



Global Initiative to
**End All Corporal Punishment
of Children**

BANGLADESH – COUNTRY REPORT

Child population: 61,091,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

Yes – Article 89 of the Penal Code (1860) states: “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person...” This article should be repealed/amended to ensure there is no legal provision that can be construed as providing a legal defence for the infliction of corporal punishment. Explicit prohibition should be enacted of all corporal punishment, however light, by all persons with authority over children.

Other legislative measures necessary

Schools – Explicit prohibition should be enacted in legislation relating to all education settings, including public and private.

Penal system – The provisions in the Code of Criminal Procedure, the Whipping Act, the Railways Act, the Penal Code and other laws authorising whipping of boys convicted of an offence should be repealed and all judicial corporal punishment prohibited, including in traditional justice systems. Similarly, legal provisions authorising corporal punishment in certified institutions, approved homes, prisons and vagrant homes should be repealed and explicit prohibition enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law.

Alternative care – All provisions authorising corporal punishment should be repealed and explicit prohibition enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in addition to amendment/repeal of article 89 of the Penal Code.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

Corporal punishment is lawful in the home. Article 89 of the Penal Code (1860) states: “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person...” Provisions against violence and abuse in the Penal Code, the Children Act (1974) and the Domestic Violence Act (2010) are not interpreted as prohibiting corporal punishment in childrearing.

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 in all settings, including the home. In its written replies to questions from the Committee on the Rights of the Child in 2009, the Government identified “protection of children from corporal punishment at home, schools and institutions” as a priority. A Children Bill is under discussion (2011); in its draft form at November 2010 it stated that no child should be subjected to cruelty or inhuman and degrading punishment by caregivers but did not prohibit all corporal punishment in childrearing.

In a 2011 ruling concerned with corporal punishment in schools (see below), the Supreme Court of Bangladesh High Court Division called for prohibition of corporal punishment in the home and directed the Government to consider amending the Children Act to make it an offence for parents (and employers) to impose corporal punishment on children.

Schools

Corporal punishment is unlawful in schools according to a Supreme Court judgment issued on 13 January 2011 (Writ Petition No. 5684 of 2010) which stated that it violated the Constitutional prohibition of torture and cruel, inhuman or degrading punishment or treatment. The judgment followed a writ petition filed in July 2010 by Bangladesh Legal Aid and Services Trust and Ain o Salish Kendra with the High Court in Dhaka, as a result of which the Ministry of Education published a circular stating that corporal punishment is prohibited in schools, that it constitutes misconduct and that measures will be taken against perpetrators under the Penal Code, the Children Act and through departmental action (Ministry of Education Circular No. 37.031.004.02.00.134.2010, 8 August 2010, Regarding the Ending of Corporal Punishment on Students in Educational Institutions). The Ministry issued relevant Guidelines which came into effect in April 2011. Prohibition is yet to be confirmed in legislation, but an Education Bill is being drafted (2011). The Supreme Court ordered laws relating to disciplinary action against teachers to be amended to identify the imposition of corporal punishment as misconduct.

Penal system

Corporal punishment (whipping) is lawful as a **sentence for crime** for males. Under the Code of Criminal Procedure (1898), 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 (article 392). 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 (article 393). Whipping can be ordered in addition to imprisonment only if the term of imprisonment exceeds three months; it 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 (article 391). The person to be whipped must be considered fit to receive the punishment, by a medical officer, the Magistrate or the officer present (article 394).

The Penal Code does not provide for judicial whipping, but under the Whipping Act (1909) 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 (articles 3 and 4). The Act provides for juvenile offenders (under 16) to be whipped in lieu of other punishments for a wider range of crimes under the Penal Code and other laws (article 5). Whipping is a sentence for offences under article 23 of the Cantonments Pure Food Act (1966), articles 9, 10 and 12 of the Suppression of Immoral Traffic Act (1933) and, for boys under the age of 12, article 130 of the Railways Act (1890).

The 2011 Supreme Court judgment noted above stated that all laws authorising whipping or caning of children as a sentence of the courts should be immediately repealed.

