and surgeries.
49. The contents of para 62 of the Petition are denied as incorrect and erroneous. It is denied that sonographies used to find abnormalities can only be done after the 18th week. It is submitted that an accepted and widely used alternative to amniocentesis tests is chorionic villus sampling, which is done fairly early during pregnancy, i.e. for 10-12 weeks. It is submitted that medical staff are thus capable of carrying out pre-diagnostic tests well in advance of 20 weeks of gestation, enabling an expecting mother to make a balanced judgment with regard to the safeguards prescribed under the 1971 Act.
50. The contents of para 63 and 64 of the Petition are misleading and hence denied. It is clarified that the reliance sought to be placed on the statement of the

United Nations Special Rapporteur are not relevant in the present case and hence require no response.

51. The contents of para 65 of the Petition are denied as erroneous. It is submitted that sonographies may be done from the 9th week of pregnancy. It is also submitted that sonographies have the widest margin for error in terms of pre-diagnostic ability. It is reiterated that the 1971 Act provides only a qualified 'right to abortion' and the termination of pregnancy has never been recognised as a normal recourse for expecting mothers. The enforcement of the 20-week limitation is on a medical basis and the Act itself does not bar women who learn about foetal cerebral abnormalities from accessing safe medical terminations as such abnormalities may be detected anywhere between 10-18 weeks of gestation. It is also submitted that the compulsion to seek out abortions from untrained medical personnel is caused primarily, not on account of foetal defects having been detected, but due to abortions beyond the 20th week for other reasons.

52. That the contents of para 66 of the Petition are misleading and hence denied. The Petitioner has erroneously sought to place reliance on the judgment of this Hon'ble Court in

Apparel Export Promotion Council v. Chopra [AIR 1999 SC 625]. It is clarified the aforesaid judgment has no applicability to the present case are distinct and have no applicability to the facts and issues involved in the present case.

53. The contents of para 67 of the Petition are wrong and hence denied. It is submitted that fathers matter deeply to child development, and they are as biologically hard-wired to provide care as mothers are. A decision with regard to the life of an unborn baby or to carry a pregnancy involving foetal impairment to term affects both the mother and father of the baby. Sections 3 & 5 of the 1971 Act, recognize women's right to quality of life and ability to pursue personal developments by allowing medical termination of pregnancies in instances where a child was conceived as a result of rape, where an abortion is immediately necessary to save the life of the mother or when there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. It is submitted that criminalization of abortion does not constitute discrimination against women on the basis of sex nor on the basis of socio-economic status.

54. The contents of para 68 of the Petition are wrong, misleading and hence denied. It is submitted that the 1971 Act does not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. It is also submitted that the 1971 Act does not impose a blanket penalty on abortions. Rather, it allows women whose lives are at risk to avail of the procedure and also allows abortion on humanitarian grounds. It is submitted that termination of pregnancy under the MTP Act is only permissive and not mandatory or necessary for the pregnant woman. The recommendations developed by CEDAW requires that state should not criminalise medical procedures only needed by women, a condition which is fulfilled by the 1971 Act.
55. It is submitted that the contents of para 69 of the Petition are wrong, misleading and hence denied. It is denied that the Respondents have failed to adhere to constitutional obligations or that they have violated the right to life and health prescribed under Article 21 or the right to equality and non-discrimination under Articles 14 and 15. The

averments in the Petition pertain specifically to the Respondent No. 1 and Respondent No. 2 and hence require no response. It is however clarified that the State has an obligation to protect the life of the unborn once the foetus has attained the stage of viability and hence the ceiling of 20 weeks has been prescribed under the 1971 Act. The rest of the contents of the paragraph requires no response.

REPLY TO THE GROUNDS:

56. It is reiterated that the contents of the present Writ Petition filed by the Petitioners are wrong and denied, save and except, where specifically admitted hereunder.
57. That the contents of sub para A of para 70 of the Petition are wrong, misleading and hence denied. It is submitted that the 1971 Act, preserves the right to life of the unborn child when it reaches the stage of viability. The construct that unsafe abortions are the only option available to women during late term abortions is a fallacy in the light of advancements in technology and the prevalence of palliative care centres in India that make it possible for babies born with anomalies to live a fulfilling life during the limited time they have.

