



South Asia Initiative to End Violence Against Children

SAARC Apex Body



JOIN SAIEVAC IN ENDING CORPORAL PUNISHMENT

Prohibition of Corporal Punishment of Children in South Asia

Progress and Proposals for Reform 2014



IN SOLIDARITY WITH THE CHILDREN OF SAARC



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Prohibition of Corporal Punishment of Children in South Asia:

Progress and Proposals for Reform

2014



SAARC LAW
South Asian Association for Regional
Co-operation in Law

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FOREWORD

Ending Corporal Punishment is one of the 5 thematic targets for SAIEVAC and also the first thematic area to be activated for implementation. In November 2010, SAARC Member State developed a National Action Plan to achieve prohibition of corporal punishment in all settings during the 1st SAIEVAC Technical Consultation on Legal Reform and Corporal Punishment. Second Governing Board Meeting of SAIEVAC endorsed the concept note for the Campaign against Corporal Punishment. SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children to review progress made in implementing the UN Study recommendations in South Asian countries. Following the launch of the regional campaign, national campaigns have already been launched in Bangladesh, Pakistan and Nepal. The national campaigns need to be launched in Afghanistan, Bhutan, India, Maldives and Sri Lanka.

In keeping with SAIEVAC's commitment for ending the legality, social acceptance and violent punishment of children, consistent efforts and interventions are being made through its three strategic pillars of legal reforms, awareness raising, and public education. Although we have covered some grounds, the going so far has certainly been an uphill one, within the backdrop of a very challenging society steeped in deeply held harmful practices of violent punishment of children in the homes, schools, institutions as well as the penal system.

A major UNICEF report published in 2014 (*Hidden in Plain Sight: A statistical analysis of violence against children*), which used data from 62 countries, highlighted that violent punishment is the most common form of violence against children. Almost four years ago in November 2010, SAIEVAC commenced dedicated work to explicitly prohibit all forms of Corporal Punishment in all settings, when the first ever regional Technical Consultation on "Legal Reforms and Corporal Punishment" was organized in South Asia.

Despite some insurmountable challenges confronted by us, we have steadfastly endeavored to forge ahead with our plans and activities in close collaboration with our National Mechanisms- the NACGs and SACG partners to end Corporal Punishment in South Asia. While many member states have developed their own plans of action to end Corporal Punishment, SAIEVAC's Regional Campaign to end Corporal Punishment has been successfully launched in Bangladesh, Pakistan and Nepal. Plans are underway to launch the campaign in all the other remaining countries within 2015.

I am also happy to report that SAIEVAC organized a Workshop of the Experts to Review the Legal Status of Corporal Punishment in South Asia and recommend Model Laws for explicit prohibition of Corporal Punishment from 23rd to 24th May 2014 in Kathmandu, Nepal. The main outcome was the drafting of a country specific recommendation of model laws for explicit prohibition of all corporal punishment in the member states. Taking stock of all that have happened till date, we are pleased to now release this report entitled "Prohibition of Corporal Punishment of Children in South Asia: Progress and Proposals for Reform".

I would like to take this opportunity to thank all the individuals and organizations including the Global Initiative to End All Corporal Punishment of Children, SAARCLAW, SACG and SAIEVAC's National mechanisms who made contributions on this report.

In Solidarity with the Children of SAARC!

Dr. Rinchen Chophel
DIRECTOR GENERAL



Kalyan Shrestha
Justice

Supreme Court, Nepal

Foreword

Corporal punishment has remained as a legalized form of violence against children in many countries of the world including South Asia. Corporal punishment violates children's right to equal protection from the law. Many countries have passed legislation to prohibit corporal punishment of children in all settings. It is the human rights obligation of all SAARC member states to undertake legal reform for prohibiting corporal punishment.

This report discusses the legal provisions of the countries of South Asia with reference to corporal punishment. As highlighted by the report, almost all the countries in South Asia have laws which permit or authorize physical assault against children in the name of discipline in one or more settings. It has listed the provisions of the domestic laws of the SAARC member states that authorize or provide defense for corporal punishment. It also recommends specific legal provisions to ensure explicit prohibition of all corporal punishment of children in all settings including home, school, penal systems and alternative care. A review of the legality of corporal punishment in SAIEVAC member states was carried out and published as a report in 2011. This report is an updated version of the 2011 report.

This report is an outcome of the collaboration between SAARCLAW and SAIEVAC. South Asian Association for Regional Co-operation in Law (SAARCLAW) is an association of the legal communities of the SAARC countries comprising judges, lawyers and legal academics. The association focuses on the development and use of law towards social change for development across the region.

SAARCLAW and SAIEVAC have signed a Memorandum of Understanding to mutually help the Member States to strive towards the goal of ending violence against children. The SAARCLAW Declaration of 26th May 2013 following 12th SAARCLAW Annual Conference passed a decision to further strengthen the conglomeration with SAIEVAC to address the issues concerning protection of children in the region in more effective manner. Through the Thimphu Declaration of 26th May 2013 following 9th SAARC Chief Justices' Conference, the Chief Justices of the SAARC member states agreed to actively support the development and enforcement of legal protection for children.

The Supreme Court of Nepal passed a verdict on 6th January 2005 that declared null and void the restrictive clause of Section 7 of Children's Act, 1992 that provided justification for inflicting minor beating to children. However, the cases of corporal punishment in Nepal are frequently reported in newspapers. Ending corporal punishment requires the joint effort of all state machineries. There is also the need of



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Justice

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sharing best practices and learning across the region to change the behaviour of people away from violent behaviour.

I believe that this report will be useful for the governments of South Asia, lawmakers as well as the child rights advocates and practitioners. I believe that this report serves as a useful reference for reforming laws to ensure that children have equal protection of law from violence against children. I also wish for the success of the regional campaign against corporal punishment of children and look forward to more collaborative efforts between SAARCLAW and SAIEVAC.

A handwritten signature in black ink, appearing to read "Kalyan", with a long horizontal stroke extending to the right.

Kalyan Shrestha
Justice - Supreme Court of Nepal
President - SAARCLAW

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List of Abbreviations and Acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
FATA	Federally Administered Tribal Areas
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INGO	International Non-Governmental Organization
MOU	Memorandum of Understanding
NACG	National Action and Coordinating Group against Violence against Children
NGO	Non-Governmental Organization
SAARC	South Asian Association for Regional Cooperation
SAARCLAW	South Asian Association for Regional Cooperation in Law
SACG	South Asia Coordinating Group on Action against Violence against Children
SAF	South Asia Forum for Ending Violence against Children
SAIEVAC	South Asia Initiative to End Violence Against Children
UN	United Nations
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
VAC	Violence Against Children

Human Rights Imperative to Prohibit Corporal Punishment

The human rights imperative to prohibit and eliminate all corporal punishment and all other degrading forms of punishment of children is premised on the rights of every person to respect for his/her dignity and physical integrity and to equal protection under the law, originally formulated in the International Bill of Human Rights and affirmed and developed in the UN Convention on the Rights of the Child (CRC) and other international human rights treaties.

UN Convention on the Rights of the Child, 1989

Article 37 of the United Nations Convention on the Rights of the Child requires states to ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”; Article 19 requires states to protect children “from all forms of physical or mental violence”. The Committee on the Rights of the Child – the monitoring body for the CRC – has repeatedly emphasized that this includes the prohibition and elimination of corporal punishment in all settings, including the home, most comprehensively in General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Articles 19, 28(2) and 37, *inter alia*)”. General Comments by the Committee on education, on juvenile justice and on protection from all forms of violence similarly stress the obligation to prohibit corporal punishment.¹ The Committee has also emphasized that it is referring to *all* corporal punishment, “however light”, providing a comprehensive definition in its General Comment No. 8:

i “... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an implement – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). ... [C]orporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention [on the Rights of the Child]. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”²

Other Articles in the Convention are relevant to protection of children from all corporal punishment: Article 3 requires that in all actions concerning children, “the best interests of the child shall be a primary consideration”. Article 6 requires States to “ensure to the maximum extent possible the survival and development of the child”. Article 28, the child’s right to education, requires States to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention”.

The Committee on the Rights of the Child which monitors implementation of the Convention on the Rights of the Child has consistently stated that legal and social acceptance of physical punishment of children, in the home, in institutions or in any other setting, is not compatible with the Convention. Since 1993, in its recommendations following examination of reports from various States Parties to the Convention, the Committee has recommended prohibition of physical punishment in the family, institutions and other settings, and education campaigns to encourage positive, non-violent child-rearing and education.

Universal Declaration of Human Rights, 1948

Article 5 of the Universal Declaration of Human Rights states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Protecting the dignity of each and every individual is the fundamental guiding principle of international human rights law. Subjecting people to corporal punishment violates their fundamental rights to respect for their physical integrity and human dignity.

¹ General Comment No. 1 on “The aims of education” (2001), para. 8; General Comment No. 10 on “Children’s Rights in Juvenile Justice” (2007), paras. 25 and 28c; General Comment No. 13, “The Right of the Child to Freedom from All Forms of Violence” (2011)

² Committee on the Rights of the Child; CRC General Comment No. 8 (2006): arts. 19; 28, para. 2; and 37, *inter alia*; 2 March 2007, CRC/C/GC/8, para. 11

International Covenant on Civil and Political Rights, 1966

The Preamble of the Covenant states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...” Article 7 of the Covenant provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Covenant also requires that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (Article 10). Article 24(1) of the Covenant guarantees the right of every child to such measures of protection as are required by his status as a minor, on the part of his family, society and the State without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth. Moreover, Article 26 provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International Covenant on Economic, Social and Cultural Rights, 1966

The Preamble of the Covenant states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...” Article 10(3) of the Covenant provides that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. The Covenant requires the States Parties to recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms (Article 13(1)).

In 1999 the Committee on Economic, Social and Cultural Rights adopted a General Comment on “The Right to Education”. The Committee states:

“In the Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration of Human Rights and both Covenants: the dignity of the individual. Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation. Nor should any form of discipline breach other rights under the Covenant, such as the right to food. A State Party is required to take measures to ensure that discipline which is inconsistent with the Covenant does not occur in any public or private educational institution within its jurisdiction. The Committee welcomes initiatives taken by some State Parties which actively encourage schools to introduce “positive”, non-violent approaches to school discipline.”³

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Article 16 of the Convention provides that each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Committee Against Torture has also frequently condemned corporal punishment of children and recommended prohibition.⁴

South Asian Regional Instruments

The South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 requires States Parties to ensure appropriate legal and administrative mechanisms and social safety nets and defences to protect the child from any form of discrimination, abuse, neglect, exploitation, torture or degrading treatment, trafficking and violence (Article IV(3)(a)). The Convention also imposes an obligation for the parties to administer juvenile justice in a manner consistent with the promotion of the child's sense of dignity and worth (Article IV(3)(c)).

³ HRI/GEN/1/Rev.4, page 73

⁴ See, for example, UN General Assembly Official Records, Fiftieth Session, A/50/44, 1995, para.177 and A/51/44, 1996, para. 65(i)

The Social Charter of the South Asian Association for Regional Cooperation, 2004 calls for the States Parties to protect the child against all forms of abuse and exploitation prejudicial to any aspects of the child's well-being (Article VII(3)).

Juvenile Justice Standards

UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") 1985 provides that juveniles shall not be subject to corporal punishment (Rule 17.3).

As mentioned in the UN Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines") 1990, no young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions (Article 54).

UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 requires that all disciplinary measures constituting cruel, inhuman or degrading treatment be strictly prohibited, including corporal punishment and any other punishment that may compromise the physical or mental health of the juvenile concerned (Rule 67).

Universal Periodic Review

The Universal Periodic Review (UPR) is a process undertaken by the Human Rights Council of reviewing the overall human rights records of all UN member states once every four years. It was established by the General Assembly in 2006, when the Council itself was established, and enables each state to describe the actions they have taken to fulfil their international human rights obligations. Following review of the national report of the state under consideration along with other stakeholder's submissions and examination of government representatives, the Working Group of the Human Rights Council makes recommendations to the particular state aimed at improving compliance with its human rights obligations. The state responds by accepting or rejecting the recommendations and providing further information as necessary, though sometimes the response is unclear or makes no reference at all to a particular recommendation.

The obligation to prohibit corporal punishment of children has now been raised as an issue in relation to over 100 states, including those from South Asia. A large number of states have accepted recommendations to prohibit corporal punishment.

Recommendations by Human Rights Mechanisms to States in South Asia

The table below provides an overview of the recommendations on corporal punishment made by different human rights bodies and mechanisms to the States in South Asia in the specified date:

State	Committee on the Rights of the Child	Universal Periodic Review	Other Treaty Bodies
Afghanistan	2011 (home, schools, institutions)	2013 (schools, institutions)	2010 (in all settings by Committee on Economic, Social and Cultural Rights)
Bangladesh	2009 (home, schools, institutions, workplaces) 2003 (home, schools, institutions) 1997 (home)	2013 (all settings) 2009 (all settings)	2011 (in penal system by Committee on the Elimination of Discrimination Against Women)
Bhutan	2008 (all settings) 2001 (home, schools, institutions)	2014 (all settings) 2009 (home)	
India	2014 (all settings) 2004 (home, schools, institutions) 2000 (home, schools, institutions)	2012 (all settings)	2014 (in schools by Committee on the Elimination of Discrimination Against Women)
Maldives	2007 (home, schools, alternative care, penal system and workplace)	2010 (penal system)	2012 (in penal system and institutional settings by Human Rights Committee) 2009 (in penal system by Subcommittee on Prevention of Torture)

State	Committee on the Rights of the Child	Universal Periodic Review	Other Treaty Bodies
Nepal	2005 (home, schools, institutions) 1996 (home, schools)		2014 (in all settings by Human Rights Committee)
Pakistan	2009 (all settings) 2003 (home, schools, penal system) 1994 (penal system)		
Sri Lanka	2010 (home, schools and alternative care institutions) 2003 (schools, penal system) 1995 (schools)		2014 (in all settings by Human Rights Committee) 2011 (in all settings by Committee Against Torture) 2003 (in schools and penal system by Human Rights Committee) 1995 (in penal system by Human Rights Committee)

International Communications and Inquiry Procedures to Challenge Corporal Punishment of Children

Communications and inquiry procedures – international mechanisms which can be used to make complaints about human rights violations – are a key avenue through which individuals and groups can enforce their rights. They present an exciting opportunity to advance children’s rights, including their right to protection in law and practice from corporal punishment.

Communications can be made by or on behalf of individuals or groups of people – including of course children – claiming that their rights under the relevant treaty have been violated. The purpose of communications procedures is to allow victims of human rights violations to hold the state which perpetrated the violations to account. Inquiries can be agreed and carried out by a committee which has received reliable information containing well-founded indications of serious or systematic violations of the treaty. The information can be submitted by individuals or organizations. The purpose of inquiry procedures is to allow committees to carry out an in-depth investigation of systematic violations of the rights of a group of people, particularly where it is difficult or impossible for the victims to access other mechanisms for enforcing their rights. Unlike a communication, an inquiry does not require a specific victim or victims to be identified.

For both types of procedure, if the committee carrying out the procedure finds that human rights have been violated, it makes recommendations about how the state should prevent similar future violations. The primary purpose of a communication or inquiry on corporal punishment and other cruel or degrading punishment of children is to generate recommendations to prohibit and eliminate all corporal punishment in the state in question, resulting in a change in law to prohibit all corporal punishment.

Prohibiting and eliminating corporal punishment of children is a human rights imperative. However, some governments fail to fulfil their human rights obligations. Communications and inquiry procedures can be used to place extra pressure on these governments to prohibit all corporal punishment and other cruel or degrading punishment of children. Communications and inquiries are “quasi-judicial” procedures: the committees which examine them are not courts and cannot force governments to accept their recommendations. However, these recommendations are authoritative statements of international law, with a relatively high profile. This makes being subject to these procedures challenging for states – a significant level of stigma is attached to a state being found by an international body to have violated rights in a particular case (communications) or to be committing grave and systematic violations of human rights (inquiries).

Communications and inquiries must be about a violation of the rights set out in the treaty to which the procedure is attached. Corporal punishment and other cruel or degrading punishment of children is a violation of the right to respect for human dignity and physical integrity, which is protected by most major treaties, and there is a broad and

growing consensus within the UN human rights system that children have a right to legal protection from such treatment.

The following table presents the list of international human rights instruments that may consider communications or inquiries about corporal punishment of children and the South Asian States to which the procedures are applicable:

Communications and Inquiry Procedures as per the listed instruments						
State	Optional Protocol to the Convention on the Rights of the Child (CRC) on Communications Procedure, 2011	International Covenant on Civil and Political Rights (ICCPR), 1966	International Covenant on Economic, Social and Cultural Rights (ICESCR), 2008	Articles 20 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984	Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD), 2006	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1999
Afghanistan					Communications and Inquiries	
Bangladesh				Inquiries	Communications and Inquiries	Communications
Bhutan						
India						
Maldives		Communications		Inquiries		Communications and Inquiries
Nepal		Communications		Inquiries	Communications and Inquiries	Communications and Inquiries
Pakistan						
Sri Lanka		Communications		Inquiries		Communications and Inquiries

Religion and Corporal Punishment

Some people believe that their religion tells them to punish their children physically. However, this does not give them the right to use corporal punishment. People have the right to practice their religion – but only as long as they don't violate other people's rights. All children have the right to protection from violence, whatever religion they or their parents follow. People with very extreme religious views who believe in severe corporal punishment are often disapproved of by other religious people and by society as a whole. Many important religious figures are now joining the campaign to stop all corporal punishment. At the 2006 World Conference of Religions for Peace in Kyoto, Japan, more than 800 faith leaders made “a religious commitment to combat violence against children.” The leaders came from many religions including Buddhism, Christianity, Hinduism, Jainism, Judaism, Islam, Sikhism, Shintoism, Zoroastrianism and Indigenous religions.

