

Inhuman sentencing of child offenders in India

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In India, the death penalty is prohibited for under 18s, although the legality of capital punishment for under 18s in Jammu and Kashmir is unclear. Corporal punishment may be imposed under traditional justice systems.

The death penalty

Article 16 of the Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006, states: “(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with the law shall be sentenced to death...” The prohibition applies to all persons convicted of a capital offence committed when under the age of 18.¹

The legality of capital punishment for under 18s in Jammu and Kashmir is unclear. Article 22 of the Juvenile Justice Act 1986, on which juvenile justice law in Jammu and Kashmir is based, states that “no delinquent juvenile shall be sentenced to death”. Since the Act defines a juvenile as a boy under 16 or a girl under 18 (see above), a boy aged 16 or 17 would be sentenced under the Ranbir Penal Code, which provides for capital punishment.²

The Government has stated that the Indian Penal Code prohibits the imposition of the death penalty on children, citing a document indexed as “No UI/151.4/5/2000 dated 12 December 2000, Minister of External Affairs”.³ This document could not be located, nor could it be ascertained whether the said prohibition would also apply under the Ranbir Penal Code.

Corporal punishment

Corporal punishment is not included as a permitted punishment for juveniles under the Juvenile Justice (Care and Protection of Children) Act,⁴ nor in Jammu and Kashmir under the the Juvenile Justice Act,⁵ or the Ranbir Penal Code.⁶ However, corporal punishment may be imposed under traditional justice systems, such as the Pipon system;⁷ and in the absence of explicit prohibition, this

¹ Articles 2 and 7A, as amended/inserted by the Juvenile Justice (Care and Protection of Children) Amendment Act 2006

² Article 53

³ 16 July 2003, CRC/C/93/Add.5, *Second state party report to the Committee on the Rights of the Child*, para. 1139

⁴ Article 15

⁵ Article 21

⁶ Article 53

⁷ <http://archives.chennaionline.com/columns/DownMemoryLane/2007/diary56.asp>, dated 31 May 2007, accessed 30

appears to be lawful.

Life imprisonment

Child offenders may not be sentenced to life imprisonment under federal law.⁸ In Jammu and Kashmir, article 22 of the Juvenile Justice Act 1986 states that “no delinquent juvenile shall be sentenced to ... imprisonment”. The definition of juvenile in the Act (see above), however, means that the prohibition does not apply to boys aged 16 or 17, who may be sentenced to imprisonment for life under the Ranbir Penal Code.⁹ The sentence may be commuted to imprisonment up to 14 years.¹⁰

Article 22 of the 1986 Act also provides for sentencing a juvenile from the age of 14, in certain circumstances. It states that the period of detention “shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed”, but does not prohibit imprisonment for life.

Moves towards reform

In February 2010, the State Government of Jammu and Kashmir was requested to amend the Jammu and Kashmir Juvenile Justice Act and Rules to bring them into line with the Juvenile Justice (Care and Protection of Children) Act.¹¹

As at July 2010, a Prevention of Offences Against the Child Bill (2009) was under discussion. It would raise the minimum age of criminal responsibility to 12, define a child as under 18 and extend to the whole of India, including Jammu and Kashmir.¹²

Recommendations by international treaty monitoring bodies

The Committee on the Rights of the Child issued its Concluding Observations in respect of India's second periodic report in February 2004. It expressed concern that the mechanisms to enforce the Juvenile Justice (Care and Protection of Children) had not been set up in most states and that the Act does not apply to the State of Jammu and Kashmir. It asked the State to take all necessary steps to establish, as a measure of urgency, the executing state mechanisms necessary for the full implementation of the Act.

India was examined under the Universal Periodic Review process in 2008. The issue of inhuman sentencing was not raised.¹³

The Review of India by the Human Rights Council

In light of the clear international human rights consensus against the imposition of capital punishment, life imprisonment and corporal punishment on child offenders, the specific recommendations to India made by the Committee on the Rights of the Child, and the current uncertainty about legality of capital punishment for under 18s in Jammu and Kashmir, we hope that

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⁸ Article 16 of the Juvenile Justice (Care and Protection of Children) Act as amended

⁹ Article 53

¹⁰ Articles 53 and 55

¹¹ Ministry of Women and Child Development (2009), *Agenda No. 4 Status of Implementation of ICPS*, para. 7.3, http://wcd.nic.in/agenda16062010/agenda_16062010_item4.pdf, accessed 6-9-10

¹² Articles 1, 2 and 16

¹³ A/HRC/8/26, 23 May 2008, *Report of the Working Group on the Universal Periodic Review: India*

members of the Human Rights Council will make the following recommendations to the Government of India during its Universal Periodic Review:

1. In Jammu and Kashmir, legislation should be enacted to explicitly prohibit capital punishment and life imprisonment for child offenders, defined as persons convicted of an offence committed when under the age of 18.
2. Throughout India, the law should be amended to clarify that child offenders may not be sentenced to corporal punishment under traditional justice systems.