

Corporal punishment of children in Nepal

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Child population 11,316,000 (UNICEF, 2015)



GLOBAL INITIATIVE TO

**End All Corporal
Punishment of Children**

Law reform has been achieved. Corporal punishment is unlawful in all settings, including the home.

Prohibition of corporal punishment

Home

Corporal punishment is prohibited in the home. The Act relating to Children 2018 was certified by the President of Nepal on 18 September 2018 and prohibits all corporal punishment of children, who are defined as persons under 18. Section 7(5) of the Act states (unofficial translation): “Each child has a right to be protected against all types of physical or mental violence and punishment, neglect, inhumane behaviour, gender based or discriminatory abuse, sexual abuse and exploitation committed by his/her father, mother, other family members or guardian, teacher or any other person”. Under section 66(2)(d), “giving physical or mental punishment or disrespectful (or inhumane) behaviour in home, school or any other setting” (unofficial translation) is criminalized as a form of violence against children, with a sanction of a fine of up to 50,000 Nepalese Rupees and up to one year of imprisonment (section 72(3)(a)). The provisions of the Act relating to Children 2018 prevail over other domestic legislation (section 84).

This Act fully replaces the Children Act 1992, which had previously defended the use of “scolding and minor beating” in its article 7. Following a writ petition filed by the Centre for Victims of Torture in Nepal on 16 June 2004, the Supreme Court had ruled that this clause was unconstitutional and, in accordance with article 88 of the then Constitution 1990, had declared the portion “or give him/her minor beating” null and void with immediate effect.¹ The judgment had also issued a directive to the Government “to pursue appropriate and effective measures to prevent physical punishment as well as other cruel, inhuman or degrading treatment or punishment or abuse being imposed or inflicted on and likely to be imposed or inflicted on children”.

The Constitution 2015 includes a section on the rights of children and states in article 39 (unofficial translation): “(7) No child shall be subjected to physical, mental, or any other forms of torture at home, in school, or in any other places or situations.” It also provides for the right of every person to “live with dignity” (art. 16) and to “equal protection of law” (art. 18). The Domestic Violence (Offence and Punishment) Act 2009 and its Regulation 2010 prohibit domestic violence including physical, mental, sexual and economic harm perpetrated by a person on another person with whom he/she

¹ *Mr Devendra Ale et al. v Office of the Prime Minister & Cabinet et al.*, Supreme Court decision 6 January 2005

has a family relationship, although it was not previously interpreted as prohibiting all corporal punishment of children.

Alternative care settings

Corporal punishment is prohibited in alternative care settings under sections 7(5) and 66(2)(d) of the Act relating to Children 2018. Under section 67(1) of the Act, a person who works in public or private institutions and commits such an offence may “be dismissed as per the prevailing law and based on the severity and nature of the offence will be barred from engaging in any work which has a direct contact with children and not eligible to be recruited, appointed or elected in such private institutions for up to 10 years” (unofficial translation).

Corporal punishment should not be used in residential institutions according to the Standards for Operation and Management of Residential Child Care Homes 2012.

Day care

Corporal punishment is prohibited in day care under sections 7(5) and 66(2)(d) of the Act relating to Children 2018.

Schools

Corporal punishment is unlawful in schools under sections 7(5), 66(2)(d) and 67(1) of the Act relating to Children 2018. We have not been able to examine the 2016 amendments to the Education Act 1971.

Penal institutions

Corporal punishment is unlawful in penal institutions under sections 7(5), 66(2)(d) and 67(1) of the Act relating to Children 2018. There is no provision for corporal punishment in the Prisons Act 1963. The Constitution 2015 confirms the right of every person in detention not to be subjected to physical or mental torture, or be treated in a cruel, inhuman or degrading manner (art. 22).

Sentence for crime

Corporal punishment is unlawful as a sentence for crime under criminal law. The Constitution states in article 39 (unofficial translation): “(7) No child shall be subjected to physical, mental, or any other forms of torture at home, in school, or in any other places or situations. (8) Every child shall have the right to child friendly justice.”

