Inhuman sentencing of children in Bangladesh


The Children's Act 2013 has substantially amended much of the relevant legislation on the criminal sentencing of children. This report has been amended based on commentary on that Act, but we have not yet been able to obtain a full translation of the Act to confirm the relevant provisions.

This report will be further updated when we are able to confirm the relevant provisions.

Introduction

Child offenders may be lawfully sentenced to corporal punishment. Since the Children Act 2013 came into force, the death penalty and life imprisonment for children have been explicitly prohibited.

The main laws governing juvenile justice are the Children Act 2013, the Children Rules 1976, the Code of Criminal Procedure 1898, the Penal Code 1860, the Special Powers Act 1974 and the Whipping Act 1909.

The minimum age of criminal responsibility is 9. The Children Act defines a child as anyone up to the age of 18 years. The Act also provides for the creation of “Children's Courts” in every district headquarters and every metropolitan area empowered with exclusive jurisdiction over the case of a child in conflict with the law.

Legality of inhuman sentencing

Death penalty

The Children's Act 2013 explicitly prohibits the death penalty for children.

Before the Children's Act 2013 came into force, the death penalty was prohibited for children under 16 convicted of a capital offence. Section 51 of the Children Act 1974 stated: “(1) Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment....” There was no prohibition of the death penalty for young persons aged 16 and over or for adults convicted of capital offences committed when they were children.

Children aged 16 and 17 were not subject to the provisions in the Children Act 1974 but were punished according to the Penal Code and other legislation. The Penal Code provides for the death penalty, which may be commuted to any other sentence provided by the Code. Capital offences

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2 Children Act 2013, Section 4
3 Children Act 2013, Section 16
4 Children Act 2013, Section 17
5 Children’s Act s. 33(1)
6 The age is that at the time of the commencement of the trial, not the age of commission of the alleged offence (Justice M Imman Ali (2010), Towards a Justice Delivery System for Children in Bangladesh: A Guide and Case Law on Children in Conflict with the Law, Dhaka: UNICEF Bangladesh)
7 Sections 53 and 54; see also Code of Criminal Procedure, section 402
include those relating to war, mutiny, murder, abetting suicide, causing grievous hurt, kidnapping and banditry. Execution is by hanging.

The Special Powers Act states that it overrides all other laws, although this has been challenged in the courts, with the judgment in *Roushan Mondal alias Hashem v The State* stating that where an offender is a child (under 16), he must be tried under the provisions of the Children Act. The Special Powers Act provides for the death penalty for offences relating to sabotage, dealing in the black market, counterfeit, smuggling and contamination of food, drink, drugs or cosmetics. Execution is by hanging or shooting. The Act applies to all persons, including under 16s.

**Corporal punishment**

Criminal law allows for males to be sentenced to whipping. Under the Code of Criminal Procedure, boys under the age of 16 may be whipped “with a light rattan not less than half an inch in diameter” up to 15 “stripes”, older males up to 30 stripes. Whipping must not be inflicted in instalments and may not be inflicted on females or on males sentenced to death or more than five years imprisonment. Whipping can be ordered in addition to imprisonment only if the term of imprisonment exceeds three months. The whipping must not be carried out until at least 15 days after sentencing and must be inflicted in the presence of the officer in charge of the jail or of the Judge or Magistrate. The person to be whipped must be considered fit to receive the punishment by a medical officer, the Magistrate or the officer present.

The Penal Code does not provide for whipping as a sentence, but under the Whipping Act whipping may be given in lieu of or in addition to the punishments specified in the Penal Code for specific offences committed by persons over 16. The Act provides for juvenile offenders (under 16) to be whipped in lieu of other punishments for a wide range of crimes under the Penal Code and other laws. Whipping is a sentence for offences under the Cantonments Pure Food Act 1966, the Suppression of Immoral Traffic Act 1933 and, for boys under the age of 12, the Railways Act 1890. It is also a common form of punishment ordered by traditional village mediation councils (*shalish*).

