

A Critical Review of Right to Abortion of Adolescents and Reproductive Justice in India

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Abstract

Abortion remains a deeply sensitive societal issue, characterized by the enduring conflict between pro-life and pro-choice ideologies. The Constitution of India recognizes reproductive autonomy as integral to right to privacy, liberty and human dignity. While reproductive autonomy serves as a broad concept, right to abortion is a critical component intrinsically linked to reproductive rights. The abortion laws of India, governed primarily by the MTP Act, 1971 with 2021 amendment, legalises abortions only under specific conditions. The regulatory framework of adolescent abortion under the Act failed to recognise the Principle of Evolving Capacities of minors evolved in the reproductive human rights initiatives of international law and the Indian judiciary. Termination of adolescent pregnancy in India requires the fulfilment of conditions, such as mandatory guardian consent requirements for termination of pregnancy of minors under MTP Act and mandatory reporting of adolescent pregnancy on the presumption of sexual assault of child, under the POCSO Act. Such restrictive procedural aspects often deter both the adolescent girls and medical professionals from providing services to adolescents, thereby obstructing access to timely, safe, and affordable care.

In this background, this article critically examines the evolution of abortion laws in the light of reproductive jurisprudence in India, by analysing the legal framework pertaining to right of abortion of adolescents. It argues that, in spite of the legal framework and judicial pronouncements to recognise reproductive rights of adolescents, inconsistencies persist in the legal mechanism necessitates a transformation of State centric approach to reproductive autonomy of adolescent girls.

Keywords: Abortion, Adolescent, Reproductive Justice, Human Right, Medical Termination of Pregnancy

Introduction

The practice of abortion is not a modern concept, it is considered as a natural phenomenon in the cycle of birth and death. From the ancient times, different cultures have adopted diverse perspectives on the practice of abortion. Many religions consider birth is the divine gift, their religious texts oppose the termination of pregnancy, which resulted in strict prohibition on induced abortions in several countries. The World Health Organization observed that, restrictive legal frameworks do not contribute in reducing the abortion rates, but, they act as barriers to safe medical care, which contribute to increased maternal mortality and morbidity, and thereby infringes the fundamental rights to health, bodily integrity, and reproductive autonomy of the women.²

In India, reproductive rights and legality of abortion are determined in the light of constitutional provisions, gender justice perspective and the criminal laws of the country. Although the legal framework recognises abortion under specific circumstances, access to abortion is practically hindered by various social and legal barriers. Though the Constitution

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² Arif Jamil et al., *Women's Right to Abortion After Overturning Roe v. Wade: Contextualizing the USA and Bangladesh*, 35(2) Dhaka U. L.J. 25–62 (2024).

recognises the reproductive autonomy of adolescent girls, legal framework adopted in India is State-centric and the regulatory provisions of the abortion regime tend to curtail the fundamental rights of safe abortion rights of adolescent girls and obstruct the provision of timely, safe, and affordable reproductive healthcare and thereby violate the rights of privacy, dignity and individual liberty of adolescents. The Principle of 'Evolving Capacities' of the international law was recognised by the Indian judiciary while determining termination of pregnancy and self-determination of adolescent girls.

In this background, this article critically examines the evolution of abortion laws of India in the light of reproductive jurisprudence by analysing the reproductive legal framework and the judicial approach in the matter. It argues that, inconsistencies persist in the legal mechanism to recognise self-determination capacity of adolescent girls, and that necessitates a transition from State centric approach to approach towards realising reproductive autonomy of adolescent girls.

Evolution of Abortion Laws and Reproductive Autonomy

During ancient times practice of abortion was a common phenomenon and recognised it as natural corollary of life and death. The idea of prohibiting and criminalising induced abortion started in the 19th century to prevent declining birth rates among communities or population of the country. Most of the western countries had enacted laws to prohibit termination of pregnancy only exception was for the cause of saving the life of pregnant woman.³ Despite the enactment of strict laws, practice of abortions continued without safety measures, which led to increase in mortality rates of mothers, and demanded for reforms in the reproductive legal regime. Meanwhile, feminist movements, human rights discourse, and medical advances like safer surgical techniques in the 1960s also led to a shift toward liberalizing abortion laws and introduction of legalised abortions through regulatory procedures.⁴

