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Age Restrictions and Reproductive Autonomy under the Surrogacy (Regulation) Act, 2021: A Critical Analysis of Recent Judicial Developments in India

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Abstract
The passing of the Surrogacy (Regulation) Act, 2021 actually makes up a milestone in the history of regulation of surrogacy in India. Though the statute endeavours to protect both the couples from unfair commercial practices and the surrogate mothers, to regulate assisted reproductive practices, and secure the interests of children born through surrogacy, it has raised several practical and constitutional issues mostly about the limitations on eligibility. One of the most important limitations that has led to most enormous disputes is about the age of intending couples. Section 4(iii)(c)(I) of the Act states5 that intending couple is required to be married couples and mustalso meet what comes next age limits- 23 years to 50 years of age if wife and 26 years to 55 years of age if husbandcommencing from certification.This age restriction is also being examined by the courts in fertilization cases involving couples who had initiated assisted reproduction procedures or generated and cryopreserved pre-embryos before the beginning of the 2021 Act. The Supreme Court's decision in Arun Muthuvel v. Union of India and connected matters rendered on 9 October 2025 is a significant development about this.
While the Court ruled that the statutory age ceiling could not be applied retrospectively to intending couples who had begun the surrogacy procedure before the Act came into effect and had reached certain identified milestones in the generation and cryopreservation of pre-embryos, it simultaneously acknowledged the constitutional right to parenthood through Article 21 without ruling on the constitutional validity of the age ceilings themselves. Later decisions by the High Court indicates that the issue of age calculation and the social and constitutionality of the statutory restrictions thereof still remain critical issues. Kerala High Court, for example, examined a challenge against the upper age limit and dealt with the matter of the exact age calculation under S4(iii)(c)(I). This paper critically explores the parameters of a statutory conception of reproductive independence in Indian constitutional law.It evaluates the rationale behind age limitations that are enacted, their adverse consequences, distinction between prospective and retrospective applications and a developing Court practice. While concluding that a reasonable regulation of surrogacy is indispensable to control the degree of commodification, preserve the interests of women and the legitimate goals of the State, the paper argues that age specifications ought to strike a fine balance with autonomy, individual difference and equality, and fit with the realities of medical practice and constitutional guarantees of reproductive choice and decisional privacy. The paper concludes with proposing a more evidence-based and proportionate regulation.

Keywords: Surrogacy, Reproductive Autonomy, Article 21, Age Restrictions, Surrogacy Regulation Act 2021, Assisted Reproductive Technology, Constitutional Law, Right to Parenthood, India, Judicial Review.

1. Introduction and background

Surrogacy sits at the nexus where medicine and technology meet family law and constitutional rights and is central to a host of ethic issues. Advances in assisted reproductive technologies have resulted in the extension of scientific possibilities for those couples or individuals who are unable to conceive or carry a pregnancy to term for a child to be parented in a genetically or socially connected family unit.Simultaneously but, competition for reproductive services raises issues of exploitation, commodification of women's bodies, informed consent, economic inequality and the best interests of children[1-2].Earlier than the implementation of a broad statute, India became a major destination for the international use of surrogate motherhood. Fear about commercial surrogacy and the exploitation of poor women motivated the creation of a limited regulation.The Surrogacy (Regulation) Act, 2021 is currently the primary statutory provision on surrogacy. The Act attempts to control surrogacy but at the same time allow surrogacy in certain limits. One of the pioneering features of the Act is the conditions of eligibility f or intending couples. On this, the most notable provision is that of age of the intending couple[3]. This is laid down in 4(iii)(c)(I), which states that an intending couple must be married and within the age limit at the time of certification.The age restrictions imposed by law have also triggered issues for reproductive rights. The act of reproductive decision-making is an aspect of individual identity dignity privacy, family life and autonomy. This is reflected in the jurisprudence of the Supreme Court of India under Article 21 which has evolved gradually[4-5].That's why the critical question: how far can the State limit the age at which an individual or couple can make

reproductive decisions using surrogacy? This issue is rendered mostly problematic where couples began assisted reproductive treatment before 2021 legislation but became ineligible by the time said legislation was enacted because of having aged out.In fact, recent judicial focus has come to give a significant answer to at least a part of these problem[6]. In October 2025, the Supreme Court concluded that the age restriction of the statute will not apply retrospectively to some of those couples who have begun the process of surrogacy before 25 January 2022, having produced and frozen the embyro within the structure of the procdure.This decision was crucial as it related the doctrine against retroactive operation of law to the constitutional status of the right to parenthood.It was simultaneously clarified by the Court that it was not ruling on the constitutional validity of the age restriction. This distinction raises an important unresolved constitutional question of whether the age restriction itself is accorded some degree of constitutionality consistent with reproductive autonomy, or if judicial protection is only now afforded to offer protection against retrospective application[7-8].

