Corporal punishment of children in Bhutan

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Child population 233,000 (UNICEF, 2020)

Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care and schools; prohibition in penal institutions requires confirmation.

Articles 109 and 111 of the Penal Code 2004 provide a defence for the use of force by parents and others in disciplining children. The near universal acceptance of corporal punishment in childrearing necessitates clarity in law that no degree or kind of corporal punishment is lawful, however light. These articles should be explicitly repealed and corporal punishment prohibited in all settings, including the family home.

Alternative care settings – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

Schools – The policy against corporal punishment in schools should be confirmed through clear prohibition in law of corporal punishment in all education settings, including public and private; the decree against corporal punishment in monastic schools should be confirmed in law. The legal provision allowing the use of force in the Penal Code 2004 (art. 109) must be repealed.

Penal institutions – The use of force as punishment in penal institutions is prohibited but the Penal Code 2004 appears to allow its use in some circumstances for purposes of discipline. Confirmation is required that all corporal punishment is prohibited.

Current legality of corporal punishment

Home

Corporal punishment is lawful in the home. Articles 109 to 112 of the Penal Code 2004 provide for the "use of force for care, discipline, or safety of another". Article 109 states: "A defendant shall have the defence of justification, if the defendant uses force on an incompetent or incapable person and the defendant is the parent or guardian or other person responsible for the general care and supervision of such person and the force: (a) is used with the purpose of safeguarding or promoting the welfare of the incompetent or incapable person, including the prevention of serious misconduct; (b) used is not designed to cause or known to create a substantial risk of causing death or serious bodily injury; and (c) used is no greater than that which is necessary." In 2023, in reporting to the Committee on the Rights of the Child,[1] the Government stated that its draft National Child Policy included "elimination of corporal punishment across all settings and promotes positive discipline." The Government added that discussions to amend section 109 of the Penal Code and other Acts were underway and that the National Child Policy along with "the interventions on positive parenting and discipline is expected to deter corporal punishment across all settings." We have no further information about the law reform process.

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 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Bhutan.[2] However, subsequent law reform did not achieve full prohibition.

The Child Care and Protection Act 2011 provides for a number of offences against children, including assault (art. 212), cruelty (art. 213), "harsh or degrading correction or punishment" (art. 214) and battery (art. 215). Article 214 prohibits "harsh or degrading correction or punishment" in the home, schools and other institutions but does not cover all corporal punishment; it states that "any corrective measures shall be culturally appropriate and in accordance with rules framed for the discipline of children". The interpretation of article 215 on battery is unclear. Article 11 of the Act states that programmes and services established under the Act shall "be culturally appropriate including any rules that may be required for the discipline of children". Rules under the Child Care and Protection Act were drafted in 2014 and are silent on the issue of corporal punishment.

The Child Adoption Act 2012 states that "during the course of adoption, the child shall be protected from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviours" (art. 4).

The Domestic Violence Prevention Act 2013 defines domestic violence as "violence against a person by another person with whom that person is, or has been in a domestic relationship" (art. 3). Violence is defined as "any act, omission or behaviour towards a person which results in physical, sexual, emotional or economic abuse", and physical abuse is defined as including "any act or conduct of the defendant which: (a) causes bodily injury, pain, harm, or danger to life; (b) impairs the health or development of the victim; or (c) otherwise violates the dignity of the victim" (art. 4). It would appear that this could be interpreted as prohibiting all corporal punishment, but the Act is not clear in this respect and the protection for children is undermined by the provisions for the use of force in the Penal Code 2004 (see above). Rules under the Act came into effect in 2015.[3] There is no mention of corporal punishment in the Rules – they only provide that "children experiencing domestic violence on a recurrent basis [be] registered …" (emphasis added).

At the Universal Periodic Review in 2019, Bhutan supported some recommendations on corporal punishment, including one to prohibit all forms of corporal punishment[4] but later noted all other recommendations to enact legislation prohibiting all corporal punishment, stating that its existing legislation was sufficient and that it did not "feel the need to pursue legislative reforms or enactment of

[1] 6 September 2023, CRC/C/BTN/6-7, Combined sixth and seventh periodic reports, para. 88
[2] SAIEVAC (2011), Prohibition of corporal punishment of children in South Asia: a progress review
[3] 15 July 2016, CEDAW/C/BTN/Q/8-9/Add.1, Reply to the list of issues on eighth/ninth report, paras. 34 and 35
[4] 10 May 2019, A/HRC/WG.6/33/L.6 Unedited version, Draft report of the Working Group, paras. 6(32) and 6(33)

new legislation".[5] End Corporal Punishment no longer considers Bhutan committed to prohibiting all corporal punishment of children without delay, as recent law reform failed to achieve prohibition and corporal punishment remains lawful in nearly every setting of children's lives.

