



FAMILY LAW

Beyond Age Bars: Calcutta High Court Upholds Reproductive Rights in Surrogacy Amid Procedural Delays

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Introduction

The regulation of assisted reproduction in India represents a delicate intersection between state control, medical ethics, and individual autonomy. With the enactment of the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021, the legislature sought to institutionalize safeguards against exploitation while prescribing strict eligibility conditions, particularly age-based restrictions for intending parents. However, these rigid thresholds often fail to accommodate the complex, time-sensitive realities of infertility treatment, where medical processes unfold over extended periods and are vulnerable to procedural delays.

The decision in *Sangita Raha & Anr. v. State of West Bengal & Ors.*¹ emerges within this tension, raising a critical question: whether statutory age limits should operate as absolute barriers even when the reproductive process has been validly initiated within the permissible timeframe. The case thus becomes a significant site for examining how courts reconcile **legislative rigidity with equitable considerations**, particularly in matters implicating the fundamental desire for parenthood.

By adopting a purposive interpretation, the Calcutta High Court moves beyond formal compliance and engages with the **substantive dimensions of reproductive justice**.

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Factual Background

The petitioners in *Sangita Raha & Anr. v. State of West Bengal & Ors.* were a married couple who, despite several years of cohabitation, were unable to conceive naturally. Their marriage, solemnized in 2019 and formally registered later, was followed by sustained medical efforts to overcome infertility. These efforts included consultations with specialists and attempts at in-vitro fertilization (IVF), all of which ultimately proved unsuccessful. Confronted with advancing age and diminishing reproductive prospects, the couple decided to pursue gestational surrogacy as a last viable option.

In compliance with the statutory framework under the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021, the petitioners initiated the procedural requirements by applying for a Certificate of Medical Indication before the competent authority. At the time of this application, the wife was within the prescribed age limit, while the husband was only marginally beyond it. Following medical approval, the reproductive process advanced significantly: viable embryos were created and successfully cryopreserved, with medical certification indicating a reasonable likelihood of successful implantation through surrogacy.

However, a critical complication arose at the stage of obtaining the eligibility certificate, which is a mandatory prerequisite for proceeding with surrogacy. Due to the time taken in administrative processing, the wife had crossed the upper age limit by the time the application was considered. Relying strictly on the statutory age criteria, the State authorities refused to grant the certificate, effectively halting the process despite the substantial medical progress already achieved.

This factual matrix placed the petitioners in a legally precarious position having complied with the law at the inception of the process and invested considerable emotional, physical, and financial resources, yet facing denial at a later stage due to a technical and time-bound disqualification. It is within this context that the petitioners approached the High Court, seeking judicial intervention to prevent the frustration of their reproductive efforts.

Legal Issue

The core issue before the Court was:

Whether an intending couple can be denied access to Assisted Reproductive Technology (ART) and surrogacy solely due to crossing the statutory age limit after initiating the process within the permissible period.

Judicial Reasoning

The Court adopts a context-sensitive and purposive interpretative approach, moving beyond a mechanical application of statutory provisions to prevent manifest injustice.

At the outset, the Court identifies a crucial temporal distinction: the petitioners had complied with the statutory age requirements at the stage of initiating the surrogacy process. This finding becomes central to the reasoning, as it shifts the focus from a rigid “point-of-decision” test to a more equitable “point-of-initiation” standard. The Court implicitly recognizes that reproductive procedures under the Assisted Reproductive Technology (Regulation) Act, 2021 and the Surrogacy (Regulation) Act, 2021 are not instantaneous events but multi-stage processes, often susceptible to administrative and medical delays. To penalize the petitioners for crossing the age threshold during this continuum would amount to an unjust application of the law.

Further, the Court places significant reliance on medical evidence, particularly the successful cryopreservation of embryos and the certification of their viability. This factual element allows the Court to distinguish the case from speculative or premature claims. The reproductive process had not merely been initiated it had progressed to an advanced and medically validated stage, thereby strengthening the petitioners’ claim to continue.

The reasoning is also anchored in precedential consistency, with reliance on earlier rulings such as *Shyamoli Saha & Anr. v. State of West Bengal & Ors.*² and *Sanchita Ghosh & Anr. v. Union of India*³. These decisions collectively establish that statutory age limits, though mandatory in form, are not inflexible in application when confronted with exceptional factual circumstances. By invoking these precedents, the Court reinforces a developing judicial trend favouring substantive justice over procedural rigidity.

Importantly, the Court also factors in the disproportionate hardship that would result from denial at this stage. The petitioners had already endured significant emotional, physical, and financial strain. Denying them the opportunity to proceed, despite prior compliance and medical readiness, would effectively render their efforts futile. In this sense, the Court implicitly applies principles akin to legitimate expectation and fairness in administrative action, though not expressly articulated.

The judicial reasoning reflects a calibrated balance: while acknowledging the statutory framework and its objectives, the Court resists an interpretation that would defeat the very purpose of the law to enable ethical and regulated access to reproductive technology. The decision thus exemplifies a shift towards a human-centric application of reproductive legislation, ensuring that regulatory safeguards do not become instruments of exclusion.

Judgment

The Court directed the authorities to:

- Issue the eligibility certificate to the petitioners
- Complete the process within seven working days

Thus, the writ petition was disposed of in favour of the petitioners, enabling them to proceed with surrogacy.

Conclusion

The decision reflects a pragmatic yet normatively significant departure from strict statutory formalism, as the Court prioritizes substantive reproductive rights over procedural rigidity. By allowing the petitioners to proceed despite crossing the prescribed age limit, the Court effectively introduces a “process-based eligibility” standard, where compliance at the initiation stage is treated as determinative. While this approach advances fairness particularly in cases involving medical timelines and administrative delay it simultaneously raises concerns about judicial dilution of clear legislative thresholds under the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021. The ruling highlights an emerging judicial tendency to constitutionalize reproductive autonomy within Article 21, yet stops short of articulating a principled limiting framework, thereby leaving scope for inconsistent application. Consequently, while the judgment is compelling in its equity-driven outcome, it exposes structural gaps in the statutory regime, reinforcing the need for legislative flexibility mechanisms to address exceptional cases without over-reliance on judicial intervention.

For more details, write to us at: contact@indialaw.in

- 1. WPA 481 of 2026 [??](#)
- 2. WPA/23776/2024, [??](#)
- 3. WPA 12154 of 2023 [??](#)

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