India's regulatory mechanism for surrogacy has gone through significant changes. Initially, the matter was mostly managed via medical guidelines and other common legal standards as the country did not have a statutory law that was more exactly dealing with surrogacy.Indian Council of Medical Research, for instance, formulated rules for the application of assisted reproductive technology and surrogacy as well. But those did not have the strength or validity of laws passed through legislature.With the spread of commercial surrogancy[9-11], the main worries of the authorities were that it could result in exploitation and that proper safeguards would be missing. As a result, India has shifted to a more limited regulatory scheme.The Surrogacy (Regulation) Act of 2021 was framed with an eye on these developments. The bill wants to disallow commercial surrogacy but still be a channel for altruistic surrogacy as long as the conditions laid down under it are followed.

Mostly, the legislative direction of India is to find a balance on these levels:

1) Prevention of exploitation + 2) Governance of reproductive technology + 3) Safeguarding of both the surrogate and the surrogh child + 4) the right of a few intending parents to get surrogacy services.Laws on a woman's age at the point of getting pregnant are one aspect of the whole regulatory body.

The Act defines who a couple must be to be considered 'intending' couples who would be looking at surrogacy as a means of having children.Section 4(iii)(c)(I) of the Act states that intending couples are required to fulfill certain conditions like age requirement. Under the statutory provision it is required that on the date of certification the intending couple should be married and for the woman they should be between 23 and 50 years old and in case of men, between 26 and 55 years old.So, in this sense the age limit should be considered as an eligibility requirement rather than just as a medical advice.A point worth noting is that if doctors give a medical advice based on certain tests and personal medical issues an individual could still go ahead with a medical decision.However a statutory eligibility condition is more of a legal constraint, and in effect, the statute of surrogacy is barred for anyone once the prescribed age is exceeded unless there is a legal or statutory exception[12].This leads one to wonder if the current standard chronological age as the benchmark age is able to recognize individual medical situations.

There could be several policy bases for justifying age limitations.First, getting pregnant or having reproductive medical procedures may pose medical risks that go on rising as the years go by.

Second, the law makers might have aimed to have parents who go for assisted reproductive technologies be of an age considered medically suitable.Third, age limitations could have stemmed from the intention to shield the rights, well being, and interests of the children born due to surrogacy.Fourth, the government might want to introduce criteria for eligibility that are objective as well as feasible to administer.Even so, the chronological age does not guarantee health level fertility life span, wealth, or parenting skills.Two people of the same age can have widely varying medical issues and reproductive situations.That's why, the key point is to find out if an age-based exclusion would have any link to the purpose of the legislature at all and whether other methods with a lower level of restrictions would achieve the same result.

The phrase 'reproductive autonomy' is not directly found in the Indian Constitution.But, the Indian constitutional jurisprudence has recognized rights that undergird the concept: life and Liberty Article 21 has not only been protective of life and personal liberty but its scope has been expanded through judicial enrichment to include dignity, privacy and decisional autonomy and bodily integrity The Justice Department has also noted that the Supreme Court's[13-14] privacy jurisprudence has acknowledged a protected area of personal decision-making as to matters of a sensitive nature.Choices related to reproduction are personal decisions.Decisions on if and when to have children and how to assemble a family are individual decisions. As a result, even when reproductive technologies are regulated by statute, domestic rules limiting provision of reproductive services may still raise constitutional concerns.Even so, the reproductive freedom of an individual is not an absolute right[15-16]. The State has a constitutional right to regulate reproductive technologies to prevent exploitation, prevent harm to the individual, ensure free and informed consent on the part of all persons involved in the reproductive process, promote the best interests of the child, and ensure standards of clinical safety and quality of medical healthcare.Regulation is also required to prevent the commercialisation or commercial exploitation of

reproductive processes and to ensure effective regulation of clinics, medical practitioners and relevant institutions involved in the provision of reproductive technologies.Still, this exercise of the State powers must not be an unacceptable infringement of the fundamental rights of the individual under Article 21 - 'noscire aut necare'-right to remain free from cruel and unjustified pressure exercising arbitrary, unreasonable or irrational power.