Alternative care settings

Corporal punishment is lawful in alternative care settings under the provisions for the use of force for "discipline" in article 109 of the Penal Code 2004 (see under "Home"). The prohibition of "harsh and degrading correction or punishment" in the Child Care and Protection Act 2011 prohibits corporal punishment of a certain severity, but not all corporal punishment. Children without parental care are often sent to monastic institutions, where corporal punishment is discouraged but not prohibited by law (see under "Schools").

Day care

Corporal punishment is lawful in day care under the provisions for the use of force for "discipline" in article 109 of the Penal Code 2004 (see under "Home"). The prohibition of "harsh and degrading correction or punishment" in the Child Care and Protection Act 2011 prohibits corporal punishment of a certain severity, but not all corporal punishment.

Schools

Corporal punishment is lawful in schools under article 109 of the Penal Code 2004 (see under "Home"). A number of non-legislative measures have been taken against corporal punishment in schools: a notification from the Ministry of Education in 1997 stated that it should not be used, confirmed in the Teacher and Student's Code of Conduct 1997 and subsequent administrative directives; corporal punishment is discouraged in schools in the promotion of Gross National Happiness; a resolution was adopted at the 11th Annual Education Conference in 2008 to enforce a ban on corporal punishment in schools, and guidance on school discipline was produced in 2011 to encourage positive non-violent forms of discipline. A new Education policy is being drafted, and there have also been reports of High Court decisions condemning corporal punishment of children in schools (information unconfirmed).[6] The Government stated in 2019 that corporal punishment in schools had been banned.[7] But there is no clear prohibition in law of all corporal punishment in schools, only of "harsh or degrading correction or punishment" in article 214 of the Child Care and Protection Act 2011 (see under "Home"). The Bhutan Education City Act 2012 is silent on the issue.

In monastic institutions, where children from the age of 6 are trained as monks and nuns and where orphaned and abandoned children are also sent, a decree of the Je Khenpo (the "chief abbot") reportedly states that corporal punishment should not be used.[8] In the 2013 Annual Conference of the Commission for Monastic Affairs in Bhutan, a resolution on Alternative Forms of Discipline was adopted and the Commission has been undertaking awareness programmes on the issue within monastic institutions.[9] But there is no clear prohibition in law.

Penal institutions

Corporal punishment appears to be unlawful as a disciplinary measure in penal institutions under the Child Care and Protection Act 2011. Article 73 states: "Every child in conflict with the law shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 23 states: "Restraint or force shall be used only when the child poses an imminent threat of injury to oneself or others and only when all other means of control have been exhausted. The use of restraint or force shall never be used as a means of punishment." According to article 75 a child detained for an offence "shall be treated with respect and dignity". However, article 109 of the Penal Code 2004, providing for

[5] 3 September 2019, A/HRC/42/8/Add.1 Advance version, Report of the Working Group: Addendum
[6] Communication with UNICEF Bhutan, August 2018
[7] 3 July 2019, A/HRC/42/8, Report of the Working Group, para. 73
[8] Government of Bhutan & UNICEF (2013), A situation analysis of children, youth and women in Bhutan – 2012
[9] [2014], CRC/C/BTN/3-5 Advance Unedited Version, Third-fifth state party report, para. 127

the use of force for the purpose of "discipline", potentially applies in penal institutions, and article 111 states: "A defendant, who is an authorized official of a prison or other correctional institution shall have the defence of justification, if the defendant uses force and: (a) the defendant believes that the force used is necessary to enforce the lawful rules or procedures of the institution; (b) the nature and degree of the force used is not otherwise forbidden by this Penal Code; (c) if deadly force used is justified under this Penal Code; and (d) the force used is no greater than that which is necessary." Article 2 of the Child Care and Protection Act states that legal provisions in conflict with its provisions are repealed, but we have yet to confirm that this would apply to the defences for the use of force in the Penal Code.

There is no provision for corporal punishment in the Prison Act 2009, though it does provide for solitary confinement and hard labour. Article 125 states that "instruments of restraint, such as chains and fetters, shall not be applied as a means of punishment".

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Constitution 2008 prohibits cruel, inhuman or degrading treatment or punishment (art. 7(17)); the Child Care and Protection Act 2011 includes a similar provision (art. 73), makes no provision for corporal punishment as a sentence of the courts (Chapters 10 to 13) and states that force shall never be used as a means of punishment (art. 23).

