

SC Reserves Verdict on Age Cap for Surrogacy

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Surrogacy in India Latest News

- The Supreme Court of India has reserved its verdict on multiple petitions challenging the age restrictions imposed by **the Surrogacy (Regulation) Act, 2021** and **Assisted Reproductive Technology (Regulation) Act, 2021**, especially where the surrogacy process was initiated before the enactment of these laws.

Background - Legal Framework Governing Surrogacy in India

- **The Surrogacy and ART Regulation Acts (2021):**
 - **Objective:** Ban commercial surrogacy and promote altruistic surrogacy only.
- **Key provisions:**
 - Age limit for intending couples –
 - Woman: 23-50 years
 - Man: 26-55 years
 - **For single women:** Only widows/divorcees aged 35-45 eligible.

- Requirement of **certificate of essentiality**, including proof of infertility, parentage order, surrogate insurance.

- **Purpose of the law:**

- To prevent commodification of reproductive services.
- Ensure surrogacy is used only when medically necessary.
- Based on expert medical advice to safeguard child and mother's health.

The Case Before the Supreme Court

- **Petitioners' arguments:**

- Couples began fertility procedures before law came into force (Jan 2022).
- The age bar retroactively disqualifies them mid-process. **For example**, a couple aged 62 and 56 lost their child in 2018; failed embryo transfer in 2022; disqualified due to a new age cap.
- **Violation of Article 14** (Right to Equality) – arbitrary classification.
- **Violation of Article 21** – infringement on reproductive autonomy and personal liberty.
- **No grandfather clause** for transitional protection in law.

- **Broader issues raised:**

- **Exclusion** of unmarried single women from eligibility is arbitrary.
- The law's **narrow definition** of "single women" is under constitutional challenge, though not part of current petitions.

Supreme Court's Observations and Government's Stand

- **Government's defence:**

- Age limits based on natural reproductive timelines and medical safety.
- Advanced parental age poses risks to child's health and parenting longevity.
- Aligns with international best practices.

- **Court's counterpoints:**

- "Why bar surrogacy when natural geriatric pregnancies are allowed?" (Justice Nagarathna)
- The court –
 - Questioned the **rational nexus** of age cap with the intent of the Act.
 - Emphasised **lack of compassion** in the law – "Stop, no children! Look how harsh it is."
 - Stressed that the law aims to regulate commercial surrogacy, not to deny genuine parenthood.

Key Constitutional and Ethical Dimensions Involved in the Case

- **Article 14:** Right to Equality — challenge to arbitrary age-based discrimination.
- **Article 21:** Right to Life and Personal Liberty — includes reproductive rights.
- **State vs. individual autonomy:** Balancing medical regulation and individual choice.
- **Judicial activism:** SC's proactive role in interpreting personal liberty and family rights.
- **Lack of grandfather clause:** Raises concerns on legislative foresight and transitional justice.

Conclusion

- The Supreme Court's forthcoming verdict will be crucial in determining how laws regulating assisted reproduction balance medical ethics, legislative intent, and individual reproductive rights.
- It may also set a **precedent for future legal treatment** of transitional scenarios and personal autonomy in health-related legislation.

Source: IE

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