HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 6556/2025
CNR: RJHC020366112025 | URN: CW / 15337U / 2025

1. Dr. Arvind Mathur S/o Shri Sobhag Narayan Mathur, Aged About 56 Years, Resident of A-65, Sobhag House, Anand Vihar, Jagatpura, Jaipur, At Present Posted As Senior Veterinary officer, Nahargarh Biological Park, Jaipur.
2. Smt. Shweta Saxena W/o Dr Arvind Mathur, Aged About 48 Years, Resident of A-65, Sobhag House, Anand Vihar, Jagatpura, Jaipur.

----Petitioners

Versus

1. Union of India, Through Principal Secretary, Ministry of Health And Family Welfare, Govt. of India, New Delhi.
2. Joint Secretary, Ministry of Health And Family Welfare, Govt. of India, New Delhi.
3. The State of Rajasthan, Through Principal Secretary, Medical And Health, Govt. of Rajasthan, Secretariat, Jaipur

----Respondents

Connected With

D.B. Civil Writ Petition No. 2224/2023
CNR: RJHC020091692023 | URN: CW / 4313U / 2023

1. Rakesh Babu Jaiswal S/o Shri Gulab Chand Jaiswal, Aged About 56 Years, Resident of Bhajuka Mohalla, Dausa (Rural), District Dausa, Rajasthan-303303.
2. Geeta Devi W/o Rakesh Babu Jaiswal, Aged About 41 Years, Resident of Bhajuka Mohalla, Dausa (Rural), District Dausa, Rajasthan-303303.

----Petitioners

Versus

1. Union of India, Through Its Secretary, Ministry of Health And Family Welfare, Shastri Bhawan, New Delhi.
2. The State of Rajasthan, Through Its Principal Secretary, Medical And Health Department, Secretariat, Jaipur.
3. The Superintendent, Mahila Chikatsalya, Sanganeri Gate, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 17086/2026
CNR: RJHC020834242026 | URN: CW / 35720U / 2026

1. Bhawana Chaturvedi W/o Pradeep Kumar Sharma, Aged About 51 Years, Resident of House No. 1483, Loharo Ki Gali, Choura Rasta, Near Kc Printers, Jaipur, Rajasthan-302003.
2. Pradeep Kumar Sharma S/o A.k. Sharma, Aged About 52 Years, Resident of House No. 1483, Loharo Ki Gali, Choura Rasta, Near Kc Printers, Jaipur, Rajasthan-302003.

----Petitioners

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SAHIL SONI
Date: 2026.10.30
13:47:34 IST

Versus

1. Union of India, Through Principle Secretary, Ministry of Health And Family Welfare Government of India, Mirman Bhawan, New Delhi.
2. Joint Secretary, Ministry of Health And Family Welfare Government of India, Mirman Bhawan, New Delhi.
3. The State of Rajasthan, Through Principle Secretary, Medical And Health, Government of Rajasthan, Secretariat, Jaipur.

----Respondents

D.B. Civil Writ Petition No. 17121/2026
CNR: RJHC020820082026 | URN: CW / 35787U / 2026

1. Tirth Raj S/o Lal Chand, Aged About 63 Years, Resident of Plot No. 50, Veer Savarkar Nagar, Alwar, Alwar, Po- Alwar, Dist- Alwar, Rajasthan- 301001.
2. Smt. Asha Rani W/o Dr. Tirth Raj, Aged About 48 Years, Resident of Plot No. 50, Veer Savarkar Nagar, Alwar, Po- Alwar, Dist- Alwar, Rajasthan, 301001.

