IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Serial No. 120

1) **CWP-18704-2026 (O&M)**

Veena Devi and another ... Petitioners

Versus

Union of India and others ... Respondents

2)**CWP-24253-2026**

Paramjit Kaur and another ... Petitioners

Versus

Union of India and others ... Respondents

3) **CWP-25817-2026**

Sharmila and another ... Petitioners

Versus

Union of India and others ... Respondents

4) **CWP-18180-2026**

Sita Rani Cheppa ... Petitioner

Versus

Union of India and others ... Respondents

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5) **CWP-28620-2026 (O&M)**

Savita and another . . . Petitioners

Versus

State of Haryana and others . . . Respondents

6) **CWP-13706-2026**

Daljinder Kaur and another . . . Petitioners

Versus

Union of India and others . . . Respondents

1.	The date when the judgment is reserved	September 15, 2026
2.	The date when the judgment is pronounced	November 5, 2026
3.	The date when the judgment is uploaded on the website	November 5, 2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Kunal Thapa, Advocate;
Mr. Aman Mittal, Advocate and
Mr. Simranjit Singh, Advocate;
Mr. Ravi Malik, Advocate;
Mr. Abhishek Rawal, Advocate;
Mr. S.S. Tiwana, Advocate
for the petitioner(s).

Mr. Dheeraj Jain, Senior Central Government Counsel with
Ms. Gurneet Sagoo, Central Government Counsel
for respondent no.1/UOI.

Mr. Akhil Kamra, Assistant Advocate General, Punjab.

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Mr. Mahender Joshi, Advocate for
respondent no.4 (in CWP-18704-2026).

Mr. A.S. Nirmaan, Advocate
for respondent no.4 (in CWP-18180-2026).

TRIBHUVAN DAHIYA, J.

These petitions are being decided together as common questions of law on similar facts arise for consideration.

2. For brevity, the facts have been noticed from CWP-18704-2026, which has been filed *inter alia* seeking a writ of *mandamus* directing the respondents to permit petitioner no.1 to continue with and complete her ongoing Assisted Reproductive Technology/ *In Vitro* Fertilization (ART/IVF) treatment, and undergo embryo transfer from amongst the four embryos lawfully created, transferred and cryopreserved at the facility of respondent no.4/ASUV Swasthya Private Limited (for short 'the Clinic'). Further, a direction has also been sought declaring that the age limit prescribed under Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 (for short 'the ART Act') is required to be construed with reference to the commissioning couple as a unit. Accordingly, the subsisting reproductive right of petitioner no.2, who is within the prescribed age limit of fifty-five years, cannot be extinguished by applying the age bar applicable to petitioner no.1/his wife, who is above the maximum prescribed age of fifty years under the Act.

3. The facts of the case in brief are petitioner no. 1/wife is working as a primary school teacher and petitioner no.2/husband is engaged in the business of agriculture. Both are physically and psychologically healthy and financially sound, and are desirous of having a child by availing ART/IVF

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services. They approached respondent no.4/the Clinic for this purpose. The requisite medical procedures were carried out, and nine embryos were lawfully created and cryopreserved at their facility on 22.11.2023. At the time both the petitioners were forty-seven years old and, accordingly, within the maximum prescribed age limits under Section 21(g) of the ART Act, i.e., fifty years for a woman and fifty-five years for a man.

3.1. The first frozen embryo transfer was undertaken at the facility in July, 2024; however, it remained unsuccessful. The second transfer undertaken at the facility was in February, 2025, which resulted in pregnancy of petitioner no.1. Unfortunately, the pregnancy had to be terminated after five-six weeks. Although four embryos are still cryopreserved at the facility in the Clinic, as confirmed by it vide letter dated 28.04.2026, Annexure P-3, the same cannot be used as petitioner no.1 has crossed the maximum permissible age of fifty years on 10.12.2025, and is not permitted to undergo the procedure due to the restriction imposed under Section 21(g) of the ART Act. Her husband, petitioner no.2, however, is below the maximum prescribed age. The petitioners have, therefore, approached this Court.