Religious freedom cannot run counter to human rights. As the Committee on the Rights of the Child makes clear:



“Some raise faith-based justifications for corporal punishment, suggesting that certain interpretations of religious texts not only justify its use, but provide a duty to use it. Freedom of religious belief is upheld for everyone in the International Covenant on Civil and Political Rights (Art. 18), but practice of a religion or belief must be consistent with respect for others’ human dignity and physical integrity. Freedom to practice one’s religion or belief may be legitimately limited in order to protect the fundamental rights and freedoms of others.”⁵

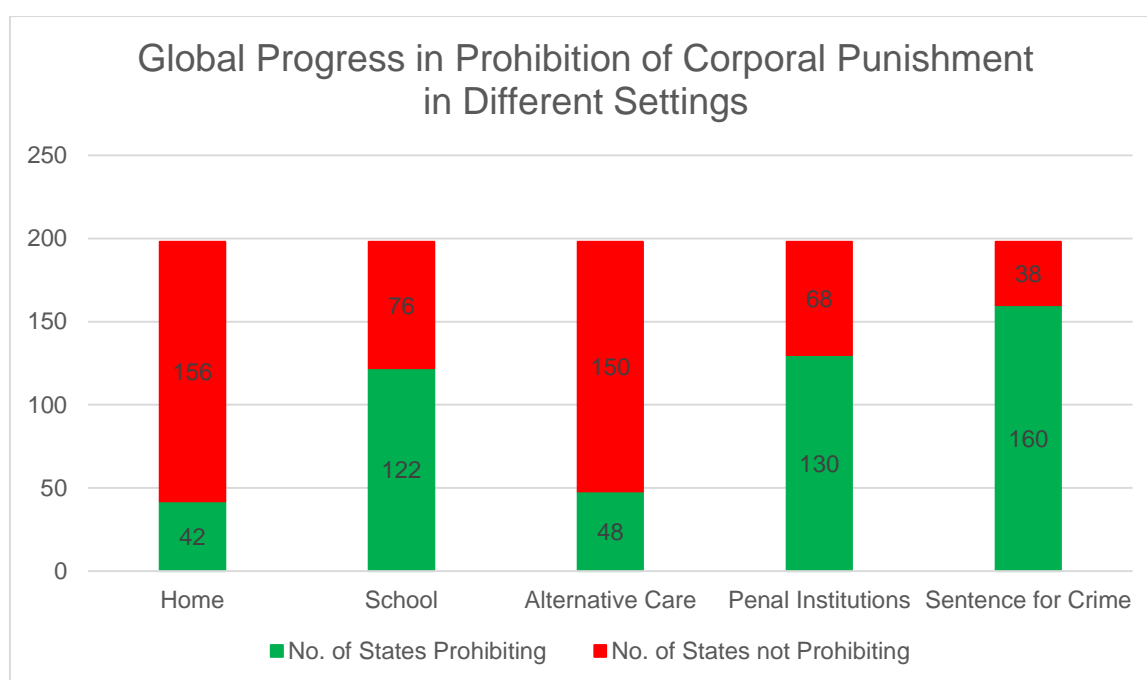
⁵ Committee on the Rights of the Child; CRC General Comment No. 8 (2006): arts. 19; 28, paras. 2 and 37, inter alia; 2 March 2007, CRC/C/GC/8, para. 29

Global and Regional Progress towards Prohibition

Global progress towards achieving prohibition of all corporal punishment of children in all settings is accelerating worldwide. As per the statistics maintained by the Global Initiative to End All Corporal Punishment of Children, as at November 2014, the total number of states with full prohibition in law is 42. At least 45 states have shown their commitment to prohibition by clearly accepting UPR recommendations and/or in other contexts including the SAARC member states. Supreme Courts in Nepal and Bangladesh have ruled against the legislation providing any defence for the use of corporal punishment.

However, more needs to be done to achieve global prohibition of all corporal punishment of children in all settings.

- 156 states have yet to achieve prohibition in the home
- 76 states have not prohibited corporal punishment in all schools
- Children are not protected from corporal punishment in all alternative care settings in 150 states
- Corporal punishment as a sentence for crime is legal in 38 states
- Corporal punishment is not prohibited as a measure of discipline in penal institutions in 68 states



Regional Commitments, Actions and Opportunities

The South Asia Initiative to End Violence against Children (SAIEVAC)

States in South Asia are committed to prohibiting and eliminating corporal punishment of children in all settings – strong commitments which date back to the Regional Consultation on the UN Study on Violence against Children in Islamabad in May 2005. One major outcome of the Consultation was the formation of the South Asia Forum for Ending Violence against Children (SAF), comprising representatives from the governments of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, representatives of civil society, and a group of children working on the issue of violence against children. The Forum met regularly and received financial and technical support from the South Asia Coordinating Group on Action against Violence Against Women and Children (SACG) – an interagency group of UN agencies and international NGOs working on child protection in the region – to coordinate work in the region and to keep the issue of violence against children high on governments’ agendas.

In 2010, SAF became the South Asia Initiative to End Violence against Children (SAIEVAC). It has a framework with a governing board where government, civil society and children are represented, a permanent secretariat hosted in Nepal and a strategic plan 2010-2015. The plan complements the SAARC Conventions on Regional Arrangements for the Promotion of Child Welfare in South Asia and on Preventing and Combating Trafficking in Women and Children for Prostitution and supports the major international human rights instruments in the field of child rights and child protection.

SAIEVAC adopted the Kathmandu Commitment to Action for Ending Violence Against Children which includes following up the recommendations of the UN Study, promoting the wellbeing of children as set out in the Social Charter of the South Asian Association for Regional Cooperation (SAARC) and strengthening cooperation at regional and national levels.

Corporal punishment is a key thematic issue for SAIEVAC (see www.saievac.org). In November 2010, with support from SACG, SAIEVAC organized its first SAIEVAC Technical Meeting on “Legal Reform and Corporal Punishment”, in Kathmandu, Nepal. Over 100 government and non-government representatives participated, and the Special Representative of the UN Secretary General on Violence against Children, Marta Santos Pais, attended. The details of law reform were discussed in depth and representatives from governments and key civil society organizations from each SAARC Member State developed a National Action Plan to achieve prohibition of corporal punishment in all settings. Governments committed to speeding up law reform and it was decided that in all eight SAARC member states, civil society organizations, including children, would work closely with their SAIEVAC government representative to implement the action plans, with technical support from SACG.⁶

In September 2011, the SAIEVAC Governing Board endorsed a progress report on Prohibition of Corporal Punishment of Children in South Asia and agreed to a regional campaign for the prohibition and elimination of all corporal punishment, to be launched under the auspices of the government of Maldives. In November 2011, SAIEVAC was recognized as a SAARC Apex body.

In the 2nd Governing Board Meeting of SAIEVAC, held in Kathmandu on 29th October 2011, governments, civil society, children and the South Asia Coordinating Group on Action against Violence against Children (SACG) representatives agreed to run a Regional Campaign against Corporal Punishment in South Asia.

South Asia Regional Campaign against Corporal Punishment

SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children to review progress made in implementing the UN Study recommendations in South



⁶ The report of the workshop and the national action plans can be downloaded from www.saievac.org

Asian countries. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The SAIEVAC National Coordinators, representatives of the CSOs, Child Participants and some of the INGO partners from the eight Member States participated in the half day National Planning Exercise on Corporal Punishment. The plans were endorsed by the SAIEVAC Governing Board. The goal of the campaign is “ending the legality, social acceptance and practice of violent punishment in South Asia, conducive to the development of a quarter of the world’s children”. It aims to contribute to the elimination of corporal punishment through legal reform with explicit prohibition of corporal punishment in all settings and public education with awareness raising on harmful consequences of corporal punishment on children’s development and developing capacity of different stakeholders on non-violent and positive parenting, teaching and caring practices. The campaign is supported by the SACG, with Save the Children as the lead technical agency.

The launch of the regional campaign has instigated national level campaigns in the region with Bangladesh becoming the first country to launch a national campaign. Pakistan and Nepal have also launched national campaigns against corporal punishment. As a component of the campaign, ‘Positive Discipline in Everyday Parenting’ by Joan E. Durrant has been adopted as the curriculum to promote alternatives to corporal punishment in the region. SAIEVAC is also in the process of publishing a South Asian edition of the book. Sri Lanka has started promoting positive discipline within the ongoing works of the National Child Protection Authority. More information regarding the campaign can be accessed from the website: www.saievac.org/cp

Collaboration between SAIEVAC and SAARCLAW

The SAARCLAW Declaration of 26th May 2013 following 12th SAARCLAW Annual Conference passed a decision to further strengthen the conglomeration with SAIEVAC so as to address the issues concerning protection of children in the region in more effective manner. Through the Thimphu Declaration of 26th May 2013 following 9th SAARC Chief Justices’ Conference, the chief justices of the SAARC members states agreed to actively support the development and enforcement of legal protection for children. On 24th October 2013, SAARCLAW and SAIEVAC signed a Memorandum of Understanding to mutually help the Member States to strive towards the goal of ending violence against children.

South Asian Children’s Recommendations for Addressing Corporal Punishment

Child representatives from South Asian countries met in Thimphu, Bhutan from 24th to 25th September, 2013 for a preparatory meeting to compile children’s recommendations and participate in the Technical Consultation on “Eliminating Harmful Practices Affecting Children in South Asia based on Tradition, Religion, Culture and Superstition” which was held in Thimphu, Bhutan from 25th to 27th September, 2013. Children made note of corporal punishment as a harmful practice affecting children in South Asia. They made the following recommendations for addressing corporal punishment:

- Better integration of child rights and child protection with government policies
- Government initiated teacher training programmes for developing positive reinforcement methods
- Creation of awareness about child rights against corporal punishment since many children are not aware of their rights
- Using the influence of media to prevent corporal punishment
- Better networking between non-governmental organizations and international organizations against corporal punishment
- Better engagement of different stakeholders to address corporal punishment
- Capacity development on positive discipline techniques such as writing statements - the child/person doing wrongful act writes a statement to not repeat such act

3rd Technical Consultation on Eliminating Harmful Practices Affecting Children in South Asia

The 3rd SAIEVAC Technical Consultation on “Eliminating Harmful Practices Affecting Children in South Asia based on Tradition, Religion, Culture and Superstition” was convened in Thimphu, Bhutan from 25th to 27th September, 2013. Among other considerations, the consultation involved the review of measures taken and results

achieved by member states in addressing corporal punishment as well as the sharing of best practices and positive examples in addressing corporal punishment.

A technical paper was developed with the support from SACG, led by Save the Children. Save the Children made a presentation on the technical paper that led into discussions on prohibition and elimination of all corporal punishment of children in the region. The presentation and discussions focused on the magnitude of corporal punishment, the impact of corporal punishment on children and the human rights imperative to end corporal punishment, the legal status of corporal punishment in SAARC countries, and the approaches to end all corporal punishment including legal reform, public education and awareness raising. As an outcome of the Technical Consultation, a set of regional recommendations were developed. The recommendations call for increased commitment of all the key stakeholders including the political machinery of the SAARC Member States to reinforce effective implementation strategies of policies and plans to address harmful practices affecting children including corporal punishment. The reform of legislation pertaining to harmful practices has been highlighted as a key priority. The recommendations were adopted by the Governing Board Meeting of SAIEVAC.

Opportunities for Progress across South Asia

The following table identifies opportunities for law reform to achieve prohibition of corporal punishment in most states in the region. Given governments' long-standing commitment to prohibition, the support of UN agencies, national and international non-government organizations and the strong regional coordination, states in South Asia are well placed to take immediate advantage of such opportunities.

State	Opportunities for achieving prohibition to corporal punishment
Afghanistan	Penal Code, Civil Code, Juvenile Code and other laws are under review as part of the process of law reform in the light of international human rights obligation; a comprehensive law on children is being drafted and the draft Shiite law and draft Family Protection Law are under discussion.
Bangladesh	Rules of procedures of Children Act, 2013 are being developed; an Education Bill is also being drafted; new Family Code is under discussion.
Bhutan	The Child Care and Protection Act, 2011 allows the formation of Rules for "culturally appropriate" correction measures; which can incorporate provisions for the explicit prohibition of corporal punishment or other forms of cruel or degrading punishment of children.
India	Juvenile Justice (Care and Protection) Bill, 2014 is under review and discussion.
Maldives	A Bill on Amendments to the Protection of Children's Rights Act is being drafted; a number of bills are under consideration, including Education Bill, Juvenile Justice Bill, Evidence Bill and Criminal Procedure Bill.
Nepal	New constitution is being drafted; Bill to Amend and Codify the Acts relating to Children, 2011, Bill to amend and codify the Prevailing Laws on Criminal Offences, 2010, Bill to Amend and Codify Civil Laws, 2011, and Education Bill is being drafted.
Pakistan	Prohibition of Corporal Punishment Bill, 2014, Child Protection Bill, Protection Against Domestic Violence Bill, Balochistan Prohibition Corporal Punishment Bill, Khyber Pakhtunkhwa Prohibition of Corporal Punishment Bill, Sindh Prohibition of Corporal Punishment Bill, Balochistan Child Welfare and Protection Bill, 2012 are being drafted, discussed and reviewed. Similarly, Zina laws are being reviewed.
Sri Lanka	Draft Juvenile Justice Procedure Code and amendments to Children and Young People's Ordinance and under discussion; laws are being considered to prohibit corporal punishment in schools, children's homes and prisons.

The country reports in the following sections describe existing legislation relevant to corporal punishment in each state, research that has been carried out on the issue, recommendations from treaty monitoring bodies and steps that have been taken towards law reform to achieve prohibition. It is vital that the pursuit of law reform is based on a thorough understanding of what prohibition means – crucially that all forms of corporal punishment are prohibited, however light, and that prohibition applies to children wherever they are, without exception. All legal defences for the use of corporal punishment must be repealed.

Legality of Corporal Punishment in the Region: Summary

This table is based on the Legal Status Report of Corporal Punishment published by SAIEVAC Regional Secretariat, information shared by the SAIEVAC national mechanisms and the information maintained by its partner: the Global Initiative to End All Corporal Punishment as at August, 2014.

State	Explicit Legal Prohibition in the Listed Settings				
	Home	School	Penal System		Alternative Care Settings
			Sentence for Crime	Penal Institutions / Correction Homes	
Afghanistan	No ⁷	Yes ⁸	No ⁹	No ¹⁰	No ¹¹
Bangladesh	No ¹²	Yes ¹³	No ¹⁴	No ¹⁵	No ¹⁶
Bhutan	No ¹⁷	No ¹⁸	Yes ¹⁹	[Yes] ²⁰	No ²¹
India	No ²²	Some ²³	Some ²⁴	Yes ²⁵	Some ²⁶
Maldives	No ²⁷	No ²⁸	No ²⁹	No ³⁰	No ³¹
Nepal	No ³²	No ³³	Yes ³⁴	No ³⁵	No ³⁶
Pakistan	No ³⁷	Some ³⁸	Some ³⁹	Some ⁴⁰	No ⁴¹

⁷ Section 54(1) of the Penal Code, 1976 and Section 194(6) of the Shiite Personal Status Law, 2009 provide justification for corporal punishment; the Juvenile Code, 2005 does not prohibit all corporal punishment (Section 7)

⁸ Prohibited in school in Section 39 of the Education Act, 2008

⁹ Certain crimes are punished in accordance with Islamic religious law; corporal punishment is lawful as a sentence for crime under *Shari'a* law

¹⁰ The Law on Prisons and Detention Centres, 2005 does not prohibit all corporal punishment in penal institutions

¹¹ See above n.7

¹² Section 89 of the Penal Code, 1860 provides justification for corporal punishment; Section 70 of the Children Act, 2013 includes the offence of child cruelty but does not prohibit all corporal punishment

¹³ Unlawful as per the Supreme Court judgment issued on 13 January 2011

¹⁴ Whipping is lawful as per the Code of Criminal Procedure, 1898 (Section 392), the Whipping Act, 1909 (Sections, 3, 4 and 5), the Cantonments Pure Food Act, 1996 (Section 23), the Suppression of Immoral Traffic Act, 1933 (Sections 9, 10, and 12), the Railways Act, 1890 (Section 130); punishments including caning, whipping, beating and stoning to death, are often issued as *fatwas* under *Shari'a* law

¹⁵ The Children Rules, 1976 (Rule No. 24) and the Prisons Act, 1894 (Section 46) authorize corporal punishment for breaches of discipline

¹⁶ See above n.12

¹⁷ The Penal Code, 2004 (Section 109) provides defence for corporal punishment; Child Care and Protection Act, 2011 (Section 214) prohibits harsh punishment but not all corporal punishment

¹⁸ See above n.17

¹⁹ The Child Care and Protection Act, 2011 states that force shall never be used as a means of punishment (Section 23)

²⁰ Though the Child Care and Protection Act, 2011 states that a child detained for an offence shall be treated with respect and dignity (Section 75), Penal Code, 2004 defence for corporal punishment may apply (Section 111); also see above n.17

²¹ See above n.17

²² The Indian Penal Code, 1860 (Section 89) and in Jammu and Kashmir the Ranbir Penal Code, 1989 provide defence for corporal punishment

²³ Prohibited for children aged (6-14) by the Right to Free and Compulsory Education Act, 2009 (Section 17) but not applicable for all types of education institutions (Section 1(5)), does not cover other children and not applicable in Jammu and Kashmir; Indian Penal Code justifications may apply, see above n.22

²⁴ The Indian Penal Code 1860 and the Juvenile Justice (Care and Protection of Children) Act, 2000 do not provide for sentencing of offenders to corporal punishment; in Jammu and Kashmir, the Ranbir Penal Code and Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 do not provide for judicial corporal punishment; but corporal punishment may be imposed, throughout India, under traditional justice systems, such as the Pison system

²⁵ Unlawful as a disciplinary measure in penal institution under Chapter VI (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007; However, in Jammu and Kashmir, the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 criminalizes cruelty to the juvenile (Section 24) but does not prohibit all corporal punishment

²⁶ See above n.22

²⁷ New Penal Code introduced in April 2014, provides a legal defence for the use of corporal punishment in the home and other settings (Section 44(a)).