1.1 Research Objectives

1. To study the legislation and policies enacted for surrogacy by the Surrogacy (Regulation) Act, 2021.
2. To discuss the age-related criteria set for people who want a baby through surrogacy.
3. To investigate the legal foundation of reproductive autonomy in the Indian Constitution.
4. To discuss the court rulings and the interpretation of the law about age limits in the Act.
5. To study how the Supreme Court interprets the retro-effect of the law on the age limits of parents.
6. To evaluate if the reproduction of life and freedom of the person conflict each time the State intervenes or if there's room for coexistence.
7. To highlight the real-life and constitutional issues resulting from strict age restrictions.
8. To suggest feasible reforms to a regulatory system that is more rights-based.

2.Judicial Aspect

The idea, concept of a right to parenthood needs thorough legal consideration the right to become a parent through natural conception does not mean an immediate, automatic right, free of limitations, to the use of all available methods of conception.For one thing, with surrogacy besides medical professionals a reproductive material and third party (the surrogate mother), a child (a result of the process) also participates. As a result, the State does have a right for a legitimate restriction of the procedure in question.Then again still the decision to have a family and become a parent is a matter of constitutional importance.The recent Supreme Court jurisprudence has been a major turning point here as the bench has acknowledged that rights of intending couples who were in the surrogacy pipeline could not be wiped out easily by retrospective implementation of the new statutory age restriction[17].

The Supreme Court's decision of 2025 focused on legal position before the Surrogacy (Regulation) Bill was enacted.There was no such legal provision before 25 January 2022 that imposed an age limit on the intending couple looking for surrogacy, similar to the restriction brought about by Section 4(iii)(c)(I). The previous regulatory regime did include ICMR guidelines on assisted reproductive technologies and surrogacy but, it did not have the same statutory age restriction on the couples.That historical circumstance played the role of being the pivot for the retrospective-application problem[18].

The couples, who had started their treatment before the Act came into effect, contended that they had complied with only the legal structure that applied to them at the time.So, the later-age restrictions made a couple who was eligible earlier suddenly ineligible even if they were already going on with the reproductive process.

2.1 Supreme Court Judgment of 2025

A major development occurred on 9 October 2025 when the Supreme Court decided the Problem raised about applying the age limitation rules backwards.The Court reviewed several cases of couples who were in the process of having a baby via surrogate just before the Surrogacy (Regulation) Act, 2021 was enacted.Sometimes they had already completed embryo creation and freezing at the time the new law became effective[19].

The Supreme Court ruled that a woman's age requirement set out in Section 4(iii)(c)(I) of the Act was a condition to be satisfied for prospective eligibility and not something one could challenge by claiming that had the law been in force the facts would not have satisfied the new requirements, because retro-application would mean going back in time which is not legally valid.

The Court pointed out that the relevant circumstances were:

1.The surrogacy had been initiated before 25 January 2022.
2.The couple had embryo creation and freezing after gametes extraction done to them.
3.They were just about to take the embryo to the surrogate mother.

In such situations, age would be the factor that would prevent continuation of the process provided yet the legislative requirements for other aspects have been fulfilled.

2.2 Constitutional Significance of the 2025 Judgment

There are a number of important reasons for the ruling.

First and foremost, protection is a right against retroactive legislation.The Court emphasized once again the rule that statutes should not normally be interpreted in such a retrospective way as to destroy rights or legal positions that have been acquired.

Second, reproductive autonomy.The Court decided that reproductive activity commenced by intending couples has a constitutional element.

Third, right to parenthood.The order related the right to have a child via surrogacy to the constitutional right to personal liberty under Article 21.
Fourth, legal certainty.The ruling offers for the protection of couples who have already spent considerable time, efforts, and money in the reproductive process before the new law was enacted[20-21].
Fifth, limited judicial intervention.Most importantly, the Court did not invalidate the statutory age limits on the ground of unconstitutionality.
On the contrary, it made it quite clear that the issue of retrospective operation was the only thing it was concerned about in its decision.
This distinction is really important.

2.3 The Difference between Retrospective Application and Constitutional Validity
Two distinct questions are involved.
Question 1:Can restriction on age for a procedure that had started before the enactment of the Act and still be applied?
In the case that was brought before it, the Apex Court, answered this question negatively.
Question 2:Is the age restriction in itself constitutional?
In its 2025 judgment, the Supreme Court did not render a decision on this question.
So, the more fundamental constitutional challenge remains a matter of consequence.
Even a law which has a prospective effect may be challenged on the ground of unconstitutionality if the said classification or limitation breaches Articles 14 and 21.

