

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL WRIT JURISDICTION)
Writ Petition (Civil) No. of 2021**

IN THE MATTER OF:

Delhi Commission for Protection of Child Rights ...Petitioner

Versus

Union of India & Anr ... Respondents

WITH

I.A. No. of 2021: An Application for Exemption from filing
welfare stamp and Notarized Affidavit.

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: PRATEEK K. CHADHA

INDEX

S.No.	Particulars	Page No. of Part to which it belong s		Remar ks
	(i)	(ii)	(iii)	(iv)
1.	Listing Proforma			
2.	Cover Page of Paper Book			
3.	Index of Record of Proceedings			
4.	Defect List			
5.	Note Sheet			
6.	Synopsis & List of Dates and Events	B-K		
7.	Writ Petition under Article 32 of Constitution of India along with supporting Affidavit	1-20		
8.	<u>Annexure-P-1:</u> A true copy of the letter dated 14.01.2021 issued by the Ministry of Health and	21-24		

	Family Welfare, Government of India.			
9.	<u>Annexure-P-2:</u> A true copy of the statement dated NIL of Federation of Obstetric and Gynecological Societies of India	25-40		
10.	<u>Annexure-P-3:</u> A true copy of the recommendation dated NIL issued by the Centre for Disease Control, USA	41-52		
11.	<u>Annexure-P-4:</u> A true copy of the recommendation dated NIL issued by the Joint Committee on Vaccination and Immunisation, United Kingdom	53-54		
12.	<u>Annexure-P-5:</u> A true copy of the recommendation dated NIL issued by the WHO.	55-83		
13.	<u>Annexure-P-6:</u> A true copy of the Report dated NIL, March, 2021	84-140		

	published by United Nations Children's Fund (UNICEF).			
14.	<u>Annexure-P-7:</u> A true copy of the email correspondence with experts including Dr. Gagandeep Kang.	141-146		
15.	<u>Annexure-P-8:</u> A true copy of letter 12.05.2021 issued by the Delhi Commission for Protection of Child Rights.	147-150		
16.	<u>Annexure-P-9:</u> A true copy of the News Report published by the Hindustan Times on the NTAGI's advisory seeking vaccination of pregnant and lactating women.	151-155		
17.	<u>I.A. No. of 2021:</u> An Application for Exemption from filing welfare stamp and Notarized Affidavit.	156-158		
18.	F/M		159	
19.	V/A		160	

SYNOPSIS

The petitioner in the instant case is Delhi Commission For Protection of Child Rights, Government of NCT of Delhi. The petitioner is a statutory body created under the Commissions for Protection of Child Rights Act, 2005, to protect and monitor the implementation of the rights of the children as well as promote their cause. The petitioner has in pursuance of its mandate undertaken many activities for the welfare of the pregnant women and lactating mothers including but not limited to commissioning studies to evaluate Pradhan Mantri Matru Vandana Yojana (PMMVY), and Integrated Child Development Scheme (ICDS). The petitioner has also undertaken five rounds of rapid surveys to monitor and improve the distribution of Take Home Ration (THR) for the beneficiaries such as pregnant women and lactating mothers. It is noteworthy that the health of pregnant women and lactating mothers is inextricably connected with and directly impacts on the mortality and health of children.

To protect the population from the Covid19 pandemic, the Government had rolled out its vaccination drive on January 16th, 2021. India has adopted a phased manner for vaccinating the population, where vaccinations rolled out from 16th January 2021 were prioritised for frontline and healthcare workers, followed by all persons aged above 60 years and those with certain comorbidities. From 01st April 2021, vaccination was extended to all citizens above the age of 45 years. Finally from 1st May 2021, vaccination for the age group 18 years and above was made available.

Pertinently, pregnant and lactating women through an Advisory issued by the Ministry of Health and Family Welfare (vide letter No. T-22020/14/2020-IMM dated 14th January 2021), have been excluded from the category of persons eligible to take the vaccine, and no subsequent change has been made to the said Advisory, despite later evidence, medical research and studies all demonstrating the need to vaccinate pregnant and lactating women, to protect them from Covid19.