----Petitioners

Versus

1. Union of India, Through Principal Secretary, Ministry of Health And Family Welfare, Govt. of India, New Delhi.
2. Joint Secretary, Ministry of Health And Family Welfare, Govt. of India, New Delhi.
3. The State of Rajasthan Through Principal Secretary, Medical And Health, Govt. of Rajasthan, Secretariat, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. R.B. Mathur, Sr. Adv. Assisted by Mr. Utsav Verma, Mr. Manish Bhodiwal Mr. Falak Mathur Mr. Yug Singh Mr. Salim Khan Gori Mr. Nikhil Simlote Mr. Y. K. Sharma Mr. Arvind Kumar Arora Mr. Anil Kumar Jain
For Respondent(s)	:	Mr. Bharat Vyas, ASG assisted by Mr. Rakesh Chaudhary, Mr. Devesh Yadav, Ms. Niti Jain Bhandari, Mr. Pulkit Bhardwaj Ms. Riya Sharma for Mr. Vigyan Shah, AAG

HON'BLE MR. JUSTICE INDERJEET SINGH

HON'BLE MR. JUSTICE SANDEEP TANEJA

Judgment

Date of Conclusion of Arguments	**01.09.2026**
Date on which Judgment was reserved	**01.09.2026**
Whether the full Judgment or only operative part is pronounced	**Full Judgment**
Date of Pronouncement	**29.10.2026**

REPORTABLE

Per: Sandeep Taneja, J.

1. The present batch of writ petitions challenges the constitutional validity of Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 (for short, 'ART Act'), which reads as under:

> *"21. Duties of assisted reproductive technology clinics and banks.—*
> *…*
> *(g) the clinics shall apply 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; …"*

2. The aforesaid provision imposes a statutory duty upon Assisted Reproductive Technology clinics (for short, 'ART clinics') to provide Assisted Reproductive Technology services (for short, 'ART services') to a woman who is above 21 years of age and below 50 years of age, and to a man who is above 21 years of age and below 55 years of age, thereby prescribing age-related restrictions for availing ART services.

3. The brief facts of the present writ petitions are as follows:

Civil Writ Petition No. 6556/2025

3.1 Petitioner No.1-husband remarried Petitioner No.2-wife on 16.01.2025. At the time of their marriage, Petitioner No.1 was aged 55 years, one month and 12 days, while Petitioner No.2 was aged 47 years and four months. Petitioner No.2 could not conceive, and thereafter, upon consultation with experts and on the advice of their family members, the petitioners decided to have a child through the process of IVF. However, the ART clinic declined to provide the requisite treatment on the ground that Petitioner No.1 was above 55 years of age and had crossed the maximum age prescribed under Section 21(g)(ii) of the ART Act.

Civil Writ Petition No. 2224/2023

3.2 Petitioner No.1-husband and Petitioner No.2-wife were married long ago. As they had no child, Petitioner No.2-wife underwent IVF treatment at a private clinic in July 2021. At that time, Petitioner No.1 was aged 54 years and Petitioner No.2 was aged 44 years. After undergoing the said procedure, Petitioner No.2 conceived in October 2021; however, she suffered a miscarriage in March 2022. In 2022, before the petitioners could restart IVF treatment, the ART Act came into force with effect from 25.01.2022. By that time, Petitioner No.1 had crossed the age of 55 years, while Petitioner No.2 was aged 45 years. The ART clinic declined to provide the requisite treatment on the ground that Petitioner No.1 had crossed the maximum age prescribed under Section 21(g)(ii) of the ART Act.

Civil Writ Petition No. 17086/2026

3.3 Petitioner No.1-wife and petitioner No.2-husband solemnized their marriage on 29.04.2016. They have no child out of the said wedlock. As they were unable to conceive a child, the petitioners consulted experts and decided to undergo treatment through the process of IVF. Upon

detailed medical evaluation, the treating doctor advised them to undergo IVF/ART treatment. Accordingly, the petitioners approached an ART clinic; however, the said clinic declined to provide the treatment on the ground that the petitioner No.1 had crossed the age of 50 years, being the maximum age prescribed under Section 21(g)(i) of the ART Act.

Civil Writ Petition No. 17121/2026

3.4 Petitioner No.1-husband remarried petitioner No.2-wife on 19.04.2026. At the time of their marriage, petitioner No.1 was aged 63 years, while petitioner No.2 was aged 48 years. As petitioner No.2 could not conceive, the petitioners were advised to undergo treatment through the ART process. However, the ART clinic declined to provide the treatment on the ground that petitioner No.1 had crossed the age of 55 years, being the maximum age prescribed under Section 21(g)(ii) of the ART Act.