A Criminal Code and a Code of Criminal Procedure were adopted in 2017: we have been unable to examine the full texts. It was reported that under article 45 of the Criminal Code 2017, children aged 10-13 can only be sentenced to 6-month imprisonment or one year in a Children Rehabilitation Home, children aged 14-15 to half of the sentence prescribed for an adult and children aged 16-17 to two thirds of an adult sentence.² There are no indications that the Code provides for judicial corporal punishment. The Abrogation of Some Criminal Cases and Remission of Punishment Act 1963 explicitly prohibited a number of cruel and humiliating punishments, including shaving the head of the

² Advocacy Forum (2018), *Torture of Juveniles in Nepal: A Continuing Challenge*

offender, impaling/piercing the body, branding the body and forcing the offender to eat forbidden/inedible foods (art. 5). The Juvenile Justice Procedure Rules 2006 are silent on the issue.

There have been reports that Maoist courts have been revived in a number of areas and sentences include physical punishment.³ However, this appears to be unlawful under article 126 of the 2015 Constitution, which states that the powers of courts must be in accord with the Constitution, other laws and the recognised principles of justice.

Universal Periodic Review of Nepal's human rights record

Nepal was examined in the first cycle of the Universal Periodic Review in 2011 (session 10). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:⁴

“Design and implement programmes to ensure the respect for and protection of the rights of women and children, in particular the rehabilitation of women, children and families affected by conflict (Egypt);

“Further enhance measures aimed at protecting the human rights of children, women and other vulnerable groups (Philippines);

“Make further efforts to implement the recommendations of various treaty bodies (Japan);

“Ensure that any form of violence against children and child recruitment becomes punishable under domestic law (Hungary) ...;

“Enact a Juvenile Justice Law compliant with international standards, to consolidate the legal framework surrounding the protection of the rights of children and to ensure the proper functioning of a juvenile justice system in the country (Maldives);

“Expedite the endorsement of long-awaited child policy legislation, including the Child Rights Act, Education Regulation, Child Protection Policy, and minimum standards for child-care homes, and take the necessary steps to ensure their full implementation (Canada);

“Review and adopt relevant legislation and policies, including bills related to caste-based discrimination, the Women's Commission, the Dalit Commission, the rights of indigenous peoples and the rights of the child, to ensure full compliance with international human rights standards (Norway);

“Ensure, without any discrimination, the rights of people with disabilities and others belonging to vulnerable groups, such as women and children (Chile);

“Regarding human trafficking and violence against women and children, take further legislative steps, where necessary, and accelerate efforts for their effective implementation (Japan)”

Examination in the second cycle took place in 2015 (session 23). During the review, the Government reported that the Children Bill included provisions for ending all violence against children, including

³ For example, see <https://southasiarev.wordpress.com/2010/02/20/nepal-maoists-reactivate-peoples-courts/> and http://news.bbc.co.uk/1/hi/world/south_asia/6048272.stm, accessed 29 May 2015

⁴ 8 March 2011, A/HRC/17/5, Report of the working group, paras. 106(13), 106(14), 106(19), 107(18), 108(2), 108(4), 108(11), 108(14) and 108(20)

corporal punishment.⁵ No recommendations were made specifically concerning corporal punishment of children. However, the Government accepted the recommendation to intensify efforts to adopt revised child legislation which complies with international standards regarding violence against children.⁶

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

(3 June 2016, CRC/C/NPL/CO/3-5, Concluding observations on fifth report, paras. 30 and 32)

“The Committee welcomes the prohibition of corporal punishment in article 39.7 of the Constitution. However, it remains concerned that corporal punishment is not explicitly prohibited in all legislation relating to children’s rights and remains, de facto, prevalent at home, in schools, and in other institutions and forms of childcare.

“The Committee reiterates its previous recommendation (CRC/C/15/Add.261, para. 48) for the State party to:

- a) expressly prohibit corporal punishment and ill-treatment of children by law in the family, schools and other institutions;
- b) expedite the process of amending the relevant provision of the Children’s Act and the 1963 Muluki Ain to ensure compliance with article 19 of the Convention;
- c) strengthen awareness-raising campaigns to inform parents, teachers and professionals working with children, particularly in institutions, as well as the public at large, about the negative impact of corporal punishment and ill-treatment on children and actively involve children and the media in the process; and,
- d) ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, in particular article 28 (2) as an alternative to corporal punishment at all levels of society.”