The Federation of Obstetric and Gynaecological Societies of India (hereinafter referred to as 'FOGSI') is a medical professional organization representing practitioners of obstetrics and gynecology in India since 1950. With 258 member societies and over 37,000 individual members spread over the length and breadth of the country, FOGSI is amongst the largest membership based organizations of specialized medical professionals in India. In April 2021, in its position statement on covid vaccination for pregnant and breastfeeding women, FOGSI has recommended that ,

“As matters stand in our country, every individual needs protection from the surging COVID-19 infections. We are in the midst of the second wave. There is a need to prevent further waves and the vaccine is the best and long term solution to this. This protection should extend to pregnant and lactating women. The very real benefits of vaccinating pregnant and lactating women seem to far outweigh any theoretical and remote risks of vaccination. Lactating women should also be considered as COVID vaccine

candidates as there are no known adverse effects on the neonate who is breastfeeding. In fact, there is a passage of protective antibodies to the child, which may be a beneficial effect. The method of administering and monitoring the vaccine and the schedule of vaccination should be the same for pregnant and lactating women as for the general population”

FOGSI has further stated that obstetricians and gynaecologists and women's health care providers should be allowed to administer the Covid vaccines in pregnant & breastfeeding women with preparations to manage adverse events. They have pointed out that the method of administering and monitoring the vaccine and the schedule of vaccination should be the same for pregnant and lactating women as for the general population and concluded that *“there is no obvious basis for excluding pregnant or lactating women from vaccination.”*

FOGSI's report has also reviewed and cited the studies conducted by the Centre for Disease Control and Prevention (hereinafter referred to as 'CDC) the national public health agency in U.S.A.. Countries such as the U.S A. and the U.K. have started the vaccination drive to include this group of women. Pregnant women are classified as high risk by the CDC, the national regulatory authority in the United States as compared to non-pregnant women. It is pertinent that in India pregnant women are not categorized as a high risk group with regard tom Covid19

The CDC, USA has recommended that pregnant women can receive a COVID-19 vaccine as during pregnancy it can

protect them from severe illness from COVID-19. In the USA, around 90,000 pregnant women have been vaccinated and no safety concerns have been identified. The study is based on a registry of 100,000 pregnant and lactating women who have received the MRNA vaccination. CDC data also provides evidence that immunisation of pregnant and lactating mothers has led to transfer of antibodies to the infant and hence extending protection of the vaccination to the infant. World over, especially in Brazil, maternal death due to Covid-19 has been acknowledged as being on the rise and requiring special attention, including through vaccination.

World Health Organization (WHO) in March 2021, has recommended vaccination of pregnant women after establishing the design of a mechanism to monitor the effects of vaccination on pregnant women. Thus, what is necessary is a scientific and medical analysis of the effects of vaccination, in order to proceed with vaccination of pregnant women.

In this context the Petitioner consulted leading medical experts including Dr. Gagandeep Kang (Professor, Christian Medical College, Vellore & Member COVID Working Group, Government of India) and relied on scientific evidences from medical literature such as reports authored by CDC, U.S.A the reports of the Joint Committee on Vaccination and Immunisation (hereinafter referred to as 'JCVI') in United Kingdom, the advisories and reports put out by the World Health Organisations, and the statements issued by FOGSI in India amongst others, only to conclude that pregnant and lactating women should receive Covid-19

vaccine to protect them and the neonates from Covid19. As per Dr. Kang, the vaccines available in India are or are equivalent to inactivated vaccines which are considered safe in pregnancy and with the FOGSI recommendation, there is no need for further discussion. Dr. Kang emphasised the fact that pregnant and lactating women should get the vaccine at any stage in pregnancy or whenever available when breastfeeding.

As per media reports the National Technical Advisory Group (NTAGI) constituted by the Government of India has also advised the Respondent No. 1 to vaccinate pregnant women and lactating mothers. However, the Government of India is yet to accept the recommendation and operationalise it.

