

# Corporal punishment of children in Pakistan



Global Initiative to  
End All Corporal Punishment  
of Children

Report prepared by the Global Initiative to End All Corporal Punishment of Children ([www.endcorporalpunishment.org](http://www.endcorporalpunishment.org)), last updated September 2015

## Child population

73,854,400 (UNICEF, 2013)

*\*Pakistan is committed to reforming its laws to prohibit corporal punishment in all settings.\**

## Pakistan's commitment to prohibiting corporal punishment

Pakistan expressed its commitment to prohibiting all corporal punishment of children, including in the home, at the July 2006 meeting of the South Asia Forum, following the 2005 regional consultation of the UN Study on Violence against Children. In 2014, the Government reaffirmed its commitment to law reform in the context of launching a national campaign against corporal punishment. Bills which include prohibition are under consideration.

## Summary of necessary legal reform to achieve full prohibition

Prohibition is still to be achieved in the home, alternative care settings, day care, schools, penal institutions and as a sentence for crime.

Article 89 of the Penal Code states that "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 the Punjab Destitute and Neglected Children Act 2004 (art. 35), the Sindh Children Act 1955 (art. 48), the Khyber Pakhtunkhwa Child Protection and Welfare Act 2010 (arts. 33 and 44) and possibly other provincial laws. These provisions should be amended/repealed to ensure that no law can be construed as providing a defence for the use of corporal punishment on children. All corporal punishment should be prohibited, however light, by parents and all persons with authority over children.

*Alternative care settings* – Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc).

*Day care* – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, kindergartens, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc).

*Schools* – The law should prohibit corporal punishment in all schools, public and private.

*Penal institutions* – Corporal punishment should be prohibited as a disciplinary measure in all institutions accommodating children in conflict with the law.

*Sentence for crime* – All judicial corporal punishment should be prohibited, including under Shari’a law and traditional legal systems, and all legal provisions authorising such punishment of children should be repealed.

## **Detailed country report**

### **Current legality of corporal punishment**

#### **Home**

Corporal punishment is lawful in the home. Article 89 of the Penal Code 1860 states: “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person....” The courts have confirmed that this article provides a legal defence for corporal punishment of children.<sup>1</sup> There are similar provisions in the Punjab Destitute and Neglected Children Act 2004 (art. 35) and the Sindh Children Act 1955 (art. 48). 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” (art. 33) and allows for “reasonable punishment” by parents (article 44); the definition of corporal punishment (art. 2) covers only that which reaches a certain severity. In 2012, rules under the Act were being drafted.

The National Child Policy adopted in 2006 recognises 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.

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 2010, Government representatives in SAIEVAC (South Asia Initiative to End Violence Against Children) developed a national action plan to achieve prohibition and in 2011 endorsed a report on progress towards prohibiting corporal punishment in South Asia states which included an analysis of the reforms required in Pakistan.<sup>2</sup> On 27 March 2014, the Ministry of Law, Justice and Human Rights announced the launch of a national campaign against corporal punishment of children, in collaboration with SAIEVAC and the South Asia Coordinating Group on Action against Violence against Children (SACG), and reaffirmed its commitment to prohibition in all settings: “The Government of Pakistan will take all legal and administrative measures requires to combat corporal punishment and protect and promote rights of the child.”<sup>3</sup>

In recent years, a number of bills which address the issue have been under discussion, including a Child Protection Bill referred by the National Commission for Child Welfare and Development (NCCWD) to the interior ministry in 2010, which included prohibition (arts. 58 and 59) though its application to “light” corporal punishment was unclear. A Prohibition of Corporal Punishment Bill was laid before parliament in 2010 which would prohibit corporal punishment in education and care

<sup>1</sup> AIR 1949 Bom. 226= ILR (1949) Bom. 46= 50 Cri. L. Jour 789 (DB); AIR 1965 Calcutta 32+AIR 1962 Mad. 216; AIR 1949 Bom. 226 (DB)

<sup>2</sup> SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

<sup>3</sup> “Pakistan Breaks the Stick as a Symbolic End to Corporal Punishment in the Country”, *Summary Report compiled by the SAIEVAC Regional Secretariat based on the proceedings of the event and the press release issued by the Ministry of Law, Justice and Human Rights, Government of Pakistan*, April 2014

settings but not by parents in the family home; the Bill was passed by the National Assembly in March 2013 but fell before the election. In March 2014, a new Prohibition of Corporal Punishment Bill was laid before the National Assembly;<sup>4</sup> this again failed to pass through the Senate.<sup>5</sup>

In Balochistan, a Child Welfare and Protection Bill which would prohibit corporal punishment in children's homes and a Corporal Punishment Bill which would prohibit it in education institutions and possibly in care settings are under discussion. A Prohibition of Corporal Punishment Bill is under discussion in Punjab.