²⁸ See above n.27

²⁹ For certain offences, *hadd* is prescribed in Islam, including flogging; children over 15 can be convicted of wider range of offences under *Shari'a* Law

³⁰ See above n.27

³¹ See above n.27

³² No. 4 of the Chapter on Hurt / Battery in the General Code, 1963 provides defence for minimum amount of force

³³ See above n.32

³⁴ There is no provision of sentencing to corporal punishment in the Children Act, 1992 (Section 11)

³⁵ Children Act, 1992 prohibits certain acts in penal institutions but does not refer to corporal punishment (Section 15)

³⁶ The Children Act, 1991 does not prohibit all corporal punishment in a children's welfare home (Section 39); also, the defence provided by the General Code apply, see above n.32

³⁷ The Pakistan Penal Code, 1860 provides defence for corporal punishment (Section 89)

³⁸ Some states have passed legislation prohibiting corporal punishment in schools; however, the defence provided by the Pakistan Penal Code applies, see above n.37

³⁹ Prohibited in the Juvenile Justice System Ordinance, 2000 (Section 12(a)); but laws against *hadd* offences punish the offenders with corporal punishment

Explicit Legal Prohibition in the Listed Settings					
State	Home	School	Penal System		Alternative Care Settings
			Sentence for Crime	Penal Institutions / Correction Homes	
Sri Lanka	No ⁴²	No ⁴³	Yes ⁴⁴	Some ⁴⁵	No ⁴⁶

⁴⁰ Prohibited in the Juvenile Justice System Ordinance, 2000 (Section 12(a)); but the Prisons Act 1894 provides for whipping as a punishment for prison offences by male prisoners (Section 46(12)); in Punjab province, the Borstal Act, 1926 permits corporal punishment on males in Borstal Institutions (Section 33 and 36)

⁴¹ See above n.37; the Punjab Destitute and Neglected Children Act, 2004 (Section 35) and the Sindh Children Act, 1955 (Section 48) provide defence for corporal punishment

⁴² The Penal Code, 1883 (Sections 82 and 341) provides defence for corporal punishment; Children and Young Persons Ordinance No. 48 of 1939 (Section 71(6)) provides defence for parent, teacher and others to administer punishment to child

⁴³ See above n.42

⁴⁴ Corporal Punishment (Repeal) Act No. 23 2005 (Section 3) prohibits corporal punishment as a sentence for crime

⁴⁵ The Corporal Punishment (Repeal) Act No. 23 of 2005 repeals corporal punishment in prisons under the Prisons Ordinance, but not in other penal institutions such as remand homes, approved homes and certified schools

⁴⁶ See above n.42

Country Report: Afghanistan



Legality of corporal punishment of children

Corporal punishment is lawful in the home, the penal system and alternative care settings.

Home

Corporal punishment is lawful in the home. There is no explicit prohibition of all corporal punishment of children in national law despite the assertion that it is prohibited made by the government to the Committee on Economic, Social and Cultural Rights in 2010.⁴⁷ Section 54(1) of the Penal Code, 1976 confirms the “right” of punishment of son and student by father and teacher provided that the punishment is within the limits of religious and other laws”. Section 194(6) of the Shiite Personal Status Law, 2009 states “Parents and legal guardian can discipline their children to the extent that does not require *dia* (blood money/ransom) or compensation for injury; however any kind of extreme discipline can result in liability”. Provisions against violence and abuse in the Penal Code, 1976 and the Law on the Elimination of Violence against Women, 2009 are not interpreted as prohibiting all corporal punishment in childrearing. The Juvenile Code, 2005 prohibits “contemptuous and harsh punishment, even if for correction and rehabilitation purposes” (Section 7), but does not prohibit all corporal punishment. The government reported to the UPR in 2014 that the Penal Code, Civil Code, Juvenile Code and other laws are under review as part of the process of law reform in the light of international human rights obligations.⁴⁸ A comprehensive law on children is being drafted, and the draft Shiite Personal Status law and draft Family Protection Law are under discussion.⁴⁹ It is not clear whether prohibition of corporal punishment has been proposed in these reforms.

School

Corporal punishment is prohibited in school in Section 39 of the Education Act, 2008.

Sentence for Crime

Corporal punishment is lawful as a sentence for crime under *Shari’a* law. Article 29 of the Constitution, 2004 prohibits “punishment contrary to human dignity”; the Juvenile Code, 2005 prohibits “contemptuous and harsh punishment”. However, according to Section 39 of the Juvenile Code, children aged 12-17 are subject to reduced sanctions specified in the Penal Code, 1976. While the Penal Code itself does not provide for judicial corporal punishment, it applies only to *Tazzeri* crime and penalties: *hodod*, *qassass* and *diat* crimes are punished in accordance with Islamic religious law, including corporal punishments.

Penal Institutions

Corporal punishment is lawful as a disciplinary measure in penal institution. Severe corporal punishment is prohibited under the Juvenile Code (Section 7) but there is no explicit prohibition of all corporal punishment. The Law on Prisons and Detention Centers, 2005 does not provide for corporal punishment and states that force can be used only if “the detainee or prisoner is escaping, resisting or attacking others or causes disorder which cannot be prevented by any other means” (Section 46), but it does not explicitly prohibit corporal punishment. A Law on Juvenile Rehabilitation Centers was adopted in 2009 but it is not confirmed if it explicitly prohibits corporal punishment.

Alternative Care Settings

The Juvenile Code applies to children in need of care and protection and prohibits harsh punishment (Section 7), but it does not explicitly prohibit all corporal punishment in all forms of care. The “right” to discipline/punish in Section 54 of the Penal Code, 1976 and Section 194 of the Shiite Personal Status Law, 2009 presumably applies to all persons with parental authority for children.

Research on Corporal Punishment

Research has made visible the subjection of children to corporal punishment by adults in their homes and other settings. In qualitative research in 2008, involving parents, children and others, corporal punishment was found to

⁴⁷ 21 May 2010, E/C.ER/2010/SR.17, Summary Record, para. 9

⁴⁸ 20 November 2013, A/HRC/WG.6/18/AFG/1, National Report to the UPR, paras. 11 and 12; 29 January 2014, A/HRC/WG.6/18/L.2, draft report of the working group, paras. 18 and 134

⁴⁹ Report prepared by the Global Initiative to end All Corporal Punishment of Children (www.endcorporalpunishment.org), last updated on June 2014.

occur in all 61 case study families, being inflicted on children as young as 2 or 3, most commonly slapping, verbal abuse, punching, kicking, and hitting with thin sticks, electrical cables and shoes.⁵⁰ In a previous survey, 82% of children reported that slapping, kicking and hitting with a stick are common forms of punishment; more than half reported being hit or severely beaten for being noisy or naughty, almost a quarter for not learning their school lessons, and nearly one in ten for disobeying adults.⁵¹ In a study of almost 250 girls and boys in juvenile rehabilitation centres in 22 provinces, 48% reported being beaten during their arrest and 36% reported being ill-treated in police custody; children under 16 were as likely to report having been beaten as older children.⁵²

Recommendations by Human Rights Treaty Bodies

Recommendations to prohibit corporal punishment of children have been made by the Committee on the Rights of the Child⁵³ and the Committee on Economic, Social and Cultural Rights.⁵⁴

Law Reform Necessary to Achieve Prohibition in All Settings

The “right to punish” in Section 54(1) of the Penal Code should be repealed. It is proposed to repeal Section 54 (1) of the Penal Code, 1976 so as to remove the defence provided to parents and teachers who use corporal punishment. A new provision should be added that provides: “*No defence shall be available to any person for using corporal punishment against the child on religious, cultural or any other ground*”. Similar reform should address the defence provided by Section 194 of the Shiite Personal Status Law, 2009.

Legislation should be enacted to explicitly prohibit all corporal punishment of children including by parents in the home, in all forms of alternative care, in all institutions accommodating children in conflict with the law, and as a sentence imposed under Islamic Law on all persons under 18 at the time of the offence.

Further, Sections 55 and 56 of the Penal Code, 1976 provides an exception for committing criminal act in the discharge of official duty. It is suggested to rephrase Section 55 of the Penal Code as “*Committing of criminal act during the discharge of a duty, which is the obligation of the state official by the law, is not considered crime except the commission of corporal punishment to children.*”

Moves towards Law Reform

The government of Afghanistan in its UPR, 2014 has submitted that the Penal Code, Civil Code, Juvenile Code and other laws are under review as part of the process of law reform in the light of international human rights obligation.⁵⁵ The government also has submitted that a comprehensive law on children is being drafted and the draft Shiite law and draft Family Protection Law are under discussion.

At a meeting of the South Asia Forum in July 2006, following the regional consultation in 2005 of the UN Secretary General’s Study on Violence against Children, the government made a commitment to prohibit corporal punishment of children in all settings, including at home. The national action plan to achieve prohibition developed

⁵⁰ Smith, Deborah J. (2008), *Love, Fear and Discipline: Everyday violence toward children in Afghan families*, Kabul: Afghanistan Research and Evaluation Unit

⁵¹ Save the Children Sweden Afghanistan (2003), *Mini Survey Report on Corporal punishment*, Kabul: Save the Children, cited in Jabeen, F (2004), *Corporal/physical and psychological punishment of girls and boys in South and central Asia Region*, Save the children Sweden, Denmark

⁵² Afghanistan Independent Human Rights Commission/UNICEF (2008), *Justice for children: The Situation of Children in conflict with the law in Afghanistan*

⁵³ 8 April 2011, CRC/C/AFG/1, *Concluding observations on initial report*, paras. 38 and 61

⁵⁴ 7 June 2010, E/C.12/AFG/CO/2-4, *Concluding observations on second to fourth report*, para. 28

⁵⁵ 20 November 2013, A/HRC/WG.6/18/AFG/1, National Report to the UPR, paras. 11 and 12; 29 January 2014, A/HRC/WG.6/18/L.2, draft report of the working group, paras. 18 and 134

during the SAIEVAC law reform workshop in Kathmandu, November 2010, confirmed that existing legislation does not prohibit corporal punishment in the home, penal system and care settings, noted the government's positive attitude towards law reform, and identified the relevant government departments and bodies and other key organizations and individuals. The following activities were planned, spanning the five years 2011-2015:

Activities	Responsible	Time Scale
Briefing and updating the parliamentarians on the status of child related Bills	Ministry of Labor, Social Affairs, Martyrs & Disabled (MoLSAMD)	2011
Policy dialogues	Ministry of Labor, Social Affairs, Martyrs & Disabled and CSOs	2011
National Consultation on Bill		2011
Awareness raising in the media (radio/TV/print)		2011-2013
Awareness raising in schools (government and private)		2011-2012
Advocacy efforts	MoLSAMD, MoI, HoH and CSOs	2011-2012
Seminar and policy dialogues on budgetary allocations	Ministry of Labor, Social Affairs, Martyrs & Disabled and CSOs	2011-2012
Capacity building of stakeholders (children, parents, government officials, CSOs etc.)	Ministry of Labor, Social Affairs, Martyrs & Disabled, Ministry of Education and CSOs	2013-2015
Training of trainers on alternative forms of discipline for teachers (government and private)		2012-2014

SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from Afghanistan in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Afghanistan:

1. Legal and policy approach:

- Child Act development – Leading by Ministry of Justice
 1. Technical committee set up (CSO, government, UNICEF)
 2. All existing laws were reviewed and the gaps are identified (as per CRC)
 3. The technical committee is on the drafting process
 4. The child act will be finalized by middle 2013

2. Advocacy:

1. Set up a parliamentary group (NACG)
2. Politics - NACG
3. Local leaders - NACG

3. Campaign

1. Through mosques awareness raising about child right more focusing in Corporal Punishment (SCO, MoR; UNICEF) Leading agency MoR
2. Awareness raising in schools on Corporal Punishment (SCO; UNICEF, AHRCO; MoE)
3. Awareness raising for local Shursa/CBCPS - leading agency (SC)
4. Awareness raising through CPAN - (CSO, Gov., UNICEF) leading agency MoLSAMD
5. It is ongoing

4. Capacity building (positive discipline and non-violence environment)

1. Teachers and education authorities (SCO, UNICEF) leading group agency NACG

2. Law enforcement authorities (Police, justice; Attorney General) (CSO, UNICEF) leading agency Afghan Independent Human Rights Commission
3. Local Leaders, religious leaders, CPAN members – leading group NACG

Country Report: Bangladesh



Legality of corporal punishment of children

There is legal defence for corporal punishment in the home, the penal system and the alternative care settings. It is unlawful in schools under a ruling by the Supreme Court in January 2011.⁵⁶ Article 35 of the Constitution of Bangladesh deals broadly with protection of citizens in respect of trial and punishment. Article 35(5) provides that “no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment”.

Section 70 of the Children Act, 2013 criminalizes any assault against a child that causes unnecessary suffering or injury to the child's health. The Section provides that if any person having the custody, charge or care of any child assaults, abuses ... the child and such act 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, he shall be deemed to have committed an offence under the Act, and shall, for such offence, be punishable with imprisonment for a term which may extend to five years, or with fine which may extend to Taka one lakh or with both. The Act has an overriding effect that provides in Section 3 that notwithstanding anything contained in any other law for the time being in force, the provisions of the Children Act shall prevail. However, it doesn't explicitly prohibit corporal punishment in all settings; hence, the defences for corporal punishment still prevail as discussed below.

Home

Section 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 Supreme Court (judgment issued on 13 January 2011 on writ petition no. 5684 of 2010) ruled that this Section does not relate to corporal punishment. The Court also 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 has repealed the Children Act of 1974 and includes the offence of cruelty under Section 70 but does not prohibit all corporal punishment.

Schools

A Supreme Court judgment issued on 13 January 2011 (writ petition no. 5684 of 2010) stated that corporal punishment in schools violated the constitutional prohibition of torture and cruel, inhuman or degrading punishment or treatment. The Supreme Court directed the Ministry of Education to ensure inclusion of a provision within the Service Rules of all teachers of public and private educational institutions of the country, by incorporating the imposition of corporal punishment upon any students within the definition of “misconduct”. In its report to the Committee on the Rights of the Child in 2012, the government referred to the ministerial circulars issued to schools on the prohibition of the corporal punishment.⁵⁷ 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 (Ministry of Education Circular No. 37.031.004.02.00.134.2010-151, 21 April 2011). Prohibition of corporal punishment in schools is yet to be confirmed in legislation.

Sentence for Crime

Whipping is 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 (Section 392). Whipping must not be inflicted in instalments and must not be inflicted on females or on males sentenced to death or more than five years imprisonment (Section 393). It 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 (Section 391). The person to be whipped must be considered fit to receive the punishment, by a medical officer, the Magistrate or the officer present (Section 394).

⁵⁶ See the report of the project “Legal Reform for Ending Corporal Punishment in All Settings”, Bangladesh Legal Aid and Services Trust, January 2012

⁵⁷ October 2012, CRC/C/BGD/5, state party report, p. 34

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 person over 16 (Sections 3 and 4) and children under 16 can be whipped in lieu of other punishment for a wider range of crimes under the Penal Code and other laws (Section 5). Whipping is a sentence for offences under Section 23 of the Cantonments Pure Food Act, 1996, Sections 9, 10, and 12 of the Suppression of Immoral Traffic Act, 1933 and, for boys under the age of 12, Section 130 of the Railways Act, 1890.

Section 33 of the Children Act, 2013 provides that no child shall be sentenced to death, imprisonment for life or imprisonment; however, it doesn't prohibit corporal punishment. The Children Act, 2013 states that the dignity of children in conflict with the law should be respected at all times (Section 54) and does not provide for judicial corporal punishment; however, it does not repeal the whipping of the juvenile offenders. Corporal punishment is also commonly ordered by traditional village mediation councils (*shalish*), particularly against girls and women. Punishments including caning, whipping and beating are sometimes issued as *fatwas* under *Sharia's* law. The practice continues, despite Supreme Court rulings in 2010 against such punishments.

Penal Institutions

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 available 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 (Section 46); for boys under 16 it must be inflicted "in the way of school discipline" (Section 53). According to the Borstal Schools Act, 1928 (Section 4), the Prisons Act applies to Borstal schools.

Alternative Care Settings

Corporal punishment is lawful under Section 89 of the Penal Code. The Children Act, 2013 has given the power to the government to issue office order and directives for determining the minimum standards of proper care for the children staying in the certified institutes (Section 63). However, it doesn't explicitly prohibit corporal punishment in alternative care settings.

Research on Corporal Punishment

In a 2013 study⁵⁸, a nationally representative sample of 4200, 12-17 year olds were asked what they thought the role of political aspirants was in stopping corporal punishment in school. 81% of respondents said political aspirant should raise awareness and ensure teacher's accountability and 77% said they should ensure enforcement of the directive against corporal punishment.

In 2012, a survey was conducted to review the progress in the implementation of the Supreme Court ruling to prohibit corporal punishment in schools.⁵⁹ 84.6% of student surveyed responded that they had knowledge about corporal punishment; 95.5% of the teachers interviewed stated they had knowledge about the negative impact of corporal punishment, and also 98.5 % of the teachers interviewed indicated that the authorities of educational institutions had taken action against corporal punishment of students.⁶⁰ In the survey,⁶¹ 77.1% of students stated that physical, psychological or financial punishments were inflicted on students in their schools.