Universal Periodic Review of Bhutan's human rights record

Bhutan was examined in the first cycle of the Universal Periodic Review in 2009 (session 6). The following recommendation was made:[10]

> "Prohibit corporal punishment of children at home (Slovenia)"

The Government stated that existing legislation adequately addresses corporal punishment in the home, that the Child Care and Protection Bill would strengthen this, and that no new legislation on corporal punishment was being considered.[11]

Examination in the second cycle took place in 2014 (session 19). The following recommendation was made:[12]

> "Consider prohibition of the use of corporal punishment of children in all settings (Zambia)"

The Government did not clearly accept or reject the recommendation, stating only that "a National Plan of Action for Child Protection is under implementation".[13]

Third cycle examination took place in 2019 (session 33). The Government supported the following recommendations:[14]

> "Intensify efforts for the promotion and protection of the rights of the child eradicating corporal punishment both at school and at home (Chile);
>
> "Take appropriate measures to ensure that the rights of the children are respected, including by prohibiting all forms of corporal punishment (Italy)"

The following recommendations were also extended:[15]

> "Review the Penal Code, the Child Care and Protection Act, the Child Adoption Act and the Domestic Violence Prevention Act in order to prohibit all forms of corporal punishment in all settings (Mexico);
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> "Pursue legislative reform efforts to completely prohibit corporal punishment in all contexts, particularly in the home and at school (Algeria);

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[10] 4 January 2010, A/HRC/13/11, Report of the working group, para. 101(41)
[11] 4 January 2010, A/HRC/13/11, Report of the working group, para. 101(41); 10 March 2010, A/HRC/13/11/Add.1, Report of the working group: Addendum, para. 41
[12] 2 May 2014, A/HRC/WG.6/19.L.6, Advance Unedited Version, Draft report of the working group, para. 120(36)
[13] 17 September 2014, A/HRC/27/8/Add.1, Report of the working group: Addendum, para. 23
[14] 3 July 2019, A/HRC/42/8, Report of the Working Group, paras. 157(32) and 157(33)
[15] 3 July 2019, A/HRC/42/8, Report of the Working Group, paras. 158(37), 158(53), 158(54), 158(55) and 158(56)

"Invest more efforts to ensure the unequivocal prohibition of corporal punishment against children in all settings by law, including at home and in schools (Croatia);

"Prohibit corporal punishment of children in all settings, including the home and schools, and take all measures to enforce it in practice (Iceland);

"Enact legislation to explicitly prohibit corporal punishment of all children in all settings (Austria)"

The Government later noted those five recommendations, stating "Section 23 of the Child Care and Protection Act of Bhutan 2011 clearly states that 'The use of restraint or force shall never be used as a means of punishment". The Ministry of Education (MoE) adopted the resolution of banning the use of corporal punishment during the 11th National Education Conference in 2008. The National Education Policy 2018 (draft) also reinforces this resolution stating that schools shall practice proactive and positive forms of behavioural management. In addition, the policy also states that 'the use of restraint or force shall never be used as a means of corrective measure or punishment', which is consistent with the Child Care and Protection Act of Bhutan 2011. The Ministry also has introduced the Mindfulness & Emotional Intelligence and Helping Skills program in July 2019 to build the competencies of teachers in understanding the children under their care in the school setting. In view of the above, the Royal Government does not feel the need to pursue legislative reforms or enactment of new legislation."[16]

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(30 May 2024, CRC/C/BTN/CO/6-7, Concluding observations on sixth-seventh report, para. 25)

"The Committee remains deeply concerned that corporal punishment is legally and socially acceptable in the State party. Recalling its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee recommends that the State party:

(a) Explicitly prohibit, as a matter of priority, corporal punishment by law in the home, alternative care, day care, schools, monastic schools, nunneries, penal institutions and all other settings, including by repealing all provisions allowing the use of corporal punishment and reviewing the Child Care and Protection Act, Articles 109 to 112 of the Penal Code, the Child Adoption Act, the Domestic Violence Prevention Act and other relevant legislation;

(b) Address the widespread use of corporal punishment in schools, including by reviewing the School Discipline Policy to harmonise it with the Convention, strengthening training on non-violent and positive forms of discipline in mandatory teacher training, developing protocols and guidelines for action when corporal punishment takes places and ensuring appropriate responses; (c) Develop guidance and training for teachers on positive discipline and addressing violence and other disturbances in schools, with a view to preventing the misuse of the School Discipline Guidelines allowing for sanctions for disruptive behaviour by children and ensuring that such measures take a child-sensitive approach;

(d) Strengthen awareness-raising campaigns to promote positive, non-violent and participatory forms of child-rearing, with a view to eradicating the practice of corporal punishment and the culture of silence in this regard."

