



Rise of Juvenile Crimes among the Older Juveniles in India: A Critical Analysis of Its Pattern, Cause and Legal Framework with Special Reference to State Of Odisha.

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Abstract *Crime by juveniles is a harsh reality in India. The last decade has seen a huge leap in the rate of Juvenile crimes committed by older juveniles in the age group of 16-18 years in India. In recent times, these juveniles were found to be involved in most heinous of the crimes such as murder and gang rape. It's a disturbing trend and society as a whole is anguished by such criminal acts by children. Sexual offences forms the bulk of Juvenile crimes in recent years. In order to tackle it, the new JJCP ACT, 2015 provides that juveniles in the age group of 16-18 years, committing a heinous offence may be tried as adults in certain cases, irrespective of date of apprehension. Also, a juvenile between 16-18 years of age who has committed a serious offence and apprehended after the age of 21 years, may be tried as an adult. The main cause of Juvenile crime are poverty, illiteracy, Hunger, malnutrition, unemployed parents, Drug abuse, anti-social peer pressure, easy availability of fire arms, broken families, lavish lifestyles, too much freedom from the parents. The researcher's tries to find out whether there is increase in the heinous crime rate among older juveniles in the age agoup of 16 to 18 years of age in India as well as in Odisha.*

Key words: *Juveniles, older juveniles, Crime, children, Sexual offences,*

Introduction

There has been recent spurt in the crimes by juveniles in India. Juvenile Crime is an enormous problem in India as well as in Odisha, by which most of the youth ruin their lives and career. Not only does the problem affect the victims of the crime but it also affects the juvenile delinquent's family, their future, and the society as a whole. The last decade has seen a huge leap in the rate of Juvenile crimes committed by older juveniles in the age group of 16-18 years in India. From 531 murders in 2002, the figure had gone up to 1, 007 in 2013, for rape and assault with intent to outrage the modesty of women, the figures have gone up from 485 and 522 to 1, 884 and 1, 424 respectively during the same

period¹. In recent times, these juveniles were found to be involved in most heinous of the crimes such as murder and gang rape. Majority of juveniles in conflict with law apprehended under IPC crimes were in the age group of 16 yrs. – below 18 years constitute (71.6%) (27,986 out of 39,074) during 2015². It's a disturbing trend and society as a whole is anguished by such criminal acts by children. Juvenile crime is like a disease in our society. Sexual offences forms the bulk of Juvenile crimes in recent years. As per NCRB,2015 Report, the highest share of cases registered against juveniles was reported for crime under "Protection of Children from sexual Offence Act,2012", which accounted for 22.6 % of total SSL cases(2,037 cases)



registered against juveniles . The Majority of cases registered under juveniles were registered under theft (19.3%) followed by Criminal Trespass/Burglary (8.3%), Rape (5.4%) and kidnapping & abduction (5.2%). It's a good News for our country that as per NCRB,2015 data, the number of cases registered against juveniles under both IPC and SLL has decreased by 6.4% (from 33,526 in 2014 to 31,396 cases in 2015) and 59.6% (from 5,039 cases in 2014 to 2,037 cases in 2015) during the year 2015 over 2014 respective. In the State of Odisha, the total number of juveniles apprehended under various crime heads of IPC and SLL crimes during the year 2015 is 1206, among which, 29 apprehended for Murder, 35 for attempt to Murder, 105 for Rape and 6 for Gang Rape. The main cause of Juvenile crime are poverty, illiteracy, malnutrition, unemployed parents ,Drug abuse, anti-social peer pressure, easy availability of fire arms, broken families, lavish lifestyles, too much freedom from the parents etc. Out of 41,385 juveniles apprehended during 2015, 4,757 juveniles were illiterate, 14,229 juveniles had education up to primary level and 19,056 juveniles have above primary but below matric/HSC level education during 2015 accounting for 11.5%, 34.4% and 46.0% of total juveniles apprehended respectively.³

The December 16, 2012 gang rape in Delhi triggered major changes in criminal laws in India including the need to replace and revamp our Juvenile Justice System as the master mind of the Nirbhaya rape case was a juvenile who was just falling short of 18 years of age. Numerous changes were proposed in the Juvenile Justice (Care and Protection of Children) Act, 2000 to address issues relating to implementation of juvenile

justice and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive the Juvenile Justice (Care and Protection) of Children Act, 2015 to address major issues of juvenile justice. The Act was given Presidential assent on 31st December 2015 and replaced the Juvenile Justice Act, 2000. It is an act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, under the act and for matters connected therewith or incidental thereto.

Legal Definition of Juvenile & Child.