3.5 In all the cases before us, either the wife or the husband has exceeded the upper age limit of 50 years and 55 years, applicable to them respectively, as prescribed under Section 21(g) of the ART Act. Consequently, being aggrieved by the refusal by the ART clinics to provide the requisite ART services, the petitioners have challenged the constitutional validity of Section 21(g) of the ART Act before this Court.

4. Learned counsel for the petitioners submitted that prescribing a maximum age limit for a married couple is arbitrary. It was further submitted that couples such as the petitioners, who are well-educated and have sufficient financial capacity, are capable of understanding their responsibilities and are willing to discharge such responsibilities towards the child and, therefore, cannot be denied access to ART services merely on the ground of age. It was also submitted that the age limits prescribed under Section 21(g) may be applied individually to a woman and a man;

however, the same cannot be applied to a commissioning couple. Learned counsel also submitted that the ART Act came into force on 25.01.2022 and that, in some of the cases before this Court, one of the parties had already attained the maximum permissible age before the Act came into force. The ART Act, however, does not contain any saving provision dealing with such transitional cases.

4.1 Learned counsel for the petitioners further submitted that there are several ambiguities in the statutory scheme with regard to a commissioning couple, which is defined under Section 2(1)(e) of the ART Act. Learned counsel also submitted that the expression 'commissioning couple' has a distinct legal connotation from the expressions 'woman' and 'man'. It was, therefore, contended that, since the expression 'commissioning couple' has not been used in Section 21(g), the said provision cannot be applied to a commissioning couple and the age limits prescribed therein would not apply to such a couple.

4.2 It was further submitted that the Act creates an unequal classification between an unmarried or single woman, on the one hand, and a married woman who is part of a commissioning couple, on the other. Learned counsel submitted that an unmarried or single woman is eligible for ART services if she falls within the age bracket of 21 to 50 years; however, a married woman falling within the same age bracket may be denied access to ART services solely on the ground that her husband or male partner has crossed the age of 55 years. This classification is arbitrary and unreasonable and, therefore, violates the fundamental right to equality guaranteed under Article 14 of the Constitution of India.

4.3 It was further submitted that the right to give birth to a child is an important aspect of reproductive autonomy, being a matter of personal

liberty, and that the impugned provision stipulating age-related restrictions is also violative of Article 21 of the Constitution. Based on the aforementioned submissions, it was prayed that the writ petitions be allowed and Section 21(g) of the ART Act be declared unconstitutional.

4.4 In support of the submissions, learned counsel placed reliance upon the judgments passed in the cases of Shyja T.K. and Anr. Vs. Union of India and Ors., WP(C) No.9349/2025, decided on 08.04.2025 by Kerala High Court, Sanchita Ghosh and Anr. Vs. Union of India and Ors., reported in 2024 SCC OnLine Cal 12155, Shyamoli Saha and Anr. Vs. State of West Bengal and Ors., reported in AIR 2025 Cal 55, Union of India Vs. Devayani S & Ors., reported in 2025 SCC OnLine Ker 11786, Sarbjit Kaur and Anr. Vs. State of Punjab and Ors., CWP No.6818/2025, decided on 22.01.2026 by Punjab & Haryana High Court, Neeru Singh and Anr. Vs. State of Chhattisgarh and Ors., reported in 2026 SCC OnLine Chh 7387, Jayanta Dasgupta and Anr. Vs. State of West Bengal and Ors., reported in 2026 SCC OnLine Cal 5931.

5. On the other hand, learned counsel appearing for the Union of India opposed the writ petitions and submitted that the petitioners have failed to make out any case for holding the aforesaid provision unconstitutional or invalid. It was further submitted that the ART Act has been enacted by Parliament within its legislative competence. It was also submitted that the provision is regulatory in nature and that mere hardship caused to an individual cannot, by itself, be a ground for declaring a statutory provision unconstitutional or ultra vires the Constitution of India.