This Hon'ble court in the case of *Vincent Panikurlangara vs. Union of India &Ors [(1987) 2 SCC 165]*, held that in a welfare State, it is the obligation of the State to ensure the creation and maintaining of conditions congenial to good health. Similarly, in the case of *CESC Ltd. vs. Subash Chandra Bose [(1992) 1 SCC 441]*, this Hon'ble court relied on international instruments and concluded that right to health is a fundamental right.

In the case of *Consumer Education and Research Centre vs. Union of India[(2010) 15 SCC 699]*, This Hon'ble court for the first time explicitly held that 'the right to health is an integral fact of a meaningful right to life.' In the case of *Paschim Banga Khet Mazdoor Samity &Ors vs State of West Bengal &Anr [(1996) 4 SCC 37]*, it was held by the Supreme Court that Article 21 of the Constitution casts an obligation

on the State to take every measure to preserve life. The Court found that it is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment.

Thus, on the basis of above held legal principles, right to health is recognised as a part of right to life under Article 21 of the Constitution. The State has a constitutional obligation towards protecting the health of women and children, and particularly pregnant women and lactating mothers, as this directly impinges on the health and well being of the new born child. Vaccination will advance this objective of promoting health as it will boost the immunity and provide resistance against this pandemic and therefore no class of persons should be excluded on arbitrary grounds.

Section 13(1) of the Commissions for Protection of Child Rights Act 2005 mandates the petitioner to examine all factors that inhibit the enjoyment of rights of children especially during a crisis like disaster and recommend remedial measures. Thus, the petitioner has a significant stake and hence locus standi on the issue of health of pregnant and lactating women and new-born care in the light of above submissions. The petitioner has a legal obligation to monitor and review the schemes related to pregnancy care, new born care, lactating mothers, inquire into specific complaints or take suo-motu cognizance and advise the authorities concerned. Not doing so would be an abdication of statutory responsibilities. In furtherance of its mandate under the Commissions For Protection of Child Rights Act, 2005 and

based on the consultations with experts, and review of medical literature, the petitioner had formally advised the Respondents vide its letter dated 12.05.2021 to:

- a. Categorise Pregnant and Lactating mothers as belonging to the high-risk category.
- b. Include pregnant women and lactating mothers within the vaccination drive and setting up a task force to work on operationalising a standard procedure and can help materialise a mechanism to track and monitor Pregnant Women & Lactating Mothers post vaccination.
- c. develop education material and Standard Operating Protocols to educate women on the side effects of vaccination, effects of vaccination on pregnant and lactating mothers and ensure that informed consent is taken before taking the vaccine.
- d. Create a registry to register pregnant women and lactating mothers being vaccinated so that a continuous monitoring mechanism can exist to see if the vaccine has an adverse effect on pregnant women. Continuous monitoring of all pregnant and lactating women receiving vaccination is necessary. Hence a separate registry such as the V-safe registry in the United States should be created to collect such data.

The Recommendations given by the petitioner are essential and need to be adopted, as the vaccination of pregnant women and lactating mothers will promote their health, which in turn will directly affect the life of the infant and if they have

antibodies due to the vaccine, the infant will also benefit from the same. The aforementioned formal advisory dated 12.05.2021 from the Petitioner to the Respondent recommending vaccination of pregnant women and lactating mothers was not acted upon, considered or even acknowledged by the Respondents.

The Covid-19 pandemic poses a dynamic threat, and medical experts have altered and evolved their opinion as new evidence has emerged from research and studies. In light of the overwhelming medical and expert advice calling for vaccination of pregnant and lactating women, as documented by FOGSI and revealed in consultations, the Respondent's advisory dated 14 January 2021 is no longer medically valid or constitutionally sustainable. The exclusion of pregnant and lactating women from vaccination now falls foul of Article 14, 15 and 21 of the Constitution, as it constitutes unreasonable classification and is thus an arbitrary and discriminatory advisory which by denying vaccination to a class of women violates their right to life. This further threatens the life of new born children and reproductive health of women, whose health is likely to be compromised due to the Respondent's impugned advisory.

Hence, the present Writ petition.