2.4 High Court Developments
High Courts have also come across age-related cases.In Smt. Annu Joseph vs Union of India, decided by the Karnataka High Court in November 2024, the petitioners who were above the age limits prescribed still approached for certificates of eligibility and essentiality. The Court cited previous orders on exceptional circumstances and advised the petitioners to contact the relevant State authorities to examine their applications.Also, the Kerala High Court has tackled the matter of age calculation under Section 4(iii)(c)(I). In Rajitha P.V. vs Union of India, after looking into whether the wording of the law would allow for an increase in the maximum age limit, the Court decided that it could not judicially override the age limits established by Parliament through legislation[22].
This shows how the courts in two cases came to different conclusions:

(a) Protecting legitimate expectations and ongoing reproductive procedures in exceptional situations.
(b) allowing the age of the statute to speak where the statute has not been held invalid.

The State is justified in interfering through reproduction including surrogate arrangements as it is part of a preventive measure to avoid exploitation and a protective one to safeguard those persons involved in the reproduction process and who are vulnerable. Besides that, the State needs to control such technologies enough that the regulation ensures that everyone voluntarily gives free and informed consent, respects the children's interest in being conceived by surrogacy arrangements and the welfare of the children, and that medical safety standards and healthcare remain of good levels. Also, legal structures should make sure no money-making business of reproduction and selling body parts and parts of people is allowed and that clinics, medical professionals, and other bodies working with reproduction technologies are held under supervision. But these are powers that the State may only use within the Constitution. So, the heart of this constitutional matter lies in finding a right level and proper proportionate balance between the legitimate public interests served by the imposition of reasonable limitations and not allowing these such limits to unduly or excessively infringing upon the individual rights, the rights to privacy dignity decisional autonomy, and reproductive choice, all of which have been upheld under Article 21 of the Indian Constitution.

2.5 Age Computation as a Legal Issue
What seems also to be a legal technical problem, is about the precise moment when a person arrives at the statutory age limit. With Rajitha P.V.the Kerala High Court discussed the application of the statutory age limits and based its decision on well known principles for the age calculation.The Court decided that the statute does not leave room for judicial extension through the interpretation of the provision as having the effect of actually adding another one year. At the same time this case is a very clear example of a judicial doctrine:Judges can interpret but they seldom get involved in changing the law in cases where the condition for eligibility is clearly and unambiguously stated in the legislation. So those who miss the prescribed age cut-off cannot necessarily depend on the courts being moved by equity considerations unless relief is constitutionally or statutorily mandated.

2.6 Constitutional Analysis under Article 14
Article 14 is equality before law and equal protection of law. The classification of age is not necessarily

unconstitutional. The State can make classifications if it exists due to some intelligible differentia, and if the classification is rational, so far as the attainment of the goal set forth.The problem is whether the differentiation of individuals inside and outside the defined age categories can be constitutionally justified. The State might argue that setting an age limit on surrogacy is justifiable, based on the idea that the medical risks of pregnancy and birth may increase with age and that the welfare of the child needs to be protected, and adequately provided for.The State might further argue that objective age criteria need to be applied in the interests of consistency, predictability and efficient administration of the law and that Parliament is entitled to take the broader view of health and the public policy in its preventative approach. Still the intending parents would argue that simply imposing an age limit does not accurately reflect the fitness and health of the individual. An assessment of fitness could be performed by looking at medical condition and reproductive fitness on an individual basis and would provide a more accurate assessment of fitness than that derived by chronological age.Truth is the intending couple falls outside the set age limit may not necessarily mean they are unable to undergo surrogacy and have children, so their right to make reproductive choices may be unduly prejudiced. The conflicting claims so lead to the classic issue of proportionality in a constitutional challenge[23].