The judgment of *Roe v. Wade*,⁵ paved the way to regulated abortion procedures across the nations. In this case, the Supreme Court of US upheld the reproductive autonomy of women and ruled that undue restrictive State regulation of abortion amounts to violation of privacy rights and bodily autonomy of the women.⁶

Before colonisation, abortion was practiced in various traditional forms, sometimes guided by local customs or informal medical knowledge in India. However, introduction of the *Indian Penal Code, 1860* changed the scenario, it condemned the customary practices⁷ and criminalized voluntary miscarriages, even with the consent of pregnant woman. Over the years, Indian Parliament realised that such prohibition is resulting in unsafe terminations of pregnancy and threaten the life and safety of pregnant woman. Hence, on the recommendations of the Shantilal Shah Committee, *the Medical Termination of Pregnancy Act (MTP Act)* was enacted in 1971 to provide a legal framework for safe abortion services. Hence, the primary objective of the law was to reduce high mortality rate caused by unsafe

³ Dipika Jain & Brian Tronic, *Conflicting Abortion Laws in India: Unintended Barriers to Safe Abortion for Adolescent Girls*, Indian J. Med. Ethics (2019).

⁴ United Nations, *Abortion Policies: A Global Review* vol. III, at 2–5 (United Nations Publications 1995).

⁵ *Roe v. Wade*, 410 U.S. 113 (1973).

⁶ Congressional Research Service, *Abortion Law Development: A Brief Overview* (2009), available at https://www.congress.gov/crs_external_products/RL/PDF/95-724/95-724.8.pdf.

⁷ Asit K. Bose, *Abortion in India: A Legal Study*, 16(4) *J. Indian L. Inst.* 536 (1974).

methods to terminate the pregnancy and provide legally recognised safe and accessible termination services.⁸

Legal Paradigms of Reproductive Human Rights under International Law

The concept of reproductive rights of women has evolved under international law through various interpretations of existing rights. Although, international law does not expressly mention about “right to abortion”, several international human rights instruments act as foundation to recognise reproductive right, which includes safe abortion as integral part of basic human rights of the women.

Among the others, Article 3 of the *Universal Declaration of Human Rights* (UDHR) guarantees right to life and liberty, with right to privacy and security of person, which necessarily includes right to integrity and bodily autonomy of women. Similarly, *ICCPR, 1966* and *ICESC, 1966* also articulate freedom from inhuman treatment, rights to health and dignity,⁹ scope of these rights were extended to reproductive autonomy by later interpretations. Article 12 of the *Convention on the Elimination of All Forms of Discrimination Against Women, (CEDAW) 1979*, a specialized international instrument dedicated to eradicating gender-based inequity,¹⁰ frames reproductive health as a fundamental component of gender justice. The CEDAW Committee, the monitoring body of the Convention, has consistently maintained that denial of access to reproductive services, including safe abortion, may constitute a form of discrimination against women.¹¹

In addition to that, the International Conference on Population and Development, 1994¹² explicitly imposes obligations on the contracting parties to uphold reproductive rights. Beijing Platform for Action also requires the member countries to provide legalised mechanism for abortion as part of reproductive rights of women. While the UN Treaty Monitoring Bodies and Special Procedure mandate-holders are emphasising that criminalization of abortions lead to violation of human rights norms,¹³ the Human Rights Committee advocates for legalisation of termination of pregnancy and advises the States not to apply criminal sanctions to individuals seeking abortions or their healthcare providers, noting that such penalties compel recourse to unsafe procedures that endanger lives.¹⁴ Similarly, the CEDAW Committee also considers forced pregnancy and criminalisation of termination of pregnancy as different forms of gender-based violence and discrimination. The Committee emphasize that criminalisation leads to jeopardising the physical and mental health of mother.¹⁵

The Convention on the Rights of the Child (CRC), 1989 recognises children as autonomous rights-holders rather than mere passive objects of State protection and enumerates comprehensive civil, socio- economic, political and cultural rights of children below the age

⁸ A. Parsapoor, M.B. Parsapoor & B. Larijani, *Informed Consent, Contents, Conditions and Practical Methods*, 5(1) Iran. J. Diabetes & Lipid Disorders 1 (2005).

⁹ Scott Sheeran & Nigel Rodley, *Routledge Handbook of International Human Rights Law* (Routledge 2013).