4. In this factual background, *firstly*, learned counsel for the petitioners contended that the rights of petitioner no.2 to procreate through ART continues to subsist, but its exercise stands frustrated as the procedure can only be undertaken through and with his own wife, who has crossed the maximum prescribed age. For carrying out the procedure as per provisions of the Act, it is incumbent upon the respondents to consider the age of the commissioning couple as a unit, and not of either of them individually. Even if one of the spouses is within the prescribed age limits, the procedure ought

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to be permitted so as to give effect to the mandate of law. This gives effect to the subsisting and unextinguished reproductive right of the partner who is within the prescribed age limit under Section 21(g) of the ART Act, viz., husband or wife, as the case may be. This would be harmonious and purposive reading of Section 21(g) of the ART Act to give effect to the rights conferred by the statute on a couple. Keeping this in view, this Court vide judgment in *Manjit Kaur and another* v. *Union of India and others*, 2025 NCPHHC 174633, has permitted the couple (petitioners therein) to undergo the procedure since one of them was within the prescribed age limit. *Secondly,* it has been contended that the procedure for ART/IVF was initiated in November 2023, when embryos were created in compliance with the provisions of the Act. Thereafter, attempts were made to transfer the frozen embryos to petitioner no.1 in July, 2024 and February, 2025; however, both attempts remained unsuccessful. This is an ongoing process, and the petitioners should be permitted to transfer the remaining embryos as well, particularly when the same were cryopreserved at the time when petitioner no.1 was within the prescribed age limit. Not doing so would infringe upon her right, or that of similarly placed other petitioners, to undertake the procedure under the Act which had already accrued when the embryos were lawfully created and cryopreserved on 22.11.2023.

5. *Per contra*, learned senior counsel for the Union of India, *firstly*, contended that the petitioners are not entitled to the relief sought, as one of them/petitioner no.1 has crossed the prescribed age for availing ART services under the ART Act. The maximum age limits for men and women have been prescribed under the Act after due consideration. The matter was placed

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before the Parliamentary Standing Committee on Health and Welfare, which had recommended minimum age of twenty-one years for both men and women, and maximum ages of fifty for women and fifty-five for men, respectively, for availing ART/IVF services. Later, the bill was passed by both houses of Parliament, incorporating Section 21(g) therein prescribing the age limits accordingly. And the validity of this Section in the ART Act has already been upheld by a Division Bench of the Gauhati High Court in *Pankaj Kumar Das and another* v. *The Union of India and others,*2025 SCC Online Gau 5083. It has further been submitted that an expert committee on 'Implication of Conception at Advanced Parental Age' was constituted by the Department of Health Research, Ministry of Health and Family Welfare, Government of India, to examine the implications of conception at advanced parental age on maternal outcomes, offspring health and long-term child well-being with respect to upper age restrictions under Section 21(g) of ART Act. The committee comprised experts serving as professors/ former professors at reputed medical and academic institutes of the country, including the All India Institute of Medical Sciences (AIIMS) and the Jawaharlal Nehru University (JNU), New Delhi. Upon deliberation, the committee concluded that the statutory upper age limits of fifty years for women and fifty-five years for men, as prescribed under the Act, are reasonable and founded on well-established medical, genetic, psychological and child welfare considerations; a copy of this report, dated 21.01.2026, has been appended to the reply as Annexure R-1/J. In view of these facts, the judgment in *Manjit Kaur* (*supra*) cannot be relied upon by the petitioners.

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5.1 *Secondly*, it has been contended that under Section 2(1)(e) of the ART Act, the expression 'commissioning couple' means an infertile married couple who approaches an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the services authorised of the said clinic or the bank. Similarly, under clause (u) of sub-section (1) of Section 2 'woman' has been defined to mean any woman above the age of twenty-one years who approaches a clinic or a bank for obtaining the said services. Under Section 21, general duties of assisted reproductive technology clinics and banks have been laid down; clause (a) whereof provides that all clinics and banks shall ensure that the commissioning couple, woman and donors of gametes are eligible to avail the assisted reproductive technology procedures subject to such criteria as maybe prescribed. There is no provision prescribing age of the commissioning couple as a composite unit for availing services under the ART Act; therefore, the petitioners cannot claim permission to undertake the procedure merely on the basis that one of them continues to fall within the prescribed age. Further, under Assisted Reproductive Technology (Regulation) Rules, 2022, (for short, the ART Rules') additional duties for ART clinics have been prescribed; in particular, by filling the form prescribed under Rule 13(*f*)(*iii*) women can avail ART services despite their husbands having crossed the prescribed maximum age under Section 21(g) of the ART Act.