3. Research Methodology

This paper, through the use of doctrinal, qualitative and analytical legal research, will critically analyze the concepts of age restrictions and autonomy in surrogacy about the Surrogacy (Regulation) Act, 2021 with specific reference to recent judicial pronouncements in India. The study is mainly based upon primary and secondary legal materials. The primary source of law are The Constitution of India, The Surrogacy (Regulation) Act, 2021 and the various rules, regulations and statutory provisions on surrogacy and assisted reproductive techniques and decisions rendered by The Supreme Court of India and other relevant High Courts.Special consideration will be given to the decisions about the reproductive rights of a woman, the right to privacy, the right to personal liberty, the right to become a parent, age-based restrictions and retrospective applicability of statutory provisions. The secondary materials used for the study are law reports and textbooks on law, academic works, journal articles reports policy papers, legal analyses for the regulation of surrogacy, the question of reproductive autonomy, assisted reproductive techniques and constitutional rights and the recent developments in Indian reproductive law. The sources were looked into so that one could comprehend the legislative intent, medical aspects, ethical issues and constitutional aspect with age limitation under the extant statutory provision.Scholarly analyses about the conflicts between the right of reproductive choice of an individual and the state's vital interests, namely the regulation of surrogacy to ensure it does not amount to exploitation and to secure the interests of surrogate mother and of the child born of surrogacy were also considered. Instead of a scientific or a statistic-based, empirical study of surrogacy arrangements, the present paper adopts a qualitative and critical analytical method. Relevant statutory provisions and the corresponding case law are scrutinized and evaluated from a constitutional law perspective, with focus on equality dignity privacy, bodily autonomy and personal liberty. An in-depth critique is provided as to whether the restrictions for age, for Surrogacy (Regulation) Act, 2021 strike the right balance between the ends of state regulation of surrogacy and the reproductive autonomy of the intending parents[24]. The recent developments in judicial interpretations have been analysed to ascertain the nascent legal principles, as also the pending constitutional questions, if any, and the possible lacuna in the present regime. Based on such analysis, it attempts to judge the constitutional and legal validity of the present age-based restriction and suggest reformative amendments to bring about a more balanced, proportionate and rights-responsive law.

4. Proportionality and Reproductive Regulation

A constitutionally sensitive regulatory structure should pose four questions:

1. Does the measure serve a lawful aim?

It is undisputed that the prevention of medical harm, protection of the child, and regulation of surrogacy all represent valid aims for government intervention.

2. Is the age restriction justified by that objective?

Age restriction of the measure could be rationally connected to specific medical risks.

3. Is the age restriction unavoidable?

Doubtful.

Would the same purpose be served by:

A.Different individual medical assessment?

B.Different independent medical certifying doctor?

C.Different psychological assessment?

D.Over and beyond of the counselling?

E.One at a time reviews?

4. Is the restriction reasonable?

The last question is the extent to which the restriction leads to a significant benefit, if at all, and if so, whether this would be outweighing the level of reproductive autonomy interference.
This is probably going to be the main constitutional issue.

4.1 Reproductive Autonomy versus Child Welfare

The idea of age restriction being mainly for the benefit of the child is quite compelling.
There are several valid points the government can rely on, such as:

1) The length of time the parent will probably live;
2) Physical health.
3) The ability of the parent(s) to take the child and care for him
4) The state of mind and how ready to care for child;
5) The condition of the family;

Yet,Differentiating the two between risk assessment and absolute exclusion should fall under a mature legal regulation.
Someone barely a few months past the law's age limit will have the same capacity to be a parent, materially speaking, as someone who still hasn't crossed the limit.
We have to question if individualised evaluation might be the best way forward in achieving child welfare goals.

Table 1: Gender Dimensions of Age Restrictions

S. No.	Parameter	Female Partner	Male Partner	Analysis / Significance
1	Prescribed maximum age	50 years	55 years	The framework prescribes different maximum age limits for female and male partners, creating a gender-based distinction.
2	Difference in age limit	—	5 years higher than female limit	The male partner is permitted to be 5 years older than the female partner under the stated age restrictions.
3	Possible biological consideration	Age may be associated with declining fertility and pregnancy-related risks	Male reproductive capacity generally persists for a longer period	The distinction may be justified on the basis of biological and reproductive considerations.
4	Reproductive technology	Genetic contribution and gestation can be separated	Genetic contribution can be separated from gestation	Assisted reproductive technologies make it possible to distinguish genetic parenthood, gestation, and social parenthood.
5	Gestational surrogacy	The intended mother may not carry the pregnancy	The intended father does not undergo gestation	Where the intended mother's oocyte cannot be used because of medical or reproductive circumstances, a surrogate may carry the pregnancy.
6	Gender equality concern	Subject to a lower age ceiling	Subject to a higher age ceiling	The 5-year difference raises questions regarding equality and whether the differential treatment is objectively justified.
7	Constitutional dimension	Requires examination under equality, dignity and	Same constitutional principles apply	Any gender-based distinction should have a rational and constitutionally sustainable