LIST OF DATES & EVENTS

- 14.01.2021 Pregnant and lactating women through an advisory issued by the Respondent No. 1 (vide letter No. T-22020/14/2020-IMM dated 14th January 2021), have not been recommended to take the vaccine.
- 16.01.2021 The Central government rolled out its Covid-19 vaccination drive. The government has adopted a phased manner for vaccinating the population, where vaccinations rolled out from 16th January 2021 prioritised frontline/healthcare workers, and elderly persons above 60 years of age, or those with certain comorbidities.
- March, 2021 WHO Strategic Advisory Group of Experts on Immunization recommended that pregnant women may receive the vaccine if the benefits of vaccination outweigh the potential risks.
- 01.04.2021 The vaccination drive was extended to all citizens above the age of 45 years.
- 01.05.2021 Vaccination for the age group 18 years and above was made available.

12.05.2021 The Petitioner formally advised the Government to India for the vaccination of Pregnant Women and Lactating Mothers however, no response has been received.

18.05.2021 Hence, the present Writ Petition.

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL WRIT JURISDICTION)**

Writ Petition (Civil) No. of 2021

IN THE MATTER OF:

██

██

██

██

██████████itioner

Versus

1. Union of India through Secretary,
Department of Health & Family Welfare,
Nirman Bhawan, Maulana Azad Road,
New Delhi 110011. ...Respondent No. 1

2. Indian Council of Medical Research
through its Director General,
V. Ramalingaswami Bhawan, P.O. Box No. 4911,
Ansari Nagar, New Delhi-110029 ...Respondent No. 2

(All are contesting Respondents)

**WRIT PETITION OF MANDAMUS UNDER ARTICLE 32
OF THE CONSTITUTION OF INDIA**

To,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUSTICES

OF THE HON'BLE SUPREME COURT OF INDIA

The humble petition on behalf
of the Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the instant petition is filed by Delhi Commission for Protection of Child Rights (DCPCR), Government of NCT of Delhi. The petitioner is a statutory body created under the Commissions for Protection of Child Rights Act, 2005 to protect and monitor the implementation of the rights of the children as well as promote their cause.
2. That the petitioner has undertaken dozens of activities for the welfare of the pregnant women and lactating mothers including but not limited to commissioning studies to evaluate Pradhan Mantri Matru Vandana Yojana (PMMVY), and Integrated Child Development Scheme (ICDS). The petitioner has also undertaken five rounds of rapid surveys to monitor and improve the distribution of Take Home Ration (THR) for the beneficiaries such as pregnant women and lactating mothers. It is pertinent to mention that the health of pregnant mothers has a direct impact on the health of the child.
3. That the Petitioner has no personal interest in the present case and that the petition is not guided by self-gain of any person/institution/body and that there is no motive other than public interest in filing this writ petition.
4. That section 13(1) of the Commissions for Protection of Child Rights Act 2005 empowers the petitioner to examine all factors that inhibit the enjoyment of rights of children especially during a crisis like disaster and recommend remedial measures. The statute empowers the petitioner to

suo-moto initiate inquiries into deprivation of child rights as well as policy issues related to them. The petitioner has a legal obligation to monitor and review the schemes related to pregnancy care, newborn care, lactating mothers, inquire into specific complaints or take suo-motu cognizance and advise the authorities concerned.

5. That the Petitioner diligently studied the medical literature on the subject of excluding pregnant women and lactating women from vaccines with the help of organisation Indus Action and consulted experts such as Dr. Gagandeep Kang, Dr Rajani Bhat, and Dr. Aparna Hegde amongst others and recommended guidelines to the Government of India.
6. That Respondent No. 1 rolled out its Covid-19 vaccination drive on 16.01.2021. It adopted a phased manner for vaccinating her population, where vaccinations rolled out from 16.01.2021 with prioritized for frontline/healthcare workers, followed by all persons aged above 60 years and those with comorbidities. From 01st April 2021, vaccination was extended to all citizens above the age of 45 years. Finally, from 1st May 2021, vaccination for the age group 18 years and above was made available.
7. That pertinently, pregnant and lactating women through an Advisory issued by Respondent No.1, The Ministry of Health and Family (vide letter No. T-22020/14/2020-IMM dated 14th January 2021), have been excluded from the category of persons eligible to take the vaccine, and no

subsequent change has been made to the said Advisory despite later medical evidence, scientific research and studies suggesting the need to vaccinate pregnant and lactating women. A true copy of the letter dated 14.01.2021 issued by the Ministry of Health and Family Welfare, Government of India is annexed and marked hereto as **Annexure P-1 (Pg. Nos. 21to 24).**