The Constitution protects persons who have been arrested or detained from torture, cruel, degrading and inhuman treatment but states that this provision “shall not affect the operation of any existing law which prescribes any punishment or procedure for trial”. The Children Act does not refer to corporal punishment.

CRIN has been unable to confirm whether provisions on corporal punishment have been affected by the Children Act 2013. This section will be updated if we become aware of any further amendments.

**Life imprisonment**

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8 Sections 121, 132, 302, 303, 305, 307, 326A, 364A and 396
9 Code of Criminal Procedure, section 368
10 Article 34B
11 59 DLR 72
13 Article 34A
14 Section 392
15 Section 393
16 Section 391
17 Section 391
18 Section 394
19 Sections 3 and 4
20 Section 5
21 Section 23
22 Sections 9, 10 and 12
23 Section 130
24 Article 35
The Children Act 2013 explicitly prohibits life imprisonment for children.\textsuperscript{25}

Before the Children Act 2013 came into force, the Children Act 1972 prohibited imprisonment for children under 16. Section 51 stated: “(1) Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment....” However, the Act allowed imprisonment of such children in certain cases “when a child is found to have committed an offence of so serious a nature that the Court is of the opinion that no punishment, which under the provisions of this Act it is authorised to inflict, is sufficient or when the Court is satisfied that the child is of so unruly or of so depraved character that he cannot be committed to a certified institute and that none of the other methods in which the case may legally be dealt with is suitable”. The section stated that the period of detention must not “exceed the maximum period of punishment to which the child could have been sentenced for the offence committed”. This was interpreted as prohibiting life imprisonment.\textsuperscript{26}

As already noted, children aged 16 and 17 were not tried under the Children Act 1972. The Penal Code provides for life imprisonment, which is always with hard labour.\textsuperscript{27} It may be commuted to a sentence of imprisonment not exceeding 20 years, with or without hard labour.\textsuperscript{28} A wide range of offences are punishable by imprisonment for life under the Penal Code.

It is possible that prior to the Children Act 2013, children younger than 16 may have been lawfully sentenced to life imprisonment under the Special Powers Act, which overrode all laws inconsistent with it (but see \textit{Roushan Mondal}, as noted above).\textsuperscript{29} As amended by the Special Powers (Amendment) Act 1987, it punishes a number of crimes with imprisonment for life, including sabotage, dealing in the black market, counterfeit, smuggling and contamination of food, drink, drugs or cosmetics.\textsuperscript{30}

\textbf{Inhuman sentencing in practice}

We have no statistical information relating to sentencing of children to death or corporal punishment, though it appears that death sentences awarded to young offenders are normally commuted to imprisonment for life.\textsuperscript{31}

During the years 2004 to 2008, 31 executions were carried out\textsuperscript{32} and Amnesty International and Hands Off Cain agreed that 17 executions were carried out between 2009 and 2011.\textsuperscript{33} We were unable to ascertain whether these included child offenders. In 1990, a 12 year-old boy convicted of murder was sentenced to imprisonment for 33 years.\textsuperscript{34} The Government report to the Committee on the Rights of the Child in 2007 stated that life imprisonment and capital punishment are “rarely” imposed on children under 18.\textsuperscript{35} In January 2000, there were four children under 15 serving life

\textsuperscript{25}Children Act 2013, Section 33(1)
\textsuperscript{26}Bangladesh Legal Aid and Services Trust and another v Bangladesh and others, 22 BLD (HCD) (2002) 206
\textsuperscript{27}Section 53
\textsuperscript{28}Section 55
\textsuperscript{29}Section 34B
\textsuperscript{30}Sections 15, 25, 25A, 25B, 25C
\textsuperscript{32}E/2010/10, 18 December 2009, \textit{Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty}, Table 2 (cf Table 3, which indicates that 29 executions were carried out)
\textsuperscript{34}Sattar, N. and Balagopal, G. (undated), \textit{Traditional Means of Dealing with Children in Conflict with the Law with Specific Reference to Bangladesh: Bringing Juvenile Justice into Focus}, UNICEF Case Study
sentences in Tongi Child Development Centre, and in August 2007 there was one child under 15 serving a life sentence in Jessore Child Development Centre.\textsuperscript{36} CRIN has as yet been unable to obtain figures on the number of children serving life imprisonment since the Children Act 2013 came into force.

