

BRIEFING ON BANGLADESH FOR THE HUMAN RIGHTS COMMITTEE, 119th session (March 2017)

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Global Initiative to
End All Corporal Punishment
of Children

This briefing describes the legality of corporal punishment of children in Bangladesh. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, the recommendations made to Bangladesh by the Committee on the Rights of the Child (in 1997, 2003, 2009 and 2015), the Committee on the Elimination of Discrimination Against Women in 2011, during the UPR in 2009 and 2013, and the Government’s commitment to prohibiting all corporal punishment of children, we hope the Human Rights Committee will recommend that legislation prohibiting corporal punishment in all settings, including the home, be enacted and implemented as a matter of priority, and that all legal defences be repealed.

1 The legality of corporal punishment of children in Bangladesh

- 1.1 **Summary:** In Bangladesh, corporal punishment is unlawful in schools since a 2011 Supreme Court ruling but the necessary law reform has not yet been carried out to inscribe this prohibition in law. Corporal punishment is not fully prohibited in the home, in all forms of alternative care and day care settings, and in the penal system.
- 1.2 **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) 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.¹ Provisions against violence and abuse in the Penal Code and the Domestic Violence Act 2010 are not interpreted as prohibiting corporal punishment in childrearing.
- 1.3 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 (art. 70),

¹ For example, see India’s Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40

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.

- 1.4 **Alternative care settings (lawful):** Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code 1860. Legislation governing care institutions reportedly provides for corporal punishment as a disciplinary measure but we have no specific details.² The Children Act 2013 does not explicitly prohibit all corporal punishment.
- 1.5 **Day care (lawful):** Corporal punishment is lawful in day care under article 89 of the Penal Code 1860. It is not prohibited in the Children Act 2013.
- 1.6 **Schools (unlawful):** Corporal punishment is unlawful in schools according to a Supreme Court judgment issued on 13 January 2011³ 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.⁴ The Ministry issued “Guidelines for the prohibition of corporal and mental punishment of students in educational institutions 2011”, which came into effect in April 2011.⁵
- 1.7 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.⁶ The Supreme Court ordered laws relating to disciplinary action against teachers to be amended to identify the imposition of corporal punishment as misconduct.
- 1.8 **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”. The Prisons Act 1894 authorises whipping as a punishment for breaches of discipline by male prisoners. According to the Borstal Schools Act (art. 4), the Prisons Act applies to borstal schools. The Children Act 2013 does not prohibit corporal punishment.
- 1.9 **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).
- 1.10 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 Justice M Imman Ali, Supreme Court of Bangladesh, in correspondence with the Global Initiative, 2 September 2010

³ Writ Petition No. 5684 of 2010

⁴ 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

⁵ Ministry of Education Circular No. 37.031.004.02.00.134.2010-151, 21 April 2011

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

- 1.11 The 2011 Supreme Court judgment 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.
- 1.12 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).
- 1.13 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).

2 Bangladesh’s commitment to prohibiting all corporal punishment and progress to date

- 2.1 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.⁷ The Ministry of Women and Children Affairs is involved in SAIEVAC activities aimed at prohibiting corporal punishment in all settings.
- 2.2 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 2015.⁸ 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.⁹ 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 2014.¹⁰

⁷ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

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

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

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

3 Recommendations by human rights treaty bodies and during the UPR

- 3.1 **CRC:** Bangladesh has received repeated recommendations concerning prohibition and elimination of corporal punishment of children from the Committee on the Rights of the Child (2015, 2009, 2003, and 1997).¹¹
- 3.2 **UPR:** During the Universal Periodic Review of Bangladesh in 2009, the Government accepted the recommendation to prohibit corporal punishment of children.¹² However, in response to a similar recommendation at the UPR in 2013, the Government indicated that it considered education and awareness raising needs to be undertaken before corporal punishment can be prohibited.¹³

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¹¹ 2 October 2015, CRC/C/BGD/CO/5 Advance Unedited Version, Concluding observation on fifth report, paras. 38 and 39; 26 June 2009, CRC/C/BGD/CO/4, Concluding observations on third/fourth report, paras. 48 and 49; 27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 43, 44, 77 and 78; 18 June 1997, CRC/C/15/Add.74, Concluding observations on initial report, paras. 18 and 38

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

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