8. That each year, 2.6 crore (Vital Statistics of India based on the Civil Registration system 2018) women deliver a child, and in addition to that there are another 2.6 crore lactating mother and so close to 5.2 crore women excluded from the current vaccination program. Clearly, this is a critical population both in numbers and their vulnerability to Covid-19.
9. That the Federation of Obstetric and Gynaecological Societies of India (hereinafter referred to as 'FOGSI') is a professional organization representing practitioners of obstetrics and gynecology in India since 1950. With 258 member societies and over 37,000 individual members spread over the length and breadth of the country, FOGSI is amongst the largest membership based organizations of specialized professionals in India. In its position statement on covid vaccination for pregnant & breastfeeding women published in April 2021, FOGSI has recommended that obstetricians and gynaecologists and women's health care providers should be allowed to administer the Covid vaccines in pregnant & breastfeeding women with

preparations to manage adverse events. They have pointed out that the method of administering and monitoring the vaccine and the schedule of vaccination should be the same for pregnant and lactating women as for the general population and concluded that “*there is no obvious basis for excluding pregnant or lactating women from vaccination.*” A true copy of the statement dated NIL of Federation of Obstetric and Gynaecological Societies of India is annexed and marked hereto as **Annexure-P-2 (Pg. Nos. 25 to 40).**

10. That it is pertinent to note that FOGSI has recommended that pregnant women receive vaccination and has also cited the studies conducted by the Centre for Disease Control and Prevention in the U.S., Countries such as the USA and the U.K. have started the vaccination drive to include this group of women as *Pregnant mothers are classified as high risk* by the Centre for Disease Control, the regulatory authority in the United States as compared to non-pregnant women.
11. That it is reiterated that the Respondents have not categorized pregnant and lactating women as high risk category. The Centre for Disease Control and Prevention, US classifies pregnant women as being “*At increased risk for severe illness from COVID-19 when compared to non-pregnant people*”. Increased risk of severe illness which includes illness that requires hospitalization, intensive care, or a ventilator, or may even result in death and they are also at risk of adverse pregnancies such as preterm birth. Pregnant women with Covid-19 might also be at increased

risk of adverse pregnancy outcomes, such as preterm birth. Poor maternal outcomes are associated with poor perinatal outcomes.

12. That the Centre for Disease Control and Prevention, US has recommended that pregnant women can receive a COVID-19 vaccine. This is because getting a COVID-19 vaccine during pregnancy can protect them from severe illness from COVID-19. In the USA, around 90,000 pregnant women have been vaccinated and no safety concerns have been identified. The study is based on a registry of 100,000 pregnant and lactating women who have received the MRNA vaccination as of now provides corroborating evidence.

13. That the Centre for Disease Control data also provides evidence that immunisation of pregnant and lactating mothers has led to transfer of antibodies to the infant and hence extending protection of the vaccination to the infant. World over, especially in Brazil, maternal death due to Covid-19 has been acknowledged as being on the rise and requires urgent attention and intervention. A true copy of the recommendation dated NIL issued by the Centre for Disease Control, USA is annexed and marked hereto as **Annexure-P-3 (Pg. Nos. 41 to 52).**

14. That in the United Kingdom, the Joint Committee on Vaccination and Immunization has advised that pregnant women should be offered COVID-19 vaccines at the same time as people of the same age or risk group. A true copy of

the recommendation dated NIL issued by the Joint Committee on Vaccination and Immunisation, United Kingdom is annexed and marked hereto as **Annexure-P-4 (Pg. nos. 53to 54).**

15. That the World Health Organization (hereinafter referred to as 'WHO') has recommended vaccination of pregnant women post designing & establishing the design of a surveillance mechanism to monitor the effects of vaccination. A true copy of the recommendation dated NIL issued by the WHO is annexed and marked hereto as **Annexure-P-5 (Pg. Nos. 55 to83).**