6. Respondent no.4/the Clinic has not disputed the assertions made by the petitioners with respect to the services availed by them and the unsuccessful attempts at frozen embryo transfers. It has also been stated that petitioner no.1 appears to be in good health for her age, with no major medical

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condition that would preclude her from carrying a child. And that the clinic has no objection to facilitating the transfer of one of the four cryopreserved embryos into petitioner no.1, subject to permission being granted by this Court for the purpose as it is bound to comply with the provisions of the ART Act.

7. Submissions made by learned counsel for the parties have been considered.

8. Undisputedly, in all these petitions either of the petitioners, husband or wife, has crossed the maximum age limit prescribed under Section 21(g) of the ART Act for availing ART/ IVF services for the purpose of conceiving a child. Notwithstanding, they still claim entitlement to such services in the light of directions issued in *Manjit Kaur* case (*supra),* which follows the judgement rendered by the Calcutta High Court in *Sanchita Ghosh and another* v. *Union of India and others, 2024 SCC Online Cal 12155,* decided on 08.04.2024. The latter holds, if one of the spouses is within the maximum age limit laid down under section 21(g)(i) of the Act, the couple will be entitled to avail ART services. The age bar has been stipulated for a woman and a man individually, and cannot be made applicable to the commissioning couple as well. The reasoning based upon which the directions have been issued is as follows:

> 29. Forging the said lack of restriction for commissioning couples with Section 21(g)(i) and (ii), the only possible interpretation is that unless the restriction is applicable to both the spouses who comprise of the commissioning couple, there is no bar in the commissioning couple to approach the appropriate clinic for assistive reproductive technology services.

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30. In the event either the woman or the man comprising the commissioning couple are eligible to have assistive reproductive technology, there is no reason why the bar stipulated for individual women and men should be incorporated into the purview of the commissioning couple as well. The age-related ineligibility of one of the spouses need not affect the other, if they comprise of a commissioning couple.

8.1. Accordingly, it needs consideration whether the commissioning couple can claim entitlement to ART services despite one of them having crossed the maximum age stipulated under Section 21(g) of the ART Act. To discuss the issue it is apposite to refer to the following provisions of the ART Act:

2. **Definitions**.- (1) In this Act, unless the context otherwise requires,-

(a) "assisted reproductive technology" with its grammatical variations and cognate expressions, means all techniques that attempt to obtain a pregnancy by handling the sperm or the oocyte outside the human body and transferring the gamete or the embryo into the reproductive system of a woman;

(b) "assisted reproductive technology bank" means an organisation which shall be responsible for collection of gametes, storage of gametes and embryos and supply of gametes to the assisted reproductive technology clinics or their patients;

(c) "assisted reproductive technology clinic" means any premises equipped with requisite facilities and medical practitioners registered with the National Medical Commission for carrying out the procedures related to the assisted reproductive technology;

(e) "commissioning couple" means an infertile married couple who approach an assisted reproductive technology clinic or

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assisted reproductive technology bank for obtaining the services authorised of the said clinic or bank;

(f) "embryo" means a developing or developed organism after fertilisation till the end of fifty-six days from the day of fertilisation;

(g) "gamete" means sperm and oocyte;

(h) "gamete donor" means a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child;

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u) "woman" means any woman above the age of twenty-one years who approaches an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the authorised services of the clinic or bank.