¹⁰ Olanike Sekinat Adalokun, *A Comparative Human Rights Approach to Surrogacy Arrangements: A Study of India, South Africa and Nigeria* (Ph.D. dissertation, Univ. of S. Afr. 2023).

¹¹ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention (Women and Health), U.N. Doc. A/54/38/Rev.1, ch. I (1999).

¹² United Nations, *Claiming the Millennium Development Goals: A Human Rights Approach*, https://classroom-hrc.ucepeace.org/pluginfile.php/101/course/section/12/Claiming_the_Millennium_Development_Goals-1.pdf.

¹³ *Ctr. for Reprod. Rights, Resources*, <https://reproductiverights.org/resources>.

¹⁴ *Id.*

¹⁵ Kamalaveni Veni, Exploring Gender Violence and Reproductive Health Access in Crisis, in *Resisting Gender Violence* 211 (Susan M. Shaw et al. eds., 2026), <https://open.oregonstate.edu/education/resistinggenderviolence/>.

of eighteen.¹⁶ The Committee on the Rights of the Child constituted under the Convention also compels the member States to decriminalize abortion to ensure unhindered access to safe reproductive healthcare and post-abortion services to adolescent girls. This Committee emphasises the need to recognise the bodily autonomy and decisional making capacities in reproductive matters of adolescents.

In furtherance of these, the UN human rights mechanisms have underscored that the mere legality of abortion is insufficient; safe reproductive health care must be available and affordable, with high quality of services. This standard compels States to dismantle existing systemic barriers and refrain from introducing new ones.¹⁷ Furthermore, the UN Working Group on the Issue of Discrimination Against Women in Law and in Practice has emphasised that, the right to safe termination of pregnancy is part of equality right of women¹⁸ and asserted that reproductive legal regime must respect the decision of a pregnant woman for terminating a pregnancy.¹⁹ Hence, considers the requirements such as, third-party authorizations or orders from Medical Boards or Courts, amounts to violation of the right to autonomy of woman, particularly adolescent girls.²⁰

The Constitutional Framework for Abortion Rights and Reproductive Justice

In India, reproductive rights have developed through judicial interpretation rather than explicit constitutional provisions, placing adolescents in a complex legal position where they are viewed simultaneously as autonomous rights-holders and as vulnerable individuals requiring State protection. This duality creates a challenging framework that blends empowerment with restriction. The cornerstone of reproductive rights jurisprudence of India is the 'right to life' of the Constitution,²¹ which not only ensures right to life, but also right to live with human dignity. The judiciary treats right to health, including reproductive health as integral part of right to life.²² The Supreme Court, in *Suchitra Srivastava* defined the right to reproductive health as "the capability to reproduce and the freedom to make informed, free and responsible decisions". the Court in *Devika Biswas*²³ emphasises the need for 'access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour' as part of the right.

Further, the Court reaffirmed that reproductive freedom is an intrinsic part of fundamental right in the *Puttaswamy* judgment²⁴ by stating:

“privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one’s mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and

¹⁶ Convention on the Rights of the Child, art. 12, Nov. 20, 1989.

¹⁷ Pallavi Bajpai & Arushi Anthwar, *Tracing Right to Abortion in International Human Rights Law and the Constitution of India with Special Reference to an Appraisal of the Medical Termination of Pregnancy (Amendment) Act, 2021*, 11(1) Kashmir J. Legal Stud. (2024).

¹⁸ Human Rights Watch, *Human Rights Crisis: Abortion in the United States After Dobbs*, <https://www.hrw.org/news/2023/04/18/human-rights-crisis-abortion-united-states-after-dobbs>

¹⁹ Pallavi Bajpai & Arushi Anthwar, *supra* note 16.

²⁰ Comm. on Econ., Soc. & Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights), ¶ 12(b), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

²¹ INDIAN CONST. art. 21.

²² *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 S.C.C. 1.

²³ *Devika Biswas v. Union of India*, (2016) 10 S.C.C. 726.

²⁴ *Justice K.S. Puttaswamy (Retd.) and Anr v. Union of India and Ors.*, (2017) 10 SCC 1.

the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised.”