5.1 It was also submitted that the age-related restrictions for ART services have been carefully prescribed to prioritize the best interests of the child to be born, and that the intent behind the regulation is to ensure the child’s welfare, safety and well-being, which are given paramount

importance. Learned counsel further submitted that the age-related restrictions are essential to prevent situations in which the child might be exposed to risks associated with the age-related concerns of the parents, such as health complications or an inability to provide adequate parental care. It was also submitted that, by implementing age restrictions, the law helps to uphold the child's right to grow in an environment in which the child is not disadvantaged by the age of the parents or their inability to provide adequate parental care.

5.2 In support of the reasons for prescribing the age limits under Section 21(g) of the ART Act, learned counsel principally relied upon the judgment passed by the learned Single Judge of the Kerala High Court in the case of Nandini K. & Anr. Vs. Union of India & Ors., reported in 2022 SCC Online Ker 8235, wherein the constitutional validity of Section 21(g), insofar as it prescribes age limits for availing ART services, was upheld. It was submitted that, although the age-related restrictions were upheld, directions were issued in the said case permitting the petitioners therein to continue ART treatment, as they had commenced such treatment before the ART Act came into force. Learned counsel further submitted that, pursuant to the said judgment, the matter concerning the age-related restrictions and transitional provision was referred to an expert member of the National Board, who, after detailed deliberations and discussions, was of the view that the age restrictions under the Act were valid and required no interference.

5.3 Learned counsel, in support of his submissions, also placed reliance on the judgments passed in the cases of Pankaj Kumar Das and Anr. Vs. Union of India, reported in 2025 SCC OnLine Gau 5083, Union of India Vs. Nandini K. & Ors., WA No.696/2024, decided on 19.12.2025 by a Division

Bench of Kerala High Court, Kavitha Anand Vs. State of Tamil Nadu, Writ Petition No.35158/2024, decided on 07.02.2025 by Madras High Court.

6. Heard learned counsel for the parties and perused the material available on record.

7. It is well settled that there is a presumption of the constitutional validity of a statute, as the legislature is presumed to have acted within the limits of its legislative competence and in conformity with the provisions of the Constitution. The burden lies on the person challenging the constitutional validity of a statute to establish that the impugned provision suffers from a constitutional infirmity. A Court, while examining such a challenge, must proceed on the basis of this presumption and determine whether the provision violates any constitutional limitation. Legislative action may, however, be challenged on the grounds of lack of legislative competence, violation of fundamental rights or other constitutional provisions, or manifest arbitrariness. In this regard, reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of **Shayara Bano Vs. Union of India**, reported in **(2017) 9 SCC 1**.

8. In the instant case, the challenge to the vires of the impugned provision has been laid on the premise that prescribing age limits under Section 21(g), which have the effect of curtailing the rights of a married couple, is not only grossly arbitrary but also violates their personal liberty. It is further the petitioners' case that the classification sought to be made between an unmarried or single woman, on the one hand, and a woman who is part of a commissioning couple, on the other, is arbitrary. According to the petitioners, an unmarried or single woman falling within the age bracket of 21 to 50 years is eligible to avail herself of ART services, whereas a married woman falling within the same age bracket is

denied the benefit of such technology solely on the ground that her husband has crossed the maximum age of 55 years.

9. To examine the petitioners' contentions, it is relevant to note that the objects of the ART Act, *inter alia*, include regulating and supervising ART clinics and ART banks, preventing misuse, and ensuring the safe and ethical practice of ART services for addressing issues of reproductive health. In furtherance of these objects, and keeping in view the interests and welfare of the child to be born and the mother, age limits have been prescribed to optimize the chances of successful and healthy pregnancies and births and to mitigate potential risks to both the mother and the child.