16. That pregnant and lactating women not only belong to the high risk category but there are potential other negative impacts on the health and well-being of pregnant and lactating women due to Covid19. A UNICEF Report of March 2021, titled, '*Direct and Indirect Effects of COVID-19 Pandemic and Response in South Asia published by the UN*', studied the impact of Covid-19 on mortality, hospitalisations, and ICU admissions due to the disease and the impact of nation-wide lockdown on maternal and child mortality, educational attainment of children, and the region's economy. According to this study, at the country-level, the largest increase in the number of stillbirths is expected in India (60,179, 10% increase). Similarly, the number of maternal deaths is also expected to increase in 2020 as a result of the COVID-19 pandemic response, with the highest number of deaths anticipated in India (7,750, 18% increase). Child mortality is estimated to increase in

India by 15.4% and neonatal mortality by 14.5%. A true copy of the Report dated NIL, March, 2021 published by United Nations Children's Fund (UNICEF) is annexed and marked hereto as **Anexure-P-6 (Pg. Nos. 84to 140).**

17. That the current datasets exist only for mRNA vaccines, Gynaecologists associations such as FOGSI are of the opinion that the theoretical benefits of India's vaccines would outweigh the risk of the disease. Covaxin is a killed (inactivated) virus vaccine while Covishield is a Adenovirus vector-based vaccine. Both are non-replicating. While inactivated virus vaccines are considered safe during pregnancy, adenovirus vector-based Zika virus vaccine used in pregnant mice showed no safety concerns.
18. That the petitioner consulted many experts including Dr. Gagandeep Kang (Professor, Christian Medical College, Vellore & Member COVID Working Group, Government of India). As per Dr. Kang, the vaccines available in India are or are equivalent to inactivated vaccines which are considered safe in pregnancy and with the FOGSI recommendation, there is no need for further discussion. Dr. Kang emphasised on the fact that pregnant and lactating women should get the vaccine at any stage in pregnancy or whenever available when breastfeeding. A true copy of the email correspondence with experts including Dr. Gagandeep Kang is annexed and marked hereto as **Anexure-P-7 (Pg. Nos. 141 to 146).**

19. That after scrutinising the medical literature on the subject and the views expressed by experts in the field both domestically and internationally, as well as based of the consultations with experts the Petitioner [Delhi Commission for Protection of Child Rights (DCPCR)] sent a communication and formally advised the Government of India on 12.05.2021 to:

- a) Categorise Pregnant and Lactating mothers as belonging to the high-risk category.
- b) Include pregnant women and lactating mothers within the vaccination drive and setting up a task force to work on operationalising a standard procedure and can help materialise a mechanism to track and monitor Pregnant Women & Lactating Mothers post vaccination.
- c) Develop education material and Standard Operating Protocols to educate women on the side effects of vaccination, effects of vaccination on pregnant and lactating mothers and ensure that informed consent is taken before taking the vaccine.
- d) Create a registry to register pregnant women and lactating mothers being vaccinated so that a continuous monitoring mechanism can exist to see if the vaccine has an adverse effect on pregnant women. Continuous monitoring of all pregnant and lactating women receiving vaccination is necessary. Hence a separate registry such as the V-safe registry in the United States should be created to collect such data.

A true copy of letter 12.05.2021 issued by the Delhi Commission for Protection of Child Rights is annexed and marked hereto as **Annexure-P-8 (Pg. Nos. 147to 150).**

20. That, till date the Government of India has neither responded to the aforesaid letter nor has taken any action on the issue.

21. As per the media reports the National Technical Advisory Group (NTAGI) constituted by the Government of India has also advised the Government to vaccinate pregnant and lactating mothers. However, the Government of India is yet to accept the recommendation and operationalize it. A true copy of the News Report published by the Hindustan Times on the NTAGI's advisory seeking vaccination of pregnant and lactating women is annexed and marked hereto as **Annexure-P-9 (Pg. Nos. 151 to 155).**

22. Further, the issue of vaccinating pregnant women remains in suspension since January 2021, posing a grave threat to the right to life of women and children.