Section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines the following terms:

Sub Section (35) "**juvenile**" means a child below the age of eighteen years;

Sub Section (12) "**child**" means a person who has not completed eighteen years of age;

Sub Section (13) "**child in conflict with law**" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

Juvenile Crime Pattern and Statistics in India



The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years is increasing in an exorbitantly high rate, especially in certain categories of heinous offences. Majority of juveniles in conflict with law apprehended under IPC crimes were in the age group of 16 yrs. – below 18 years constitute (71.6%) (27,986 out of 39,074) during 2015. Sexual offences forms the bulk of Juvenile crimes in recent years. As per NCRB,2015 Report, the highest share of cases registered against juveniles was reported for crime under “Protection of Children from sexual Offence Act,2012”,which accounted for 22.6 % of total SSL cases(2,037 cases) registered against juveniles . The last decade has seen a huge leap in the rate of Juvenile crimes committed by older juveniles in the age group of 16-18 years in India. From 531 murders in 2002, the figure had gone up to 1, 007 in 2013, for rape and assault with intent to outrage the modesty of women, the figures have gone up from 485 and 522 to 1, 884 and 1, 424 respectively during the same period⁴

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Out of 41,385 juveniles apprehended during 2015, 38,877 juveniles apprehended for the first time and 2,508

juveniles were recidivists, i.e. repeat offenders.

Out of 41,385 juveniles apprehended during 2015, 4,757 juveniles were illiterate, 14,229 juveniles had education up to primary level and 19,056 juveniles have above primary but below matric/HSC level education during 2015 accounting for 11.5%, 34.4% and 46.0% of total juveniles apprehended respectively

It is pivotal to note that the cases of juveniles in conflict with law to total cognizable crime increased slight from 1.0% in 2005 to 1.1 % in 2015.It has decreased from 1.2 % in 2013 & 2014 to 1.1 % in 2015⁵.

Odisha Statistics

As per Crime in India, 2015, Report by National Crime Records Bureau, total number of juveniles apprehended in the state of Odisha under various crime heads of IPC & SLL crimes during 2015 is 1206, which is 11.35 % higher than total number of juveniles apprehended in 2014, which was 1083. In 2015,total number of juveniles apprehended were 1206, out of which 29 juveniles were apprehended under Murder,35 under attempt to Murder,105 under Rape and 6 under Gang Rape,9 under Dacoity,49 under Robbery which constitutes 3.72%, 3.80%, 6.73%, 7.22%, 5.05% and 5.54% respectively of crime by juveniles of Odisha under the same head in India in 2015.It is also important to mention here that out of the total juveniles apprehended in the state of Odisha,205 were illiterate,456 juveniles completed primary education,343 juveniles were above primary but below matric level and 91 passed Matric/Higher Secondary or above.



Causes of Juvenile Crime:

A child is born with innocence and if nurtured with tender care and attention, then they grow in positive way. Physical, mental, moral and spiritual development of the children makes capable of realizing their fullest potential. On the opposite side, harmful surroundings, negligence of basic needs, wrong company and other abuses may turn a child to a delinquent i.e. a juvenile delinquent. 'A child is an uncut diamond' it depends on the society how to shape an uncut diamond. Children constitute about 40% of India's population and India has a National Policy for Children declaring children to be a national asset. Even though, majority of India's children continue to be in difficult circumstances. There are many and multifarious causes of Juvenile Crime and some of them in nut shell are:

- Urbanization
- Family and environment
- Lack of discipline
- Broken Homes/Families
- Criminalization of families
- Movies and media
- Adolescent Instability
- Gang subculture
- Hunger, poverty, malnutrition and unemployment
- Lack of recreation
- Uncongenial homes
- Illiteracy
- Unemployed Parents
- Drug Abuse
- Anti-Social peer pressure

- Easy availability of fire Arms
- Lavish life styles
- Too much freedom from parents

Judicial approach to Juveniles:

The **constitutionality of the JJ Act 2000**, in so far as it allows all children in conflict with the law to be dealt with under the beneficial juvenile justice system irrespective of the gravity of the offence has been **upheld by the Hon'ble Supreme Court** in *Salil Bali v. Union of India*⁶ and *Dr. Subramanian Swamy v. Raju*⁷. In *Salil Bali*, the Supreme Court emphasized that, "the essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society."

It was observed by Honourable Supreme Court in *Salil Bali v. Union of India*⁸ - "that the apathy of the administration towards juveniles and the manner in which they are treated would be evident from the fact that by falsifying the age of juveniles, they were treated as adults and sent to jails, instead of being produced before the Juvenile Justice Board or even before the Child Welfare Committees to be dealt with in a manner provided by the JJCPA, 2000, for the treatment of juveniles".