Committee on the Rights of the Child

(5 July 2017, CRC/C/BTN/CO/3-5, Concluding observations on third/fifth report, paras. 22, 38 and 39)

"In the light of its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee urges the State party to:

[16] 3 September 2019, A/HRC/42/8/Add.1 Advance version, Report of the Working Group: Addendum

(a) Review the Penal Code of 2004, in particular article 109, to prohibit fully the use of corporal punishment in all settings, including the home, alternative care, monasteries, day care and schools; the Child Care and Protection Act of 2011; the Child Adoption Act of 2012; and the Domestic Violence Prevention Act of 2013, to prohibit unequivocally corporal punishment of children;

(b) Finalize promptly the initiative of the Dratshang Lhentshog (Commission for Monastic Affairs) to provide for alternative forms of discipline and take all measures necessary to enforce it in practice;

(c) Ensure that investigations, administrative and legal proceedings are initiated promptly and systematically in relation to cases of corporal punishment of children."

"The Committee welcomes the progress in reaching near universal primary education enrolment and the adoption of the strategic document entitled "Bhutan Education Blueprint 2014-2024". The Committee is however concerned about:

(f)The lasting practice of corporal punishment in schools, notwithstanding the directive from the Ministry of Education banning it.

"The Committee recommends that the State party:

(f) Adopt national legislation to explicitly prohibit corporal punishment in all educational settings and develop public education and awareness-raising programmes, involving children, families, communities, teachers and religious leaders on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the general attitude towards this practice, and to promote positive, non-violent and participatory forms of child-rearing and discipline;

(g) Develop and implement initiatives to combat violence, sexual harassment and bullying among children in schools, including towards lesbian, gay, bisexual, transsexual and intersex children, and train teachers and students to resolve conflicts peacefully, to create an environment of tolerance and respect;

(h) Seek technical assistance from UNICEF in the implementation of these recommendations."

Committee on the Rights of the Child

(8 October 2008, CRC/C/BTN/CO/2, Concluding observations on second report, paras. 37 and 38)

"The Committee, while noting that the State party is undertaking measures to promote alternative forms of disciplining, is concerned that corporal punishment has yet to be prohibited at home, in schools and in alternative care settings, including monasteries. The Committee is concerned that corporal punishment is still practiced.

"The Committee recommends that the State party:

a) adopt legislation as soon as possible, explicitly prohibiting all forms of corporal punishment of children in all settings, including the home;

b) take all measures to ensure the enforcement of the law, conduct capacity building of professionals working with children, carry out awareness raising and public education campaigns against corporal punishment and promote non-violent, participatory methods of childrearing and education, while taking into account the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment."

Committee on the Rights of the Child

(9 July 2001, CRC/C/15/Add.157, Concluding observations on initial report, paras. 40 and 41)

"Noting the respect for children in Bhutan, the Committee is concerned that there is insufficient information and awareness of the ill-treatment of children in schools and within the family.

"The Committee recommends that the State party: ...

b) take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools, and in institutions;

c) 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…."

Prevalence/attitudinal research in the last ten years

A national survey conducted in 2016 found the most common forms of physical violence experienced by children to be in the context of corporal punishment. Children reported being subject to tasks involving excessive physical endurance, such as being made to stand for a long time, carry stones or forced to do heavy work (50.5%), and being hit with an object (43.8%). Almost 23% said they had been slapped, punched, kicked, had their ear pulled or twisted, their hair pulled or their knuckles rapped on their forehead. Three quarters (75%) of the children attending day school experienced physical violence at least once by a teacher "most likely in the context of corporal punishment". Corporal punishment was reported less frequently by children attending boarding school (22%). The survey also found "confusion among local leaders and teachers about the status and provisions of different laws and policies", with a number of teachers saying they did not know whether or not policy banning corporal punishment in schools was reaffirmed in the Child Care and Protection Act.

(National Commission for Women and Children, Royal Government of Bhutan & UNICEF Bhutan (2016), Study on Violence Against Children in Bhutan, Thimphu: National Commission for Women and Children, Royal Government of Bhutan & UNICEF Bhutan)

A situation analysis by UNICEF published in 2012 reported that corporal punishment is "quite commonly" inflicted on children at home, in schools, in the workplace and in other settings. In focus group discussions, parents and children often accepted beating as an element of school discipline.

(Government of Bhutan & UNICEF (2013), A situation analysis of children, youth and women in Bhutan – 2012)

An assessment in 2010 by an "Eleven-Expert Committee" for the National Commission for Women and Children (NCWC), supported by UNICEF, of the situation of young monks and nuns in their respective regions found that physical punishment (spanking, beating and whipping) was used as a last resort in around 10% of monastic institutions. Most were also using alternative, non-violent forms of discipline.

(National Commission for Women and Children (NCWC) (2011), Report of Assessment of situation of Young Monks and Nuns in Monastic Institutions by the Eleven Expert Committee Members)

End Corporal Punishment acts as a catalyst for progress towards universal prohibition and elimination of corporal punishment of children. We support and analyse national progress, monitor legality and implementation worldwide, partner with organisations at all levels, and engage with human rights treaty body systems. End Corporal Punishment is hosted by the World Health Organization and supported by a multi-partner Advisory Committee.