GROUND

A. Because the impugned advisory dated 14 January 2021 is no longer consistent with the medical and expert opinion on the issue of vaccination for pregnant and lactating women, and amounts to an unreasonable classification which denies such women their right to reproductive health and medical

care by excluding them from the vaccination against Covid-19.

- B. Because the latest medical opinion, both domestically and internationally, is of the overwhelming view that pregnant and lactating women need to be treated as a ‘high-risk’ category of persons who ought to be vaccinated on priority. FOGSI’s recommendations, published in the last week of April 2021, state:

*“There is a need to prevent further waves and the vaccine is the best and long term solution for this. This protection should extend to pregnant and lactating women. **The very real benefits of vaccinating pregnant and lactating women seem to far outweigh any theoretical and remote risks of vaccination. Lactating women should also be considered as Covidvaccine candidates as there are no known adverse effects on the neonate who is breastfeeding. In fact, there is a passage of protective antibodies to the child, which may be a beneficial effect. The method of administering and monitoring the vaccine and the schedule of vaccination should be the same for pregnant and lactating women as for the general population.**”* (Emphasis supplied)

- C. Because it is a matter of record that the impugned advisory is a document limited to the factual position at the time of its publication, viz. 14 January 2021, and is subject to change as new evidence emerges. In page 2 of the said document under the heading ‘Contraindication’, it is stated that pregnant and lactating women should not be vaccinated

“at this time” as they have not been subjected to vaccine trials so far. However, in the four months since the publication of the impugned advisory, there is ample evidence to suggest that pregnant and lactating women ought to be vaccinated. In view of the latest medical opinion, if the impugned advisory is not revoked, it would amount to an arbitrary denial of vaccination to pregnant and lactating women, and would be hit by the doctrine of arbitrariness under Art. 14, thereby calling for it to be struck down upon judicial review.

D. Because the denial of vaccination to pregnant and lactating women amounts to a denial of access to maternal health, which in turn acts as a threat to the life, health and well being of the neonate child. This Hon’ble Court has on numerous occasions held that access to maternal, reproductive and sexual health is a right of a woman which flows from the right to life under Article 21. As such, there is a constitutional obligation on the State to provide necessary health care including vaccination against Covid-19 to all women without any discrimination, unless such exclusion is protected as a reasonable classification in view of the conspectus of medical and expert opinion and evidence available as on date. It is submitted that the exclusion of pregnant and lactating women is not based on sound medical evidence or opinion as is presently available, and is based on mere theoretical apprehension which is unfounded and stands refuted by medical experts. Thus, it amounts to a discriminatory bar on the right to health by

denial of vaccination to pregnant and lactating women, which is constitutionally impermissible.

- E. Because in the case of *Maneka Gandhi v. Union of India* AIR 1978 SC 597, it was stated by this Hon'ble court that: "Right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living."
- F. Because this Hon'ble Court in the case of *Vincent Panikurlangara vs. Union of India & Ors* [(1987) 2 SCC 165], held that in a welfare State, it is the obligation of the State to ensure the creation and maintaining of conditions congenial to good health.
- G. Because in the case of *CESC Ltd. vs. Subash Chandra Bose* [(1992) 1 SCC 441], this Hon'ble Court relied on international instruments and concluded that right to health is a fundamental right.
- H. Because in the case of *Consumer Education and Research Centre vs. Union of India* t[(2010) 15 SCC 699], this Hon'ble Court for the first time explicitly held that 'the right to health is an integral fact of a meaningful right to life.'
- I. Because in the case of *Paschim Banga Khet Mazdoor Samity & Ors vs State of West Bengal & Ans* [(1996) 4 SCC 37], it was held by this Hon'ble Court that Article 21 of the Constitution casts an obligation on the State to take every

measure to preserve life. The Court found that it is the primary duty of a welfare State to ensure that medical facilities are adequate and available to provide treatment.