Committee on the Rights of the Child

(21 September 2005, CRC/C/15/Add.261, Concluding observations on second and third combined report, paras. 47, 48 and 76)

“The Committee is concerned that corporal punishment and ill-treatment of children is prevalent in the family, in schools and in other institutions. The Committee is concerned about the provisions in the 1992 Children’s Act and the 1963 Muluki Ain (Civil Code) which provide for corporal punishment in the home, in schools and in other institutions and forms of childcare, which is in clear contravention of article 19 of the Convention. The Committee underlines the importance of specific legal prohibition of traditional practices which are harmful to children by law.

“The Committee recommends that the State party:

- a) expressly prohibit corporal punishment and ill-treatment of children by law in the family, schools and other institutions;

⁵ 23 December 2015, A/HRC/31/9, Report of the working group, para. 69

⁶ 23 December 2015, A/HRC/31/9, Report of the working group, para. 121(5)

- b) expedite the process of amending the relevant provisions of the Children’s Act and the 1963 Muluki Ain to ensure compliance with article 19 of the Convention;
 - c) strengthen awareness-raising campaigns to inform parents, teachers and professionals working with children, particularly in institutions, as well as the public at large about the negative impact of corporal punishment and ill-treatment on children and actively involve children and the media in the process;
 - d) ensure that positive, participatory, non-violent forms of discipline are administered in a manner consistent with the child’s human dignity and in conformity with the Convention, in particular article 28 (2) as an alternative to corporal punishment at all levels of society.
- “The Committee recommends ... that the State party:
- i) adopt appropriate legislative measures to combat the use of corporal punishment in schools...”

Committee on the Rights of the Child

(7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34)

“The Committee is concerned at the inadequate measures adopted to ensure that national legislation fully conforms with the principles and provisions of the Convention. The Committee notes in particular the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage, inheritance and parental property, torture and corporal punishment. The Committee is also concerned about the gap between existing legislation and its practical implementation.

“... The Committee also expresses its concern at section 7 of the Children’s Act which allows parents, members of the family and teachers to beat a child ‘if it is thought to be in the interest of the child’, as well as at the fact that, as recognized in the State party’s report, the views of the child are unlikely to be respected. The persistence of such traditional practices and attitudes seriously hampers the enjoyment of the rights of the child.

“The Committee is concerned that appropriate measures have not yet been taken to effectively prevent and combat any form of ill-treatment and corporal punishment of children within the family. It is seriously worried about the absence of adequate legislation and mechanisms designed to ensure the recovery and reintegration of child victims in the light of article 39 of the Convention.

“In the light of article 19 of the Convention, the Committee further recommends that the Government take all appropriate measures, including of a legislative nature, to combat any form of ill-treatment and sexual abuse of children, including within the family. It suggests, inter alia, that the authorities gather information and initiate a comprehensive study to improve the understanding of the nature and scope of the problem and set up social programmes to prevent all types of child abuse and neglect.”

Human Rights Committee

([April 2014], CCPR/C/NPL/CO/2 Advance Unedited Version, Concluding observations on second report, para. 15)

“While noting the adoption of the National Children Policy in 2012, the Committee notes that corporal punishment remains a concern, especially in the home, where it traditionally continues to be practiced as a form of discipline by parents and guardians (arts. 7 and 24).

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.”

