
BEYOND THE CLIFF EDGE: CHALLENGING THE BINARY OF JUVENILE JUSTICE IN INDIA

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ABSTRACT

The rigid application of the age of majority in Indian criminal law, has created an unjust "cliff edge" of culpability that is misaligned with the foundational principle of *mens rea*. Current legal fiction, which presumes all individuals under 18 are incapable of forming criminal intent (*doli incapax*), is psychologically and neurologically outdated - rendering the binary distinction between "child" and "adult" untenable for justice. This paper explores how the law can be truly rehabilitative towards juveniles.

Mens rea or the guilty mind is the corner stone of criminal justice. It is the principle that distinguishes a criminal act from a mere accident or a natural event¹. The philosophical and moral foundation of this principle comes from affording justification to the punishment awarded to offenders. Criminal punishment is a profound exercise of state power involving – in no soft terms – the deliberate infliction of suffering, justified only by its deservedness². In alignment with the fundamental principles of personal autonomy and free will, a person deserves punishment not simply because they caused harm, but because they chose and intended to cause such harm³. This ties back to the Latin maxim of *Actus Non Facit Reum Nisi Mens Sit Rea*⁴ which translates to “an act does not make a person guilty unless the mind is also guilty” encapsulating the morally neutral nature of a physical act⁵ when it is not accompanied

¹ PAUL H. ROBINSON, ‘Mens Rea’ in ENCYCLOPEDIA OF CRIME & JUSTICE 995 (2nd ed., Macmillan Reference USA 2002), https://scholarship.law.upenn.edu/faculty_scholarship/34 (last visited Nov. 1, 2025).

² H. L. A. HART, PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 28–53 (OUP 1968).

³ JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (T Payne and Son 1789).

⁴ SHIVOM GARG, ‘Actus Non Facit Reum Nisi Mens Sit Rea’ – Reconceptualising Mens Rea In Indian Criminal Jurisprudence: A Doctrinal And Contemporary Analysis’ [2023] 3(2) ULSSS 639.

⁵ JOHN D MAYNE, THE CRIMINAL LAW OF INDIA 9 (4th edn, Higginbotham 1896).

by guilty intent⁶. A person or an offender can therefore only be held accountable for his conscious choices. Further, *mens rea* allows a differentiation between crimes so that they can be graded by way of their seriousness. This hierarchy of *mens rea* – from intention to knowledge to recklessness to negligence – creates a ladder of culpability. Punishments imposed are therefore more likely to be proportional to the harm caused, as well as to the offender's level of moral blameworthiness⁷. An intentional killing is therefore punished more severely than a reckless one, which is subsequently punished more severely than a negligent one.

In its capacity as a practical safeguard, the principle of *mens rea* plays the imperative role of protecting the morally innocent from arbitrary convictions. In the realm of juvenile criminality, this doctrine of *mens rea* manifests itself in the presumption of *doli incapax* – a term that means “incapable of wrongdoing”⁸. Whether this is a defence that should unequivocally apply to all those not defined as “adults” as under the criminal law has been a matter of continuous debate.

The concept of age of majority is one that has evolved over a long period of time, from initially being focussed on solely property law to then expanding to include other responsibilities and rights such as voting and contracting⁹. The age of 18 was selected as the age of majority in many countries during the mid-20th century in several legal jurisdictions, including India, largely because it was a reasonable compromise between the traditional age of 21 and the need to recognize increasing numbers of educated young people with the maturity and experience to make informed decisions about their lives¹⁰. Further, such age seemed to align with the broader concept of a transition from adolescence into adulthood. Perhaps it is pertinent to consider that such transition is a largely gradual process, and its markers must therefore adapt contextually. That is to say, there may be a varied amount of coexisting definitions of “adult” and the concept of majority with respect to areas of contracting, voting, marriage, consent and criminal liability.

⁶ EUGENE J CHESNEY, ‘Concept of Mens Rea in the Criminal Law’ (1938) 29 American Journal of Criminal Law and Criminology 627.