- J. Because on the basis of above held legal principles, right to health is a part of right to life under Article 21 of the Constitution and it is of utmost importance. Vaccination will only be helpful in maintaining this health as it will boost the immunity and provide resistance to survive this pandemic and therefore it should not be excluded for any individual.
- K. Because on the basis of above held legal principles, right to health is recognised as an integral part of right to life under Article 21 of the Constitution. Vaccination Of pregnant women and lactating mothers will promote the advancement of this right to health as it will boost the immunity and provide resistance to survive this against the pandemic. The unreasonable and untenable exclusion of this class of women therefore constitutes a grave breach of the right to life of women and children.
- L. Because the section 2 (b) of Commissions for Protection of Child Rights Act, 2005 that lays down the definition of "child rights" as follows:
““Child rights” includes the children's rights adopted in the United Nations convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992;”

M. Because the Government of India ratified the United Nations Convention on the Rights of the Child (UNCRC) as was except on a particular clause related to minimum age of employment. The Article 24 of the United Nations Convention on the Rights of the Child and the same is being reproduced herein for the convenience:

“2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

.....

(d) To ensure appropriate prenatal and postnatal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.”

N. Because the Respondent State has an obligation under international law to protect the right to health of all women without discrimination. The vaccination, or refusal for vaccination, of pregnant and lactating women directly affects reproductive health of said women. General Recommendation No. 24 of the CEDAW Committee states that under Article 12 of CEDAW,

“It is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women.”

O. Because the petitioner has a significant stake in the issue of health of pregnant women and new-born care in the light of above submissions. The petitioner has a legal obligation to monitor and review the schemes related to pregnancy care, newborn care, lactating mothers, inquire into specific complaints or take suo-motu cognizance and advise the authorities concerned. It is reiterated that not doing so would be an abdication of statutory responsibilities.

23. That the petitioner graves leave to add, to alter or delete from the grounds mentioned above.

24. That the petitioner has not filed any other Petition before this Hon’ble Court or any other Court seeking the same reliefs.

PRAYER

Therefore, in the light of facts and circumstances mentioned herein above, it is humbly requested to this Hon’ble Court to grant the following reliefs:

- i. Issue of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Government of India to categorise Pregnant Women and Lactating mothers as belonging to the high-risk category and be given priority in vaccination; and

- ii. Issue a direction, order or writ, including writ in the nature of mandamus directing the concerned respondent authority under the Government of India to include pregnant women and lactating mothers within the vaccination drive on priority basis and set up a task force to work on operationalising a standard procedure and in materialising a mechanism to track and monitor Pregnant Women & Lactating Mothers post vaccination; and
- iii. Issue a direction, order or writ, including writ in the nature of mandamus directing the concerned respondent authority to develop education material and Standard Operating Protocols to educate women on the side effects of vaccination, effects of vaccination on pregnant and lactating mothers and ensure that informed consent is taken before taking the vaccine; and
- iv. Issue a direction, order or writ, including writ in the nature of mandamus directing the concerned respondent authority to create a registry to register pregnant women and lactating mothers being vaccinated so that a continuous monitoring mechanism can exist to see if the vaccine has an adverse effect on pregnant women; and
- v. Issue a direction, order or writ, including writ in the nature of mandamus directing the concerned respondent authority of the Government of India to set up separate vaccination centres for pregnant women and lactating mothers to protect them from infection as they are a high risk category; and;

- vi. Issue a direction, order or writ, including writ in the nature of mandamus directing the concerned respondent authority to engage Anganwadi Centres and Asha Workers for vaccination drive to reach out to pregnant women and lactating mothers from low socio-economic backgrounds; and
- vii. Issue a direction, order or writ, including writ in the nature of mandamus directing the concerned respondent authorities to make an option on CoWin Portal so that the pregnant women and lactating mothers, can classify / identify themselves as PW /LM and be prioritized while providing slots for vaccination; and
- viii. Pass any other order or direction which this Hon'ble Court deems fit and proper in the interest of Justice, Equity and Good Conscience.

DRAWN BY: Vrinda Grover, Kumar Shanu

& Soutik Banerjee

Date: 18.05.2021

Place: New Delhi

FILED BY:



PRATEEK K. CHADHA

ADVOCATE FOR THE PETITIONER