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India should reject regressive move to treat alleged child offenders as adults

The Indian government must reject proposed amendments to juvenile justice laws that could allow children to be treated as adults in cases of serious crimes, Amnesty International India said today.

“Children suspected of crimes should be treated under juvenile justice rules, and those found guilty should be held accountable in a way that reflects their special capacity for reform”, said Tara Rao, Director, Amnesty International India.

“The law as it exists today recognizes this need. But the proposed reforms, if passed, will set back India’s commitment to protect children’s rights and breach its international obligations.”

Under the amendments reportedly proposed by the Women and Child Development Ministry, children aged between 16 and 18 who are accused of serious crimes like murder and rape can be detained and prosecuted as adults under criminal law - based on an assessment of factors including their ‘maturity’ - and punished as adults if convicted.

The Ministry has reportedly said that convicted child offenders would not receive the death penalty or imprisonment for life, in line with India’s obligations under the UN Convention on the Rights of the Child (CRC).

The proposed amendments have not yet been made public. They have reportedly been sent to other government ministries for consultation.

“India’s obligations under the CRC are not limited to refraining from giving child offenders the death penalty or life imprisonment,” said Tara Rao. “Any amendment that in effect lowers the age at which juvenile justice rules apply to below 18 would violate India’s obligations.”

The UN Committee on the Rights of the Child – the expert body charged with monitoring the implementation of the CRC – has said that every person under the age of 18 at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice. The CRC states that detention of children should be a last resort, and children in detention should be held separately from adults in facilities that meet their particular needs.

In July 2013, India’s Supreme Court dismissed petitions asking for children accused of serious crimes to be tried under criminal law, and for the upper-age limit for juvenile justice rules to be lowered to 16. The Court stated, “the age of 18 has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future.”

The Women and Child Development Minister has said the proposed amendments were a response to widespread anger around the perceived leniency of the sentence given to a 17-year old boy convicted in the December 2012 Delhi gang-rape case. In August 2013, a juvenile court sentenced the 17-year old to three years detention in a juvenile home after finding him guilty of charges including rape and murder.

“Children can and do commit terrible crimes, and it is true that the reform and rehabilitation of child offenders under the juvenile justice system often exists largely on paper. However the solution is not to change the law, but to ensure it is better enforced,” said Tara Rao.

“Authorities must implement the recommendations made by children’s rights activists and the Justice Verma Committee. They must provide better infrastructural facilities for juvenile homes and access to quality counselling and support for child offenders, and appoint a panel of judges to carry out surprise inspections of juvenile homes.

“Effective reform and rehabilitation will serve not only the best interests of children, but also the short and long-term interests of society.”

Background Information

The Women and Child Development Ministry’s proposed amendments have been opposed by India’s National Commission for the Protection of Child Rights and several child rights organizations.

In a letter to the Ministry, the Commission said, “Indian laws relating to children have evolved over several years and are the product of an extensive research and understanding of the issue and therefore it is essential that any review of the child rights jurisprudence should take place only after an exhaustive deliberation.”

The Justice Verma Committee, set up by the central government in December 2012 to review laws against sexual violence, also recommended that the upper-age limit for juvenile justice rules not be reduced from 18 to 16.

According to Indian government data, child offenders committed 1.2 per cent of all reported crimes in 2012. Most of their crimes were property-related.

The International Covenant on Civil and Political Rights, to which India is a state party, requires all proceedings against juveniles to take into account their age and the desirability of promoting their rehabilitation.

The UN Convention on the Rights of the Child requires states to recognize the right of every child accused of a crime to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.

Anyone under the age of 18 should be tried in accordance with internationally accepted juvenile justice standards, including:

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”);

- 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 “Havana Rules”); and
- The Economic and Social Council Guidelines for Action on Children in the Criminal Justice System.