A number of studies have exposed children's vulnerability to corporal punishment in Bangladesh, particularly in the home and schools. UNICEF research of 2009 covered nearly 4000 households' in interviews with children aged 9-18 and the heads of their households, focus group discussions, case studies and a survey of children living on the street. It found that 91% of the children experienced physical punishment in schools, including hitting the palm with a ruler or stick (experienced by 76%), standing in the class, hitting other body parts with a ruler or stick, and

⁵⁸ Ministry of Information (2013), *Children's Opinion Poll: Children's views and Expectations from Political Aspirants and Leaders in Bangladesh*, UNICEF

⁵⁹ The Survey was conducted by the Institute of Information and Development (IID) with support from Bangladesh Legal Aid and Services Trust (BLAST)

⁶⁰ Syeed Ahamad, *Draft Survey Report on Corporal Punishment of Children at Educational Institution*, 2012 (collected from BLAST)

⁶¹ Bangladesh Legal Aid and Services Trust & Institute of Informatics and Development (2012), *Survey Report on Violence against Children in Education Settings*, Institute of Informatics and Development.

slapping; 23% said they faced corporal punishment every day and 7% reported injuries and bleeding as a result. Corporal punishment was one of the top four reasons children gave for not attending school. Almost all children (99.3%) reported being verbally abused and threatened regularly by their parents; 74% said they were physically punished by parents or guardians, with 70% usually being slapped, 40% being regularly beaten or kicked. Of the 367 children who worked outside the home, 25% experienced physical punishment in their work place.⁶²

Recommendations by Human Rights Treaty Bodies

Recommendations to prohibit corporal punishment of children have been made a number of times by the Committee on the Rights of the Child.⁶³ The Committee on the Elimination of Discrimination Against Women has expressed concern about punishment inflicted on women and girls through *fatwas*.⁶⁴ A recommendation was made during the Universal Periodic Review of Bangladesh in 2009 to prohibit all corporal punishment, which the government accepted.⁶⁵ The second cycle of Universal Periodic Review took place in 2013 (session 16) in which a recommendation was made to “explicitly prohibit corporal punishment in all settings, including home”.⁶⁶

Law Reform Necessary to Achieve Prohibition in All Settings

Although the Supreme Court has held that Section 89 of the Penal Code has no relation with corporal punishment, there remains a possibility that the section will be used as a defence for inflicting corporal punishment on children. It is necessary to repeal the provision and enact a new provision which provides that “neither Section 89 of the Penal Code nor anything in any rule of common law justifies the use of force for the purpose of disciplining or punishing a child.”

The provisions authorizing judicial whipping/caning of children in the Whipping Act, 1909; the Prisoners Act, 1894, Cantonment Pure Foods Act, 1966, Railways Act, 1890, the Children Rules, 1976, Suppression of Immoral Traffic Act, 1933 and Code of Criminal Procedure, 1898 should be repealed.

A provision prohibiting all corporal punishment in all settings should be inserted in any law relating to children (including the Education Act that is under consideration). Such provision should state that corporal punishment and any other cruel or degrading forms of punishment of children are prohibited.

Moves towards law reform

The Supreme Court Judgment dated 13th January 2011 following the Writ Petition No. 5684 of 2010 mentioned: “Article 28 of the Convention (on the Rights of the child) is relevant to the issue before us and we have no hesitation to hold that in the light of the Convention corporal punishment upon the children must be prohibited in all settings, including schools, homes and work places. Children who are subjected to corporal punishment or indeed psychological and emotional abuse cannot be expected to develop, freely and properly and will not be able to give their best to this society.”

The government is working on developing the rules of procedures of Children Act, 2013. An Education Bill is also being drafted, and it has been said that the Education Bill will prohibit corporal punishment in schools. A new Family Code is also being drafted.

⁶² UNICEF (2009), *Opinion of Children of Bangladesh on Corporal Punishment: Children's Opinion Poll 2008*, Dhaka: Ministry of Women and Children Affairs, Government of Bangladesh/UNICEF

⁶³ 26 June 2009, CRC/C/BGD/CO/4, Concluding observation on third/fourth report, para. 49; 27 October 2003, CRC/C/15/Add.221, Concluding observation on second report, paras. 44 and 78; 18 June 1997, CRC/C/15/Add.74, Concluding observation on initial report, para. 38

⁶⁴ 22 March 2011, CEDAW/C/BGD/CO/7, Concluding observations on sixth/seventh report, paras. 19 and 20

⁶⁵ 5 October 2009, A/HRC/11/18, Report of the Working Group on the Universal Periodic Review: Bangladesh, para. 94(16); 9 June 2009, A/HRC/11/18/Add.I, Report of the Working Group on the Universal Periodic Review: Bangladesh, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, para.16

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

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 at home. In 2009, the government accepted the recommendation to prohibit all corporal punishment made during the UPR (see above). The national action plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010, confirmed that there are a number of laws authorizing corporal punishment of children and a comprehensive review of the legislation is necessary. It noted that the children bill would explicitly prohibit corporal punishment in care institutions and indicated that a law was being drafted which would prohibit in education institutions. The bill is still under discussion. The plan outlined in detail the following process of law reform, though did not specify a starting date:

Process	Responsible	Supportive Activities (SAIEVAC)	Time
Review of existing laws	Ministry of Social Welfare (MoWCA, BNWLA, SC, UNICEF)	Consultation with children	6 months
Review of existing policies	Ministry of Women and Children Affairs (MSW, INCIDIN-BNWLA, SC, UNICEF)	Consultation with children	6 months
Dissemination and consultation at stakeholder level (grassroots to national level)	Ministry of Women and Children Affairs (MSW, LGRD, MoO, NGO Network...)	Stakeholder consultations held at union/upazilla/district/divisional levels, jointly organized by government and CSO	6 months
Preliminary draft for presenting at cabinet	Ministry of Women and Children Affairs (MSW, NGO Network...)	Technical assistance from civil society, development partners and SAIEVAC	2 months
Web circulation and feedback consultations to finalize draft	Ministry of Social Welfare (MoWCA, NGO, Network...)	1. Stakeholder consultations at union/upazilla/district/divisional levels - organized by government and CSO 2. Media campaign 3. Tools and method development on alternative forms of discipline 4. Professional capacity building 5. Care Standard development 6. Message development 7. Cross-networking 8. Advocacy	3 months
Submission of draft to cabinet for review and recommendations	Ministry of Women and Children Affairs (MSW, and NGO Network...)		1 month
Vetting and finalization	Ministry of Law, Justice and Parliamentary Affairs, legislative division (MoWCA, MSW)		2 months
Draft bill place in the National Parliament	Ministry of Law, Justice and Parliamentary Affairs, law, justice and parliament division (MSW and NGO Network)		2 months
Review by Parliamentary standing committee	Ministry of Law, Justice and Parliamentary Affairs, law, justice and parliament division (MSW and NGO Network)		3 months
Enactment by parliament	Ministry of Law, Justice and Parliamentary Affairs, law, justice and parliament division (MSW and NGO Network)		3 months

SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States

on initiating campaigns in their respective countries. The delegates from Bangladesh in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Bangladesh:

S. No.	Activity	Implementing Organization/ Agency responsible	Timeline/ Date	Remarks
1.	Formation of NACG & national level task force on Corporal Punishment	Working Group on Prevention of VAC	July 2012	
2.	Series of consultation with children	NACG with the support of SAIEVAC	Nov-Dec 2012	
3.	Develop action plan to address Corporal Punishment in all settings	National SAIEVAC and NACG	January 2013	
4.	Campaign on legal reform: to repeal all provisions in legislation that authorise corporal punishment	NACG and National SAIEVAC	On going	
5.	Identifying good behavior modification models at family, institutions, school and community settings that can be replicated at the national level (bottom-up approach)	NACG and National SAIEVAC	Up to 2013	

The government of Bangladesh launched the National Campaign to End Corporal Punishment against Children in Bangladesh on 30th December 2012 with the support of SAIEVAC and NACG Bangladesh. The Chief Guest, Dr. Shirin Sharmin Chaudhury, M.P. and the then Honorable State Minister, Ministry of Women and Children Affairs, government of Bangladesh inaugurated the Campaign and emphasized the importance of implementing the government's directive to end corporal punishment of children. The importance of law reform was also stressed by SAIEVAC's Director General Dr. Rinchen Chopel and NACG Co-Chair Advocate Salma Ali.

Country Report: Bhutan



Legality of corporal punishment of children

There is legal defence for corporal punishment in the home, schools, alternative care settings, and in penal institutions. It is unlawful as a sentence for crime and possibly in penal institutions.

Home

Section 109 of the Penal Code, 2004 provides for the use of force by parents, guardians and other responsible persons for “the prevention of serious misconduct”, provided the force used does not cause or risk causing “death or serious bodily injury” and is “no greater than that which is necessary”.

The Child Care and Protection Act, 2011 provides for a number of offences against children, including assault (Section 212), cruelty (Section 213), “harsh or degrading correction or punishment” (Section 214) and battery (Section 215). Section 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”. Section 11(a) 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”. The rules under the Child Care and Protection Act have been finalized and endorsed for implementation by the NCWC’s Commission; however, the Rules are silent regarding the discipline of children. Section 2 of the Child Care and Protection Act, 2011 repeals any laws, Acts, regulations, rules, directives, notifications and enactments that are inconsistent with the Act; however, no further judicial or executive actions have taken place to confirm that the defence for corporal punishment provided by the Penal Code no longer applies.

Section 215 of the Child Care and Protection Act, 2011 defines ‘battery’. The Section provides that “a person shall be guilty of the offence of battering a child, if a person purposely uses physical force or causes the child to be subjected to a physical force. The offence of battering a child shall be a petty misdemeanor or a misdemeanor, if aggravated circumstances are present.”

Schools

Administrative directives prohibit the use of corporal punishment in schools; however, there is no legal prohibition of all corporal punishments in schools. The defence for corporal punishment provided by Section 109 of the Penal Code of Bhutan applies for teachers as well. There is no judicial or executive confirmation that the overriding effect of Section 2 of the Child Care and Protection Act, 2011 repeals Section 109 of the Penal Code. On the other hand, the Child Care and Protection Act, 2011 prohibits harsh or degrading correction or punishment (Section 214), but not all forms of corporal punishment. The corrective measures in schools will be further governed by the rules framed for discipline of children as per Section 214 of the Act; however the The Child Care and Protection Rules and Regulations of Bhutan, 2014 are silent regarding the discipline of children.

A notification from the Ministry of Education in 1997 stated that corporal punishment 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. The courts in Bhutan have applied the provisions of the Penal Code to prosecute teachers who use corporal punishment on students.

Sentence for crime

Corporal punishment is unlawful as a sentence for crime. The Constitution of 2008 prohibits cruel, inhuman or degrading treatment or punishment in Article 7(17)). The Child Care and Protection Act, 2011 includes a similar provision in Section 73. The Act 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 (Section 23).

Penal Institutions

Corporal punishment appears to be unlawful as a disciplinary measure in penal institutions under the Child Care and Protection Act, 2011: Sections 73 and 23 (see above). Section 75 of the Act states that a child detained for an offence shall be treated with respect and dignity. However, Section 109 of the Penal Code, 2004, providing for the use of force for the purpose of “discipline”, potentially applies in penal institutions, and Section 111 states: “A defendant, who is an authorised 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.” Section 2 of the Child Care and Protection Act states that legal provisions in conflict with its provisions are repealed, however, it is not confirmed if it repeals 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 labor. Section 125 states that “instruments of restraint, such as chains and fetters, shall not be applied as a means of punishment”.

Alternative Care Settings

Corporal punishment is permitted in alternative care settings under the provisions for the use of force for “discipline” in Section 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 (Section 214) prohibits corporal punishment of a certain severity, but not all corporal punishment. Section 11(a) of the Child care and Protection Act, 2011 states that programmes and services established under the Act shall be culturally appropriate in accordance with any rules that may be required for the discipline of children.

While the Child Care and Protection Rules and Regulations of Bhutan, 2014 make no specific mention of the rules relating to the discipline of children, Rule 143 (a) of The Child Care and Protection Rules and Regulations of Bhutan, 2014 states that “a child placed in care is to be cared for in a way that ... the child’s dignity and rights shall be respected at all times”.

Research on Corporal Punishment

There appears to have been no research on the nature and extent of corporal punishment of children in Bhutan. The National Commission for Women and Children is undertaking a study on violence against children to understand the magnitude, contexts and drivers of violence against children in Bhutan. The study is being carried out in three phases starting with preliminary secondary analysis leading into formative qualitative research, and culminating in a national prevalence survey informed by the first two phases. Once the study is completed, it will provide national population-based estimates that describe the magnitude and nature of the problem of violence including corporal punishment experienced by the children in Bhutan.

Recommendations by Human Rights Treaty Bodies

Recommendations to prohibit corporal punishment of children have been made twice by the Committee on the Rights of the Child.⁶⁷ During the Universal Periodic Review of Bhutan in 2009⁶⁸ and later in 2014⁶⁹, recommendations were made to prohibit corporal punishment of children.

⁶⁷ 8 October 2008, CRC/C/BTN/CO/2, Concluding observation on second report, para. 38; 9 July 2001, CRC/C/15/add.157, Concluding observations on initial report, para. 41

⁶⁸ 4 January 2010, A/HRC/13/11, Report of the working group on the Universal Periodic Review; Bhutan, para. 101(41)

⁶⁹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review : Bhutan, 4 January 2010, A/HRC/13/11

Law reform necessary to achieve prohibition in all settings

Substantial progress towards prohibiting all forms of violence against children were made with the enactment of the Child Care and Protection Act 2011, which has very positive aims and provides a number of relevant offences of assault, cruelty, harsh or and battery against a child. However, the Act stops short of prohibition of all corporal punishment – but does allow for the issue of Rules to govern discipline of children. In addition, Sections 109 to 112 of the Penal Code, 2004 still provide for “the use of force for care, discipline or safety of another”.

It is necessary to confirm that Section 109 to 112 of the Penal Code 2004 which provides for use of force for care, discipline, or safety of another is repealed by the repealing provision (Section 2) of the Children Care and Protection Act, 2011; or equivalent rules may be drafted to avoid anomalies between the penal provisions allowing the defence for use of force and with that of the special protection laws including protecting the child from corporal punishment.

The Child Care and Protection Rules and Regulations of Bhutan, 2014 has been finalized and endorsed for implementation. The Rule was expected to clarify the reference to “culturally appropriate” correction measures in Section 214 of the Act; however the Rules make no mention of the discipline of children as mandated by the Act. It is thus necessary to amend the Act or the Rule to prohibit all corporal punishment of children. A provision under the Act or the Rules may incorporate “*Corporal punishment and other forms of cruel or degrading punishment of children is prohibited*”.

Explicit prohibition of all corporal punishment can be achieved also by amending The Child Care and Protection Rules and Regulations of Bhutan, 2014. The inclusion of a paragraph along the following lines would clarify that the reference to “culturally appropriate” correction measures in Article 214 (quoted above) cannot justify the use of corporal punishment or other forms of cruel or degrading punishment of children. The offences in sections 213 – 215 of the Act would then effectively provide children with equal legal protection from assault, battery etc. in all settings of their lives, whoever the perpetrator and whether or not the actions were described as punishment or discipline.

“Rule () Article 214 of the Act requires that any corrective measure for children in the home, schools and other institutions or forms of care “shall be culturally appropriate and in accordance with rules framed for discipline of children”. For the avoidance of doubt, nothing in the Act or in any other legislation or rules of common law can justify the use of force for the purpose of discipline or punishment of children. [For clarity, could add: Corporal punishment and other forms of cruel or degrading punishment of children are prohibited.]”

Additional clarity could usefully be achieved by adding an explicit prohibition to corporal punishment in education rules and regulation (until the enactment of specific education law) applying to all educational institutions and law/regulations applying to all forms of alternative care and day care for children, for example: “*Corporal punishment and any other cruel or degrading forms of punishment of children are prohibited*”.

Moves towards Law Reform

The Rules to implement the Child Care and Protection Act, 2011 have been finalized and endorsed for implementation by the National Commission for Women and Children; however, the rules make no mention of any provisions regarding the discipline of children as per the mandate given by the Act.

At a meeting of the South Asia Forum in July 2006, following 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. The National Action Plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010, stated that efforts would be made to lobby for inclusion of prohibition of corporal punishment in all settings in the Child Care and Protection Bill (which has already come into effect as Child Care and Protection Act, 2011), setting out the following activities to be carried out in the last two weeks of November 2010:

Activity	Process
To lobby with the Legislative Committee, Human Rights Committee, Women and Children's Committee, Social and Cultural Committee and other members of Parliament to include an explicit ban on corporal punishment in all settings in the Child Care and Protection Bill.	Holding briefing sessions providing the rationale and justification.
Media briefing on Child Care and Protection Bill, child rights generally and corporal punishment in particular	Press conference.
Children's consultation and lobbying on the Child Care and Protection Bill.	Discuss elements of Bill

Other activities were identified in the plan but no time scale given:

Activity	Responsible Department / Body
Prepare a proper mapping of the indicators of the SAIEVAC thematic areas including corporal punishment and link with nodal agencies or organizations	National Commission for Women and Children (NCWC)
Awareness raising of the Child Care and Protection Act and related instruments in all the institutions, agencies, ministries etc. Advocate for time bound actions	NCWC, Education, MoLHR, MoCHA, UNICEF, Save the Children
Advocacy through media	NCWC
Educating the parents and children on the Child Care and Protection Act	NCWC, Education and Children's forum with partner agencies

SAIEVAC launched Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from Bhutan in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Bhutan:

1. Finalization of the Rules and Regulations of the Child Care and Protection Act, 2011, with specific provisions on corporal punishment.
2. Awareness campaign among children, schools, general public and with very special and efficient advocacy initiative in family on the ill effects of corporal punishments.
3. Advocacy campaigns for the parliamentarians/policy makers and relevant stakeholders for ban on corporal punishment in all settings.
4. Review of the existing legislations that authorise corporal punishment and recommend amendments to the legislations wherever necessary.
5. Conduct a national study on the nature and prevalence of violence against children for appropriate actions.
6. Capacity building for caregivers/teachers and concerned stakeholders to promote positive forms of discipline.

Country Report: India



Legality of corporal punishment of children

Corporal punishment is lawful in the home, the penal system and alternative care settings. Recent law reform prohibited its use in some schools for children aged 6-14 (except in Jammu and Kashmir) but not for other children.

Home

Corporal punishment is lawful in the home. Section 89 of the Penal Code, 1860 (in Jammu and Kashmir the Ranbir Penal Code, 1989) 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...” The government has confirmed that this provides a legal defence for the use of corporal punishment.⁷⁰ Provisions against violence and abuse in the Penal Code, the Juvenile Justice (Care and Protection of Children) Act, 2000 (amended 2006), the Protection of Child Rights Act, 2005, the Protection of Women from Domestic Violence Act, 2005 and the Constitution are not interpreted as prohibiting all corporal punishment in childrearing. The National Charter for Children, 2003 confirms children’s right to protection from all corporal punishment (Article 9), but this is not reflected in legislation.

