

Inhuman sentencing of children in India

Briefing for the 27th session of the Human Rights Council Universal Periodic Review in April 2017, submitted by the Child Rights International Network (www.crin.org), September 2016.

Inhuman sentencing of children in India

1. On 31 December 2015, India enacted the Juvenile Justice (Care and Protection of Children) Act 2015, which substantially reformed the law on criminal sentencing of children and reintroduced life imprisonment as a possible sentence across all states and union territories with the exception of Jammu and Kashmir.¹

2. Under the Act, a child is defined as any person under the age of 18 years and a child in conflict with the law as any child who is alleged or found to have committed an offence and who had not completed 18 years at the time of committing the offence.² However, children aged 16 or older may be tried and sentenced as adults for “heinous offences”.³ A heinous offence is defined as an offence for which the minimum penalty is seven years’ imprisonment or more.

3. Generally, in India no one can be held criminally responsible for an act committed while under the age of seven⁴ and no person can be held criminally responsible for an act committed while under the age of 12 while of “immature understanding”. A child is considered to have “immature understanding” when he or she “has not attained sufficient maturity of understanding to judge the nature and consequences of his [or her] conduct on that occasion.”⁵ In Jammu and Kashmir, the minimum age of criminal responsibility is set at seven.⁶

The legality of inhuman sentencing of children

Life imprisonment

4. The Juvenile Justice (Care and Protection of Children) Act 2015 has effectively reintroduced life imprisonment as a possible sentence for children who commit serious offences while they are aged 16 or older. Children aged 16 or older may be tried and sentenced as adults for “heinous offences”.⁷ A heinous offence is defined as an offence for which the minimum penalty is seven years’ imprisonment or more. While the Act specifically prohibits sentencing anyone to life imprisonment without the possibility of parole for an

¹ The Act repealed and replaced the Juvenile Justice (Care and Protection of Children) Act 2000. See Juvenile Justice (Care and Protection of Children) Act 2015, Section 111(1). Available at:

<http://www.prsindia.org/uploads/media/Juvenile%20Justice/Juvenile%20Justice%20Act,%202015.pdf>

² Juvenile Justice (Care and Protection of Children) Act 2015, Section 2(12) and (13).

³ Juvenile Justice (Care and Protection of Children) Act 2015, Sections 15 and 19(1).

⁴ Indian Penal Code 1860, Section 82. Available at:

<http://www.advocatekhaj.com/library/bareacts/indianpenalcode/index.php?Title=Indian%20Penal%20Code,%201860>.

⁵ Indian Penal Code 1860, Section 83.

⁶ Indian Penal Code, Section 82.

⁷ Juvenile Justice (Care and Protection of Children) Act 2015, Sections 15 and 19(1).

offence committed while under the age of 18,⁸ other forms of life imprisonment are lawful under the Penal Code and can be imposed under these provisions.⁹

5. A person serving life imprisonment for an offence for which the death penalty is a lawful penalty or who has benefited from a commutation of a death sentence may not be released from prison unless he or she has served at least 14 years' imprisonment.¹⁰ For life sentences which do not fall within this category, release may be ordered at an earlier date.¹¹ Under the Juvenile Justice (Care and Protection of Children) Act 2015, where a person is sentenced to detention for an offence committed while under the age of 18 and is still detained at the age of 21, the Children's Court must determine whether the child has "undergone reformatory changes and if [he or she] can be a contributing member of society". Where the Children's Court decides that this requirement is met, it can decide to release the child subject to conditions or order the rest of the sentence be served.¹²

6. In Jammu and Kashmir, no person who was under the age of 18 at the time of an offence may be sentenced to imprisonment "for any term which may extend to imprisonment for life".

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Inhuman sentencing in practice

The first prosecution of a child offender as an adult under the Juvenile Justice (Care and Protection of Children) Act 2015 was filed in June 2016 in relation to an alleged hit and run that resulted in the death of a man¹⁴ and in August 2016 the Juvenile Justice Board decided that a boy accused of rape would face trial as an adult.¹⁵ It is not yet clear what sentencing practices the courts will adopt under these provisions.

The review of India by the Human Rights Council

In light of the clear international human rights consensus against the imposition of life imprisonment for offences committed by children¹⁶ and the recognition by the Special Rapporteur on torture that this sentence amounts to cruel, inhuman or degrading treatment

⁸ Juvenile Justice (Care and Protection of Children) Act 2015, Section 21.

⁹ Indian Penal Code, Section 53(1).

¹⁰ Criminal Procedure Code, Section 433A. Available at:

¹¹ Criminal Procedure Code, Section 432.

¹² Juvenile Justice (Care and Protection of Children) Act 2015, Section 20.

¹³ Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act 2013, Section 17(1).

¹⁴ NDTV, "Accused be tried as adult, says juvenile board in Mercedes hit-and-run" 6 June 2016.

Available at:

<http://www.ndtv.com/delhi-news/accused-be-tried-as-adult-says-juvenile-board-in-mercedes-hit-and-run-1415813>.

¹⁵ The Hindu, "In a first, juvenile to be tried as adult in gang-rape case" 18 August 2016. Available at: <http://www.thehindu.com/news/national/in-a-first-juvenile-to-be-tried-as-adult-in-gangrape-case/article8999718.ece>.

¹⁶ Human Rights Council Resolutions A/HRC/24/L.28, para. 22 and A/HRC/25/L.10, para. 8(g). Report of the Secretary-General on the question of the death penalty, A/HRC/C/27/23, 30 June 2014, para. 74. General Assembly Resolution, A/RES/67/166, 20 March 2013, para. 18.

when imposed on children¹⁷ as well as the international consensus against the trial and sentencing of children as adults¹⁸ we urge States to recommend that India:

- Explicitly prohibit life imprisonment for any offence committed while under the age of 18;
- Amend the Juvenile Justice (Care and Protection of Children) Act 2015 to ensure that no one is tried or sentenced as an adult for an offence committed while a child;
- Raise the minimum age of criminal responsibility.

¹⁷*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/28/68, 5 March 2015, para. 74.

¹⁸ See Committee on the Rights of the Child, *General Comment No. 10, children's rights in juvenile justice*, CRC/C/GC/10, 25 April 2007, para. 38.