⁷ MATTHEW R GINTHER, FRANCIS X SHEN, RICHARD J BONNIE, MORRIS B HOFFMAN, OWEN D JONES, RENE MAROIS AND KENNETH W SIMONS, ‘The Language of Mens Rea’ (2014) 67(5) Vanderbilt Law Review 1327, <https://scholarship.law.vanderbilt.edu/vlr/vol67/iss5/2> (last visited Nov. 1, 2025).

⁸ KATE FITZ-GIBBON AND WENDY O’BRIEN, ‘A Child’s Capacity to Commit Crime: Examining the Operation of Doli Incapax in Victoria (Australia)’ (2019) 8(1) International Journal for Crime, Justice and Social Democracy 18, <https://doi.org/10.5204/ijcjsd.v8i1.1047> (last visited Nov. 1, 2025).

⁹ T. E. JAMES, ‘The Age of Majority’ (1960) 4(1) The American Journal of Legal History 22, <https://doi.org/10.2307/844549> (last visited Nov. 2, 2025).

¹⁰ VIVIAN E. HAMILTON, ‘Adulthood in Law and Culture’ (2016) 91 Tulane Law Review 1057, <https://scholarship.law.wm.edu/facpubs/1824> (last visited Nov. 1, 2025).

By theorizing that a man is an adult for all these different purposes when he turns 18, we take a wanton view on the age of majority and give adulthood this vague barrier of an arbitrary age – whose decision is not sufficiently contextualized. The present jurisprudence on this matter, that is, the Juvenile Justice Act¹¹ finds its foundational roots in the *Sheela Barse*¹² case. The case was a landmark judgement to afford juveniles the protection of the law, but it is the opinion of the author that the resulting legislation has swung the pendulum a bit too far. The current governing statute seems to divide offenders into a clean binary on the basis of age - a person is either a "child" (under 18, protected by the Juvenile Justice Act) or an "adult" (fully culpable). That a seventeen-year-old could receive a measly sentence of three years in a correctional facility while an eighteen-year-old receives life imprisonment or the death sentence for the commission of the same crime is a stark cliff edge that has no place in modern nuanced criminal jurisprudence.

What connection exists between the legal fiction of the age of majority and the principle of *mens rea*? Does one only develop the emotional capacity of guilt and the cognitive morality of differentiation between rights and wrongs when he reaches this prescribed age of adulthood?¹³

The rigid chronological marker of adulthood hinders the justice system from acknowledging the spectrum of adolescent development and the basic psychological premise that cognitive maturity, moral reasoning, and the capacity for impulse control, the very faculties necessary for culpability or *mens rea*, develop along a continuum¹⁴. The primary brain region responsible for what we call "judgment" is the prefrontal cortex which governs all the executive functions of liability as mentioned above. While the brain does continue to mature into the mid – 20s (which further raises doubt on criminal culpability being set at 18), the most significant functional development of the pre frontal cortex occurs during early and mid-adolescence periods, that is between 10 and 16 years of age¹⁵. A 16 or 17-year-old therefore, from a neurocognitive standpoint, possesses the same fundamental hardware as an "adult" and is fully

¹¹ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016 (India).

¹² *Sheela Barse & Anr. v. Union of India & Ors.*, AIR 1986 SC 1773.

¹³ MALCOLM RITTER, 'Experts Link Teen Brains' Immaturity-Juvenile Crime' ASSOCIATED PRESS (Dec. 3, 2007), <https://abcnews.go.com/Technology/story?id=3943187&page=1> (last visited Nov. 1, 2025).

¹⁴ MAC TUOMI AND DOMINIQUE MORITZ, 'Criminal responsibility of older children: The failings of *doli incapax* in Australia' CHILDREN AND SOCIETY (2023), <https://doi.org/10.1111/chso.12715> (last visited Oct. 31, 2025).