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21. **General duties of assisted reproductive technology clinics and banks**.-The clinics and banks shall perform the following duties, namely:-

(a) the clinics and banks shall ensure that commissioning couple, woman and donors of gametes are eligible to avail the assisted reproductive technology procedures subject to such criteria as may be prescribed;

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(g) the clinics shall apply the assisted reproductive technology services, -

(i) to a woman above the age of twenty-one years and below the age of fifty years;

(ii) to a man above the age of twenty-one years and below the age of fifty-five years;

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(h) the clinics shall issue to the commissioning couple or woman discharge certificate stating details of the assisted reproductive technology procedure performed on the commissioning couple or woman;

8.2. Apparently, under clause (a) to sub-section (1) to Section 2 of the ART Act "assisted reproductive technology" (ART) means all techniques that attempt to obtain a pregnancy by handling the sperm or the oocyte outside the human body and transferring the gamete or the embryo into the reproductive system of a woman. Under clause (b), the ART bank has been defined as an organisation responsible for collection and storage of gametes and embryos, and supplying the same to the ART clinics or their patients. Under clause (c), the ART clinic is a premises equipped with the requisite facilities, having medical practitioners registered with the National Medical Commission for carrying out the procedures related to the assisted reproductive technology. Clause (e) defines the commissioning couple as an infertile married couple who approaches the ART clinic or the bank for obtaining the services. Clause (f) describes an embryo as a developing or developed organism after fertilisation till the end of fifty-six days from the day of fertilisation, and gamete under clause (g) has been described as a sperm and oocyte. Gamete donor under clause (h) means a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child. And woman under clause (u) is the one above the age of twenty-one years who approaches the ART clinic or the bank for obtaining the authorised services. Section 21 of the Act lays down general duties of ART clinics and banks, and sub-section (a) thereto requires them to ensure that the commissioning couple, woman and donors of gametes are eligible to avail the ART procedures

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subject to the criteria laid down. And minimum and maximum age for availing the services has been prescribed under sub-section (g). Both, the woman and the man, must be above twenty-one years of age; however, the maximum age for a woman to avail the services is fifty years, and for a man it is fifty-five years.

8.3. The nature and different stages of the procedures required to be undertaken for availing ART services have been detailed in the reply filed by the Union of India, and read as under:

> 17. It is submitted that the procedures under the ART Act are done in terms of "treatment cycles". One treatment cycle by and large aligns with menstrual cycle of the woman involved in the procedure. In terms of the duration of the treatment cycle under the ART Act also, it broadly aligns with the duration of a normal menstrual cycle. The term "treatment cycle finds mention in the ART Act. Once, a couple or party undergoes one treatment cycle and if it does not yield the intended result, the treatment cycle can be repeated as many times and as often as advised by doctors on case-to-case basis. The ART treatment is inherently cyclical in nature, with every cycle involving a fresh and independent round of treatment. eligibility criteria prescribed under the Assisted Reproductive Technology (Regulation) Act, 2021 are required to be satisfied at the commencement of each cycle.

8.4 As evident from the aforesaid statutory provisions, the ART procedure encompasses techniques involving the handling of sperm or oocyte in an attempt to secure a pregnancy. It involves two stages; (i) preservation of sperm or oocyte and/or fertilisation outside the human body, and (ii) transferring gamete or embryo into the reproductive system of a woman. ART banks are meant for collection and storage of gametes and embryos, to be

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supplied to the ART clinics or their patients. An infertile couple or a woman are entitled to have a child availing the ART procedure which is inherently cyclical in nature as by and large it aligns with the menstrual cycle of the woman involved. This entitlement is subject to age restrictions prescribed separately for a woman and a man under Section 21(g) of the ART Act. The woman must be between twenty-one to fifty years of age, and the man between twenty-one to fifty-five years, for application of ART services/procedure. The constitutional validity of this provision is not under challenge in the present proceedings. Nevertheless, entitlement to avail the services has been claimed by the petitioners/couples despite one of the spouses having crossed the age bar laid down. The legislature in its wisdom has prescribed distinct age limits for a woman and a man desirous of availing the services. It has refrained from prescribing minimum and/or maximum age for the commissioning couple as a unit for determining eligibility, nor has it provided that the procedure can be permitted if one of the spouses continues to fall within the prescribed age limit. In case the age of the commissioning couple as such is to be seen for granting permission to avail the services under the ART Act and/or permission is to be granted even if one of them is within the maximum prescribed age, there has to be a provision to that effect in the Act, but there is none. A provision which has not been provided for specifically, cannot ordinarily be read into the enactment as it would be expanding the scope of the enactment itself. This is nothing short of re-framing the statute which is beyond the scope of judicial interpretation. Otherwise, the words of sub-section (g) to Section 21 are unequivocal, calling for no interpretation; the intention of the legislature is unmistakable as it has

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not provided for the couple age. Also, it is not a case that giving effect to those explicit words is not possible, or it leads to an absurd situation, or defeats the object of the statute itself; nor is it inconsistent with any other provision of the Act. There is, accordingly, no case for supplying *casus omissus,* and the literal rule of construction is to be followed, reading the words of the statute exactly as they stand and giving them full effect.