10. The aforesaid purpose is also evident from the instructions issued by the Government of India, Ministry of Health and Family Welfare, vide its letter dated 31.03.2023, regarding the reasons for prescribing age limits under Section 21(g) of the ART Act for application of ART services, which are as follows:

> • *"Bringing up a child at least upto 18 years, to take care of the responsibility to provide care and financial support while the child is growing up needs parents with reasonable good health status and able to be financially stable.*
>
> • *Most important factor which justifies the upper age limit is the Life expectancy in India which is around 70 years.*
>
> • *For all rules about ART, the desire to help the infertile couples is important but more important is the child to be brought into this world is loved, cared for and gets the best option and should get all family care and family life similar to any average child born to biological parents within the realms of normal biology.*
>
> • *In the process of fulfilling the desire of a couple to become parents, the rights of the unborn*

child/child brought in this world by ART should not be neglected. The life available to the child should have similar parental care like children born by normal way of reproduction.

- *The upper age of male and female undertaking ART is based on these considerations.*
- *Average age of menopause in females is 46.2 years in India.*
- *Women older than 50 has higher chances of high-risk pregnancy in terms of increased risk of Pregnancy Induce Hypertension (PIH). Gestational Diabetes, cardiovascular complications as well as risk of preterm delivery and increased chances of Caesarean delivery. These are the health hazards for the older pregnant women.*
- *Women older than 50 have higher chances of chromosomal conditions such as Down's syndrome and increased risk of pregnancy loss.*
- *Even men sperm quality is also compromised in above 55 years age, the number of mutations in the father's genome increases that leads to an increased in the incidence of congenital malformations in offspring. Older paternal age may be harmful to the offspring's health in terms of genetic mutation and epigenetics."*

11. A perusal of the aforesaid reasons indicates that the prescription of the upper age limit is based, *inter alia*, on the consideration that parenthood entails a continuing responsibility to provide care, support and a stable environment to a child during the course of upbringing. The material also refers to life expectancy in India and the health hazards to both the mother and the child. It emphasizes that, while the desire of an infertile couple to become parents is an important consideration, the interests of a child born through ART services cannot be overlooked. The legislative framework, therefore, seeks to balance the desire to attain

parenthood through medical assistance with the need to ensure the welfare and well-being of the child.

12. The welfare of a child has always been given paramount importance, as reflected in various judicial precedents dealing with adoption and child custody. In **Gaurav Nagpal Vs. Sumedha Nagpal**, reported in **(2009) 1 SCC 42**, the Hon'ble Supreme Court held that, in matters concerning the custody of a minor child, the welfare of the child is the paramount consideration. The Court explained that the concept of welfare extends beyond financial means and includes the moral and ethical welfare, physical well-being, and emotional needs of the child. Although the said judgment was delivered in the context of child custody, it underscores the importance of considering the overall welfare of the child rather than limiting the inquiry to the financial capacity of the parents.

13. Similarly, in **Jeshy C O Vs. Union of India and Ors.**, reported in **2018 SCC OnLine Ker 8250**, the Kerala High Court, while examining the validity of the maximum composite age prescribed for prospective adoptive parents under the Adoption Regulations, 2017, framed under the Juvenile Justice (Care and Protection of Children) Act, 2015, observed that the right to adopt is regulated by the Regulations framed under the said Act and that the rights of prospective parents have to immediately give way to the best interest of the child. It was further observed that it is not the rights of the parents that are paramount, but the best interests of the child sought to be adopted that have to be considered in any matter concerning adoption. The Court, while upholding the aforesaid maximum composite age, also observed as follows:

> *"In a matter of adoption, what is to be looked into is the welfare of the child and where it is stated that the maximum age is prescribed keeping in*

> *mind the probability of the prospective adoptive parents surviving the formative years of the child, this Court cannot, in exercise of its powers of judicial review, say that such a guideline is violative of the right of the prospective adoptive parents or that it is discriminatory. It is not for this Court to consider the reasons behind the fixing of a particular age or to substitute it's own wisdom for that of the executive by fixing a criteria for adoption at variance with those provided in the impugned guidelines."*

Although the aforesaid decision concerns adoption, the broader principle emerging therefrom is that the desire of prospective parents must remain subservient to the welfare of the child.