Subsequently, in *High Court on Its Own Motion* case²⁵ the Bombay High Court explained the significance of right to reproductive autonomy held that,

“a woman’s decision to terminate a pregnancy is not a frivolous one. Abortion is often the only way out of a very difficult situation for a woman. An abortion is a carefully considered decision taken by a woman who fears that the welfare of the child she already has, and of other members of the household that she is obliged to care for with limited financial and other resources, may be compromised by the birth of another child. These are decisions taken by responsible women who have few other options. They are women who would ideally have preferred to prevent an unwanted pregnancy, but were unable to do so. If a woman does not want to continue with the pregnancy, then forcing her to do so represents a violation of the woman’s bodily integrity and aggravates her mental trauma which would be deleterious to her mental health.”

The Court in this case further emphasized the need to access to safe abortion as indispensable for recognising fundamental rights, such as right to life, which includes right to health and personal liberty of a woman. The Court observed that, “since pregnancy occurs within the body of a woman and profoundly impacts her physical health, mental well-being, and overall life trajectory, the decision regarding how to proceed must be solely decided by her”.²⁶ The Supreme Court ensured the right to make decisions by the individuals, including adolescents, regarding one’s own body remains a protected component of personal liberty is a fundamental right.²⁷

In addition to Article 21, reproductive rights of adolescent girls are safeguarded by Articles 14, 15, and 39 of the Indian Constitution. Together, these Articles ensure that age and gender do not become barriers to essential healthcare. Article 14 ensures that adolescents have equal rights to access any kind of healthcare that includes safe abortion services. While Article 15 prohibits any kind of discrimination, Article 15(3) specifically empowers the State to enact legislation or favourable provisions for women and children to advance equality through protective discrimination, which prevents the State from enacting arbitrary policies that might unfairly restrict bodily autonomy of adolescents or create discriminatory issues in accessing reproductive care. Affirmative measures, such as adolescent-friendly health clinics, that address the unique physiological and social disadvantages faced by pregnant minors is justified by this provision. Further, as a guiding principle for policy-making, the Directive Principles of State Policy compels the State to ensure protection of women’s health and create atmosphere for the children to grow up healthily.²⁸ This encourages the government to prioritize maternal health and safe reproductive conditions for adolescents, reducing the risks associated with unsafe abortion procedures.

²⁵ *High Court on Its Own Motion v State of Maharashtra*, 2017 Cri LJ 218.

²⁶ S.D.M. Law College, Ctr. for P.G. Stud. & Research in Law, *Reproductive Rights and Legal Framework Addressing Population Issues: Proceedings of the One-Day National Seminar Organized by S.D.M. Law College, Centre for P.G. Studies and Research in Law*, Mangaluru (Mar. 15, 2025) (2025).

²⁷ *X v. State of Odisha, W.P. (C) No. 5396 of 2025 (Orissa H.C. Mar. 2025)*, https://courtbook.in/pdf_upload/2025/03/X-v.-State-of-Odisha-Ors_compressed.pdf.

²⁸ INDIAN CONST. arts. 39(e), (f).

The MTP Act and Beyond: Indian Legal Framework on Abortion of Adolescents

Conceptually, adolescence is recognized as the transitional phase between childhood and maturity, typically commencing at puberty. Section 2(i) of *The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986* defines an adolescent as “a person who has completed his fourteenth year of age but has not completed his eighteenth year”.²⁹ In India, sexual activity and abortions, outside marriage bond, particularly, by adolescents are often considered as social stigma, that act as a barrier to access medical care. Besides that, limited medical literacy and intricate legal complexities created by the criminal laws exacerbate the situation.

i. Indian Criminal Law on Abortion

Historically, abortion was criminalised in India during the British period through introduction of *Indian Penal Code*. The Code dedicated a separate chapter to discuss the offences related to termination of pregnancy, and considered every act related to abortion as an offence.³⁰ The Code holds every individual involved in such act as an offender, which includes the pregnant woman, if she had consented for or voluntarily induced abortion. The Code permits termination of pregnancy if done in good faith to save the life of mother as the only exception to the offences listed under the chapter.³¹ Depending on the stage of pregnancy, punishment for causing miscarriages increase significantly. Further, the Code prescribes life imprisonment for miscarriages induced without consent,³² and heavy prosecution if an attempted abortion results in death of the woman.³³ This tendency of criminalization continued in the modern *Bharatiya Nyaya Samhita*³⁴ and causes a persistent friction between penal logic and the contemporary recognition of reproductive healthcare as a fundamental right.