Committee on the Elimination of Discrimination Against Women

(9 November 2018, CEDAW/C/NPL/CO/6 Advance unedited version, Concluding observations on sixth report, paras. 32 and 33)

“The Committee ... is concerned, however, at:

(c) The fact that girls suffer sexual harassment, corporal punishment and abuse in school, including by teachers;

“The Committee, taking note of target 4.5 of the Sustainable Development Goals, which calls for the elimination of gender disparities in education, recommends that the State party, in line with its General Recommendation No. 36 (2017) on the right of girls and women to education:

(c) Address safety issues for girls in and out of school, effectively investigate and prosecute acts of corporal punishment, harassment, abuse or gender-based violence against girls at school and endorse the Safe Schools Declaration”

Prevalence/attitudinal research in the last ten years

A survey carried out in 2014 by the Central Bureau of Statistics (CBS) as part of the global MICS programme found 82% of children age 1-14 years had been subjected to at least one form of psychological or physical punishment by household members during the month preceding the survey; 53% had experienced physical punishment and 14% severe physical punishment (hitting the child on the head, ears or face or hitting the child hard and repeatedly). Only 13% of children had experienced only non-violent forms of discipline.

(Central Bureau of Statistics (2015), *Nepal Multiple Indicator Cluster Survey 2014, Final Report*, Kathmandu, Nepal: Central Bureau of Statistics & UNICEF Nepal)

In a survey conducted between October 2013 and March 2014, about 1,440 Nepalese students aged 12–17 years were asked about their experience of violence at school in the last 6 months. A quarter of all students (32% of boys and 21% of girls) said they were asked to stand on the bench or in a corner or outside the class – this is specific to teachers, as they use it to punish students.

(International Center for Research on Women (ICRW) and Plan International (2014), *Are Schools Safe and Gender Equal Spaces? Findings from a baseline study of school related gender-based violence in five countries in Asia*, Plan International)

A survey involving 100 students and 30 teachers at five government-aided and five private schools in the Kathmandu Valley found that a majority of the children experienced corporal punishment at school and almost all had seen or heard corporal punishment at school. Children said the most common types of punishment were being forced to hold their ears and sit up and down repeatedly, being beaten and being forced to maintain painful positions. Other punishments included having their ears or hair pulled, being forced to fight with a friend, being scolded, being hit with a stick or duster and being made to stand on a bench. Children were punished for being late, “speaking

rubbish, doing bad things,” fighting with friends, not being attentive in class and not answering teachers’ questions. Corporal punishment resulted in injuries, back pain, marks and swelling. Children said corporal punishment made them feel bad, unhappy, humiliated, depressed, angry, scared and embarrassed about facing their friends, and it made them lose interest in studying and feel like quitting school. Although most teachers said that after inflicting corporal punishment of children they regretted it, felt uneasy or felt distressed, the majority said corporal punishment was effective and should continue to be used. Most students said physical punishment was harmful to students, could lead to emotional and psychological disorder problems and so should be stopped. The study recommends prohibition of corporal punishment.

(Sanchar, H. et al (2013), *Physical Punishment at School: a Study (Summary)*, Save the Children Norway)

According to statistics collected in 2010 under round 4 of the UNICEF Multiple Indicator Cluster Survey programme (MICS4), 83% of children aged 2-14 experienced violent “discipline” (physical punishment and/or psychological aggression) in the home in the month prior to the survey. Six children in ten (61%) experienced physical punishment, while a smaller percentage (36.1%) of mothers and caregivers thought physical punishment was necessary in childrearing. Eighteen per cent of children were severely physically punished (hit or slapped on the face, head or ears or hit over and over with an implement), 79% experienced psychological aggression (being shouted at, yelled at, screamed at or insulted).

(Central Bureau of Statistics (2012), *Nepal Multiple Indicator Cluster Survey 2010, Mid- and Far Western Regions, Final Report*. Kathmandu: Central Bureau of Statistics & UNICEF Nepal)

A study on barriers to education for children with disabilities in Nepal found that students with disabilities experienced corporal punishment at home and at school, and that this could contribute to the children’s lack of access to education.

(Human Rights Watch (2011), *Futures Stolen: Barriers to Education for Children with Disabilities in Nepal*)

A 2008 study in 71 child centres in Nepal involved interviews and focus groups with children, child centre staff and children’s biological parents. It found that punishments in child centres included children being hit, isolated, locked in the toilet, publicly humiliated, and forced to clean floors and toilets.

(UNICEF & Terre des Hommes (2008), *Adopting the Rights of the Child: A study on intercountry adoption and its influence on child protection in Nepal*, www.crin.org/docs/adopting_rights_child_ICA.pdf)