

GAHC010081752024



AS:17579-DB

2025:GAU-

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/2344/2024**

PANKAJ KUMAR DAS AND ANR  
SON OF MADHU RAM DAS, RESIDENT OF HOUSE NO.6, 1ST BYE LANE,  
UDAYAN NAGAR, PRAGATI NAGAR UDAYAN VIHAR, P.S. NOONMATI,  
DISTRICT- KAMRUP (METRO), ASSAM, GUWAHATI- 781171

2: SMTI. DIPTI HAZARIKA  
WIFE OF SRI PANKAJ KUMAR DAS  
RESIDENT OF HOUSE NO.6  
1ST BYE LANE  
UDAYAN NAGAR  
PRAGATI NAGAR UDAYAN VIHAR  
P.S. NOONMATI  
DISTRICT- KAMRUP (METRO)  
ASSAM  
GUWAHATI- 78117

VERSUS

THE UNION OF INDIA AND 4 ORS  
REPRESENTED BY THE SECRETARY, MINISTRY OF HEALTH AND FAMILY  
WELFARE DEPARTMENT NEW DELHI- 110001

2:THE CHAIRMAN  
NATIONAL MEDICAL COMMISSION  
POCKET-14  
SECTOR 8  
DWARAKA PHASE-1  
NEW DELHI- 110077

3:THE STATE OF ASSAM  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM  
HEALTH AND FAMILY WELFARE DEPARTMENT

DISPUR  
GUWAHATI-06

4:THE DIRECTOR OF HEALTH AND FAMILY WELFARE DEPARTMENT  
ASSAM  
HENGRABARI  
GUWAHATI-36

5:THE DIRECTOR  
INDIRA IVF FERTILITY CENTRE  
3RD FLOOR  
ACHYUT AND CHOUDHURY COMPLEX  
GS ROAD  
LACHIT NAGAR MAIN ROAD  
ULUBARI  
ASSAM  
GUWAHATI- 78100

**Advocate for the Petitioner** : MR. B K GOGOI, MR. N D SARMA

**Advocate for the Respondent** : DY.S.G.I., MR. D J DAS.(R-2),SC, HEALTH

**BEFORE**

**HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR**

**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the Petitioners : Mr. B. K. Gogoi, learned Adv.

For the Respondents : Mr. D.J.Das, learned Adv.  
Mr.B.Chakravarty, learned CGC.

Date on which judgment is reserved : 12.12.2025

Date of pronouncement of judgment : 18.12.2025

Whether the pronouncement is of the

operative part of the judgment : No

Whether the full judgment has been pronounced : Yes

## **JUDGMENT & ORDER (CAV)**

Date:18-12-2025

***(Arun Dev Choudhury, J)***

1. Heard Mr. B. K. Gogoi, learned counsel for the petitioners and Mr. D.J. Das, learned counsel, as well as Mr. B. Chakravarty, learned Central Government counsel, for the respondents.
2. This writ petition under Article 226 of the Constitution of India raises a challenge to the constitutional validity of Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 (for short, the Act, 2021). The petitioners seek a direction to the respondent authorities to permit them to avail Assisted Reproductive Technology (for short, ART) services, notwithstanding their ineligibility under the impugned provision. Since the validity of a parliamentary enactment is assailed, the matter has been heard by this Division Bench.
3. The petitioners are a married couple who have been unable to conceive naturally. In 2020, they commenced medical consultations for an Assisted Reproductive procedure. The onset of the COVID-19 pandemic interrupted their course of treatment.
4. Thereafter, the petitioners underwent an Assisted Reproductive Procedure at Pratiksha Hospital, which did not result in a successful outcome.
5. On 13.03.2024, the petitioners approached Indira IVF Hospital to avail ART

services. However, the hospital declined to treat the petitioners on the ground that they did not meet the age-eligibility criteria prescribed under the Act, 2021.

6. The grievance of the petitioners is that the statutory prescription of an upper age limit under Section 21(g) violates their fundamental rights under Articles 14 and 21 of the Constitution of India by foreclosing access to ART services despite their individual medical fitness and by disproportionately denying them reproductive autonomy.

7. For the sake of completeness, the statutory provision under challenge is quoted herein below.

**21. General duties of assisted reproductive technology clinics and banks.**

—The clinics and banks shall perform the following duties, namely:—

.....