14. Besides the above, a statutory provision cannot be declared ultra vires merely because it prescribes a disqualification, provided that the disqualification has a nexus with the object sought to be achieved. The Hon'ble Supreme Court, in the case of **Javed Vs. State of Haryana and Ors.**, reported in **(2003) 8 SCC 368**, rejected the challenge to the vires of Sections 175(1)(q) and 177 of the Haryana Panchayati Raj Act, 1994, which prescribe disqualification from contesting elections for a person having more than two living children. The Hon'ble Supreme Court upheld the validity of the provision on the premise that the impugned disqualification had a nexus with the purpose sought to be achieved by the Act. By following the above judgment, this position has been reiterated by the Hon'ble Supreme Court in the case of **Ramji Lal Jat Vs. State of Rajasthan**, reported in **2024 SCC OnLine SC 217**, wherein the provision disqualifying candidates for having more than two living children was non-discriminatory and intra vires the Constitution.

15. In the present case as well, having regard to the purpose reflected in the material placed on record, the upper age limit prescribed under

Section 21(g) of the ART Act has a nexus with the object sought to be achieved, i.e., the welfare of both the mother and the child. A similar view has also been taken by the Gauhati High Court and the Kerala High Court in **Pankaj Kumar Das** (supra) and **Nandini K.** (supra), respectively. Therefore, merely because age-related restrictions have been imposed on persons seeking to avail themselves of ART services, the restrictions do not, by themselves, render the provision manifestly arbitrary or constitute a violation of the personal liberty of an intending married couple.

16. The next contention raised by the petitioners is that the ART Act imposes age-related restrictions on a married woman but does not impose similar restrictions on an unmarried or single woman seeking to avail ART services through a male gamete donor, thereby creating an arbitrary classification. In this regard, reference may first be made to the definitions of 'commissioning couple', 'gamete donor', 'patient' and 'woman' contained in Section 2 of the ART Act:

> ***Section 2(1)(e) – "commissioning couple"***
>
> *"commissioning couple" means an infertile married couple who approach an assisted reproductive technology clinic or assisted reproductive technology bank for obtaining the services authorised of the said clinic or bank;*
>
> ***Section 2(1)(h) – "gamete donor"***
>
> *"gamete donor" means a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child;*
>
> ***Section 2(1)(n) – "patient"***
>
> *"patient" means an individual or couple who comes to any registered assisted reproductive technology clinic for management of infertility;*
>
> ***Section 2(1)(u) – "woman"***
>
> *"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.*

17. A careful reading of the aforesaid definitions indicates that an individual or a couple may fall within the definition of 'patient' for the purpose of availing themselves of the services of a registered ART clinic. Further, a 'commissioning couple' means an infertile married couple that approaches an ART clinic or ART bank to avail itself of the services provided by such clinic or bank. The expression 'woman' means any woman above the age of 21 years who approaches an ART clinic or ART bank to avail herself of ART services. It is pertinent to note that the definition of 'woman' does not make any distinction between a single or unmarried woman and a married woman. Further, the expression 'patient' refers to an individual or a couple and is not confined to a commissioning couple, as an individual or a couple may approach an ART clinic for the management of infertility. Moreover, Section 21(g) of the ART Act does not expressly prescribe a composite age limit for a commissioning couple. Instead, the provision prescribes separate age limits for a woman and a man seeking to avail themselves of ART services.

18. Furthermore, we find that the petitioners' contention that there is no age-related restriction on an unmarried or single woman lacks substance in view of the specific provision contained in Section 27 of the ART Act, which deals with the sourcing of gametes by ART banks. While Section 21(g) prescribes age limits for a woman and a man seeking to avail themselves of ART services, the Act separately regulates the age of male and female gamete donors under Section 27. The relevant portion of Section 27 reads as under:

> *"27. Sourcing of gametes by assisted reproductive technology banks.—*

> *(2) The banks shall—*
>
> *(a) obtain semen from males between twenty-one years of age and fifty-five years of age, both inclusive;*
>
> *(b) obtain oocytes from females between twenty-three years of age and thirty-five years of age; and*
>
> *(c) examine the donors for such diseases, as may be prescribed."*

19. From a bare perusal of the above provision, it is evident that the age of a semen donor shall not exceed 55 years. The said provision, read with Section 21(g) of the ART Act, makes it clear that a man, whether acting as a donor of male gametes or seeking ART services as a member of a commissioning couple, cannot be above 55 years of age.

