



Global Initiative to
End All Corporal Punishment
of Children

**BRIEFING ON BANGLADESH FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – February 2015**

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This briefing describes the legality of corporal punishment of children in Bangladesh. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendations on the issue, the recommendations made during the UPR in 2009 and 2013, the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children and the Government’s commitment to enacting prohibiting legislation, we hope the Committee will:

- **in its List of Issues for Bangladesh, raise the issue of corporal punishment of children, in particular asking what progress has been made in drafting legislation to prohibit corporal punishment of children in all settings, including the home, and**
- **in its concluding observations on the third to fifth report of Bangladesh, welcome the steps taken to address corporal punishment in schools and urge the Government to ensure that legislation is enacted to prohibit corporal punishment in all settings, including the home, and to repeal all legal provisions currently in force which provide a defence or authorisation for the use of corporal punishment.**

1 The report of Bangladesh to the Committee on the Rights of the Child

1.1 In its fifth report to the Committee on the Rights of the Child, the Government of Bangladesh states that it takes the issue of corporal punishment very seriously and is taking measures to prevent corporal punishment in all settings, particularly in schools. Reference is made to a High Court ruling against corporal punishment in schools as well as circulars issued by the Directorate of Primary Education and the Ministry of Education, supported by awareness raising on the issue.¹ However, there is no report of any measures being taken to reform the law to confirm in legislation the prohibition of corporal punishment in schools, nor to the drafting of legislation to prohibit corporal punishment in the home and all other settings. The report notes that the draft new

¹ [October 2012], CRC/C/BGD/5, Fifth state party report, pp. 30, 34, 37, 54 and 55

Children Act is designed “to ensure the rights of the children in alignment with the CRC”.² Since the report was submitted, the Children Act 2013 has been enacted: it does not prohibit corporal punishment.

- 1.2 Bangladesh has long been committed to prohibiting corporal punishment of children in all settings, including the home (see below, para. 2.3). **We hope the Committee will welcome the steps taken to address corporal punishment in schools and urge the Government to ensure that legislation is enacted to prohibit corporal punishment in all settings, including the home, and to repeal all legal provisions currently in force which provide a defence or authorisation for the use of corporal punishment.**

2 The legality of corporal punishment of children in Bangladesh

- 2.1 **Summary:** Corporal punishment of children in Bangladesh is unlawful in schools under a Supreme Court ruling, though this has not yet been confirmed through law reform. Corporal punishment is lawful in the home, alternative care settings, day care and penal institutions and as a sentence for crime.
- 2.2 **Home (lawful):** 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...” A 2011 Supreme Court ruling (see below, para. 2.6) stated that this article is relevant only to medical actions on a child and not to corporal punishment. However, this has not been confirmed through law reform to explicitly prohibit all corporal punishment; it is notable that in other jurisdictions with comparable Penal Code provisions the article is interpreted as providing a defence for corporal punishment. Provisions against violence and abuse in the Penal Code and the Domestic Violence Act 2010 are not interpreted as prohibiting corporal punishment in childrearing.
- 2.3 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. 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 Bangladesh.³ The Ministry of Women and Children Affairs is involved in SAIEVAC activities aimed at prohibiting corporal punishment in all settings.
- 2.4 In the 2011 ruling on corporal punishment in schools, 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 1974 to make it an offence for parents (and employers) to impose corporal punishment on children. But the Children Act 2013, which repeals the Children Act 1974, failed to achieve this: it includes the offence of child cruelty (art. 70) but it does not prohibit corporal punishment in any setting.
- 2.5 **Alternative care settings (lawful):** Corporal punishment is lawful under article 89 of the Penal Code 1860 (see above, para. 2.2). Legislation governing care institutions reportedly provides for corporal punishment as a disciplinary measure but we have no specific details.⁴

² *ibid.*, p. 12

³ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

⁴ Justice M Imman Ali, Supreme Court of Bangladesh, in correspondence with the Global Initiative, 2 September 2010