		autonomy principles		basis.
8	Ethical dimension	May affect reproductive autonomy and access to assisted reproduction	Relatively higher permissible age may provide greater access	The differential treatment requires consideration of fairness, autonomy and reproductive rights.
9	Need for further research	Examine whether the 50-year limit remains medically and legally appropriate	Examine whether the 55-year limit has a different justification	Contemporary reproductive technologies may require reassessment of traditional gender-based age restrictions.
10	Overall issue	Maximum age: 50 years	Maximum age: 55 years	The gender-specific age restrictions warrant further medical, legal, ethical and constitutional analysis.

Table 2:Comparative Data

Category	Female Partner	Male Partner	Difference
Maximum prescribed age	50 years	55 years	5 years
Relative age allowance	100%	110% of female limit	10% higher for male partner

Explanations: The statistics reveal that there is a 5-years age range gap that is prescribed for the two genders as to their age limits. Such discrepancy may be related to biological and reproductive issues but considering the advancement of artificial reproduction technologies like splitting the roles of genetic contribution, gestation, and parenthood, it is important subject for legal ethical medical and constitutional inquiry why age limits differentiates based on gender(Table 1 &2)[25-27].

5. Critical Evaluation of the Judicial Approach

The recent decision by the Supreme Court is an important and cautious one.What it is essentially doing by acknowledging is that changing the law is not a valid reason to interfere through legal means with something that's at a very advanced stage of development in an area of human reproduction only if the consequences for the Constitution are properly taken into account.Couples that were already the ones to create or at least to freeze embryos before when the legislation was actually enacted would find that this decision is very supportive. The embryos are, of course, fruits of a previously undertaken reproductive decision and many medical procedures.If a new age limit is set and at the same time there are cases where the age of parties involved was a matter of using reproductive material at an age where legally it was allowed, this combination might be such that the affected individuals might not be able to use their reproductive material due to the new law(Fig 1)[28].

Given this, a constitutionally-oriented decision-making model, protecting the individual's rights, was decided by the Court without yet the court going for a wide statement as to the validity of the law itself.Unfortunately, the scope of the decision's limitation aspect as well is substantial.If the Supreme Court had made a finding that the age limits themselves run contrary to constitutional rights then this decision would have provided a broad basis that the Constitution protects people who start the treatment after the Act and are subject to the age limit[29-30].

