

Corporal punishment of children in Bangladesh: Briefing for the Universal Periodic Review, 44th session, Oct./Nov.2023



*From the Global Partnership to End Violence Against Children,
March 2023*

This submission provides an update on the legality of corporal punishment of children in Bangladesh since its review in the third cycle UPR in 2018. Corporal punishment prohibition is still to be fully achieved in the home, alternative care settings, day care, penal institutions and as a sentence for crime; the Supreme Court ruling against corporal punishment in schools requires confirmation in legislation.

The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.

In Bangladesh, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child, other human rights treaty bodies, and during the 3rd cycle UPR of Bangladesh in 2018.

We hope the Working Group will note with concern the legality of corporal punishment of children in Bangladesh. We hope states will raise the issue during the review this year and make a specific recommendation that Bangladesh accelerates its efforts to clearly prohibit all corporal punishment of children in every setting of their lives and repeal any legal defence allowing its use, as a matter of priority.

1 Review of Bangladesh in the 3rd cycle UPR (2018) and progress since

1.1 Bangladesh was reviewed in the third cycle of the Universal Periodic Review in 2018 (session 30). Recommendations to prohibit corporal punishment in all settings were made and supported by the Government.¹

¹ 11 July 2018, A/HRC/39/12, Report of the Working Group, paras. 147(45), 147(52), 147(55), 147(56)

1.2 However, following the review, no law reform to explicitly prohibit corporal punishment of children in all settings seems to have been initiated.

1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in Bangladesh. We hope states will raise the issue during the review this year and make a specific recommendation that Bangladesh intensify its efforts to enact a law to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, as a matter of urgency.**

2 Legality of corporal punishment in Bangladesh

Summary of current law and opportunities for achieving prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, penal institutions and as a sentence for crime; the Supreme Court ruling against corporal punishment in schools requires confirmation in legislation.

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. All corporal punishment should be prohibited, however light and by all persons with authority over children.

2.1 **Home (lawful):** 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...." A 2011 Supreme Court ruling (see under "Schools") 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.² Provisions against violence and abuse in the Penal Code and the Domestic Violence Act 2010 are not interpreted as prohibiting corporal punishment in childrearing.

2.2 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. The Children Act 2013, which repeals the Children Act 1974, failed to achieve this. It includes the offence of child cruelty

² For example, see India's Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40

(art. 70), punishing “any person having the custody, charge or care of any child [who] assaults, abuses, neglects, forsakes, abandons unprotected, uses for personal services, or exposes in an obscene way such child and such assault, abuse, negligence, forsaking, abandonment, or the use in personal service causes unnecessary suffering or such injury to his health that it leads to loss of the child's eyesight or hearing or injury to any of limb or organ of the body and any mental derangement”, but it does not prohibit all corporal punishment.

2.3 In reporting to the Committee on the Rights of the Child in 2015, the Government noted that a number of legislative measures are still being developed, including a “Ban on Corporal Punishment Policy and Guideline 2015” and the Children Rules 2015.³ The Government also reported that a law to ban corporal punishment of children in all educational institutions and workplaces is being drafted, as well as a comprehensive law to ban all forms of violence against children, including corporal punishment.⁴ Consultations have been carried out in Dhaka, Chittagong and Patuakhali districts on amendments necessary to existing laws on violence against children and recommendation submitted to the Ministry of Law, Justice and Parliamentary Affairs in March 2014.⁵ We are seeking further information.

2.4 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code 1860 (see under “Home”). Legislation governing care institutions reportedly provides for corporal punishment as a disciplinary measure but we have no specific details.⁶ The Children Act 2013 does not explicitly prohibit all corporal punishment.

2.5 **Day care (lawful):** Corporal punishment is lawful in day care under article 89 of the Penal Code 1860 (see under “Home”). It is not prohibited in the Children Act 2013.

2.6 **Schools (lawful):** Corporal punishment is unlawful in schools according to a Supreme Court judgment issued on 13 January 2011⁷ 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.⁸ The Ministry issued “Guidelines for the prohibition of corporal and mental punishment of students in educational institutions 2011”, which came into effect in April 2011.⁹

Prohibition is yet to be confirmed in legislation passed by Parliament: a draft Education Act has long been under discussion but as at June 2016 had still not been enacted.¹⁰ The Supreme Court ordered laws relating to disciplinary action against teachers to be amended to identify the imposition of corporal punishment as misconduct.

³ 12 August 2015, CRC/C/BGD/Q/5/Add.1, Reply to list of issues, para. 3

⁴ 12 August 2015, CRC/C/BGD/Q/5/Add.1, Reply to list of issues, paras. 24 and 26

⁵ 12 August 2015, CRC/C/BGD/Q/5/Add.1, Reply to list of issues, para. 27

⁶ Justice M Imman Ali, Supreme Court of Bangladesh, in correspondence with the Global Initiative, 2 September 2010

⁷ Writ Petition No. 5684 of 2010

⁸ 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

⁹ Ministry of Education Circular No. 37.031.004.02.00.134.2010-151, 21 April 2011

¹⁰ 2 October 2015, CRC/C/BGD/CO/5 Advance Unedited Version, Concluding observation on fifth report, para. 4

2.7 Penal institutions (lawful): 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 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. The Children Act 2013 does not prohibit corporal punishment.

2.8 Sentence for crime (lawful): Whipping appears to be lawful as a sentence for crime 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).

2.9 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).

2.10 The 2011 Supreme Court judgment (see under “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. We are seeking information regarding the extent to which the new Act overrides other laws.

2.11 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 (writ petitions No. 5863/2009, No. 754/2010, No. 7245/2010). This prohibition of *shalish* decisions and *Shari’a* courts was reiterated by the Government in 2017.¹¹

¹¹ 14 March 2017, CCPR/C/SR.3340, Summary records of the 3340th meeting, paras. 34 and 54

2.12 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” (art. 35).

3 Recommendations by human rights treaty bodies

3.1 **CRC:** The Committee on the Rights of the Child has four times expressed concern at corporal punishment of children in Bangladesh and recommended it be explicitly prohibited in all settings – in its concluding observations on the state party’s initial report in 1997,¹² on the second report in 2003¹³ and on the third/fourth report in 2009¹⁴ and on the state party’s fifth report in 2015.¹⁵

3.2 **CAT:** In its concluding observations on the state party’s initial report in 2019,¹⁶ the Committee Against Torture recommended that the Government prohibit all forms of corporal punishment in all settings.

Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children

www.endcorporalpunishment.org; secretariat@end-violence.org

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

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

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

¹⁵ 2 October 2015, CRC/C/BGD/CO/5 Advance Unedited Version, Concluding observation on fifth report, paras. 38 and 39

¹⁶ 26 August 2019, CAT/C/BGD/CO/1, Concluding observations on initial report, paras. 6, 46, 47, 48 and 49