**Progress towards prohibition and elimination**

**Law reform needed**

Corporal punishment should be explicitly prohibited for child offenders, defined as persons under 18 at the time of the offence. Provisions specifically authorising corporal punishment for children should be repealed, including those in the Code of Criminal Procedure, the Whipping Act and the Railways Act. The Special Powers Act should be made inapplicable to persons under 18.

**Law reforms under way**

The Children Act 2013 introduced extensive reforms to the juvenile justice system in Bangladesh, including prohibiting life imprisonment and the death penalty.

At a meeting of the South Asia Forum in July 2006, following on from the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the Government made a commitment to prohibition of corporal punishment in all settings.

Prior to the amendments introduced by the Children Act 2013, there had been a number of High Court rulings related to juvenile justice. In 1995 a child under 16 was sentenced to imprisonment for life. The sentence was overturned by the High Court.\textsuperscript{37} In 2003 the High Court issued *Suo Moto* Order No. 248, addressing the situation of children in jail.\textsuperscript{38} A High Court judgment in 2006 (*Roushan Mondal*, as cited above) considered the international human rights standards for juvenile justice and stated: “... as a signatory to the Convention [on the Rights of the Child], Bangladesh is duty bound to reflect Article 40 as well as other articles in CRC in our national laws. We are of the view that the time is ripe for our legislature to enact laws in conformity with the UNCRC.”\textsuperscript{39} In another case, the High Court set aside the death penalty for a 15 year old boy, provided guidelines for law reform regarding juvenile justice, and asked the Ministry of Law, Justice and Parliamentary Affairs to draft legislation in line with the judgment.\textsuperscript{40} In 2007, the High Court issued a *Rule Nisi* upon the relevant authorities to say why imprisonment of children in jails should not be declared illegal.\textsuperscript{41}

**National campaigns**

CRIN has been lobbying internationally to raise the issue of inhuman sentencing on the international agenda. We have met with UN experts working on judicial sentencing (including relevant Special Procedures) and participated in expert meetings on juvenile justice and to influence UN reports and resolutions.

You can read CRIN’s submissions to treaty bodies and the UPR through the homepage of our inhuman sentencing campaign ([http://www.crin.org/violence/campaigns/sentencing/](http://www.crin.org/violence/campaigns/sentencing/)).

**National and international law conflicting with inhuman sentencing**

\textsuperscript{36} ibid.

\textsuperscript{37} Bangladesh Legal Aid and Services Trust and another v Bangladesh and others, 22 BLD (HCD) (2002) 206

\textsuperscript{38} See also Bangladesh Legal Aid and Services Trust v Bangladesh and others, 57 DLR (2005) 11; Khan, B.U. and Rahman, M.M. (2008), *Protection of Children in Conflict with the Law in Bangladesh*, Dhaka: Save the Children UK, p. 21

\textsuperscript{39} Quoted in Ministry of Women and Children Affairs (2007), *op cit.*, p.61 (no citation given). Citation provided by Justice M Imman Ali, Supreme Court of Bangladesh, in correspondence with CRIN, 23 December 2010

\textsuperscript{40} Reported in Ministry of Women and Children Affairs (2007), *op cit.*, pp. 63-64 (no citation given)

\textsuperscript{41} Ministry of Women and Children Affairs (2007), *op cit.*, p.15
The Constitution

A number of provisions in the Constitution (1971) potentially protect children from inhuman sentencing, but there are also clauses which would seem to allow it.

Article 32 (Protection of right to life and personal liberty):

“No person shall be deprived of life or personal liberty save in accordance with law.”

Article 35 (Protection in respect of trial and punishment):

“(5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.
(6) Nothing in clause ... (5) shall affect the operation of any existing law which prescribes any punishment or procedure for trial.”