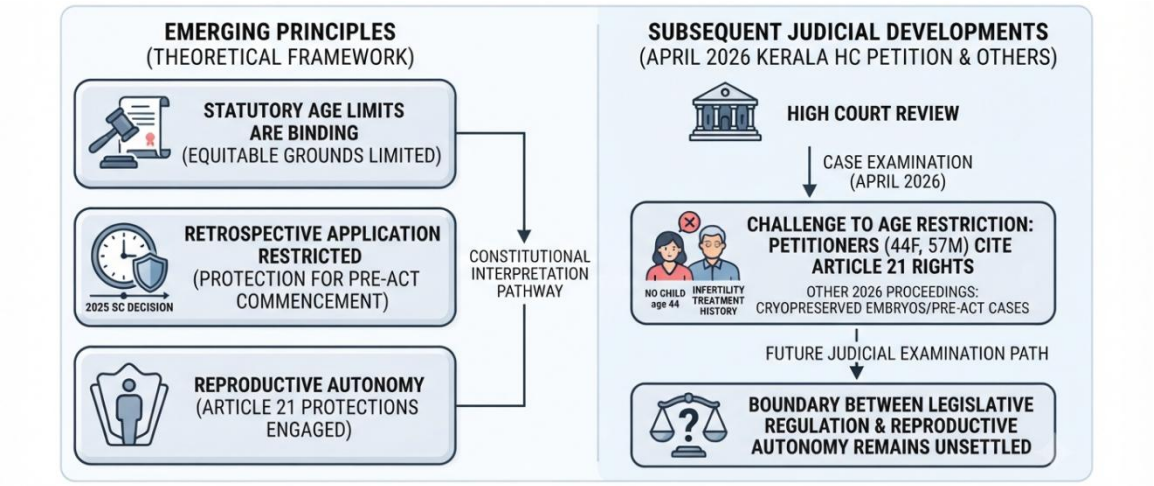

Figure 1:Emerging Judicial Trends in Indian Surrogacy Law

5.1 Major Issues Requiring Further Judicial Consideration

1.Whether the restriction on the upper age limit meets the requirements of Art. 14.
2.The question is, whether the restrictions much and disproportionately restrict the right to Art. 21.
3.Can an individual medical evaluation act as an alternative to age-based exclusion limits?
4.Should extraordinary situations be acknowledged?
5.The assessment method of child well-being.
6.Are the age limits based on robust empirical support?
7.Do gender-based variations in the age limits necessitate separate justification?
8.A legal approach dealing with embryos made before the enactment of the legislation should be worked out.
9.Are the current laws and regulations able to support or respond well to the developments in the field of reproductive medicine?
10.Is it necessary and desirable to set up a statutory appeal mechanism for the exceptional cases?

6. Research Gaps

Although courts are paying more attention to age limits, major gaps in research still exist.For instance, there is very little scientific data that the exact statutory age limits of the law are the best scientifically-based age limits.In addition, we need to do more studies on the well-being soon of children who are born through surrogacy by parents who were old at the time.It also would be useful to carry out a comparison research to find out how different places set age limits legally.Also, we need more constitutional analysis to explore the rights of reproduction against the access to the technologies of reproductive assistance.Lastly, it is necessary to conduct a systematic study of the experiences of couples who, while in the process of prolonged infertility treatment, got banned on the grounds of their age.

7. Conclusions & Recommendations

7.1 Conclusions

Apart from paving the way for the commercialisation of surrogacy, the Surrogacy (Regulation) Act, 2021 also exemplifies an important attempt by the Indian State at creating a comprehensive setup to regulate surrogacy. The purposes behind the Act of crime prevention, regulating reproductive technology and safeguarding interests of surrogate mother and child, all of which are legitimate. There may well be valid reasons for age regulation for medical safety and child welfare, but in difficult cases inflexible chronological limits can exclude individuals perfectly capable of functioning within society simply because they are a few days or months too old. The judgment of the Supreme Court in October 2025 is a significant step in constitutional development.By determining that the age restrictions could not be applied retrospectively to certain couples who had already initiated the process of surrogacy before 25 January 2022, it upheld legitimate expectations, and acknowledged the constitutional importance of reproductive choice. At the same time, the Court explicitly refrained from ruling on whether the age restrictions themselves were constitutionally valid.So, the larger question of whether or not there is a violation of Articles 14 and 21 remains to be settled.The recent proceedings in the High Court are testament that this is still a matter of litigation. That means, the future Indian law on surrogacy should allow a prudent balancing of the zero in between regulation and autonomy, medical safety and discreation, child pretense and parental freedom, legislative policy and constitutional auton.

A rights-sensitive setup should not equate to a fully liberalized system. It should entail thatany restrictions are evidence-based, proportionate to legitimate state interests, include adequate transitional safeguards and provide just procedures in cases of exception. In the end, the constitutional problem is not whether the State can regulate reproductive technologies; obviously it can.Rather, the constitutional question concerns "how far" the State can regulate reproductive decisions before such regulation is deemed an unconstitutional interference with individual autonomy and the right to pursue the "family life." The ongoing judicial deliberations consequent to the Surrogacy (Regulation) Act, 2021 prove that this issue should be an important space of Indian constitutional and reproductive law.

7.2 Recommendations

A. Evidence-Based Age Regulation Instead of keeping age limits permanently fixed, age limits should be regularly revised in consideration of current medical and demographic data.

B.Individual Medical Assessment A possibility is to allow an independent medical board, to evaluate unique situations.

C. Limited Exceptional Circumstances couples who:

I.Have no living child II.Have a medically confirmed need for surrogacy

III.Are otherwise eligible IV.Are fit and ready for parenting, medically assessed, and

V.Comply with increased child-welfare requirements. Could be granted exception, subject to strictly regulated condition.

D. Clear Transitional Provisions couples who have already initiated assisted reproductive treatment, future laws and regulations, and changes should contain, without ambiguity, transitional provisions for such people.

E.Embryo Protection embryos that were frozen before regulatory change, their protection should be legally safeguard by separate laws.

F. Independent Review Mechanism it should be allowed for an independent appeal panel, to reconsider unique exceptional cases of eligibility.

G. Greater Medical Individualisation the law should be such that age in years may be disregarded, with actual medical risk, if that is supported by scientific proof.

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