8.5. This is in line with the settled position in law laid down by the Supreme Court in *Padma Sundara Rao (Dead) and others* v. *State of T.N. and others*, 2002 (3) SCC 533, as under:

> 12. The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. …
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> 13. xxx xxx xxx
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> 14. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.*) The legislative casus omissus cannot be supplied by judicial interpretative process. …
>
> 15. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a

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> casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself … This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature.

Further, in *Independent Sugar Corporation Limited* v. *Girish Sriram Juneja and others*, 2025 (5) SCC 209, the Supreme Court laid down that intention of the legislature is to be gathered not only from the words used but also from the words not used. And any interpretation requiring addition of words should be avoided. It reads as under:

> 49. …that when the words used are clear, plain and unambiguous, the courts are duty-bound to give effect to the meaning emerging out of such plain words. The intention of the legislature must be gathered from the language used and also, the words not used. It becomes imperative to understand those words in their natural and ordinary sense, and any interpretation requiring for its support addition or substitution or rejection of words as meaningless, must ordinarily be avoided.

Accordingly, reading the age of the commissioning couple in the unambiguous language of Section 21(g) amounts to re-writing or altering the provision which is impermissible, not being an adjudicatory function.

8.6. The ground of 'lack of restriction for commissioning couples' referred to in *Sanchita Ghosh* case (*supra*) to permit ART services even if one of the spouses is beyond the maximum age limit, is alien to the scheme of things mandated under the ART Act. Laying down of restrictions and lack of it, has to be seen with reference to the provisions of the statute. The Act as such provides different maximum ages for a man and a woman, and appears

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to be right in doing so given their individual biological reproductive capabilities. The role of the couple as a unit becomes relevant after the process fructifies. While their joint effort may be relevant for parenting, but for ART/IVF services under the Act individual potential of the woman and the man matters. Hence, the age restrictions are for the spouses separately, and any perceived lack of such restrictions on the couple cannot afford any ground to the Court to provide for it. This would amount to reading into the statutory provisions something which has not been provided for by the legislature and is impermissible, as discussed hereinbefore. Accordingly, with utmost respect this Court is unable to subscribe to the reasoning in *Sanchita Ghosh* case.

8.7. Additionally, the argument by learned counsel for the petitioners that they acquired a vested right to avail ART services upon the freezing of their embryos, can also not be accepted. It is because the mandatory requirement under Section 21(g) of the ART Act is that the clinic shall apply ART services only to a woman and a man who are below the age of fifty years and fifty-five years, respectively. Therefore, the prescribed age limit must be satisfied on the day these services are availed or the relevant procedure is undertaken. As already discussed, the procedure has two stages, and for every stage the age limit must be met. Merely because embryos were frozen before the woman crossed the maximum age, would not entitle her to undertake the subsequent stage of the procedure - transferring the embryo or the gamete into her reproductive system, after she has crossed the prescribed age limit as that would be violative of stipulations under the Act.

8.8. It has also come on record that the implications of conception at an advanced parental age were considered by a committee constituted by the

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Department of Health Research, Ministry of Health and Family Welfare, Government of India, comprising of the following experts from leading institutes in the country:

> (i) Dr. Neena Malhotra - Professor & Head IVF Department, AIIMS, New Delhi & Expert Member of the National ART Surrogacy Board.
> (ii) Dr. Madhulika Kabra - Emeritus Scientist ICMR (AIIMS New Delhi) Former Professor & Head, Department of Paediatrics & In-Charge, Division of Genetics, AIIMS, New Delhi.
> (iii) Dr. Ashutosh Halder - Professor, Reproductive Biology, Department of Genetics-AIIMS, New Delhi & Expert Member of the National ART Surrogacy Board.
> (iv) Dr. Sunita Reddy -Associate Professor, Centre of Social Medicine and Community Health, School of Social Sciences, JNU & Expert Member of the National ART Surrogacy Board
> (v) Dr. Sujata Satapathy, Professor, Clinical Psychology, Dept. of Psychiatry, AIIMS, New Delhi-110029, India.