20. An issue may, however, arise as to whether the ineligibility of a husband on account of having crossed the prescribed upper age limit would also render his wife, who is below the age of 50 years, ineligible to avail herself of ART services. In this regard, we have already observed that the expression 'woman' does not distinguish between a married woman, on the one hand, and an unmarried or single woman, on the other. Meaning thereby, a married woman can also avail herself of ART services individually.

21. This position is also fortified by Rule 13 of the Assisted Reproductive Technology (Regulation) Rules, 2022 (for short, 'the Rules of 2022'), which deals with the maintenance of consent forms for undergoing ART procedures. The said Rule recognises that ART procedures may be undertaken by a couple or by a woman. This assumes significance in determining whether the ineligibility of a husband on account of having crossed the prescribed upper age limit would, by itself, render his wife ineligible to avail herself of ART services, despite her satisfying the

prescribed age requirement. Rule 13(1)(f)(iii) of the Rules of 2022 provides for consent for Intrauterine Insemination with donor semen in Form-8. The relevant provision is reproduced below:

> *"Rule 13(1)(f)(iii):-*
> *(iii) consent for Intrauterine Insemination with donor semen as specified in Form-8;"*

22. Form-8, titled "Consent for Intrauterine Insemination with Donor Semen", contains, *inter alia*, the following declaration by the husband:

> *"I, the husband, also declare that should my wife bear any child or children as a result of such insemination(s), such child or children shall be as my own and shall be my legal heir(s)."*

23. The aforesaid declaration indicates that the statutory framework contemplates a situation in which a married woman may undergo insemination using donor semen, subject to the prescribed consent requirements. Hence, on reading the aforesaid Rule along with the declaration contained in the consent form, it can safely be concluded that, even if the husband has crossed the upper age limit prescribed under Section 21(g) of the ART Act, the wife, if she continues to satisfy the prescribed age requirement, should not be rendered ineligible to avail herself of ART services using donor semen. In such a situation, the husband is required to give his consent in accordance with Form-8.

24. The question whether the age restriction applicable to a man necessarily renders his wife ineligible to undergo ART treatment using donor semen has also arisen before other High Courts. In this regard, reference may be made to the judgment of the Kerala High Court in **Devayani S.** (supra). The Division Bench, while interpreting the provisions of Section 21(g) of the ART Act, observed that the upper age

limits prescribed under the Act could not, by themselves, be considered so excessive or arbitrary as to warrant judicial interference. The relevant paragraphs of the judgment are reproduced hereunder:

> *"21. When Section 2(1)(e) defines commissioning couple and Section 2(1)(u) defines woman, it is pertinent to note that there is no definition of the word man in the ART Act. When a woman is given the right to seek ART services independently, as gatherable from the definition of woman under Section 2(1)(u) of the ART Act, a married woman can approach the ART clinic only as one among the commissioning couple under Section 21(g) of the ART Act. However, the definition of 'gamete donor' includes both men and women, since it speaks about a person who provides sperm or oocyte with the objective of enabling an infertile couple or woman to have a child.*
>
> *22. From the reading of the provisions under the ART Act, we could foresee six circumstances of using the ART service such as; (i) the commissioning couple approach the ART clinic to obtain a pregnancy by using the oocyte of the wife and sperm of the husband, (ii) the commissioning couple approach the ART clinic to obtain a pregnancy by using the oocyte of the wife and sperm of a third party male gamete provider, (iii) the commissioning couple approach the ART clinic to obtain a pregnancy by using the oocyte of a third party gamete provider and the sperm of the husband, (iv) the commissioning couple approach the ART clinic to obtain a pregnancy by using the oocyte and sperm both of third party gamete providers, (v) a woman approaching the ART clinic to obtain a pregnancy by using her oocyte and a third party male gamete (sperm), and (vi) a woman approaching the ART clinic to obtain a pregnancy by completely using a third party gamete, that is, both oocyte and sperm.*

