

EXTERNAL

TRINIDAD AND TOBAGO
Woman sentenced to corporal punishment

Background

Myra Bhagwansingh, a 45-year-old mother of four, was sentenced on 28 February 1996 to 12 years in prison with the additional punishment of 10 strokes with the cat o' nine tails (a device consisting of nine knotted cords or thongs of raw-hide attached to a handle). She is the first woman sentenced to receive corporal punishment in Trinidad and Tobago. She was found guilty of having committed grievous bodily harm by throwing acid on Raffick Mohammed. According to the *Trinidad Guardian*, the incident took place in Mohammed's clothes store on 29 August 1991. Myra Bhagwansingh had allegedly called Raffick Mohammed to the store to settle a dispute and told him "Take that", throwing corrosive acid onto his face. When he tried to get away, he fell and she allegedly threw more acid on his back. According to the newspaper, Mohammed underwent two years of skin grafts and now suffers certain permanent disabilities.

There is a controversy as to whether the Trinidad and Tobago law allows for women to be flogged. Section 2 of the Corporal Punishment (Offenders Over Sixteen) Act (1953) provides that any male offender over sixteen years convicted of offences involving violence, the use of corrosive fluid or destructive or explosive substance, rape, or robbery with violence or with aggravation may be ordered to be flogged in addition to any other punishment to which he is liable. Before sentence was passed, Myra Bhagwansingh's lawyers were consulted and they agreed that there was nothing in the law preventing women from being flogged. But one of her lawyers told the *Trinidad Guardian* that she "had not researched the point then" and after having looked at the law she said that the judge had no authority to impose the sentence. She has filed an appeal against the conviction and sentence. A lecturer and former prosecutor also said that the Corporal Punishment Act was clear and unequivocal and that it relates only to male offenders. According to the press, a lawyer who represented Myra Bhagwansingh at the preliminary inquiry also said that the Act was intended for male offenders and that he felt the sentencing judge had erred. However, the Prosecutor insisted there was nothing in the law which prohibits a woman from being flogged, a view which has been supported by other attorneys.

The first sentencing of a woman to corporal punishment has put the prison authorities in a difficult position. All the officers specially trained to administer the floggings are male and the prisoner is stripped completely for the flogging. According to a press article, a prison official declared: "We don't know if a woman prisoner's rights will be violated if she has to go through that with male officers and all. We are very serious on this thing about who deals with female prisoners, so I'm really not sure how we would handle this one." The officer also expressed concern on how a woman would endure the flogging itself which he described as "something that would make big men bawl".

Flogging sentences are regularly imposed on males in Trinidad and Tobago and they are also used as a means of prison discipline. Corporal punishment can be imposed only once for the same offence and cannot exceed 20 strokes. The sentence should be carried out as soon as practicable and will expire after six months. Alternatively a judge may impose a sentence of whipping which will be carried out with a rod of tamarind or birch. Only the President of Trinidad and Tobago and the courts can repeal a prisoner's flogging sentence.

Almost all floggings are carried out at the Carrera Island maximum security prison where there is a special "whipping room". The naked prisoner is placed face down on an adjustable bench and handcuffed. He never knows who delivers the blows - the officer is masked or the prisoner's face is turned. Many people are present during a flogging, including the prison doctor, the infirmary officer, the prison superintendent, and several other senior officials. The doctor is responsible for examining the prisoner's heart rate, blood pressure, respiratory rate and other signs both before and after the flogging. S/he can suspend the flogging or whipping if s/he considers that the prisoner is physically unfit to withstand the punishment.

International standards

The use of corporal punishment contravenes a number of international human rights standards:

- Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights (ICCPR, to which Trinidad and Tobago acceded on 21 December 1978) state: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment";
- Article 5 of the American Convention on Human Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person";
- The United Nations Human Rights Committee, in its authoritative "general comment" on Article 7 of the ICCPR, emphasized that the absolute prohibition of cruel, inhuman or degrading punishment "must extend to corporal punishment";
- Corporal punishment is also prohibited under the United Nations Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (not ratified by Trinidad and Tobago);
- Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: "No person under any form of detention or imprisonment shall be subjected to torture or to cruel, unhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment". Principle 7 of the same Body of Principles enjoins that "States should prohibit by law any act contrary to the rights and duties contained in these Principles...".