Schools

Law reform has gone some way to prohibiting corporal punishment in schools but is not yet complete. Corporal punishment is prohibited in schools in Section 17 of the Right to Free and Compulsory Education Act, 2009; however, this applies only to children aged (6-14) and not at all in Jammu and Kashmir. The state of Jammu and Kashmir has a special status under the Constitution of India. In 2014, the Ministry of Human Resources Development issued guidance (Advisory for eliminating Corporal Punishment in Schools under section 35 (1) of the Right to Education Act, 2009) which sets out the national law relevant to corporal punishment in schools, the international human rights standards, steps that may be taken to promote positive child development and not resorting to corporal punishment, and the role of national bodies in implementing the Act. Also, in 2012 the Act was amended to state (Section 1(5)): “Nothing contained in this Act shall apply to Madrasas, Vedic Pathshalas and educational institutions primarily imparting religious instruction.”⁷¹ The amendment followed a ruling by the Supreme Court in April 2012 that the Act does not apply to unaided minority schools.⁷² The Right of Children to Free and Compulsory Education Act does not apply to Jammu and Kashmir.

It is also unclear whether sections 88 and 89 of the Indian Penal Code provide some immunity for prosecution of teachers for using corporal punishment. The Gujarat High Court in 2008 ruled that where the law prohibits corporal punishment in schools, section 89 of the Penal Code cannot be used as a legal defence for its use.⁷³ In some states, children in all schools are additionally protected from corporal punishment under state laws – Goa (Goa Children’s Act, 2003, art. 41), Andhra Pradesh (Education Rules 1966, amended 2002, rule 122) and Tamil Nadu (Education Rules, amended 2003, rule 51). In Delhi, provisions for corporal punishment in the Delhi School Education Act, 1973 were struck down by the Delhi High Court in 2000, and in 2004 the Calcutta High Court ruled that caning in state schools in West Bengal was unlawful.

Sentence for Crime

Corporal punishment is unlawful as a sentence for crime under the Penal Code 1860 and the Juvenile Justice (Care and Protection of Children) Act, 2000, which do not provide for sentencing of offenders to corporal punishment. The Juvenile Justice (Care and Protection of Children) Bill, 2014 does not allow sentencing children to corporal punishment. In Jammu and Kashmir, the Juvenile Justice Act, 1997 and the Ranbir Penal Code do not provide for judicial corporal punishment. But corporal punishment may be imposed, throughout India, under traditional justice systems, such as the Pison system: in the absence of explicit prohibition, this appears to be lawful. There is no

⁷⁰ Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40

⁷¹ The Right of Children to Free and Compulsory Education (Amendment) Act, 2012

⁷² *Society for Un-aided Private Schools of Rajasthan vs U. O. I. & Anr.*, Writ Petitions (C) No. 95 of 2010 et al

⁷³ *Hasmukhbhai Gokaldas Shah v. State of Gujarat*, 17 November 2008

provision for judicial corporal punishment in the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013.

Penal Institutions

Corporal punishment is unlawful as a disciplinary measure in penal institution under Chapter VI (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007. It is mentioned in Chapter VI (s) of the Rules that at all stages, from the initial contact till such time the child remains in contact with the care and protection system, and thereafter, the juvenile or child or juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment. However, these rules do not apply in Jammu and Kashmir. The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 criminalizes cruelty to the juvenile (Section 24) but does not prohibit all corporal punishment. The Juvenile Justice (Care and Protection of Children) Bill, 2014 prohibits corporal punishment of children in conflict with law (Sections 1(4) and 83).

Alternative Care Settings

Corporal punishment is prohibited in care institutions under Chapter VI of the Juvenile Justice (Care and Protection of Children) Rules, 2007; it is lawful in non-institutional forms of care under Section 89 of the Penal Code (see above). The Juvenile Justice (Care and Protection of Children) Bill, 2014 prohibits corporal punishment of children who are in need of care and protection (Sections 1(4) and 83). There is no prohibition of corporal punishment in care settings in Jammu and Kashmir, where it is lawful under the Ranbir Penal Code (see above). The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 criminalizes cruelty to the juvenile (Section 24) but does not prohibit all corporal punishment.

Research on Corporal Punishment

In a 2014⁷⁴ survey of 6-14 year olds in Delhi, 49.33% said that teachers in their schools used corporal punishment. The survey was carried out by the NGO Joint Operation for Social Help. According to Child Rights NGO AP Balala Hakkula Sangham, 583 cases of school corporal punishment were reported in Greater Hyderabad in January 2014 and more than 1500 were reported in 2013.⁷⁵ Research has repeatedly demonstrated a high prevalence of corporal punishment of children in India. The first national study on child abuse analysed the experiences of nearly 12500 children aged 5-18, around 2300 young adults aged 18-24, and 2500 stakeholders. More than two in three children (69%) reported experiencing physical abuse including corporal punishment, more commonly being slapped and kicked (63.7%) and beaten with a stave or stick (31.3%).⁷⁶

A study in 2006 found corporal punishment to be an accepted way of life in 41 schools visited across four states, most commonly hitting with hand and stick, pulling hair and ears, and telling children to stand for long periods in certain positions; there were at least five beatings a day in every school, in addition to other less severe forms of punishment.⁷⁷ In research in urban schools in Andhra Pradesh in 2006, 59% of children said they had been caned on the palms of their hand by their teacher; other punishments included being forced to kneel in an uncomfortable position, being slapped or spanked and beaten on the knuckles.⁷⁸

Recommendations by Human Rights Treaty Bodies

The Committee on the Rights of the Child has three times recommended that India prohibit all corporal punishment of children.⁷⁹ In 2014, the Committee on the Elimination of Discrimination Against Women recommended effective investigation of corporal punishment in school and prosecution of perpetrators.⁸⁰ The government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India in 2012.⁸¹

⁷⁴ Reported in *The Hindu*, 30 March 2014

⁷⁵ Reported in *The Indian Express*, 27 January 2014

⁷⁶ Kicker, L., Varadan, S. & Kumar, P. (2007), *Study on child Abuse: India 2007*, New Delhi, Ministry of Women and Child Development

⁷⁷ Saath Charitable Trust/Plan International, India (2006), *Impact of Corporal Punishment on school Children: A Research Study - Final Report*

⁷⁸ Devi Prasad, B. (2006), *Spare the Rod and Save the Child: A Study of the Corporal Punishment in Urban School of Andhra Pradesh*, Child rights Advocacy Foundation-Vijayawada

⁷⁹ 13 June 2014, CRC/C/IND/CO/3-4 Advance Unedited Version, Concluding observations on third/fourth report, paras. 47, 48, 49, 50, 55 and 56; 26 February 2004, CRC/C/15/Add.228, Concluding observations on second report, paras. 44 and 45; 23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45

⁸⁰ 18 July 2014, CEDAW/C/IND/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 26 and 27

⁸¹ 9 July 2012, A/HRC/21/10, Report of the working group, para. 138(104)

Law Reform Necessary to Achieve Prohibition in All Settings

The Government of India has proposed the Juvenile Justice (Care and Protection) Bill, 2014 to supersede the Juvenile Justice (Care and Protection of Children) Act, 2000. The Bill presents an opportunity to prohibit corporal punishment of children in the penal system and care institutions. Section 2 (24) of the Bill defines Corporal Punishment as: “the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child”. This definition includes physical punishment; however, other cruel, humiliating or degrading acts or treatment should also be included in the definition.

Section 1(4) of the Juvenile Justice (Care and Protection of Children) Bill, 2014 provides that the provisions of the Bill applies to the cases involving children in conflict with law or the children in need of care and protection. However, it should be noted that all children (not only those in conflict with law or in need of care and protection) should be protected from corporal punishment. Also, the legislation should remove the defence for the use of corporal punishment by stating, for example, that *neither Sections 88 and 89 of the Indian Penal Code nor anything in any rule of common law justifies the use of force for the purpose of punishing or disciplining a child*. Such provision would secure equal legal protection for children from corporal punishment or other harsh or degrading punishment in all settings of their lives. It would ensure that the offences of hurt, grievous hurt etc. in the Penal Code are fully applicable to assault and battery on children, whether or not described as “discipline” or “punishment.

Section 89 of the Penal Code, and in Jammu and Kashmir the Ranbir Penal Code, should be repealed/amended to ensure that no legal provision exists which can be construed as providing a defence for the use of corporal punishment in childrearing and education. Legislation should be enacted to explicitly prohibit all forms of corporal punishment in all setting, including the home, education setting and other institutions for children of all ages up to 18, all forms of alternative care and in relation to punishments imposed under traditional justice systems. Prohibition should be enacted throughout India, including Jammu and Kashmir.

Moves towards Law Reform

As mentioned above, the government of India has proposed the Juvenile Justice (Care and Protection) Bill, 2014 to supersede the Juvenile Justice (Care and Protection of Children) Act, 2000. The Bill as presented to Parliament is progressive in terms of defining and criminalizing corporal punishment of children - but only in relation to child care institutions. However, the Bill does provide an opportunity to prohibit all corporal punishment of children in all settings. If its scope is considered inadequate for this purpose, other legislation to achieve complete prohibition should be introduced at the earliest opportunity.

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 prohibit corporal punishment in school and other settings outside the home. It repeated its commitment to achieve full prohibition,

including in the home, in its periodic report to the UN Committee on the Rights of the Child in 2012.⁸² The government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India in 2012.⁸³

The national action plan to achieve prohibition presented at the SAIEVAC law reform workshop in Kathmandu in November 2010, outlined the progress made in prohibition of corporal punishment in school and ways to ensure implementation of the prohibition. It identified the government departments and bodies to be involved in reforming the law. Key organizations and individuals for supporting law reform were also identified.

SAIEVAC launched Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from India in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from India:

S. No.	Activity	Implementing Organization/ Agency responsible	Timeline/ Date	Remarks
1	Removing all legal justification for corporal punishment	Ministry of Women & Child Development (MWCD)		There are certain sections in Indian Penal Code (IPC) and other laws that allow corporal punishment
2	Setting up a working group against corporal punishment in India and sub groups to work on legislation against corporal punishment in all settings	MWCD	2012	
3	Translation of guidelines against Corporal punishment framed by National Commission for Protection of Child Rights (NCPCR) in vernacular languages			Develop child friendly version of the guidelines
4	On same lines, develop guidelines against Corporal Punishment in Care Institutions and family settings	(NCPCR)		
5	Introduce topics/activities in text books/ curriculum	MWCD, National Council of Educational Research And Training (NCERT)		
	Working with teachers' associations against punishment	State Education Dept.		
6	Peer evaluation of teachers to prevent corporal punishment in school system	SSA / HRD/ MWCD		
7	Support group/system for teachers, parents and caregivers on positive teaching, parenting and care respectively	HRD/MWCD		civil society provide support
8	Public Education Campaign against corporal punishment in all settings	MWCD		civil society provide support
9	Formulating appropriately effective, and catchy Campaign for creating public	SAIEVAC		

⁸² Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40

⁸³ 9 July 2012, A/HRC/21/10, Report of the working group, para. 138(104)

S. No.	Activity	Implementing Organization/ Agency responsible	Timeline/ Date	Remarks
	awareness			
	Develop innovative campaign material to promote positive parenting, positive care and positive teaching, all aimed to be against corporal punishment			



Legality of corporal punishment of children

Corporal punishment is lawful in the home, schools, the penal system and alternative care settings. In April 2014, a new Penal Code was adopted. The Code authorises sentences of lashes and provides a legal defence for corporal punishment of children in all settings. The Code is expected to come into force in April 2015.

Home

Corporal punishment is lawful in the home. There is no legal defence for its use by parents in the Penal Code 1968 (amended 2002), but legal provisions against violence and abuse are not interpreted as prohibiting corporal punishment of children. Section 18 of Law on the Protection of the Rights of the Child, 1991 prohibits only punishment of a degree which is considered to harm the child: “no child shall, even as a measure of discipline, be subjected to punishment which may cause physical injury or which may be detrimental to the health of the child.”

A new Penal Code was introduced in April 2014, which provides a legal defence for the use of corporal punishment in the home and other settings. Section 44(a) of the Code provides for the parent, legal guardian, teacher or other person similarly responsible for the care or supervision of a minor to justifiably use force on the child for the “prevention or punishment of his misconduct”, provided that the force used “does not create a substantial risk of causing death, serious bodily injury, extreme or unnecessary pain or mental distress, or humiliation”.

A Bill on Amendments to the Protection of Children’s Rights Act is being considered which would reportedly prohibit corporal punishment in all settings.⁸⁴ According to a draft version of the Act that was circulated for comments, Clause 6 entitled “Prevention of Abuse/Corporal Punishment” states “Abuse, inhumane or degrading and/or humiliating punishment or treatment is prohibited, at home and schools as well as in any other environment or a setting in which a child may live or be present”. Nevertheless, there is no provision in the current draft that provides any primacy to this Act over Article 44 of the Penal Code which provides a legal defence for corporal punishment in all settings. However, as at August 2014 it appears that no new law has been enacted.

School

There is no explicit prohibition of all corporal punishment in schools. Section 10 of Law on the Protection of the Rights of the Child, 1991 states that punishment in school “must be appropriate to the age of the child and should not be physically or psychologically harmful to the child”. The Penal Code, 2014 provides a defence to teachers for using force on a child (Section 44(a)). The Ministry of Education has stated that corporal punishment should not be used, but there is no explicit prohibition of corporal punishment in law. An Education Bill has been under discussion since 2009; however, it is not clear if the bill addresses corporal punishment.

Sentence for Crime

Corporal punishment is lawful as a sentence for crime. The Law on the Protection of the Rights of the Child, 1991 prohibits cruel and degrading punishment on children, and the Penal Code does not authorise judicial corporal punishment. However, the Penal Code does not apply to offences under Islamic Sharia or to certain other offences. The Regulation on Conducting Trials, Investigations and Sentencing Fairly for Offences Committed by Minors, 2006 states that children from the age of puberty may be held criminally responsible for committing apostasy, and revolution against the state, fornication, falsely accusing a person of fornication, consumption of alcohol, unlawful intentional killing and other offences relating to homicide (Numbers 4 and 5). These are offences for which *hadd* is prescribed in Islam, including flogging. From the age of 15, children can be convicted of wider range of offences under Islamic Sharia. The Disobedience Law provides for corporal punishment as a sentence but there are no further details.

A review commissioned by the Attorney General recommended the abolition of flogging,⁸⁵ but the new Penal Code adopted in April 2014 authorises lashes for certain offences (Sections 411, 413, 612 and 616). A Juvenile Justice Bill has long been under discussion but there are no further details of its provisions.

⁸⁴ National Action Plan to Prohibit All Corporal Punishment, SAEVAC Workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

⁸⁵ Robinson, Paul H. & Diver, C. S. (2004), *Report on the Criminal Justice System of the Republic of Maldives: Proposals for Reform*, para. 6.4

Penal Institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions. The Penal Code adopted in April 2014 legalizes corporal punishment in institutions (Section 44(a) – see above). Section 98 of the Prison and Parole Act, 2013 adopted in December 2013 prohibits only punishment that could cause physical harm.

Alternative Care Settings

Corporal punishment is lawful in alternative care settings. The Penal Code adopted in April 2014 legalizes corporal punishment in institutions and other care settings (Section 44(a) – see above). In 2010 regulations for children's home were being drafted which would reportedly prohibit corporal punishment.⁸⁶

Research on Corporal Punishment

There appears to be no published research on corporal punishment in Maldives. Large scale unpublished research by UNICEF in 2009, involving over 17000 people in 2500 households and 2000 children in schools found that 47% of children had experienced physical or emotional punishment at home, at school or in the community. 30% of children at secondary school had been hit by at least one of their caregivers, 21% with an object; 8% of school students had been physically punished by their teacher.⁸⁷ Statistics from UNICEF relating to the period 2001-2007, indicate widespread acceptance of violence in home, with 70% of girls and women aged 15-49 believing that a husband is justified in hitting or beating his wife under certain circumstances.⁸⁸

Recommendations by Human Rights Treaty Bodies

The Committee on the Right of the Child has recommended that corporal punishment of children be prohibited in all settings in the Maldives, including as a sentence for offences.⁸⁹ The Human Rights Committee recommended Maldives to “abolish flogging and also explicitly prohibit corporal punishment in all institutional settings”.⁹⁰ Similarly, the Subcommittee on Prevention of Torture recommended the government of Maldives to prohibit all types of corporal punishment, including flogging irrespective of whether inflicted with the purpose of causing pain or humiliation, as a sentence for crime or for disciplinary purposes.⁹¹

Recommendations were made to abolish corporal punishment in the penal system during the Universal Periodic Review of the Maldives in 2010.⁹² The government partially accepted the recommendations, stating that the new draft Penal Code was intended to combine Islamic Sharia with international human rights obligations, although it includes provisions for corporal punishment, and that Maldives will consult with national and international authorities on the compatibility of corporal punishment with the Maldives Constitution and international human rights law.⁹³

⁸⁶ National action plan to prohibit all corporal punishment, SAIEVAC workshop on Legal Reform and Corporal Punishment, November 2010, Kathmandu

⁸⁷ Reported in *Minivan News*, 21 February 2011

⁸⁸ UNICEF (2009), Progress for Children: A report card on child protection, NY: UNICEF

⁸⁹ 13 July 2007, CRC/CDV/CO/3, Concluding observations of second/third report, paras. 56, 62, 63 and 99

⁹⁰ 31 August 2012, CCPR/C/MDV/CO/1, Concluding observations on initial report, para. 16

⁹¹ 26 February 2009, CAT/OP/MDV/1, Report on first periodic visit, paras. 26, 27, 28, 29, 192, 194, 195, 196, 207 and 248

⁹² 9 November 2010, A/HRC/WG.6/9/L.5, Draft Report of the Working Group on the Universal Periodic Review: Maldives, paras. 100(55) and 100(58)

⁹³ 14 March 2011, A/HRC/16/7/Add.I, Report of the Working Group on the Universal Periodic Review: Maldives, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, paras. 100.55 and 100.58

Law Reform Necessary to Achieve Prohibition in All Settings

Legislation should explicitly prohibit corporal punishment in the home and in all education settings, all institutions accommodating children in conflict with the law, all forms of alternative care, and as a sentence of the courts, including under Shari'a law.