(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;

8. The petitioners urged that the reproductive choice and aspiration to parenthood are integral to the right to life and personal liberty under Article 21 of the Constitution of India.

9. It is contended that a rigid age-based exclusion fails to account for individual medical assessments and is, therefore, arbitrary and disproportionate, offending Article 14 of the Constitution of India. It is also urged that since the petitioners had

commenced treatment prior to the enactment of the Act, 2021, the subsequent statutory restriction ought not to be applied to them.

10. The respondents, on the other hand, contend that the Act, 2021 constitutes a comprehensive regulatory framework governing ART enacted to address ethical, medical, and societal concerns.

11. It is argued that the age limits are founded on scientific evidence relating to the maternal health risks, fetal outcomes, and child welfare, and that the Court must accord due deference to legislative policy in such matters.

12. We have given our thoughtful consideration to the materials available on record and have also heard the learned counsels for the parties.

13. There can be no serious dispute that the right to make reproductive choices forms part of personal liberty under Article 21 of the Constitution of India. In **Suchita Srivastava & Anr. Vs. Chandigarh Administration** reported in **[(2009) 13 (ADDL.) S.C.R 989]**, the reproductive autonomy was recognised as an aspect of bodily integrity and decisional privacy.

14. Yet, the Apex Court has consistently held that the protection of Article 21 of the Constitution of India does not render every personal choice immune from regulation. The Constitutional rights, particularly in the domain of social welfare and public health, operate within a framework of permissible regulation. In **Javed and Others Vs. In State of Haryana and Ors. reported in [(2003) 8 SCC 369]**, the statutory restrictions impacting reproductive choices were upheld on the ground that a reasonable regulation in pursuit of legitimate state objectives does not infringe

Article 21 of the Constitution of India.

15. The impugned provision must, therefore, be assessed not on the touchstone of absolute autonomy but within the well-established limits of constitutional review of social legislation.

16. Section 21(g) prescribes an upper age limit based on considerations of medical science, ethical standards, and the welfare of both the woman undergoing treatment and the child to be born. These considerations fall squarely within the legislative domain.

17. The Court does not evaluate the wisdom of legislative choices but examines whether the choice made transgresses the constitutional boundaries. Fixation of the age limit has consistently been held to be a matter of policy. Such fixation can be said to be arbitrary when it is a case of “picked out from a hat”; in the present provision, the same is based on the well-being of the mother and child. In the **Union of India and Another Vs Sudhir Kumar Jaiswal**, reported in [(1994) 4 SCC 212], the age-based classifications were upheld where they were founded on rational considerations and applied uniformly.

18. A statute enacted by the Parliament carries a presumption of constitutionality. The burden of establishing unconstitutionality lies heavily upon the challenger. It is by now too well settled that the economic and the social welfare legislations are entitled to the judicial deference, particularly where the classification adopted has a rational nexus with the object sought to be achieved.

19. The age-based classification under Section 21(g) applies uniformly to all

intending couples. It is founded on an intelligible differential and bears a direct nexus to the regulation of ART services in a manner that is safe, ethical, and socially responsible. The provisions do not suffer from manifest arbitrariness and do not violate Article 14 of the Constitution of India.

**20.** The submission that the petitioners had initiated the ART prior to the coming into force of the Act, 2021, does not create any vested right to continue such treatment contrary to the statutory prescription. The law applicable on the date when eligibility is considered must govern access to the statutory benefits, even if the earlier attempt failed prior to the enactment of the Act, 2021, and was not a continuing process.

**21.** To carve out, the individual exemptions on the grounds of hardship or medical fitness would amount to substituting judicial discretion for legislative policy. Such an exercise would traverse beyond the permissible limit of constitutional adjudication.

**22.** On a careful evaluation of the statutory scheme, the constitutional principle governing judicial review and the precedence holding the field, we are of the considered view that Section 21(g) of the Assisted Reproductive Technology (Regulation) Act, 2021 withstands the constitutional scrutiny and does not infringe Articles 14 or 21 of the Constitution of India.

**23.** The writ petition is devoid of merit and, accordingly, stands dismissed.

**24.** There shall be no order as to cost.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**