58. That the contents of sub para B of para 70 of the Petition are wrong and hence denied. It is submitted that after 20 weeks of pregnancy, foetal development becomes higher and the foetus starts looking like an almost fully-grown new-born. Therefore, termination of pregnancy at this stage due to foetal abnormalities would lead to an increased risk of physical health to the mother.
59. That the contents of sub-para C to F of para 70 of the Petition are wrong and misleading hence denied. The 1971 Act, does not lead to violation of the constitutional rights of Article 21 and the right to life must be read with a broader interpretation as encompassing the rights of a viable foetus as well as that of a pregnant mother. It is also submitted that the Articles under the ICCPR also deal with the right of the unborn child as the ICCPR's prohibition of the death penalty for pregnant women implicitly recognizes the right to life of the unborn. Although the ICCPR allows for the death penalty to be imposed on both adult men and women, it explicitly prohibits applying the death penalty to pregnant women. Article 6(5) states, "*Sentence of death shall not be imposed for crimes committed by persons below eighteen*

years of age and shall not be carried out on pregnant women."

60. That the contents of sub para G of para 70 of the Petition are incorrect and hence denied. It is reiterated that it is not possible to determine whether a child in the womb is suffering from an abnormality or defect with absolute accuracy nor is it possible to claim that such a foetus has no potential to survive.
61. That the contents of sub-para H and I of para 70 of the Petition are incorrect, misleading and hence denied. It is clarified that the 1971 Act, permits the pregnant mother to terminate the pregnancy up to 20 weeks in qualified cases. Abortion is thus a regulated procedure that does not fall foul of Article 21. That the privacy of procreation, motherhood and child bearing of the pregnant woman is not an absolute right and the State as the guardian of its citizens has the *parens patriae* power to safeguard the life of the child in the womb after it has attained the stage of viability.
62. That the contents of sub-para J of para 70 of the Petition are misleading, incorrect and hence denied. A reinterpretation of the 1971 Act, altering the statutory

imposition of a 20-week limitation on abortion runs contrary to legislative intent of the 1971 Act.

63. That the contents of sub-para K and L of para 70 of the Petition are incorrect, misleading and hence denied. It is denied that the reproductive autonomy or sexual reproductive freedom of the Petitioners was violated.
64. That the contents of sub-para M and N of para 70 of the Petition are erroneous and hence denied. It is reiterated that pre-natal diagnostic techniques which render results well in advance of the 20-week limitation exist and are currently in use in India.
65. That the contents of sub-para O of para 70 of the Petition are incorrect and hence denied. The term "protection of the health and welfare of pregnant women" is vague and unacceptable as a criterion for medical termination of pregnancy in light of the prevalence of unsafe abortions that are carried out in India by quacks and untrained personnel. It is submitted that widening the scope of the exceptions in place in the 1971 Act will have a detrimental effect on the already alarming child sex ratio in the country. As of 2011, for every 1000 boys below the age of 6, there are only 919 girl children.

66. That the contents of sub-para P of para 70 of the Petition are misleading, incorrect and hence denied. It is submitted that the 1971 Act, does not violate any obligations or rights that are imposed/guaranteed by any international treaties. The Petitioners have deliberately sought to interpret the provisions of international treaties in a narrow manner. Given the references to the pregnant woman in the ICCPR, the right to life can and should be applied to the human life being carried by the pregnant woman. The right to life should attach as soon as the life is viable. Thus, the right of the unborn child is implicitly recognised in international treaties as highlighted hereinabove.

REPLY TO GROUNDS TO INTERIM RELIEF:

The contents of para 71 of the Petition are wrong, misleading and hence denied. It is submitted that if the ceiling on termination of pregnancy under the 1971 Act, is extended from 20 weeks up to 26 weeks, it will lead to grievous harm and danger causing risk to the health of the mother. It is submitted that an extension on the ceiling will also lead to an unprecedented rise in female foeticide in India as it will open more doors for sex determination tests at a later stage in pregnancy. It is crucial to consider the viability of the foetus as well. Therefore, the prayers being sought by the Petitioners in the present Petition should not be allowed.