A Bill on Amendments to the Protection of Children's Rights Act is being drafted by the Gender Department of Ministry of Health and Family. The Bill presents an opportunity to explicitly prohibit all corporal punishment of children in all settings. The Bill should incorporate "*Corporal punishment and other forms of cruel or degrading punishment of children are prohibited*". The Bill should override and repeal the provisions authorizing corporal punishment in Section 44(a) of the Penal Code adopted in April 2014 such as: Neither Section 44(a) of the Penal Code nor anything in the prevailing laws including the religious laws justifies the use of force for the purpose of disciplining or punishing a child."

Section 98 of the Prison and Parole Act 2013 should be amended to prohibit all forms of corporal punishment and other cruel or degrading punishment of children. It can be achieved through any Juvenile Justice Bill being considered.

Moves towards Law Reform

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 prohibit corporal punishment in all settings, including the home.

The national action plan to prohibit corporal punishment developed at the SAIEVAC workshop in Kathmandu, November 2010, confirmed the need to amend/repeal laws allowing corporal punishment. It stated that a Children's Bill was being drafted which would prohibit corporal punishment in all settings, an Education Bill which would prohibit corporal punishment in schools was soon to be tabled in Parliament, and regulations for children's homes were being drafted which would include prohibition. Consideration would also be given to abolition of judicial flogging.

A new child protection law is being drafted and a number of bills are under consideration, including an Education Bill which would prohibit corporal punishment in schools, a Juvenile Justice Bill, an Evidence Bill and a Criminal Procedure Bill. All of these instruments provide opportunities to prohibit all corporal punishment of children in the respective settings.

SAIEVAC launched Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from Maldives in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Maldives:

S. No.	Activity	Implementing Organization/ Agency responsible	Timeline/ Date	Remarks
1	Amend the current laws on child rights	Ministry of Gender, Family & Human Rights (MGFHR) / Maldives People's Majlis		Include corporal punishment into the existing laws on child rights.
2	Conduct "Parent Effectiveness Trainings"	MGFHR / NGOs		Parents Teachers Institutions Professionals
3	Conduct awareness campaigns to children and public on corporal punishment	MGFHR / NGOs		Mainly focus on strengthening on reinforcement techniques (positive & negative reinforcement), child rights & responsibilities.

Country Report: Nepal



Legality of Corporal Punishment of Children

Corporal punishment is lawful in the home, schools, penal institutions and alternative care settings. A Supreme Court ruling in 2005 rendered void the defence in the Children Act for the use of corporal punishment but the defence still exists in the General Code.

Home

Corporal punishment of children is lawful in home because of the defence provided by No. 4 of the Chapter on Hurt / Battery in the General Code, 1963 A.D. (Muluki Ain, 2020 B.S.) which states that if a person, who has a duty to protect or give education to somebody else, causes injury to the victim upon using a reasonable minimum amount of force, the act of causing injury shall not be deemed to be the offence of hurt (battery). Section 7 of Children's Act, 1992 has a provision that no child shall be subjected to torture or cruel treatment. However, it had a restrictive clause that the act of scolding and minor beating to child by father, mother, member of the family, guardian or teacher for the interests of the child himself/herself shall not be deemed to be violation of this Section. The restrictive clause of Section 7 of the Act (the portion on scolding and minor beating) was declared null and void by the Supreme Court verdict dated 6 January 2005 in the case of *Mr. Devendra Ale et al. v Office of the Prime Minister & Cabinet et al.* The judgment directed 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 Domestic Violence (Offence and Punishment) Act, 2009 is not interpreted as prohibiting the use of corporal punishment against children within domestic relationship. Section 2(a) of the Act defines "domestic violence" as "any form of physical, mental, sexual and economic harm perpetrated by person to a person with whom he/she has a family relationship and this word also includes any acts of reprimand or emotional harm. The Act in Section 2(b) defines "domestic relationship" as "relationship between two or more persons who are living together in a shared household and are related by descent, marriage, adoption or are family members living together as a joint family; or a dependent or worker living in the same family."

The Bill to Amend and Codify the Acts relating to Children, first drafted in 2011, would prohibit corporal punishment. The Bill in clause 76(c) provides that "...it is regarded as an act of violence against children if any person does or causes to be done or uses children in the following act: inflicting physical or mental punishment or committing degrading behavior in the name of protection, education or discipline". The chapter on Hurt/Battery in the Bill to Amend and Codify the Prevailing Laws on Criminal Offences, 2010 does not provide the defence for the use of corporal punishment as provided in the prevailing General Code. On the other hand, clause 129 of the Bill to Amend and Codify Civil Laws, first drafted in 2011 allows parents to take disciplinary actions against their children for correcting their conduct, behaviour and character but prohibits cruel, inhumane and torturous acts. While it is not clear what constitutes the disciplinary actions, the provision may be interpreted as allowing some degree of corporal punishment. These Bills are still under consideration.

The National Policy Relating to Children, 2012 aims to protect children from all forms of physical and mental violence, loss or abuse, abandonment, neglect, exploitation and sexual abuses (Paragraph 7.1). As mentioned in the policy, the necessary law shall be made and effectively implemented to protect children from all types of abuses, deprivation, exploitation, violence and discrimination as well as corporal punishment including torture in house, school, organization, work places or community (Paragraph 8.25)

Schools

Corporal punishment of children is lawful in schools because of the defence provided by No. 4 of the Chapter on Hurt / Battery in the General Code, 1963. There is no explicit prohibition of corporal punishment in schools in the Education Act, 1971. The sixth amendment to the Education Rules, 2002 in 2011 added a code of conduct for the teachers in No. 133(1)(k) of the Rules that the teachers should not commit physical or mental torture to the students. However, the possible punishments for the teachers who violate the code of conduct as provided for in Rule No. 137 is limited to the departmental action of withholding of promotion for up to two years or withholding of salary increments for up to five years. Though torture or cruel treatment is prohibited under Section 7 of the

Children Act (see above) and the legal defence available to teachers was rendered null and void by the 2005 Supreme Court Verdict, the defence for minimum amount of force in the General Code applies (see above).

National Plan of Action for Children, Nepal [2004/05 – 2014/15] aims to prohibit mental and corporal punishment in schools from being practiced in the name of discipline. The National Framework of Child-friendly School for Quality Education, 2010 defines “Child-Friendly School” as the school where all types of physical, corporal and mental punishment are prohibited, and constant efforts are made to protect children from abuse and harm. Within the “Security” theme of the framework the minimum requirement for a child friendly school is the prohibition of physical and corporal punishment prohibited. The School Sector Reform Plan, 2009 – 2015 has listed minimum enabling conditions for quality improvement. Within the instructional provisions, the education is required to be child friendly which requires that: no child shall be subject to physical punishment in any form in the school. Similarly, the Policy Measures for Learn without Fear Environment, 2010 focuses on making arrangements to prohibit corporal punishment in school environment and for the promotion of alternative forms of discipline.

Sentence for Crime

Corporal punishment is unlawful as a sentence for crime. The Interim Constitution, 2007 prohibits cruel, inhuman or degrading treatment (Article 26). The Children Act, 1992, defining a child as a person under the age of 16 (Section 2), prohibits cruel treatment (Section 7) and subjecting a child to handcuffs, fetter or solitary confinement (Section 15). There is no provision for sentencing to corporal punishment in the relevant clauses in the Children Act, 1992 (Section 11), the Bill to Amend and Codify the Prevailing Laws on Criminal Offences, 2010 (Section 44), and the Bill to Amend and Codify the Acts relating to Children, 2011 (Section 43).

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 offender, impaling/piercing the body, branding the body and forcing the offender to eat forbidden/inedible foods (Section 5).

Penal Institutions

There is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions, though Section 7 of the Children Act, 1992 and the 2005 Supreme Court Verdict (see above) presumably apply. Section 15 of the Children Act, 1992 prohibits the use of handcuffs, fetters and solitary confinement of children but does not refer to corporal punishment. Similar provision has been mentioned in Section 43 of the Bill to amend and codify the Acts relating to Children, 2011. There is no provision for corporal punishment in the Prisons Act, 1963. Section 169 of the Bill to amend and codify the Prevailing Laws on Criminal Offences prohibits physical or mental torture, cruel, degrading or humiliating treatment in custody or imprisonment.

Alternative Care Settings

Corporal punishment of children is lawful in alternative care settings. Though torture or cruel treatment is prohibited under Section 7 of the Children Act, 1991 and the legal defence available to guardians was rendered null and void by the 2005 Supreme Court Verdict, the defence for reasonable amount of force in the General Code still prevails (see above). Section 39 of the Children Act, 1991 states that the powers of the chief of a children’s welfare home to punish a child do not include “to batter or detain the child in solitary confinement or to stop giving food and water to such child”, but it does not prohibit all corporal punishment. Minimum Standards of Operations of Child Care Homes, 2003 provide that no acts of physical punishment, abuse, violence, exploitation or discrimination shall be carried out in children’s home (Paragraph 5.1(2)(a)). Even though the Minimum Standards prohibit corporal punishment, it is not prohibited in the law.

Research on Corporal Punishment

A 2013 survey⁹⁴ involving 100 students and 30 teachers at five government-aided and five private schools in the Kathmandu valley found that a huge majority of the children experienced corporal punishment at school and almost all had seen or heard corporal punishment at school. A 2008 study of 71 child centres found that punishments included hitting children, isolating them, locking them in the toilet, public humiliation, and forcing them to clean floors and toilets.⁹⁵ Research in schools in Kathmandu reportedly found that 82% of students were

⁹⁴ Hatemalo Sanchar et al (2013), *Physical Punishment at School: a Study (Summary)*, Save the Children Norway

⁹⁵ UNICEF & Terre des Hommes (2008), *Adopting the Rights of the Child: a study on intercountry adoption and its influence on child protection in Nepal*

physically punished in school.⁹⁶ In 2003, the Centre for Victims of Torture (CVICT), in collaboration with UNICEF, carried out focus group research among students, teachers and parents in four regions. It revealed that corporal punishment was being used in most schools, more commonly in private than public schools; physical punishment was more prevalent in primary schools, psychological punishment in secondary schools. Many teachers and parents reported giving severe punishment to children because they were unaware of alternatives to corporal punishment and knew little about the physical and psychological impacts of harsh punishments.⁹⁷

Recommendations by Human Rights Treaty Bodies

Recommendations to prohibit corporal punishment of children have been made twice by the Committee on the Rights of the Child.⁹⁸ The Human Rights Committee in 2014 recommended Nepal to take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. The Committee also recommended that the state 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.⁹⁹

When examined by the UN Human Rights Committee in 2014, the government replied to a question about progress towards prohibiting all corporal punishment by asserting that it is unlawful under existing law, but it also stated that the government expedites the process of amending the relevant provisions of the Children Act and other laws to ensure full compliance with Article 19 of the Convention on the Rights of the Child.¹⁰⁰

Law Reform Necessary to Achieve Prohibition in All Settings

The defence provided by No. 4 of the Chapter on Hurt / Battery in the General Code, 1963 to use corporal punishment needs to be repealed. In case the General Code will be replaced by separate Penal Code and Civil Code, clause 129 of the Bill to Amend and Codify Civil Laws, 2011 in its current form will allow parents to take disciplinary actions against their children for correcting their conduct, behaviour and character. Though the clause prohibits cruel, inhuman or torturous behaviour, the provision may be interpreted as allowing some degree of corporal punishment. Hence, it is necessary to include in clause 129 of the Bill to Amend and Codify Civil Laws, 2011 a provision to prohibit all forms of corporal punishment:

The disciplinary actions should not include any corporal punishment or cruel, inhuman or degrading treatment.

Even though the Bill to Amend and Codify the Acts relating to Children, first drafted in 2011, would prohibit corporal punishment, it does not give a clear message that corporal punishment is prohibited in all settings including home, care institutions, education institutions, penal institutions, etc. Hence, it is necessary to incorporate all settings in Section 76(c) of the Bill to Amend and Codify the Acts relating to Children, 2011 and the provision may be read as:

*It is regarded as an act of violence against children if any person does or causes to be done or uses children in the following act: inflicting physical or mental punishment or committing degrading behavior in the name of protection, education or discipline **in the home, care institutions, education institutions or any other place.***

Similar provisions should be incorporated in the Education Act that is being considered for amendment.

⁹⁶ Reported in *The Rising Nepal*, 24 December 2006

⁹⁷ Reported in *CVICT*, Monthly Update, June 2004

⁹⁸ 21 September 2005, CRC/C/15/Add. 261, Concluding observations on second and third combined report, paras. 48 and 76; 7 June 1996, CRC/C/15/Add.57, Concluding observations on initial report, paras. 10, 12, 19 and 34

⁹⁹ April 2014, CCPR/C/NPL/CO/2 Advance Unedited Version, Concluding observations on second report, para. 15

¹⁰⁰ 31 March 2014, CCPR/C/NPL/Q/Add.I, Reply to a list of issues, para. 35

It is necessary to have an overriding clause in the Bill to Amend and Codify the Acts relating to Children, 2011 so that the provisions of other laws that provide for lesser or no punishment are not applied in the cases of corporal punishment:

Notwithstanding anything contained in the prevailing laws the provisions of this Act shall prevail in all matters relating to children.

Moves towards Law Reform

The Committee for Fundamental Rights and Directive Principles of the first Constituent Assembly of Nepal has proposed the following provision, among others, under the Fundamental Rights of Children: “No child shall be tortured at home, school or any other place and in any condition, either physically, mentally or in any other forms.” The Committee has explained that this right has been provisioned in order to ensure the right against being tortured at home, school or any other place in the name of penalty or security and in any condition, either physically, mentally or in any other forms and such act shall be prevented.

The sixth amendment to the Education Rules, 2002 in 2011 added a code of conduct for the teachers that the teachers should not commit physical or mental torture to the students; however, this does not cover all corporal punishment. The chapter on Hurt/Battery in the Bill to Amend and Codify the Prevailing Laws on Criminal Offences, 2010 does not provide the defence for the use of corporal punishment as provided in the prevailing General Code. The Bill to Amend and Codify the Acts relating to Children, 2011 defines and penalizes the “act of inflicting physical or mental punishment or committing degrading behavior in the name of protection, education or discipline” as violence. The Bill to amend and codify the Prevailing Laws on Criminal Offences prohibits physical or mental torture, cruel, degrading or humiliating treatment in custody or imprisonment.

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 prohibit corporal punishment in all settings, including the home. The national strategy presented at the SAIEVAC workshop in Kathmandu, November 2010, addressed all forms of violence.

SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from Nepal in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Nepal:

Areas / Issues	Context	Action	Responsible Organizations / Agencies	Timeline
Legal Reform	Constitution: Constituent Assembly (CA) dissolved without promulgating a new constitution. The draft prepared by the CA’s Committee on Fundamental Rights and Directive Principles had extensive provisions related to child rights as fundamental rights.	Advocacy to retain the provisions proposed by the former Committee on Fundamental Rights and Directive Principles regarding child rights, with an addition of the phrase “corporal punishment” in the Article related to children’s right to protection against torture	CSOs, together with Parliamentary Forum for Child Rights and Legislative-Parliamentary Committee on Women, Children and Social Welfare	After the new election of the CA, currently proposed for 22 nd November 2012

Areas / Issues	Context	Action	Responsible Organizations / Agencies	Timeline
	Mentioning the words “corporal punishment” together with Torture and other cruel, inhumane and degrading punishment or treatment would be sufficient			
	Laws:			
	Draft Child Rights Bill: Context: Provisions exist to prohibit any kind of violence against children Provision need to be added to prohibit it in all settings	Once the Bill is tabled in the parliament, amendments will be proposed through “child friendly” parliamentarians to add the provision of banning it in all settings	The Ministry of Women, Children and Social Welfare (MoWCSW) and CSOs, NACG	2013 (depends on when the parliament resumes)
Public Education	Capacity building and Sensitization	Training to teachers, parents, caregivers on violence free caring and rearing		2012-2015
		Teacher training curriculum to incorporate/strengthen violence free teaching	Ministry of Education (MoE) in coordination with MoWCSW, Central Child Welfare Board (CCWB), NACG	
		Training to owners/management of child care homes on violence free child care	CCWB in coordination with development partners	
		Training to Parents by highlighting the harmful effects of corporal punishment and promoting alternative means of discipline and also legal provisions against corporal punishment- <ul style="list-style-type: none"> • Through non-formal education • Through Parent- Teachers’ Association • Mothers’ groups • Youth groups • Other User Groups 		
Awareness Raising	Media campaigns	<ul style="list-style-type: none"> • Media sensitization • IEC materials production through formative research and dissemination • Dissemination of legal provisions on corporal punishment through 	NACG, government of Nepal MoE, development partners, Media partners and	2012 - 2015

Areas / Issues	Context	Action	Responsible Organizations / Agencies	Timeline
		TV talk-shows, public discussion, jingles and public service announcements, child clubs and their federations <ul style="list-style-type: none"> • Emotional commitment of parents/carers received through using “Influence Principles” • Child to community awareness campaigns and also using community positive deviants • A day to celebrate “corporal punishment” free Nepal (Saraswati Pooja) 	CCWB	

The government of Nepal, Ministry of Women, Children and Social Welfare launched the National Campaign against the Corporal Punishment of Children in Nepal on 14th September 2014 in Kathmandu with the support of SAIEVAC and NACG Nepal. The campaign was officially launched by releasing a booklet entitled “National Campaign against Corporal Punishment of Children in Nepal, 2014”, which introduces the campaign, outlines an action plan for the campaign and also presents the responses to Frequently Asked Questions (FAQs) on Corporal Punishment in Nepali. The campaign is in line with SAIEVAC’s Regional Campaign against Corporal Punishment of Children and aims to achieve legal reform for prohibiting all forms of corporal punishment of children in all settings, raise awareness on the harmful consequences of corporal punishment of children, build capacity of the relevant actors on the use of positive discipline techniques and foster non-violent discipline methods. Honourable Prakash Man Singh, Deputy Prime Minister and Minister for Federal Affairs and Local Governance observed the event as the chief guest. Speaking on the occasion, honourable Neelam K.C Khadka, Minister for Women, Children and Social Welfare said “punishing children always leads to negative consequences by impacting negatively on the child’s physical and psychological wellbeing. It can also jeopardize the intimate relationships that we enjoy in our family. We all should therefore join hands to bring this issue to the front and address it collectively”.