¹⁵ VALERIE E. STONE, SIMON BARON-COHEN AND ROBERT T. KNIGHT, 'Frontal Lobe Contributions to Theory of Mind' (1998) 10(5) Journal of Cognitive Neuroscience 640, <https://doi.org/10.1162/089892998562942> (last visited Nov. 1, 2025).

capable of understanding the consequences of their actions, distinguish right from wrong, and make deliberate choices.

The Theory of Mind is the landmark achievement of understanding that others have their own thoughts, beliefs and intentions which may differ from one's own¹⁶. By the ages of 4 or 5, an individual is able to understand that hitting someone causes them pain or that stealing a toy deprives another of it. This understanding forms the basis of being cognizant of the consequences of one's actions which is a crucial component of *mens rea*. Further, by the age of 3-5, children clearly understand the concept of rules and the difference between what is "right" and what is "wrong" in a concrete sense¹⁷. Although the philosophical explanations of a similar root may not make sense to them, they understand that an act is "forbidden" and that it will elicit a negative response.

Piaget posits that children between the ages of 7 and 12 attain the stage of Operational Thought where they develop logical thinking¹⁸. They can understand cause and effect in a more sophisticated way and further they move away from a morality of constraint¹⁹ and a belief that rules are absolute to a morality of cooperation, understanding that rules can be changed in context to intent²⁰.

Lawrence Kohlberg's stages of moral development²¹ says that by early adolescence (typically by ages 13 – 15), most persons have consolidated their place at the "Conventional Level" of moral reasoning characterized by an understanding of and conformity to societal laws and norms²². This implies that an average 15-year-old understands the concept of law and its role in maintaining social order. The cognitive capacity for this level of moral understanding is

¹⁶ HENRY M. WELLMAN, THE CHILD'S THEORY OF MIND (MIT Press 1990), <https://ci.nii.ac.jp/ncid/BA19665330> (last visited Nov. 1, 2025).

¹⁷ J. W. ASTINGTON, P. L. HARRIS AND D. R. OLSON, DEVELOPING THEORIES OF MIND (CUP 1989), <https://doi.org/10.5860/choice.26-5332> (last visited Oct. 31, 2025).

¹⁸ JEAN PIAGET, 'Part I: Cognitive Development in Children: Piaget Development and Learning' (1964) 2(3) Journal of Research in Science Teaching 176, <https://doi.org/10.1002/tea.3660020306> (last visited Oct. 31, 2025).

¹⁹ SIDNEY STRAUSS AND JONAS LANGER, 'Operational Thought Inducement' (1970) 41(1) Child Development 163, <https://doi.org/10.1111/j.1467-8624.1970.tb00984.x> (last visited Oct. 31, 2025).

²⁰ DEANNA KUHN AND J. ANGELEV, 'An Experimental Study of the Development of Formal Operational Thought' (1976) 47(3) Child Development 697, <https://doi.org/10.2307/1128184> (last visited Oct. 31, 2025).

²¹ LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES (HarperCollins 1984).

²² JÜRGEN HABERMAS, MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION (MIT Press 1990).

firmly in place well before the age of 18²³.

Psychologically, therefore, the use of the age of majority (18 years old) as the determinant of full criminal culpability is outdated legal fiction. The legislative system with these gaps, seems to be begging for a nuanced system of determination of majority and adulthood situated in evidence and relevant to its field.

With regards to criminal legislature, the amendments to this tune are rather straightforward.