- 2.6 **Day care (law)**: Corporal punishment is lawful under article 89 of the Penal Code 1860 (see above, para. 2.2).
- 2.7 **Schools (unlawful)**: Corporal punishment is unlawful in schools according to a Supreme Court judgment issued on 13 January 2011⁵ 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.⁵ The Ministry issued “Guidelines for the prohibition of corporal and mental punishment of students in educational institutions 2011”, which came into effect in April 2011.⁶ Prohibition is yet to be confirmed in legislation: a draft Education Act was under discussion in 2013. The Supreme Court ordered laws relating to disciplinary action against teachers to be amended to identify the imposition of corporal punishment as misconduct.
- 2.8 **Penal institutions (lawful)**: Corporal punishment is lawful in penal institutions, including certified institutes, approved homes, prisons and vagrant homes. Rule No. 24 of the Children Rules 1976 lists sanctions 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 (art. 46); for boys under 16 it must be inflicted “in the way of school discipline” (art. 53). According to the Borstal Schools Act (art. 4), the Prisons Act applies to borstal schools.
- 2.9 **Sentence for crime (lawful)**: Whipping appears to be lawful for males. Under the Code of Criminal Procedure 1898, boys under 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 (art. 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 (art. 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 (art. 391). The person to be whipped must be considered fit to receive the punishment, by a medical officer, the Magistrate or the officer present (art. 394).
- 2.10 The Penal Code 1860 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 (arts. 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 (art. 5). Whipping is a sentence for offences under the Cantonments Pure Food Act 1966 (art. 23), the Suppression of Immoral Traffic Act 1933 (arts. 9, 10 and 12) and, for boys under the age of 12, the Railways Act 1890 (art. 130).
- 2.11 The 2011 Supreme Court judgment concerning schools stated that all laws authorising whipping or caning of children as a sentence of the courts should be immediately repealed. The Children Act 2013 states that the dignity of children in conflict with the law should be respected at all times (art. 54) and does not provide for judicial corporal punishment – but it does not explicitly prohibit corporal punishment as a sentence nor repeal the above mentioned provisions authorising judicial whipping of juvenile offenders.
- 2.12 Corporal punishment is commonly ordered by traditional village mediation councils (shalish),

⁵ 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

⁶ Ministry of Education Circular No. 37.031.004.02.00.134.2010-151, 21 April 2011

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.

3 The practice of corporal punishment in Bangladesh

3.1 Numerous studies have been carried out which make visible the extent to which children in Bangladesh are subjected to corporal punishment and the nature of the punishment involved. For example, in a 2012 national study, 77.1% of students stated that physical, psychological or financial punishments were inflicted on students in their schools.⁷ A 2009 study by UNICEF involving nearly 4,000 households found that 91% of children had been physically punished at school, including being hit on the palm with a ruler or stick (76%), having to stand in class, being hit on other body parts with a ruler or stick, and being slapped; 23% said they faced corporal punishment every day, 7% reported injuries and bleeding as a result. 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; 25% of children had been physically punished in their workplace.⁸

4 Recommendations by human rights treaty bodies and during the UPR

- 4.1 **CRC:** The Committee on the Rights of the Child has three times expressed concern about corporal punishment of children in Bangladesh and recommended it be prohibited in the family and other settings – in the concluding observations on the state party's initial report in 1997,⁹ the second report in 2003¹⁰ and the third/fourth report in 2009.¹¹
- 4.2 **UPR:** Bangladesh was examined in the first cycle of the UPR in 2009 (session 4). The Government accepted a recommendation to “taking into account the provisions of the CRC, take further measures to prohibit all forms of violence against children, including corporal punishment and to raise the minimum age of criminal responsibility”.¹² The second cycle review took place in 2013 (session 16). A recommendation was made to “explicitly prohibit corporal punishment in all settings, including the home”.¹³ The Government's response was to draw attention to the Supreme Court ruling on corporal punishment in schools (see above, para. 2.6) and to say that awareness raising about the adverse effects of corporal punishment would be carried out in relation to all settings but that prohibition in all settings “needs extensive and proper educational and socio-cultural initiatives”.¹⁴

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⁷ Bangladesh Legal Aid and Services Trust & Institute of Informatics and Development (2012), Survey Report on Violence against Children in Education Institute Settings, Institute of Informatics and Development

⁸ UNICEF (2009), Opinions of Children of Bangladesh on Corporal Punishment: Children's Opinion Poll 2008, Dhaka: UNICEF & Ministry of Women and Children Affairs

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

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

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

¹² 5 October 2009, A/HRC/11/18, Report of the working group, para. 94(16)

¹³ 8 July 2013, A/HRC/24/12, Report of the working group, para. 130(19)

¹⁴ 23 July 2013, A/HRC/24/12/Add.1, Report of the working group: Addendum, para. 130(19)