67. In view of the above submissions, it is respectfully submitted that the present Writ Petition is devoid of any merit and deserves to be dismissed, with costs.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- i. Dismiss the present Writ Petition (C) No. 308 of 2014;
- ii. Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstance of this case.

DRAWN BY:

Anmol Stephen Singh
Sanbha Giri Rumnong
Loreign Ovung
Anushree Bernard
Joseph Aristotle.S.,
Advocates

FILED BY

JOSEPH ARISTOTLE
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Mob: 9212018118

FILED ON: 13.09.2019

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO. 308 of 2014

IN THE MATTER OF:

Mrs. X & Mrs. Y

...Petitioner

Vs

The Union of India &Ors.

... Respondents

AFFIDAVIT

I, Frank Simon Stanley Durairaj, S/o U. Durairaj, aged about 44 years, Chairman of "Life for All" having its registered office at Jeevalaya Campus, Rayaruthupathi, Naickenpalayam, Coimbatore-641020, Tamil Nadu, do hereby solemnly state on oath and affirm as hereunder;-

1. That I am the Chairman of the Respondent No. 4, "Life for All", in the aforesaid matter, and I am fully conversant with the facts and circumstances of the present case and hence competent to swear this affidavit.

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2. I state that all the facts stated in the accompanying Counter containing pages 1 to 34, paragraphs No. 1 to 67, are all true to my knowledge and belief and that no part thereof is false and nothing material is concealed there from.

3. I further state that all the annexures annexed to the Counter are true copies of their originals.

DEPONENT

VERIFICATION:

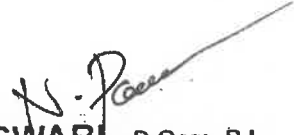
I, the above named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part thereof is false and nothing material has been concealed therefrom.

Verified at Coimbatore on this the 2nd day of Sep. 2019.



For LIFE FOR ALL

Managing Trustee
DEPONENT


N. PARAMESWARI, B.Com., B.L.
Enrollment No. MS 17/98
Advocate & Notary Public
(Govt. of India)
No. 702, Raja Street
COIMBATORE - 641 001
Cell : 99444 76854

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Annex-R1

ITEM NO.4

COURT NO.13

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

I.A. 4/2016 In Writ Petition(Civil) No. 308/2014

MRS X & MRS Y

Petitioner(s)

VERSUS

UOI & ANR.

Respondent(s)

(For impleadment and office report)

Date : 28/09/2016 This application was called on
for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
[IN CHAMBERS]

For Petitioner(s) Ms. Jyoti Mendiratta, Adv.

For Respondent(s) /
Applicant(s)Mr. Sanjay R Hegde, Sr. Adv.
Mr. Joseph Aristotle S., Adv.
Ms. Tehmina Arora, Adv.
Ms. Loreign ovung, Adv.
Mr. Dheeraj Philip, Adv.
Mrs. Priya Aristotle, Adv.
Mr. Rajesh Kumar Singh, Adv.
Mr. K. Priyadarshini, Adv.For Respondent(s) Mr. A. Deb Kumar, Adv.
Mr. D.S. Mahra, Adv.

Mr. Nishant Ramakantrao Katneshwarkar, Adv.

UPON hearing the counsel the Court made the following
O R D E RHeard learned senior counsel appearing for the
applicant in I.A. No. 4 of 2016, filed by the
organization, namely, Life for All, for being

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impleaded in the writ petition.

The writ petition has been filed under Article 32 of the Constitution praying for various directions pertaining to the Medical Termination of Pregnancy Act, 1971 to the limited extent that it stipulates a ceiling of 20 weeks for an abortion.

Learned senior counsel for applicant submits that applicant is an organization which is vitally interested in the issues brought before the Court in the above matter.

Accordingly, in the interest of justice, I.A. No. 4 is allowed and applicant is impleaded as a respondent in the writ petition.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Pokhriyal]
Court Master

TRUE COPY