The committee submitted its detailed report, dated 21.01.2026, after considering medical implications of conception at advanced parental age, the health risks to child/children born to couples of advanced age, and the associated psychological and caregiving implications, *et al.*, and concluded that the age limits prescribed under Section 21(g) of the ART Act are reasonable and well-founded. The relevant extracts of the report are as under:

> I. MEDICAL IMPLICATIONS OF ADVANCED PARENTAL AGE
> (i) Health risks associated for woman carrying a pregnancy at advanced maternal age (gestational and obstetric outcomes): Pregnancy in women beyond 50 years of age is inherently high-

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risk and is associated with significantly increased maternal and perinatal complications.

- Women of the advanced age group have pre-existing medical conditions such as chronic hypertension, which may worsen during pregnancy, and face a higher risk of pregnancy-induced hypertension, pre-eclampsia, and eclampsia, which can be life-threatening.
- They have a substantially higher risk of gestational diabetes, which often progress with advancing gestation, and lead to severe complications.
- Higher maternal age is often associated with pre-existing gynaecological conditions, including fibroids or prior uterine surgeries, which subsequently increase obstetric risk, such as abnormal placentation, such as placenta praevia and morbidly adherent placenta. These conditions can result in severe, life-threatening haemorrhage during pregnancy or delivery.
- These maternal complications may lead to foetal growth restriction, often necessitating carly termination of pregnancy for maternal safety and preterm birth, where an infant may not survive. Growth-restricted and preterm babies frequently require intensive care and may face long-term developmental and health problems.
- Elderly mothers will have a high risk of caesarean delivery, increasing surgical risks such as increased blood loss during and after delivery, extreme rise of blood pressure, and anaesthetic risks such as delayed reversal of anaesthesia and other such conditions.
- Lactation difficulties have also been reported in older mothers, which can further affect infant health and development.

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(ii) Health risks to child/children born to couples of advanced parental age:

Conception at advanced parental age is known to be associated with a range of potential health risks for the offspring. These risks broadly encompass general medical outcomes as well as genetic and epigenetic factors influencing foetal and long-term child health.

- General medical risks: Scientific evidence demonstrates that conception through assisted reproduction at advanced parental age carries significant health risks for the offspring such as preterm birth, low birth weight, macrosomia, growth disturbances, metabolic alterations and perinatal mortality. Emerging evidence also suggests potential long-term cardiovascular effects, although long-term outcomes remain limited and influenced by multiple factors.
- Epigenetic risks: Evidence suggest that the ageing oocytes and sperm may undergo epigenetic alterations. The periconception period and early embryonic development are associated with widespread epigenetic changes such as imprinting disorders, altered DNA methylation patterns, and changes in small RNA profiles which may be influenced by ART as well as age-related changes, potentially affecting the foetal development and long-term health outcomes.
- Genetic risks: There is clear evidence that advance parental age is associated with the higher risk of chromosomal abnormalities and congenital birth defects in the offspring.

(i) Risks associated with advanced maternal age:

- Higher maternal age is strongly linked to chromosomal abnormalities because older eggs are more likely to

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develop errors during cell division (chromosomal aneuploidies).

- Scientific evidence suggests that the risk of conditions such as Down syndrome and other serious chromosomal disorders rises significantly after 35 years of maternal age.
- Studies further show that in embryos chromosomal abnormalities remain relatively low and stable up to around 35 years of age, but increase sharply thereafter, exceeding 90% in women in their early to mid-40s. Some of these chromosomal abnormalities cause lifelong disability, while others are associated with severe illness and poor survival.