23. The consent to be signed by the commissioning couple as per Rule 13(1)(f)(iii) of the ART Rules is necessary only when the couple wants to obtain a pregnancy with third-party donor semen. That means, the wife among the commissioning couple can proceed with the ART procedure by receiving a third-party male gamete (sperm) with the consent of her husband, as in the second circumstance mentioned above i.e., the commissioning couple approach the ART clinic to obtain a pregnancy by using the oocyte of the wife and sperm of a third party male gamete provider. The Rule is silent about the consent of the husband for the wife to receive a third-party oocyte. Therefore, the Rule prevents the wife from proceeding with the ART procedure by using a third-party male gamete (sperm) without the consent of her husband, if she approaches the ART clinic as a commissioning couple. It is therefore clear from the provisions that, even after approaching the clinic as a commissioning couple, the woman is entitled to receive a third-party male gamete (sperm) with the consent of her husband.

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30. As rightly noticed by the learned Single Judge, the contention of the appellant that if the spouses approached the clinic for availing the ART service as a commissioning couple, both of them must satisfy the age criteria as stipulated under Section 21(g) of the ART Act, if accepted, it will be a discrimination among the married woman and unmarried woman and divorced woman. The learned counsel for respondents 1 and 2, during the course of arguments submitted that the respondents 1 and 2 herein are even gone to the extend of expressing readiness to avail the status of divorced persons, so as to make respondent 1 eligible to apply for ART procedure as a single woman, if the law does not permit them to avail

the ART services as a commissioning couple. If the argument of the appellant is accepted, the 1st respondent will be eligible for the ART services the moment she acquires the status of a single woman, but immediately when she acquires the status of a married woman and approaches the clinic with her husband, even if she is ready to proceed with ART procedure by receiving male gametes from a third party, she will become ineligible for the treatment. On analysing the provisions under the ART Act, in the light of Ext.R1(a) report, Adoption Regulations 2022, and also the provisions under the Hindu Adoptions and Maintenance Act, 1956, as mentioned in the preceding paragraphs, we are of the considered opinion that the age restriction in the case of women mentioned in Section 21(g)(i) is applicable to all the six circumstances mentioned above, since that age restriction is prescribed considering the risk to maternal health, if the pregnancy is below or above the age suggested by the expert stakeholders and also the health of the child to be begotten, especially when the woman availing the ART procedure is the biological mother who has to carry the child in his womb, unlike that in the case of surrogacy. At the same time, the age restriction in the case of men prescribed under Section 21(g)(ii) of the ART Act, it can only be said that the same is applicable only to the circumstance of using his male gamete (sperm), either as one among the commissioning couple or as a third-party male gamete provider. When the ART Act does not provide composite age criteria for the commissioning couple, or Section 21(g) of the ART Act does not speak about the age criterion there in as applicable to the persons approaching the ART clinic as a commissioning couple, prescribing such age restriction on mere assumptions is unwarranted and against what is intended by the legislature. A court of law cannot read between the lines when the statute is clear on this aspect.

> *While considering all these aspects, we agree with the finding of the learned Single Judge that the classification of a married woman and a single woman differently, when they approach the ART clinic, either as one among the commissioning couple or as a single woman, would put married woman at an unfair disadvantage when compared to single woman. The learned Single Judge rightly found that the parliament never intended such an inequitable classification within a benevolent statute like the ART Act."*
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> (emphasis supplied)

25. In view of the foregoing discussion, we are of the considered opinion that the impugned provision does not, by itself, create an arbitrary classification between a married woman and a single or unmarried woman. A married woman, if otherwise eligible, can also avail herself of ART services as an individual using donor semen, subject to fulfillment of statutory requirements, including that of consent of her husband. Accordingly, this Court finds no substance in the challenge to Section 21(g) of the ART Act on this ground as well.

26. As an upshot, the present writ petitions deserve to be dismissed.

27. Accordingly, the present writ petitions are dismissed.

28. All pending applications, if any, stand disposed of.

(SANDEEP TANEJA),J (INDERJEET SINGH),J

1-4/S-A/SAHIL SONI