Corporal punishment is also commonly ordered by traditional village mediation councils (*shalish*), particularly against girls and women. Punishments include caning, whipping, beating and stoning to death, and are often issued as *fatwas* under *Shari'a* law. The practice continues, despite a High Court ruling in July 2010 declaring all kinds of extra-judicial punishment unlawful and observing that cruel punishments at *shalish* are unconstitutional; a ruling in October 2010 declared that Bangladesh is a secular state, again confirming the issuing of *fatwas* as unlawful.

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” (article 35). The Children Act does not refer to corporal punishment.

Corporal punishment is lawful as a **disciplinary measure** in penal institutions, including certified institutes, approved homes, prisons and vagrant homes. Rule No. 24 of the Children Rules lists sanctions available for infringements of discipline, including “caning not exceeding ten stripes”. It states that the number of strokes should vary according to the age of the person and nature of the offence, should be inflicted on the buttocks or on the palm of the hand, and a medical officer should be present. The Prisons Act (1894) authorises whipping as a punishment for breaches of discipline by male prisoners, up to 30 stripes (article 46); for boys under 16 it must be inflicted “in the way of school discipline” (article 53). According to the Borstal Schools Act (article 4), the Prisons Act applies to borstal schools.

In 2007, laws relating to juvenile justice were under review but we have no further information. As at November 2010, the Children Bill stated that children in institutions should not be subjected to cruelty or inhuman and degrading punishment but did not explicitly prohibit all corporal punishment.

Alternative care

Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code (see above). Legislation governing care institutions provides for corporal punishment as a disciplinary measure but we have no specific details. As at November 2010 the draft Children Bill included explicit prohibition of corporal punishment in care institutions.

Prevalence research

A 2009 report by UNICEF documented a high prevalence of corporal punishment of children at home and school. The study involved nearly 4,000 households, through interviews with children aged 9-18 and the heads of their households, focus group discussions, case studies and a survey of children living on the street. The research found that 91% of children experienced physical punishment in school. Poorer children were more likely to experience it, with greater frequency and severity, than richer students. Punishments included hitting the palm with a ruler or stick (experienced by 76% of students),

standing in class, hitting other body parts with a ruler or stick, and slapping. Almost a quarter (23%) of students said they faced corporal punishment every day and 7% reported injuries and bleeding as a result. Corporal punishment was one of the top four reasons children gave for not attending school. In the home, 99.3% of children reported being verbally abused and threatened regularly by their parents; 74% said they were physically punished by parents or guardians, with 70% usually being slapped, and 40% being regularly beaten or kicked. Of the 367 children who worked outside the home, 25% experienced physical punishment in their workplace, with older girls and young boys receiving more physical punishment than other groups; girls were more likely than boys to be seriously injured by corporal punishment. (UNICEF (2009), *Opinions of Children of Bangladesh on Corporal Punishment: Children's Opinion Poll 2008*, Dhaka: UNICEF & Ministry of Women and Children Affairs.)

Interviews with children living in slums conducted by UNICEF and the NGO Phulki revealed that physical and psychological punishment is widely practised in public schools. (UNICEF ROSA (2001), *Corporal Punishment in Schools in South Asia*, submission to the Committee on the Rights of the Child, Day of General Discussion on Violence Against Children 28 September 2001, Kathmandu: UNICEF ROSA, cited in Jabeen, F. (2004), *Corporal/physical and psychological punishment of girls and boys in South and Central Asia Region*, Save the Children Sweden Denmark)

In a random survey conducted by Andhra Pradesh Bala Sangham, an NGO, students from about 12 schools stated they had been subjected to corporal punishment, despite the 2011 Supreme Court judgment (see above). (Reported in *Deccan Chronicle*, 7 February 2011)

A survey by Save the Children of more than 2,500 child domestic workers in Dhaka found that over 60% of employers said they were prepared to beat their servants. (Save the Children UK [undated], *Half Way: Address and Basic Information on Shelter Homes for Children in Dhaka City*, cited in Jabeen, F. & Karkara, R. (2006), *Mapping Save the Children's Response to Violence against Children in South Asia*, Kathmandu: Save the Children Sweden Regional Programme for South & Central Asia)