In the present legislature of the Juvenile Justice Act, the doctrine of *doli incapax* is used as an unbreakable shield and as an explanation to reduce sentencing. On the first count, Section 83²⁴ encompassing the doctrine is often mechanically applied to cases on the ground as a complete defence. In *AK v. State of Maharashtra*²⁵, the Court directly quashed an FIR registered against a 9-year-old boy without any analysis on the mental capacity of the child during the commission of the crime, simply citing Section 83 an absolute explanation to the child being “incapable of evil”. Further, the facts of *Sainath Minj v. State of Chhattisgarh*²⁶ demonstrated that the police were presumed to be exempt from filing charge sheets against the criminals because they were between the ages of 10 and 11. In addition to failing to consider the impact of *doli incapax* in this particular situation, the Court went one step further and declined to get involved, arguing that Section 83 would justify the police's inaction. In *Shiv Kumar v. State of Jammu and Kashmir*²⁷, the benefits of Section 83 afforded to a 5-year-old was blindly extended to be applied to a 12-year-old in a completely different case with no other considerations. On the second count, in the Indian context, even when a conviction is obtained in Court, individuals termed “children” derive the benefit of Section 83 through its citing as a ground to reduce sentences to convicted offenders. In the case *Kakoo v. State of H.P.*²⁸ the Court cites Section 83 as grounds to reduce the sentence of the already convicted offenders – who were at the time thirteen years of age (out of the scope of Section 83) betraying the clear distinction that the criminal justice system makes between the trial and sentencing stages.

²³ ANNE COLBY, LAWRENCE KOHLBERG, ABRAHAMI ABRAHAMI, JOHN GIBBS AND ANN HIGGINS, THE MEASUREMENT OF MORAL JUDGMENT (CUP 2011).

²⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, § 83, No. 2, Acts of Parliament, 2016 (India).

²⁵ A.K. v. State of Maharashtra and Others, Bom. H.C., Criminal Writ Petition No. 3062 of 2022 (2022).

²⁶ Sainath Minj v. State of Chhattisgarh, Chh. H.C., WPCR/26/2016 (2023).

²⁷ SHIV KUMAR V. STATE OF JAMMU & KASHMIR, J&K and Lad. H.C., OWP No. 2451/2018 (2023).

²⁸ KAKOO V. STATE OF H.P., AIR 1976 SC 1991.

This legal loophole can be remedied with a two-pronged approach – a philosophical shift from a one size fits all approach (for the trial stage) and fair punishment through structured sentencing (for the sentencing stage)²⁹. The current doctrine of *doli incapax* which grants absolute immunity, is a rigid philosophy of common law because it operates primarily on an irrebuttable presumption that ignores the reality of varying cognitive development³⁰. The modern approach would be to adopt a rebuttable presumption of incapacity for children over the age of 14³¹. This would mean that for crimes committed by individuals falling within this age range, the State would have the opportunity to present evidence – such as psychological evaluations or the circumstances of the commission of the crime itself³² – to show that the young offender possessed enough mental capacity to understand the nature and consequences of their conduct³³. Countries like Australia and England follow this rebuttable presumption for incapacity³⁴ for offenders aged between 10 and 14 years. Such offenders are assumed to be innocent, but the Prosecution is given the chance to prove otherwise beyond doubt. The age of 14 is further in alignment with the recommendations of The UN Committee on the Rights of the Child³⁵.

It is crucial to establish a reformed sentencing framework to ensure that this increased accountability does not lead to unintentional disproportionate sentencing³⁶. A major flaw in the current Indian criminal justice system is the sweeping judicial sentencing often leading to

²⁹ ARJUN V. HARIHAR, ‘Need to Revisit the Doli Incapax Doctrine in India’ SCC ONLINE BLOG (Sept. 24, 2024), <https://www.scconline.com/blog/post/2024/09/24/need-to-revisit-the-doli-incapax-doctrine-in-india/> (last visited Nov. 2, 2025).

³⁰ LIVEMINT, ‘Juvenile crime: Let children be children’ LIVEMINT (Aug. 13, 2014), <http://www.livemint.com/Opinion/PsfkCb1i83BhhFB0HFwpdN/Juvenile-crime-Let-children-bechildren.html> (last visited Oct. 31, 2025).

³¹ SANFORD J. FOX, ‘Philosophy and the Principles of Punishment in the Juvenile Court’ (1974) 8(4) Family Law Quarterly 373, <https://www.jstor.org/stable/25739105> (last visited Oct. 31, 2025).