(ii) Risks associated with advanced Paternal age:

- Higher paternal age increases the chance of new genetic mutations (de novo mutations) that may lead to increased risks of inherited disorders, neuro developmental delays, and psychiatric illnesses in children such as autism, schizophrenia, bipolar disorder, ADHD, and other mental health conditions.
- Some of these disorders can be severe or life- limiting and include conditions such as achondroplasia, Apert syndrome, and Noonan syndrome.
- The number of genetic mutations in sperm increases progressively with advancing paternal age and is higher than that seen in the maternal germline, highlighting advanced paternal age as an independent risk factor for childhood health disorders.

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II. PSYCHO SOCIAL AND CAREGIVING IMPLICATIONS OF ADVANCED PARENTAL AGE: The key

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implications of advanced parental age from a psychosocial and care giving perspective are outlined below:

(i) Reduced caregiving capacity: Parents above 50 years are more likely to experience age-related illnesses, reduced physical stamina, and functional limitations during a child's formative years, which may impair active caregiving, emotional availability. and parenting capacity at crucial stages of child's development. Children require stable guardianship for nearly two decades. Serious maternal health issues at advanced age may also shift caregiving responsibilities to extended family members, raising concerns regarding long-term child care and dependency and disguised neglect.

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Concluding remarks:

The above scientific evidence demonstrates that advancing maternal and paternal age is independently associated with increased risks to maternal health, adverse perinatal outcomes, genetic and epigenetic abnormalities in offspring, and long-term psychosocial and caregiving challenges. Therefore, the age limits prescribed under the Acts represent a balanced legislative choice, grounded in scientific evidence, ethical considerations, and the paramount principle of child welfare.

After careful consideration and in light of the above discussion and examination of the scientific literature, clinical evidence, psychosocial research, and international practices, the committee is of the considered opinion that:

"The upper age limits of 50 years for women and 55 years for men prescribed under the ART (Regulation) Act, 2021, and the Surrogacy (Regulation) Act, 2021 are reasonable and founded on well-established medical, genetic, epigenetic, psychosocial, and child-welfare considerations."

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Accordingly, prescribing the maximum age limits for a man and a woman to avail the services under the ART Act has been vindicated by independent experts in the concerned fields.

8.9. In view of the discussion, this Court holds that in the event of either a woman or a man crossing the maximum prescribed age, their right to avail the services/undertake procedures under the ART Act does not survive.

9. The second issue that needs to be considered is whether a woman can avail services under the ART Act only through her husband, and refusal of permission to the latter on account of the prescribed age restriction would frustrate the former's rights under the Act as well. The scheme of the Act, as discussed hereinbefore, entitles a *commissioning couple* as well as a *woman* to avail ART services by approaching an authorised clinic or bank for the purpose. This is apparent from the provisions of clause (e) and (u) to sub-section (1) to Section 2 of the Act. Under clause (h), gamete donor has been defined as a person who provides sperm or oocyte to enable an *infertile couple* or a *woman* to have a child. This is further made clear from the general duties of the ART clinics and the banks laid down under Section 21 of the ART Act. These provisions also require them to ensure that the *commissioning couple*, *woman* and donors of gametes, all three, are eligible to avail the procedures. This makes it evident that ART services can be availed either by a couple or a woman on her own, and there is no requirement that only a couple must approach the ART clinic or the bank for this purpose.

9.1 In this view of the matter, the argument advanced by learned counsel for the petitioners that services under the ART Act can be exercised by a woman only through and with her husband is misconceived. A woman,

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who may or may not be married, has been conferred an independent right under the Act to avail ART services by approaching an authorised bank or clinic and furnishing the requisite information, consent, etc., as may be required. In this eventuality, her husband having crossed the maximum prescribed age of fifty-five years would not, by itself, deprive her from availing the services, provided she remains below the maximum prescribed age of fifty years. Resultantly, the women petitioners in the aforementioned petitions who have not crossed the maximum age, have the option of availing the services under the Act, if desired.

9.2. In view of the discussion, it is held that a woman has the right to avail the services/undertake procedures independently under the ART Act, irrespective of her husband having crossed the prescribed age limit.

10. The writ petitions are hereby disposed of in the aforesaid terms.

11. Pending application(s), if any, also stand(s) disposed of.

12. A photocopy of this order be placed on the case file(s) of connected matter(s).

(TRIBHUVAN DAHIYA)
JUDGE

05.11.2026
Mehak

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No

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