A study of 153 children in 16 groups and 109 adults in 13 groups examined behaviours children liked and disliked. The children identified a total of 1,043 behaviours that they disliked from people in the immediate family, educational settings and the workplace. Of these, 293 were categorised as physical discipline/punishment, 206 as verbal discipline/punishment, and 66 as other kinds of discipline/punishment, representing the top three disliked behaviours. (Government of Bangladesh/UNICEF/Save the Children Alliance (2005), *Child Abuse Study: Study Report*, Draft Version, 25 January 2005)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(26 June 2009, CRC/C/BGD/CO/4, Concluding observations on third/fourth report, paras. 48 and 49)

“The Committee remains concerned about the ineffective implementation of existing laws to prevent corporal punishment and the existence of certain regulations in schools that permit forms of corporal punishment. Furthermore, the Committee is concerned that although the Constitution prohibits cruel, inhuman or degrading treatment, children continue to be victims of corporal punishment and other forms of cruel and degrading treatment because of its acceptance in law and in society.

“The Committee recommends that the State party take the necessary actions to stop corporal punishment and other cruel or degrading forms of punishment currently widely accepted and practiced and inter alia:

- a) enforce existing laws to explicitly prohibit corporal punishment;
- b) raise public awareness of this prohibition in order to transform societal attitudes towards the disciplining of children and to prevent corporal punishment at home, in schools, institutions and workplaces;

- c) provide training and advocacy to promote alternative, non-violent forms of discipline in the family, schools, institutions and communities;
- d) ensure that all cases of corporal punishment are investigated and perpetrators are brought to justice.”

Committee on the Rights of the Child

(27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 43, 44, 77 and 78)

“The Committee expresses its profound concern at the prevalence of corporal punishment in schools, as well as at the fact that corporal punishment is still legal and widely practised within the legal system, in educational and other institutions and in the family.

“The Committee recommends that the State party, as a matter of urgency, review existing legislation and explicitly prohibit all forms of corporal punishment in the family, schools and institutions, as well as carry out public education campaigns about the negative consequences of ill-treatment of children, and promote positive, non-violent forms of discipline as an alternative to corporal punishment, particularly at the local level and in traditional communities.

“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: ...

- 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.... In particular, the Committee recommends that the State party: ...

- 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

(18 June 1997, CRC/C/15/Add.74, Concluding observations on initial report, paras. 18 and 38)

“The Committee is concerned at the lack of appropriate measures to combat and prevent ill-treatment and abuse, including sexual abuse, both within and outside the family, and at the lack of awareness and information on this matter. The persistence of corporal punishment and its acceptance by the society and instances of violence committed by law enforcement officials against abandoned or ‘vagrant’ children are matters of serious concern.

“The Committee recommends that the State party develop public awareness campaigns and measures to provide appropriate assistance to families in carrying out their childrearing responsibilities with a view, inter alia, to preventing domestic violence, prohibiting corporal punishment, and preventing early marriages and other harmful traditional practices.”

Committee on the Elimination of Discrimination Against Women

(22 March 2011, CEDAW/C/BGD/CO/7, Concluding observations on sixth/seventh report, paras. 19 and 20)

“... The Committee notes with concern ... that despite the High Court’s decision that the extrajudicial punishments fatwas are illegal, there are reports of illegal penalties being enforced through *shalish* rulings to punish ‘anti-social and immoral behaviour’....

“The Committee urges the State party to give priority attention to combating violence against women and girls and to adopt comprehensive measures such as a national action plan to address all forms of violence against women and girls, in accordance with its general recommendation No. 19 (1992). It calls upon the State party to expeditiously: ...b) ... ensure that *shalish* decisions do not violate laws and do not lead to extrajudicial penalties....”

Universal Periodic Review

Bangladesh was examined in the first cycle of the Universal Periodic Review process in 2009. The Government accepted the recommendation to prohibit corporal punishment of children (A/HRC/11/18/Add.1, Report of the Working Group: Addendum). Examination in the second cycle is scheduled for 2013.

Report prepared by the Global Initiative to End All Corporal Punishment of Children

www.endcorporalpunishment.org; info@endcorporalpunishment.org

January 2012