ii. Legalisation of Termination of Pregnancy

Meanwhile, to reform the abortion stance of the law, *the MTP Act, 1971* was enacted with the aim to regulate and legalise termination of pregnancy by stipulating specified conditions. Section 3 of the Act describes the grounds for termination of pregnancy by stating that, in cases of physical or mental health risks associated to the pregnant woman, abnormalities in the foetus, forced pregnancy due to sexual assault, or contraceptive failure. In such cases, termination of pregnancy of the woman to a certain stage, i.e., up to 20 weeks of gestation is permitted on the authorisation by a registered medical practitioner or depending on the duration of the pregnancy by two medical practitioners.³⁵ For termination of pregnancy exceeding twelve weeks of gestation period, the Act requires a second medical opinion from the registered medical practitioners. To safeguard the health of the pregnant woman, the Act also imposes additional conditions on private sector health facilities to obtain formal government approval to terminate pregnancy, except in emergency cases to save the life of pregnant

²⁹ Dipika Jain and Brian Tronic, *supra* note 2.

³⁰ Indian Penal Code, No. 45 of 1860, §§ 312–316 (India).

³¹ *Id.* § 312.

³² Indian Penal Code, No. 45 of 1860, § 313 (India).

³³ *Id.* § 314.

³⁴ Bharatiya Nyaya Samhita, No. 45 of 2023, §§ 88–91 (India).

³⁵ S.D.M. Law College, Centre for P.G. Studies & Research in Law, *Reproductive Rights and Legal Framework Addressing Population Issues: Proceedings of the One Day National Seminar Organized by S.D.M. Law College, Centre for P.G. Studies & Research in Law, Mangaluru on Mar. 15, 2025.*

woman³⁶ Further, the Act requires mandatory medical assessment by the professional and valid consent from the guardian if the pregnant is an adolescent girl.³⁷

To perform the procedure, *the Medical Termination of Pregnancy Rules, 1975* stipulates the procedures for approval of the place.³⁸ These Rules also mandate, compulsory training for medical practitioners in this regard, and ensures that certified medical centres maintain hygiene and safety standards to safeguard the health of pregnant woman. After the 2002 amendments, authority to regulate the Medical centres have shifted from State-level to District-level Committees.

This framework of termination of pregnancy was substantially broadened by *the Medical Termination of Pregnancy (Amendment) Act, 2021*, by extending the gestational limit for termination from twelve weeks to 24 weeks for specific categories, that include adolescent girls and survivors of sexual assault.³⁹ Although the amendment permits terminations beyond the 24-week period in cases of substantial foetal abnormalities, such procedure should be conducted after obtaining approval from the authorised Medical Board. The amendment replaced restrictive language concerning marital status used under the 1971 Act with the terminology of “any woman”, that effectively grants access to legal termination under the contraceptive failure clause for unmarried individuals. This amendment also reinforced the right to privacy of women including adolescents, by expressly mentioning to maintain patient confidentiality, by emphasising a rights-based approach to reproductive healthcare. Although this State-centric approach is meant to protect the interest of pregnant adolescents, the procedural aspects are hindering such minors to receive proper medical care.

iii. **Impact of The POCSO Act on the Right to Abortion of Adolescents**

The Protection of Children from Sexual Offences Act, (POCSO) 2012, was enacted to safeguard Children below the age of eighteen from sexual assault, harassment, and pornography.⁴⁰ To protect the best interests of children, the Act criminalizes all categories of sexual activities of minors as sexual assault. To facilitate the protection, Section 19 of the Act imposes a mandatory reporting obligation on all individuals, including the medical professionals. However, this procedural requirement read with Section 23 give rise to privacy issues of adolescent girls. While the law mandates for maintaining strict confidentiality and prohibits the disclosure of identity of the child, the procedural requirements, such as recording the name of the patient in official medical and police registers, may lead to unauthorised disclosure of the identity of the adolescent and act as an impediment to protecting the child’s right to privacy.

In an hostile Indian environment for abortions, where adolescent’s pregnancy and abortions are treated as social stigma, the overlapping provisions of *MTP Act* and the *POCSO Act* create significant friction between the two and deters both pregnant adolescents and medical practitioners from safe abortion services. Even though the 2021 amendments to *the MTP Act* represent a substantial expansion of abortion law, newly introduced provisions remain insufficient in dismantling the systemic legal barriers that preclude adolescents from accessing safe and timely reproductive services.