Country Report: Pakistan



Legality of Corporal Punishment of Children

There is legal defence for corporal punishment in the home, schools, the penal system and alternative care settings.

Home

Section 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....” There are similar provisions in Section 35 of the Punjab Destitute and Neglected Children Act, 2004 and Section 48 of the Sindh Children Act, 1955. The Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 prohibits corporal punishment “in all its kinds and manifestations” but it states that this is “as provided under Section 89 of the Pakistan Penal Code, 1860” (Section 33) and allows for “reasonable punishment” by parents (Section 44); the definition of corporal punishment (Section 2) covers only that which reaches a certain severity. Section 89 of the Penal Code, 1860 may be used as defence against punishing the child under twelve years of age; however, as noted by SAIEVAC Pakistan Mechanism, the operation of the said section has been minimized by a number of provincial legislations.

The Prohibition of Corporal Punishment Bill, 2014, presented in the National Assembly which has been sent to the Parliamentary Standing Committee for review, provides in clause 3(2) that “notwithstanding anything contained in Section 89 of the Pakistan Penal code, 1860 and any other law for the time being in force, corporal punishment of child by any person is prohibited in all its forms, in schools and other educational institutions including formal and non-formal, both public and private, in child care institutions and in the juvenile justice system.” However, after 18th Constitutional Amendments in the Constitution of Pakistan, this Bill when enacted will cover only Islamabad Capital Territory.

The National Child Policy adopted in 2006 recognizes the right of the child to protection from corporal punishment but there is no prohibition in law. Provisions against violence and abuse in the Penal Code 1860, the Domestic Violence (Prevention and Protection) Act, 2012, the Punjab Destitute and Neglected Children Act, 2004, the Sindh Children Act, 1955, the Sindh Child Protection Authority Act, 2011, the Guardians and Wards Act, 1890, and the Code of Criminal Procedure, 1898 are not interpreted as prohibiting corporal punishment of children.

Schools

While there is administrative ban on corporal punishment in schools, clear prohibition in law is yet to be achieved. Defence for corporal punishment in school is provided by Section 89 of the Penal Code (see under “Home”). A federal ministerial directive and ministerial directives in all Provinces have instructed teachers not to use corporal punishment but it is not explicitly prohibited in legislation. As part of awareness campaign, the federal and provincial government placed sign boards at the entrance of all educational institutes with the text “*mar nai, peyar*” (No Punishment, Only Love). In 2012, the Right to Free and Compulsory Education Act, 2012 was passed in Islamabad Capital Territory, providing for the right to education for children aged 5-16 and prohibiting corporal punishment or mental harassment (Section 13) for children of that age in schools established by federal government and local government.

In Punjab, Punjab Education Commission has finalized a draft Right to Education Bill and presented to the Punjab government for approval.¹⁰¹ The Punjab Free and Compulsory Education Bill, 2013 provides that the in-charge of a school shall ensure that a child studying in the school is not subjected to corporal punishment or harassment (Section 16(4)). Sindh Right of Children to Free and Compulsory Education Act, 2013 also has similar provisions (Section 13(3)). The Balochistan Right to Free and Compulsory Education Act, 2013 was passed in February 2014¹⁰²; however the Act makes no mention of corporal punishment.

The Prohibition of Corporal Punishment Bill, 2014 was presented in the National Assembly and the same has been sent to the Parliamentary Standing Committee for review. The Bill provides that corporal punishment of child by

¹⁰¹ Right to Education Pakistan, <http://rtepakistan.org/legislation/punjab/>; accessed 19 August, 2014

¹⁰² Right to Education Pakistan, <http://rtepakistan.org/legislation/balochistan/>; accessed 19 August, 2014

any person is prohibited in all its forms, in schools and other educational institutions including formal and non-formal, both public and private. It also overrides section 89 of the Pakistan Penal Code 1860 and any other law for the time being in force that are not consistent with the provisions of the Bill.

Sentences for Crime

There is no clear prohibition of corporal punishment as a sentence for crime. Section 12(a) of the Juvenile Justice System Ordinance, 2000 states that no child shall be given corporal punishment while in custody. It is not clear that this prohibits corporal punishment of children not given a custodial sentence, though it is reportedly interpreted as prohibiting corporal punishment as a sentence of the courts. The Ordinance states that it is “in addition to and not in derogation of any other law for the time being in practice” (Section 14), and it is not in force in all areas of the country.

The Abolition of the Punishment of Whipping Act, 1996 prohibits whipping as a sentence under any law but it does not apply to the Federally Administered Tribal Areas (FATA), where until 2011 children could be sentenced to whipping under Clauses 6 and 12 of the Frontier Crimes Regulation, 1901. The Frontier Crimes (Amendment) Regulation 2011 removed these whipping provisions. Section 3 of the Abolition of the Punishment of Whipping Act, 1996 does not apply to *hadd* offences (defined as the punishment of crimes laid down in the Holy Qur'an and Sunnah in the Act). Some laws against *hadd* offences were amended in 2006 but they continue to punish these offences with corporal punishment and are applicable to children from the onset of puberty. Whipping is provided for in Section 7 of the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance, 1979, Section 5 of the Offence of *Zina* (Enforcement of *Hadud*) Ordinance 1979, Sections 3, 4, 8, 11 and 25 of the Prohibition (Enforcement of *Hadd*) Ordinance, 1979 and Sections 17 and 21 of the Offences Against Property (Enforcement of *Hadud*) Ordinance, 1979. The Execution of the Punishment of Whipping Ordinance, 1979 requires the involvement of medical personnel, ensuring the punishment does not result in the convicted person's death, being present at the punishment, and intervening if necessary. Section 9 of the Offences Against Property (Enforcement of *Hadud*) Ordinance provides for the punishment of amputation – of the right hand for the first offence, the left foot for the second; the amputation must be carried out by an authorised medical officer, who must be of the opinion that it would not cause the death of the convicted person (Section 9).

As noted by SAIEVAC Pakistan Mechanism, the punishment of whipping are practically not being inflicted on children since most of the offences punishable under the *Hadud* Ordinance attract only to the adult persons and the trial of offences under *Hadud* Ordinance requires at least two Muslim adult witnesses who fulfill the requirement of Tazkia Tuz Shahood, which is considered to be difficult to meet.

The Penal Code and the Code of Criminal Procedure provide for the penalty of *qisas*, a punishment causing similar hurt at the same part of the body of the convicted person as s/he caused to the victim. The Penal Code states that no *qisas* can be ordered when the offender is a minor (Section 337-M), but a minor is defined as a male under the age of 18 years (Section 299), allowing for the punishment of *qisas* to be ordered for females.

A Bill for bringing amendments in the Juvenile Justice System Ordinance, 2000 under the name of “Juvenile Justice System (Amendment) Act, 2014” has been circulated in the Ministry of Law, Justice and Human Rights in line with the recommendation by Law and Justice Commission of Pakistan for presenting the same before the parliament. Among other provisions, the said Bill suggests amendments in the existing section 14 of the Ordinance to the effect that the provisions of the Ordinance shall have overriding effect, which may repeal the custodial corporal punishment provided in any other penal law. It has also been noted by the SAIEVAC Pakistan Mechanism that the jurisdiction of the Ordinance is already expanded to “whole of Pakistan”, including Federally Administered Tribal Areas”.

Penal Institutions

Corporal punishment is not explicitly prohibited as a disciplinary measure in penal institutions. The Juvenile Justice System Ordinance, 2000 prohibits corporal punishment of children in custody (Section 12), but as noted above it does not override all other laws and is not in force throughout Pakistan. Section 46(12) of the Prisons Act, 1894 provides for whipping as a punishment for prison offences by male prisoners. The prisoner must be certified fit to receive the punishment by a medical officer (Section 50) and the whipping should be inflicted “with a light rattan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen ... in the way of school discipline, with a lighter rattan” (Section 53(2)). In Punjab province, the Borstal Act, 1926 permits

corporal punishment on males in Borstal Institutions (Section 33 and 36). In Khyber Pakhtunkhwa, corporal punishment is unlawful under the Borstal Institutions Act, 2012, which does not include it among permitted disciplinary measures (Section 22). A bill to give the Juvenile Justice System Ordinance overriding effect over all other laws in force throughout Pakistan has been proposed for legislation.

Alternative Care Settings

Section 89 of the Penal Code, 1860, Section 35 of the Punjab Destitute and Neglected Children Act, 2004 and Section 48 of the Sindh Children Act, 1955 (see under “Home”) may be used as defence for corporal punishment in alternative care settings. The Prohibition of Corporal Punishment Bill (2014), would prohibit corporal punishment in alternative care settings; however, the Bill will only cover Islamabad Capital Territory.

Research on Corporal Punishment

A 2013 study documented that beatings and other physical violence, sometimes amounting to torture, were inflicted on child domestic workers.¹⁰³ A study carried out as part of Plan International’s “Learn Without Fear” campaign in 2012 found that physical punishment was used in 89% of public and private schools in Punjab. Physical punishment was most common in public schools, followed by private schools and then madrasas. It sometimes caused major injury or death.¹⁰⁴ A 2012 report on violence against children in police and pre-trial detention stated that corporal punishment is inflicted on children as a disciplinary measure in pre-trial detention.¹⁰⁵ In a survey carried out by the Society for the Protection of the Rights of the Child (SPARC) in 2011, 76% of parents were in favour of corporal punishment and believed it was “necessary to correct children’s behaviour”.¹⁰⁶

A study by Save the Children, UNICEF and government of the North West Frontier Province in three districts of the Province found that corporal punishment is widely used to discipline children in homes and educational institutions. The study involved consultations with 3582 children aged 6-14 years from government and religious schools, 1231 parents, and 486 teachers. Not one child reported never having received corporal punishment. Cumulatively, the children identified 28 types of punishment used in homes and 43 in schools. The most common punishments at home were hitting with an object (shoe, brick, iron rod, knife, etc), smacking, kicking, punching, hair-pulling and ear-twisting. The most common in schools were smacking, hitting with an object, hair-pulling, ear-twisting, and awkward and humiliating physical positions.¹⁰⁷

While these studies may not be generalized on the whole of Pakistan comprising of more than 180 million population with diverse cultural, ethnic, linguistic as well as educational characteristics, they indicate the persistence of the issue. The state of Pakistan is reacting to the issue by initiating legislation process to criminalize all forms of corporal punishment of children in all settings and launching national campaign against corporal punishment.

Recommendations by Human Rights Treaty Bodies

Recommendations to prohibit corporal punishment of children have been made three times by the Committee on the Rights of the child.¹⁰⁸ No recommendations specific to the prohibition of corporal punishment were made during the first or second cycle Universal Periodic Review of Pakistan, in 2008 and 2012 respectively.

¹⁰³ Child Rights Movement Punjab et al (2013), *The unending plight of child domestic workers in Pakistan: Exploitation, abuse, torture, rape and murder*, Child Rights Movement Punjab, Institute for Social Justice, Society for the Protection of the Child & Pakistan Institute of Labour Education & Research

¹⁰⁴ Reported in *The Express Tribune*, 19 November 2012

¹⁰⁵ Sheahan, S. & Randel, B. (2012), *A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries*, Penal Reform International & UKaid

¹⁰⁶ Reported in *The Peninsula*, 7 October 2011

¹⁰⁷ April 2005, *Disciplining the Child: Practices and Impacts*, Save the Children/UNICEF/Schools and Literacy Dept, Government of NWFP

¹⁰⁸ 15 October 2009, CRC/C/PAK/CO/3-4; 27 October 2003, CRC/C/15/Add.217, Concluding observations on second report: 25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, para. 23

Law Reform Necessary to Achieve Prohibition in All Settings

The Prohibition of Corporal Punishment Bill, introduced in 2014, is required to be amended to achieve the explicit prohibition of corporal punishment in all settings including the home as well as schools and education institutions, penal systems, alternative care settings as well as work settings and enacted in Islamabad Capital Territory. Prohibition is required to apply to all corporal punishment, not only that perceived to be injurious or harmful. The defence for using corporal punishment provided by any prevailing law including Shari'a law and traditional legal systems is required to be overridden and repealed. Section 89 of the Penal Code, 1860 and similar provisions providing defence for using corporal punishment in other laws such as the Punjab Destitute and Neglected Children Act, 2004 (Section 35), the Sindh Children Act, 1955 (Section 48), the Khyber Pakhtunkhwa Child Protection and Welfare Ordinance, 2010 (Sections 33 and 44) need to be amended/repealed particularly to ensure that no law can be construed as providing a defence for the use of corporal punishment on children.

Legislation similar to the Prohibition of Corporal Punishment Bill, amended as proposed above, is required to be enacted in all other provinces in addition to Islamabad Capital Territory. The legislation is required to explicitly prohibit corporal punishment in home, all schools, public and private (issuing directives instructing teachers not to use corporal punishment does not amount to prohibiting corporal punishment). All judicial corporal punishment are required to be prohibited, including under Shari'a law and traditional legal systems, and all legal provisions authorizing such punishment of children are required to be repealed. Explicit prohibition need to be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law and in all alternative care settings, including public and private day care, residential institutions, foster care, etc.

The federal government is responsible to ensure the compliance with the international human rights obligations of the state. Article 27 of the Vienna Convention on the Law of Treaties, 1969, which has attained the status of customary international law, provides that the provisions of internal law may not be invoked as justification for failure to perform treaty obligations. Measures need to be put in place to enforce the legislation prohibiting corporal punishment throughout the country.

Moves towards Law Reform

In recent years, a number of bills which address the issue of corporal punishment have been under discussion. The Prohibition of Corporal Punishment Bill, 2014 that covers Islamabad Capital Territory is a progressive instrument that defines corporal punishment in line with General Comment No. 8 of the Committee on the Rights of the Child.

A Bill for bringing amendments in the Juvenile Justice System Ordinance, 2000 under the name of "Juvenile Justice System (Amendment) Act, 2014" has been circulated in the Ministry of Law, Justice and Human Rights in line with the recommendation by Law and Justice Commission of Pakistan for presenting the same before the parliament. Among other provisions, the said Bill suggests amendments in the existing section 14 of the Ordinance to the effect that the provisions of the Ordinance shall have overriding effect, which may repeal the custodial corporal punishment provided in any other penal law.

Ministry of Law, Justice and Human Rights, after having consultation with the concerned stakeholders, forwarded Criminal Law (Amendment) Bill, 2014 specifically for the protection of children. The bill proposes insertion of new section in the Pakistan Penal Code 1860 as Section 328 A: Cruelty to a child which states that “Whoever wilfully assaults, ill-treats, neglects, abandons or does an act of omission or commission, that results in or have potential to harm or injure the child by causing physical or psychological injury to him shall be punished with imprisonment of either description for a term which shall not be less than one year and may be extended up to three years, or with fine which shall not be less than twenty five thousand rupees and may extend up to fifty thousand rupees, or with both.”

As mentioned by SAIEVAC’s National Mechanism in Pakistan, the Balochistan Prohibition of Corporal Punishment Bill, the Khyber Pakhtunkhwa Prohibition of Corporal Punishment Bill, and the Sindh Prohibition of Corporal Punishment Bill are being discussed and reviewed. The Social Welfare Department (SWD) of Balochistan has drafted the Balochistan Child Welfare and Protection Bill, 2012 which reportedly prohibits corporal punishment. A Child Protection Bill referred by the National Commission for Child Welfare and Development (NCCWD) to the Interior Ministry in 2010 prohibits corporal punishment (Sections 58 and 59).

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 this respect, the Government of Pakistan has adopted a National Child Policy in 2006 which recognises the right of the child to protection from corporal punishment. In July 2010, a Child Protection Bill (2009) was initiated by the National Commission for Child Welfare and Development for the protection and welfare of the children. The bill prohibits corporal punishment of children. Later, the subject of child protection and welfare was transferred to the provinces under 18th Constitutional Amendments; and some provinces have enacted and some are in the process of enacting legislation for prohibition of corporal punishment.

The presentation of the national action plan to achieve prohibition developed during the SAIEVAC law reform workshop in Kathmandu, November 2010 identifies 2015 as the target date for achieving prohibition in the home, with the following activities planned for the years 2010-2015:

Activities	Responsible	Time scale
Briefing and updating parliamentarians on the status of child related Bills	MOSW, MOHR, CSO	2011
Policy dialogues	MOSW, CSO	2011
National consultation on Bill	MOSW 2011	2011
Awareness raising in the media (radio/TV/print)	MOSW, CSO	2011-2013
Talk show	MOSW, CSO	2011-2012
Awareness raising in schools (government and private)	MOE, MOSW, CSO	2011-2012
Advocacy efforts to increase allocations (lobby meeting)	MOSW, CSO	2011-2012
Seminar and policy dialogues on budgetary allocations	MOSW	2011-2012
Capacity building of stakeholders (children, parents, government officials, CSO, etc.)	MOSW, CSOs	2013-2015
Training of trainers on alternative forms of discipline for teachers (government and private)	MOSW, MOE, CSOs	2012-2014

In 2011, the government of Pakistan endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Pakistan.

SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from Pakistan in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Pakistan:

Categories	Tasks	Target Timeline
Planning Phase	Mapping exercise with key active actors to map out the efforts/interventions already being implemented or planned by the government and non-government stakeholders	Jul-12
	Joint meeting with the key stakeholders for rolling-out the current plan	Jul-12
	<ul style="list-style-type: none"> Establishment of Technical Task Force consisting of government, UN & I/NGOs under the umbrella of National Commission for Child Welfare & Development (government) and Child Rights Movement (a national coalition of child rights organization) Involvement of Children/Youth Parliament as Steering body to hold Technical Task Force accountable against the plan Also devising the action plan with the children to support their peers and take actions against violations 	July-August 2012
Legislative Framework and its Implementation	Review, revise and advocate for the enactment of laws prohibiting corporal punishment and repealing the negative provisions by Section 89 of Pakistan Penal Code with reference to Corporal Punishment	Aug-12
	Review, revise and recommend the amendments/revisions in education codes for the provinces, state of AJK & Gilgit/Baltistan by the Technical Task Force	Sep-12
	Development of Strategy Position Paper devising the model & process of Complaint & Redressal Mechanism for Corporal Punishment issues in all settings by the Technical Task Force with the participation of children (the initial proposed model will be drafted by children)	Nov-12
	Institutionalizing the child rights & alternative disciplining techniques in teacher training curricula by producing recommendations and submitting them to provincial education ministries	Jan-13
	Institutionalizing the monitoring of child rights & particularly corporal punishment by Parent-Teacher Committees / School Management Committees	May-13
Awareness Raising and Capacity Building	Awareness raising on immediate and longer-term harmful effects of corporal punishment on Children	Will be planned by technical task force
	Promotion and capacity building of Parents & Teachers in Parenting Skills & Alternative Disciplining Techniques	Will be planned by technical task force
	Supporting the children groups to come up with their own positions papers on the subject and facilitate them to key decision making authorities to present their positions	Will be planned by technical task force
	Child-led Advocacy Campaigns to End Corporal Punishment in Pakistan (to be jointly planned and supported by government and civil society)	Still to be specified

The government of Pakistan, Ministry of Law, Justice and Human Rights launched the National Campaign against the Corporal Punishment of Children in Pakistan on 27th March 2014 in Islamabad with the support of SAEVAC and NACG Pakistan. Honorable Zahid Hamid, Minister for Science and Technology officially launched the campaign and signed the Campaign Signature Book on behalf of the Minister for Law, Justice and Human Rights. His signature mentioned "... the government of Pakistan will take all legal and administrative measures required to combat corporal punishment and protect and promote rights of the child." It is one of the objectives of the campaign to bring together concerned actors to take necessary actions on enacting and enforcing legislations with explicit prohibition of corporal punishment of children in all settings. A children's representative from Pakistan broke a stick as a symbolic end to the use of corporal punishment against children in the country.

Country Report: Sri Lanka



Legality of Corporal Punishment of Children

Corporal punishment is lawful in the home, schools, penal institutions and alternative care settings.

Home

Corporal punishment is lawful in the home. The Penal Code, 1883 was amended in 1995 to provide for the offence of cruelty to children (Section 308(A), amended further in 2006), but Section 82 of the Code 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 be likely to cause, to that person...” Illustration (i) of the offence of “criminal force” (Section 341) states that a schoolmaster who flogs a student is not using force illegally. Section 71(6) of the Children and Young Persons Ordinance No. 48 of 1939 confirms “the right of any parent, teacher or other person having lawful control or charge of a child ... to administer punishment to him”. Provisions against violence and abuse in the Penal Code, the Children’s Charter 1994 and the Prevention of Domestic Violence Act, 2005 are not interpreted as prohibiting all corporal punishment of children.

The Draft National Child Protection Policy (October, 2013) recognizes that corporal punishment still occurs and is generally accepted as a form of discipline in homes, schools, and child care institutions. The Policy has made recommendations to child protection actors to promote behavioral change and changes in social and cultural norms so as to foster non-violent relationships and ameliorate negative situations for children such as ingrained attitudes towards corporal punishment.

Schools

Corporal punishment is lawful in schools, as confirmed in the explanation of acceptable criminal force in the Penal Code (see under “Home”). Section 2 of Circular No 2005/17, issued by the Ministry of Education in 2005, states that corporal punishment should not be used in schools, but this has not been confirmed in legislation. Provisions in the Education Ordinance 1939 allowing the court to order corporal punishment for persistent truancy (Section 56) were repealed by Section 3 of the Corporal Punishment (Repeal) Act No. 23, 2005.

The Draft National Child Protection Policy (October, 2013) recommends prohibition of all forms of abuse and violence in schools, particularly the practice of corporal punishment, and the humiliating and degrading treatment of children, bullying, and sexual and gender-based violence.

The Indicators of the Child Friendly School Initiative in Sri Lanka, 2008 developed by the Ministry of Education mentions that corporal and psychological punishment should not be practiced (Criteria 1.3). The National Action Plan for the Promotion and Protection of Human Rights 2011-2016 provides for the enactment and enforcement of legislation to prohibit corporal punishment in schools and educational institutions within the timeframe of two years (Goal 7.5).

Sentence for Crime

Corporal punishment is prohibited as a sentence for crime by Section 3 of the Corporal Punishment (Repeal) Act No. 23, 2005, which repeals the Corporal Punishment Ordinance 1889 and all provisions authorising judicial corporal punishment in other laws.

Penal Institution

Corporal punishment is lawful as a disciplinary measure in penal institutions. The Corporal Punishment (Repeal) Act No. 23 of 2005 repeals corporal punishment in prisons under the Prisons Ordinance, but there is no prohibition relating to other penal institutions for young persons in conflict with the law such as remand homes, approved homes and certified schools. Section 14(2)(e) of the Youthful Offenders (Training Schools) Ordinance No. 28 of 1939 provides for the Minister to make regulations for discipline in training schools, but there is no

further information concerning such regulations. Under examination by the Committee on the Rights of the Child in 2010, the government stated its intention to prohibit corporal punishment in remand homes.¹⁰⁹

The National Action Plan for the Promotion and Protection of Human Rights 2011-2016 plans for amendments to laws on juvenile justice but does not refer to corporal punishment in this context.

Alternative Care Settings

Corporal punishment is lawful in alternative care settings under Sections 82 and 341 of the Penal Code and Section 71(6) of the Children and Young Persons Ordinance No. 48 of 1939 (see under “Home”). Under examination by the Committee on the Rights of the Child in 2010, the government stated its intention to prohibit corporal punishment in alternative care settings.¹¹⁰

The Guidelines and Standards for Childcare Institutions in Sri Lanka, 2013 issued by the National Child Protection Authority provides that excessive force should not be used to control or discipline a child (Paragraph 3.10.1). The Guidelines has listed a number of methods that shall not be followed by the caregivers or staff members as a way to discipline a child including corporal punishment (3.10.2(i)). The National Action Plan for the Promotion and Protection of Human Rights 2011-2016 plans for law reform in relation to orphanages, inspection of childcare institutions and early childhood care and development but it does not refer to corporal punishment in this context.

Research on Corporal Punishment

A study involving 194 parents living in Colombo found that 76.3% had physically punished their child in the past month by shaking them, hitting them on the bottom with an object or bare hand, slapping them, pinching them, pulling their ear or hair or hitting them on the head.¹¹¹ In a study involving 1226 children with an average age of 12, 52.3% were physically punished by their parents at least weekly and 70% had been physically punished by their parents in the past year.¹¹² A 2005 study into institutional care in Sri Lanka found that corporal punishment and other cruel treatment occurred sometimes in institutions.¹¹³

Recommendations by Human Rights Treaty Bodies

Human rights treaty bodies have repeatedly¹¹⁴ recommended that corporal punishment of children be prohibited in Sri Lanka including the Committee on the Rights of the Child and the Human Rights Committee. In 2005, the Committee Against Torture welcomed the abolition of judicial corporal punishment by Act No. 23 of 2005.¹¹⁵

Law Reform Necessary to Achieve Prohibition in All Settings

Section 82 and illustration (i) of Section 341 of the Penal Code, 1883 and all provisions authorizing corporal punishment in remand homes, approved schools and Borstal institutions should be repealed. The possibility of invoking the provision as a justification for corporal punishment of children may be avoided by adding a restrictive clause or explanation within Section 82 of The Penal Code, 1883 as follows:

Corporal punishment or any other cruel or degrading punishment of any kind is an offence and it shall never be interpreted as an act benefiting a child.

¹⁰⁹ 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 42

¹¹⁰ 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 42

¹¹¹ De Zoysa, P. (2013), *A Study on Parental Disciplinary Practices and an Awareness Program to Reduce Corporal Punishment and Other Forms of Negative Practices*, Colombo, Sri Lanka: Child Protection in Crisis, Institute for Participatory Interaction in Development & Save the Children

¹¹² De Zoysa P. et al (2006), “The prevalence of Sri Lankan children’s experience of parental physical punishment and their attitudes towards its use”, in Behera, D. K. (ed), *Childhoods in South Asia*, New Delhi: Pearson Education

¹¹³ Save the Children in Sri Lanka (2005), *Home Truths: Children’s Rights In Institutional Care in Sri Lanka*

¹¹⁴ 19 October 2010, CRC/C/LKA/CO/3-4, Concluding observations on third/fourth report, paras. 40 and 41; 2 July 2003, CRC/C/15/Add.207, Concluding observations on second report, paras. 28 and 29; 21 June 1995, CRC/C/15/Add.40, Concluding observations on initial report, paras. 15 and 32; 8 December 2011, CAT/C/LKA/CO/3-4, Concluding observations on third/fourth report, para. 30; [November 2014], CCPR/C/CO/LKA/5, Advance Unedited Version, Concluding observations on fifth report, para. 19, 1 December 2003, CCPR/CO/79/LKA, Concluding observations on the combined fourth and fifth reports, para. 11; 27 July 1995, CCPR/C/79/Add.56, Concluding observations on third report, sections 3 and 5

¹¹⁵ 15 December 2005, CAT/C/LKA/CO/1/CRP.2, Concluding observations on second report, para. 3

Legislation should be enacted to explicitly prohibit corporal punishment in all settings. In order to ensure explicit prohibition of all corporal punishment to children in all settings Section 71(6) of the Children and Young Persons Ordinance, 1939 should be amended to include a restrictive clause or explanation as follows:

No child shall be subjected to corporal punishment or any other cruel or degrading forms of punishment in home, educational institutions, care institutions, penal systems or any other settings.

In order to avoid the possibility of inflicting corporal punishment to young persons in conflict with law in penal institutions, Section 14 of the Youthful Offenders (Training Schools) Ordinance, 1939 should be amended to include sub-rules such as:

No regulations shall be made that authorize corporal punishment or any other cruel or degrading punishment of any kind to discipline or control persons detained in training schools.

Moves towards Law Reform

The amendments to the Children and Young Persons Ordinance, which is currently at the Legal Draftsman's Department, and the draft Act on Working with Children, which has been sent to the Board of National Child Protection Authority for approval, may provide an opportunity for explicitly prohibiting corporal punishment. 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.

The national action plan developed at the SAIEVAC workshop in Kathmandu, November 2010 confirmed the need to repeal Sections 82 and 341 of the penal code and to enact legislation to prohibit corporal punishment, noting that a draft child protection bill had reached the cabinet and the remaining process would take approximately a year and a half, providing an immediate opportunity for law reform. In the longer term, the plan noted that there were opportunities to amend the Domestic Violence Act to include explicit prohibition of corporal punishment and to review the provisions in the Youthful offenders (Training schools) Ordinance, the Prison Ordinance and other laws. The government departments and bodies to be involved were identified as the Ministry of Child Development and Women's Affairs, the Ministry of Justice, the Ministry of Rehabilitation and Prison Reforms, the Ministry of Education, the Development of Probation and Child Care Services, the National Child Protection Authority, the Legal Draftsman's Department and the Attorney General's Department. Organisations and key individuals likely to support reform were also listed.

When Sri Lanka was examined by the Committee on the Rights of Child in 2010, the government stated its intention to prohibit corporal punishment in remand homes and alternatives care settings.¹¹⁶ Since February 2011 high level discussions have been held to take the plan forward and consideration is now being given as to whether law reform requires amending existing law or the introduction of a separate law to prohibit corporal punishment of children. In 2011, the government also endorsed a report on progress towards prohibiting corporal punishment in South Asian states which included an analysis of the reforms required in Sri Lanka. In the context of accepting recommendations on children's rights made during the UPR in 2012, the government stated that laws would be reformed in line with the recommendations of the Committee on the Rights of the Child.¹¹⁷

The Indicators of the Child Friendly School Initiative in Sri Lanka, 2008 and the Draft National Child Protection Policy (October, 2013) aim at prohibiting corporal punishment and humiliating and degrading treatment of children along with the promotion of alternative forms of discipline.

SAIEVAC launched its Regional Campaign against Corporal Punishment on 28th May, 2012 in Colombo during the South Asia Regional Consultation on the Follow-up of the UN Study on Violence against Children. After the

¹¹⁶ 6 October 2010, CRC/C/SR.1567, Summary record of examination by the Committee on the Rights of the Child, para. 42

¹¹⁷ 21 February 2013, A/HRC/22/16/Add.1, Report of the working group: Addendum, para. 4.13

launch of the Regional Campaign against Corporal Punishment of Children, a national planning exercise meeting was organized on 31st May, 2012 with the aim to develop the National Action Plans for each of the Member States on initiating campaigns in their respective countries. The delegates from Sri Lanka in the national planning exercise prepared the following plan which was endorsed by SAIEVAC Governing Board that also has representation from Sri Lanka:

Activities	Responsibility	Timeline
1. Existing laws to be strengthened and monitored Existing fast track of Child Abuse cases	Ministry of Justice; NCPA; Probation and Police; Judiciary	3 months plan
2. Empowering children for child led action in all settings	National Children's Council	
3. Parents – extend pilot study on effectiveness of awareness work – to rural and ethnic settings	MoCD, and PCCS	
4. Teacher training upgrades both short and long term – and review of teachers workload	MoE	
5. Positive discipline examples to be identified and disseminated	Community initiatives	
6. Review of impact of changes to the law on corporal punishment	MoJ	

Resources to Support Law Reform

The following publications can be downloaded free of charge from the relevant websites:

- South Asia Initiative to End Violence Against Children (SAIEVAC): <http://www.saievac.org>
- Committee on the Rights of the Child: <http://www2.ohchr.org/english/bodies/crc/comments.htm>
- Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org>
- Save the Children Sweden: <http://resourcecentre.savethechildren.se>

Committee on the Rights of the Child, General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia) (2006) <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/GC/8>

SAIEVAC (n.d.), Ban Corporal Punishment of Children: *Questions and Answers for Children and Young People*. Author, Kathmandu, Nepal

Global Initiative to End All Corporal Punishment of Children, Save the Children Sweden (2010), *Prohibiting corporal punishment of children: A guide to legal reform and other measures*:

Global Initiative to End All Corporal Punishment of Children, Save the Children Sweden, CNNV Churches’ Network for Non-violence (2011), *Ending Corporal Punishment of Children: A handbook for working with and within religious communities*:

Global Initiative to End All Corporal Punishment of Children, Save the Children Sweden (2010), *Campaigns Manual: Ending corporal punishment and other cruel and degrading punishment of children through law reform and social change*:

Global Initiative to End All Corporal Punishment of Children, Save the Children (2013), *Ending legalised violence against children: Global Report 2013*.

Save the Children Sweden, Regional Office for South & Central Asia, Nepal (2007), *A Toolkit on Positive Discipline: with particular emphasis on South and Central Asia*. Author, Kathmandu

Durrant, Joan E. (2013), *Positive discipline in everyday parenting (Third edition)*: Save the Children Sweden, Bangkok

Save the Children Sweden, Regional Office for South and Central Asia (2010), *Stepping Up Child Protection: An assessment of Child Protection Systems from all countries in South Asia, including reflections from Central Asia*. Author, Kathmandu

Posters relating to Corporal Punishment in different settings

Resources on Corporal Punishment in South Asian languages developed by SAIEVAC’s National Mechanisms

Global Initiative Newsletters, Briefings, Regional Reports and Tables

Global Initiative Legal Reform Briefings

- Understanding the need for prohibition
- Reviewing current law
- Drafting prohibiting legislation
- Building a national strategy
- Working with government and parliament
- Using legal action and regional and international human rights mechanisms



violence against children in South Asia.

www.saievac.org

Launched in April 2001 in Geneva, the Global Initiative to End All Corporal Punishment of Children aims to speed the end of corporal punishment of children across the world. The Global Initiative aims to encourage governments systematically to ban all forms of corporal punishment and to develop public education programmes. It has been making corporal punishment of children visible by building a global map of its prevalence and legality. It is working to form a strong alliance of human rights agencies, key individuals and non-governmental organizations against corporal punishment. The Initiative also focuses on promoting awareness of children's right to protection and public education on positive, non-violent forms of discipline for children. It also provides technical assistance to support states with these reforms.

www.endcorporalpunishment.org



Global Initiative to
**End All Corporal Punishment
of Children**



SACG is a network of UN agencies, INGOs and other actors working together at the regional level in South Asia to coordinate actions against violence against children. SACG collaborates closely with other global and regional forums and bodies working on ending violence against children such as SAARC, the Office of the UN Special Representative to the Secretary General on Violence against Children and the Working group on violence against children in South East Asia. It aims to promote a coordinated approach in preventing violence and protecting women and children by strengthening protection systems. SACG provides necessary technical and other support to South Asian Initiative to End Violence Against Children (SAIEVAC) and participates in

SAIEVAC mechanisms.

South Asian Association for Regional Co-operation in Law, SAARCLAW, is an association of the legal communities of the SAARC countries comprising judges, lawyers, academicians, law teachers, public officers and a host of other law-related persons, registered with the SAARC Secretariat at Kathmandu and awarded the status of a Regional Apex Body of SAARC.

SAARCLAW was established in Colombo on 24th October 1991. The members of SAARCLAW have persistently worked towards the achievement of its objectives of bringing together the legal communities within the region for closer co-operation, development of understanding, promotion of exchange of ideas and dissemination of information, and to use and develop law as a source and an instrument towards social change for development as well as for building co-operation among the peoples of the region. SAIEVAC has signed a MOU with SAARCLAW in order to mutually help the Member States to strive towards the goal of Ending Violence Against Children.

www.saarclaw.org



SAARCLAW
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Co-operation in Law



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