It was also observed by Honourable Supreme Court in *Salil Bali v. Union of India*⁹ that Having regard to the serious nature of the issues



raised before the Supreme Court, Court had given serious thought to the submissions advanced and had also considered the relevant extracts from the Report of Late Justice J.S. Verma Committee on "Amendments to the Criminal Law, 2013" and are convinced that the JJCPA, 2000, as amended in 2006, and the JJPC Rules, 2007, are based on sound principles recognized internationally and contained in the provisions of the Indian Constitution and there is a definite thought process, which went into its enactment.

Global Scenario on the issue of Age of Criminal Liability of Juveniles:

Scenario in Canada:

In regard to Canada, it was referred to **The Youth Criminal Justice Act (YCJA), 2003**¹⁰, as amended from time to time, where the age of criminal responsibility has been fixed at twelve years. Referring to Section 13 of the Criminal Code of Canada, it was submitted that the same is in **pari materia** with the provisions of Section 83 IPC. In fact, according to the Criminal Justice Delivery System in Canada, a youth between the ages of 14 to 17 years may be tried and sentenced as an adult in certain situations.

It was also pointed out that even in Canada the YCJA governs the application of criminal and correctional law to those who are twelve years old or older, but younger than 18 at the time of committing the offence, and that, although, trials were to take place in a Youth Court, for certain offences and in certain circumstances, a youth may be awarded an adult sentence.

Scenario in USA:

In USA, in several States, no set standards have been provided, reliance is placed on the common law age of seven in fixing the age of criminal responsibility, the lowest being six years in North Carolina as per juvenile justice and delinquency prevention Act 1974¹¹. The general practice in the United States of America, however, is that even for such children, the courts are entitled to impose life sentences in respect of certain types of offences, but such life sentences without parole were not permitted for those under the age of eighteen years convicted of murder or offences involving violent crimes and weapons violations.

Scenario in England and Wales:

In England and Wales, children accused of crimes are generally tried under the Children and Young Persons Act, 1933, as amended by Section 16(1) of the Children and Young Persons Act, 1963. Under the said laws, the minimum age of criminal responsibility in England and Wales is ten years and those below the said age are considered to be **doli incapax** and, thus, incapable of having any **mens rea**, which is similar to the provisions of Sections 82 and 83 IPC, 1860.

Law on Juvenile in India: Legal basis for fixing the Age of Criminal Liability of Juveniles :

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The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years is increasing in an exorbitantly high rate, especially in certain categories of heinous offences, i.e. offence for which the minimum punishment under Indian Penal Code or any other law for time being in force is imprisonment for seven years or more.

The Act allows children between 16 and 18 years alleged to have committed heinous offences to be tried and sentenced as adults after a preliminary assessment by Juvenile justice Board to ascertain the mental and physical capacity to commit such offence, ability to understand the consequences of the offence, and circumstances in which the juvenile committed the offence. While it does not expressly lower the age of a child in conflict with law from 18 to 16 years, the effect is the same as the Act provides that children above 16 years can be tried and treated as adults.

Conclusion & suggestions:

- The researchers found that the data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years is increasing in an exorbitantly high rate in India and Odisha also, especially in certain categories of heinous offences, So ,the

provisions of JJCP ACT,2015 is fully justified which allows children between 16 and 18 years alleged to have committed heinous offences to be tried and sentenced as adults, even if, it contravenes India's obligation to United Nations Conventions on the Right of the Child, to protect the broader interest of the society.

- Government should take steps to properly implement the provisions of JJCP ACT, 2015 & its Rules in its letter and spirit, to strike a balance between the broader interest of the society and the Child in conflict with law.
- Government should take immediate steps to root out the main causes of Juvenile crime like poverty, illiteracy, Hunger, malnutrition, unemployed parents, Drug abuse, anti-social peer pressure, easy availability of fire arms, broken families, lavish lifestyles, too much freedom from the parents etc.
- 'Preliminary assessment' by Juvenile Justice Board may not be fool proof as it lacks accuracy, capacity and expertise to evaluate the mental capacity of the child to commit an offence, which is a very complex procedure, in every district of Odisha and in every backward district in India, where there is an acute shortage of experienced and highly qualified doctors. The 'Preliminary assessment' should have been entrusted to an expert medical board constituted by a Government Medical College & Hospital for the said purpose.
- Sending Juveniles in the age group of 16 to 18 years of age, who commits a heinous offence, to adult criminal



justice system, based on the possible faulty and erroneous 'Preliminary assessment' by Juvenile Justice Board is not in the best interest of the Children and the wider community as a whole. Since every district is supposed to have a JJ Board and due to non-availability of experienced and highly qualified doctors in every remote district of Odisha and in India, effective and proper justice cannot given to these older Juveniles/Child in conflict with law, unless there is an amendment in the JJCPA ACT, 2015 to constitute an expert medical Board in every Government or private medical college & Hospital in every State to help JJ Boards in 'Preliminary assessment'.

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