³² MARTIN L. FORST, BRUCE A. FISHER AND ROBERT B. COATES, ‘Indeterminate and Determinate Sentencing of Juvenile Delinquents: A National Survey of Approaches to Commitment and Release DecisionMaking’ (1985) 24(4) Juvenile and Family Court Journal 35, <https://doi.org/10.1111/j.17556988.1985.tb01348.x> (last visited Oct. 31, 2025).

³³ HILAL A. NAJAR AND MASHOOG A. MALIK, ‘Sentencing of Juvenile Offenders in India: A Theoretical Analysis’ (2023) 3(1) International Journal of Criminal, Common and Statutory Law 42, <https://www.criminallawjournal.org/> (last visited Nov. 1, 2025).

³⁴ THOMAS CROFTS, ‘Rebutting the Presumption of Doli Incapax’ (1998) 62(2) The Journal of Criminal Law 185, <https://doi.org/10.1177/002201839806200208> (last visited Nov. 1, 2025).

³⁵ United Nations Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system, U.N. Doc. CRC/C/GC/24 (Sept. 18, 2019), at para. 21.

³⁶ GAURI PILLAI AND SHRIKRISHNA UPADHYAY, ‘Juvenile Maturity and Heinous Crimes: A Re-look at Juvenile Justice Policy in India’ (2017) 10 NUJS Law Review 49, <https://ssrn.com/abstract=2995831> (last visited Nov. 1, 2025).

inconsistencies and perceived injustices. The structured sentencing guidelines, the framework of which has been laid down by the Malimath Committee of 2003³⁷, recommends the categorization of crimes strictly by severity, providing a clearer range of punishments helping judges impose sentences that are both proportional and consistent³⁸. It is also important that the system move beyond the binary of incarceration or release. In the Bhartiya Nyaya Sanhita of 2023 community service has been introduced as a punishment³⁹. A wider range of options, including rehabilitation programs, counselling, and restorative justice processes could help impose commensurate punishments on offenders ages 14-18⁴⁰. Further, this shift in legal mindset encourages early recognition and rehabilitation of deviant criminal behaviours in juveniles which allows for better support in their holistic development.

These recommendations, in practise, would work interdependently where a reduction in the age of liability itself is balanced out by a robust implantation system⁴¹. Such reform, though bold, is necessary for the criminal justice system to keep up with the times. With the advent of accessibility of digital media and psychological evidence suggesting dissent against the rigid “cliff-edge” system of determination of culpability⁴², it becomes important to explore reorientations of the criminal law – in both its trial and sentencing stages – in order to successfully upkeep the objective of effective rehabilitation of young offenders.

³⁷ COMMITTEE ON REFORMS OF THE CRIMINAL JUSTICE SYSTEM, REPORT OF THE MALIMATH COMMITTEE (2003).

³⁸ UPENDRA BAXI, THE (MALIMATH) COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM: PREMISES, POLITICS, AND IMPLICATIONS FOR HUMAN RIGHTS (2003), <http://ci.nii.ac.jp/ncid/BA80151430> (last visited Nov. 1, 2025).

³⁹ Bharatiya Nyaya Sanhita, 2023, § 4, No. 45, Acts of Parliament, 2023 (India).

⁴⁰ GERALD R. WHEELER, ‘Juvenile Sentencing and Public Policy: Beyond Counter-Deterrence’ (1978) 4(1) Policy Analysis 33, <https://www.jstor.org/stable/42783522> (last visited Nov. 1, 2025).

⁴¹ ANN SKELTON, ‘Proposals for the Review of the Minimum Age of Criminal Responsibility’ (2013) 26(3) South African Journal of Criminal Justice

257, https://repository.up.ac.za/bitstream/handle/2263/40378/Skelton_Proposals_2013.pdf?sequence=1 (last visited Nov. 1, 2025).

⁴² ELIZABETH DELMAGE, ‘The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective’ (2013) 13(2) Youth Justice 102, <https://doi.org/10.1177/1473225413492053> (last visited Oct. 31, 2025).