Article 47 (Saving for certain laws):

“(3) Notwithstanding anything contained in this Constitution, no law or any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful, on the ground that such law or provision of any such law is inconsistent with, or repugnant to, any of the provisions of this Constitution.”

Article 47A (Inapplicability of certain articles):

“(1) The rights guaranteed under ... article 35 ... shall not apply to any person to whom a law specified in clause (3) of article 47 applies....”

International human rights treaties

Bangladesh has ratified or acceded to the following international treaties:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in 1998)
- Convention on the Elimination of All Forms of Discrimination against Women (in 1984) Reservation/Declaration: “The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of article 2, [... and ...] 16 (1) (c) as they conflict with Sharia law based on Holy Quran and Sunna.”
- Convention on the Rights of the Child (in 1990)
- Convention on the Rights of Persons with Disabilities (in 2007)
- International Covenant on Civil and Political Rights (in 2000)
- International Convention on the Elimination of All Forms of Racial Discrimination (in 1979)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (2011)
- International Covenant on Economic, Social and Cultural Rights (in 1998) Reservation/Declaration: “… Articles 10 and 13: While the Government of the People's Republic of Bangladesh accepts the provisions embodied in articles 10 and 13 of the Covenant in principle, it will implement the said provisions in a progressive manner, in keeping with the existing economic conditions and the development plans of the country.”

Bangladesh has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

Bangladesh has ratified or acceded to the following complaints/communications mechanisms:

• Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
  Declaration: “The Government of the People’s Republic of Bangladesh declares in accordance with Article 10(1) thereof, that it would not undertake the obligations arising out of Articles 8 and 9 of the said Optional Protocol.” [inquiry procedure]

• Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Status of treaties:

Constitution article 145A (International treaties):

“All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament....”

Recommendations from human rights treaty monitoring bodies

Committee on the Rights of the Child (2009)

(26 June 2009, CRC/C/BGD/CO/4, Concluding observations on third/fourth report, paras. 46, 47, 92 and 93)

“The Committee reiterates its concern regarding capital punishment for children and its retroactive application for persons who had committed offenses when they were children between the ages of 16 to 18 years old which contradicts article 37 (a) of the Convention.

“The Committee recommends that the State party take immediate steps to halt the imposition of death penalty for crimes committed by persons under 18 and abolish the death penalty.

“The Committee appreciates the efforts of the State party to address the previous concluding observations, including the removal of some children from adult jails, the establishment of juvenile development centres and the increased training for judges, magistrates and law enforcement officers concerned with juvenile justice. However, the Committee expresses great concern over information indicating that children younger than 15 years old had been condemned to life sentences and children younger than 18 years old to the death penalty. The Committee also notes with concern that the legal age of criminal responsibility has been raised to only 9 years old....

“The Committee reiterates its previous recommendation that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee’s General Comment No. 10 (2007) on the rights of the child in juvenile justice. In this regard, the Committee recommends that the State party inter alia:

a) ensure with immediate effect that neither the death penalty nor life sentence are imposed for offenses committed by persons under 18 years of age;
b) raise the minimum age of criminal responsibility to at least 12 with a view to raising it further as recommended in the Committee’s general comment No. 10 (2007) on the rights of the child in juvenile justice. 

**Committee on the Rights of the Child 2(2003)**

(27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 33, 34, 41, 42, 77 and 78)

“Despite the information that the death penalty has never been carried out against juvenile offenders in the State party, the Committee remains seriously concerned that capital punishment may be imposed for offences committed by persons from the age of 16 years and over, contrary to article 37 (a) of the Convention.

“The Committee strongly recommends that the State party take immediate steps to ensure that the imposition of the death penalty for crimes committed by persons while under 18 is explicitly prohibited by law.

“While taking note of the efforts by the State party to raise public awareness of the ill-treatment of children, the Committee is concerned at reports of ill-treatment and violence against children in State institutions such as orphanages and rehabilitation centres, including by law enforcement agents, as well as at the solitary confinement of juvenile and child prisoners. The Committee is also concerned at reports of violence against street children. Furthermore, the Committee expresses its deep concern at the reported inhuman and degrading punishment carried out by order of traditional village councils (“shalishes”) as well as at the increasing incidents of acid attacks on women and girls.