³⁶ Dipika Jain & Brian Tronic, *supra* note 3.

³⁷ Medical Termination of Pregnancy Act, No. 34 of 1971, § 3(4) (India).

³⁸ Medical Termination of Pregnancy Rules, 1975, r. 5 (India).

³⁹ Vivek Divan ed., *The Bench and the Body: An Analysis of Abortion Jurisprudence in India (2019–2024)* (Centre for Health Equity, Law & Policy 2024), https://bfda9b73-bb63-4945-b64d-2477e3eb985d.usrfiles.com/ugd/bfda9b_12b39d8d9d4d458b84571820dd70c8a8.pdf.

⁴⁰ Ved Kumari & Kriti Srivastava eds., *Kaleidoscope of Children: Issues Through the Lens of the Youth* (Nat’l L. Univ. Odisha 2024), <https://nluo.ac.in/storage/2024/05/Final-Kaleidoscope-of-Children-Digital-1.pdf>.

The Principle of “Evolving Capacities” and Reproductive Justice for Adolescent Girls

The Principle of “Evolving Capacities” has evolved under the UN Convention on the Rights of the Child. This principle described in the Convention recognises the decision-making capacity of the children in reproductive matters. The Principle considers mental maturity is a developmental process through which adolescents gradually acquire the knowledge and agency necessary to exercise their rights. Hence, Article 5 of the Convention⁴¹ dictates that, with the mental maturity of adolescents, the level of parental or State intervention must proportionately decrease, and their role should be limited to appropriate guidance or direction, and to permit the child to make self-determination.

The recognition of this principle is a major achievement for the sexual and reproductive health of adolescents, as it postulates the reproductive autonomy of the adolescent girls. The Principle permits the cognitive and emotional maturity to understand the implications of medical or personal choices made by adolescent girls, such as seeking legal abortion, rights to bodily autonomy and confidentiality. A legal failure to acknowledge this maturity often results in the over-criminalization of consensual sexual behaviour or the denial of basic healthcare, ultimately inflicting greater long-term harm than the risks the law initially aimed to mitigate. Hence, the CRC Committee emphasizes that nations should not criminalise the consensual, non-exploitative sexual activities of adolescents of similar ages.⁴²

However, the legal framework, including the *POCSO Act* and *the MTP Act* creates a complex legal environment that often prioritizes a rigid protectionist model over the reproductive autonomy of adolescent girls. This statutory framework effectively undermines the basic rights of minors by treating all persons who are below eighteen years of age as children and in need of absolute protection,⁴³ regardless of their individual maturity or evolving capacities. While the *MTP Act* is ostensibly designed to provide safe healthcare, its interplay with *the POCSO Act* introduces significant dual barriers of mandatory guardian consent and mandatory reporting to the Special Juvenile Police Unit or the local police.⁴⁴

Besides that, categorisation of all types of sexual contact involving a minor as a criminal offence under the *POCSO Act*, totally ignored consensual sexual activities.⁴⁵ While the healthcare providers are legally obligated to report adolescent pregnancies to the police, presuming the girl to be a survivor of sexual assault,⁴⁶ the adolescent girls hesitate to access safe abortion procedures due to the fear of victimising her partner. This creates a profound ‘chilling effect’ on legal abortions, often driving them toward high-risk, unsafe alternatives.

In recent years, Indian judiciary has challenged criminalisation of consensual adolescent behaviour. High Courts in cases such as *Vijayalakshmi*⁴⁷ and *Sabari*⁴⁸ have observed that

⁴¹ Convention on the Rights of the Child, art. 5, Nov. 20, 1989, 1577 U.N.T.S. 3; see also Vesna Dejanović ed., *Child Rights in Serbia 1996–2002* 81 (Child Rights Ctr. 2003), https://cpd.org.rs/wp-content/uploads/2017/11/Child_Rights_in_Serbia_96-02.pdf.

⁴² Godfrey Dalitso Kangaude, *A Feminist Post-Structuralist Critique of the Transformative Potential of Malawi’s Gender Equality Law to Promote Adolescent Sexual Health* (doctoral dissertation, Univ. of Pretoria 2020).

⁴³ Dipika Jain & Brian Tronic, *supra* note 3.