“The Committee strongly recommends that the State party:

a) review its legislation (inter alia, Code of Criminal Procedure, 1898) with the aim of prohibiting the use of all forms of physical and mental violence, also within educational and other institutions;

b) conduct a study to assess the nature and extent of torture, ill-treatment, neglect and abuse of children, to assess the inhuman and degrading treatment of children attributable to “shalishes”, and effectively to implement policies and programmes as well as to amend and adopt laws to address these issues....

“The Committee acknowledges the efforts made by the State party to improve the juvenile justice system. However, the Committee remains concerned at the limited progress achieved in establishing a functioning juvenile justice system throughout the country. In particular, the Committee is concerned at:

a) the minimum age of criminal responsibility (7 years), which remains far too low;

b) the sentencing to life imprisonment of children from the age of 7 years and to the death penalty of children from the age of 16 years; ...

e) the use of caning and whipping as a sentence for juvenile offenders....

“The Committee recommends that the State party ensure the full implementation of juvenile justice standards, in particular articles 37, 39 and 40 of the Convention, and other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, the Vienna Guidelines for Action on Children in the Criminal Justice System, in the light of the Committee’s day of general discussion on the administration of juvenile justice, held in 1995. In particular, the Committee recommends that the State party:
a) raise the minimum age of criminal responsibility to an internationally acceptable level;

b) ensure that the imposition of the death penalty, of life imprisonment without possibility of release, and of caning and whipping as sanctions for crimes committed by persons while under 18 is explicitly prohibited by law....”

Committee on the Rights of the Child (1997)

(18 June 1997, CRC/C/15/Add.74, Concluding observations on initial report, paras. 12, 26 and 46)

“The Committee is concerned about the unclear status of the Convention in the domestic legal framework and the insufficient steps taken to bring existing legislation into full conformity with the Convention, including in light of the general principles of non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival and development (art. 6) and respect for the views of the child (art. 12). It is deeply concerned at the lack of conformity between existing legislative provisions and the Convention with respect to the various age limits set by law, the lack of a definition of the child, the age of criminal responsibility, which is set at too young an age, the possibility of imposing the death penalty, and/or imprisonment of children 16-18 in ordinary prisons. The Committee also notes that, as recognized in the State party’s supplementary report, many laws are inadequately enforced and that most children’s lives are governed by family customs and religious law rather than by State law.

“The situation in relation to the administration of juvenile justice, and its incompatibility with articles 37, 39 and 40 of the Convention and other relevant international standards, is a matter of concern to the Committee. Specifically, the Committee is concerned about the very young age of criminal responsibility (7 years), the lack of adequate protection for children aged 16-18, grounds for arrest and detention of children that can include prostitution, "vagrancy" or "uncontrollable behaviour", the possibility of imposing heavy sentences on children and the solitary confinement and ill treatment of children by the police.

“With regard to the administration of juvenile justice, the Committee recommends that legal reform be pursued in connection with the very young age of criminal responsibility (7 years), the lack of adequate protection for children aged 16-18, grounds for arrest and detention of children that can include prostitution, "vagrancy" or "uncontrollable behaviour", the possibility of imposing heavy sentences on children, and the solitary confinement and ill-treatment of children by the police. In this reform the State party should take fully into account the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The Committee also recommends that the State party avail itself of the technical assistance programmes of the High Commissioner/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the Secretariat.”

Universal Periodic Review

Bangladesh was examined under the Universal Periodic Review process in 2009. A recommendation was made to prohibit all corporal punishment of children.\(^42\) The Government accepted the recommendation.\(^43\) Recommendations were also made to abolish the death penalty.\(^44\) The Government rejected these recommendations.\(^45\)

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\(^{44}\) A/HRC/11/18, 5 October 2009, op cit., para. 94(19)

\(^{45}\) A/HRC/11/18/Add.1, 9 June 2009, op cit., page 4