⁴⁴ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 19 (India); *X v. Principal Secretary, Health & Family Welfare Dep’t, Gov’t of NCT of Delhi*, Civil Appeal No. 5802 of 2022 (India), <https://www.legitquest.com/case/x-v-the-principal-secretary-health-and-family-welfare-department-govt-of-nct-of-delhi-/3D81AA>.

⁴⁵ Protection of Children from Sexual Offences Act, No. 32 of 2012, § 18 (India).

⁴⁶ Dipika Jain & Brian Tronic, *supra* note 3.

⁴⁷ *Vijayalakshmi v. State*, CrI. O.P. No. 232 of 2021 (Madras H.C. Jan. 27, 2021).

⁴⁸ *Sabari @ Sabarinathan @ Sabarivasan v. Inspector of Police*, Criminal Appeal No. 490 of 2018 (Madras H.C. Apr. 26, 2019).

relationships driven by natural biological attraction are a common developmental reality rather than a form of criminal deviance. The Court has warned that the aggressive use of *the POCSO Act* in such contexts, can cause irreversible damage to reputation and future livelihood of youngsters. In the case of *Sabari*, the Madras High Court emphatically opined that teenage romance is a natural phenomenon, not a criminal act, hence the age of consent by adolescents in reproductive activities, particularly for termination of pregnancy must be lowered to 16 years to better reflect social realities.

This conflict between State protection and individual rights is further highlighted by the evolving precedents on reproductive autonomy. In the recent judgment of the Supreme Court in *A (Mother of X) v. State of Maharashtra & Others*,⁴⁹ the petitioner challenged the High Court order which denied permission to terminate 28-week pregnancy of the daughter of the petitioner. Denial by the Court was based on the rationale that, the foetus was viable and could be given up for adoption later. However, the Supreme Court reversed this decision, by declaring reproductive right is bodily autonomy of women and it is the intrinsic part of their right to life, liberty, and dignity. Consequently, the Supreme Court upheld the decision of the adolescent girl by stating that, whether to continue pregnancy or not can be solely decided by the pregnant woman. No authority, including the State or the judiciary, can compel a woman to carry an unwanted pregnancy to term.

In the recent judgment of the Supreme Court,⁵⁰ on the question of termination of 31-week pregnancy, the Court permitted a 15-year-old adolescent by prioritizing her fundamental rights. The Court observed that, forcing an adolescent carry the pregnancy to the full-term amounts to infringement of her fundamental rights to live with human dignity, personal liberty and also impacts on her physical and mental health. Despite exceeding the statutory limits of termination of pregnancy mentioned under the *MTP Act*, the Court reaffirmed that no woman, and especially no minor child should be forced to endure an unwanted pregnancy. This decision reinforced the Principle of 'Evolving Capacity' by establishing that choice of an adolescent girl must be respected.

These rulings bring a paradigm shift in Indian Reproductive justice jurisprudence. By reinforcing the principle of 'evolving capacities', the Courts are increasingly acknowledging that decision of an adolescent girl on her body should be respected, even though she is a minor.

Conclusion

To conclude, the reproductive rights of adolescent girls are an integral component of fundamental rights in India. However, conflicting laws within the Indian legal framework which create fear of criminal proceedings, law enforcement, and social stigma deter adolescent girls from seeking safe abortion services. While the judiciary has attempted to address legislative inertia by upholding the Principle of Evolving Capacities in several judgments, the legal framework still fails to fully recognize the right to self-determination or maturity of adolescent girls to make decisions on their pregnancy. It is the need of the day to presume competence of adolescents, and giving decisive weight in matters concerning their own body. By harmonizing these conflicting legal frameworks, the system can achieve a more sophisticated balance, protecting adolescents from exploitation while simultaneously empowering them to navigate their reproductive health and future with dignity.

⁴⁹ *A (Mother of X) v. State of Maharashtra*, Civil Appeal No. 827 of 2026 (India Feb. 6, 2026); see also *Balancing Marriage and Bodily Autonomy: Experts Weigh Marital Rape Exemptions*, Econ. Times Legal (Sept. 2024), <https://legal.economicstimes.indiatimes.com/news/litigation/balancing-marriage-and-bodily-autonomy-experts-weighs-marital-rape-exemptions/113662105>.

⁵⁰ *S. v. Union of India*, S.L.P. (C) No. 14454 of 2026 (India Apr. 24, 2026).