In May 2014, the Child Protection System Bill 2014, applicable to Islamabad Capital Territory, was passed in the lower house of the Senate.<sup>6</sup> The Bill would prohibit corporal punishment in article 38: "Corporal punishment stands abolished in all its kinds and manifestations and its practice in any form is prohibited." However, the definition of corporal punishment in article 2n suggests that it covers only that which reaches some degree of severity (emphasis added): "Corporal punishment means intentional use of physical force intended to cause a *high degree* of pain or discomfort for discipline, correction and control, changing behaviour or in the belief of education or bringing up the child, that *either results in or has a high likelihood of resulting in* injury, psychological harm, mal-development or deprivation."

### **Alternative care settings**

Corporal punishment is lawful in alternative care settings under article 89 of the Penal Code 1860, article 35 of the Punjab Destitute and Neglected Children Act 2004 and article 48 of the Sindh Children Act 1955 (see under "Home"). The Prohibition of Corporal Punishment Bill would prohibit corporal punishment in all alternative care settings but possibly only in Islamabad Capital Territory.

### **Day care**

Corporal punishment is lawful in early childhood care and in day care for older children under article 89 of the Penal Code 1860, article 35 of the Punjab Destitute and Neglected Children Act 2004 and article 48 of the Sindh Children Act 1955 (see under "Home").

### **Schools**

Corporal punishment is prohibited in some but not all schools. Except where it is explicitly prohibited, corporal punishment is lawful in schools under article 89 of the Penal Code 1860 (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 prohibited in legislation.

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 in government schools for children of that age (art. 13). The Act operationalises the right to education in article 25-A of the Constitution, and other provinces must enact similar legislation. This has been achieved in Sindh province (Sindh Right of Children to Free and Compulsory Education Act 2013) and Punjab (Punjab Right to Free and Compulsory Education Ordinance 2014).

The Balochistan Compulsory and Free Education Ordinance 2013 does not include prohibition of corporal punishment. With regard to Khyber Pakhtunkhwa, the Government states in its report to the Committee on the Rights of the Child in 2015 that the Child Protection and Welfare Act 2010 prohibits

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<sup>4</sup> Reported in *Geo.tv News*, 25 March 2014 (<http://www.geo.tv/article-142347-Bill-prohibiting-corporal-punishment-tabled-in-NA>, accessed 26 March 2014); see also *The Express Tribune Blogs*, 16 March 2014

<sup>5</sup> SPARC - Society for the Protection of the Rights of the Child, correspondence with Global Initiative, 7 September 2015

<sup>6</sup> <http://tinyurl.com/omrn8ag>, accessed 15 May 2014

corporal punishment in government schools,<sup>7</sup> but as already noted, this prohibition is undermined by article 89 of the Penal Code (see under “Home”, above).

## Penal institutions

The Juvenile Justice System Ordinance 2000 prohibits corporal punishment of children in custody (art. 12), but it does not override all other laws – article 14 states that the Ordinance is “in addition to and not in derogation of any other law for the time being in practice” – and it is not in force throughout Pakistan. Article 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 (art. 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” (art. 53(2)). In the Punjab province, the Borstal Act 1926 permits corporal punishment on males in borstal institutions (arts. 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 (article 22).

## Sentence for crime

Law reform has not yet achieved complete abolition of corporal punishment as a sentence for crime. Article 12 of the Juvenile Justice System Ordinance 2000 states that no child may 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. However, as already noted (see under “Penal institutions”), the Ordinance does not override other laws and 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 articles 6 and 12 of the Frontier Crimes Regulation 1901. The Frontier Crimes (Amendment) Regulation 2011 removed these whipping provisions.

The Abolition of the Punishment of Whipping Act does not apply to *hadd* offences (article 3). 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 article 7 of the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance 1979, article 5 of the Offence of *Zina* (Enforcement of *Hudood*) Ordinance 1979, articles 3, 4, 8, 11 and 25 of the Prohibition (Enforcement of *Hadd*) Ordinance 1979 and articles 17 and 21 of the Offences Against Property (Enforcement of *Hudood*) 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. Article 9 of the Offences Against Property (Enforcement of *Hudood*) 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 (art. 9).

The Penal Code 1860 and the Code of Criminal Procedure 1898 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 (art. 337-M), but a minor is defined as a male under the age of 18 years (art. 299), allowing for the punishment of *qisas* to be ordered for females.

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<sup>7</sup> 4 May 2015, CRC/C/PAK/5, Fifth state party report, para. 107

## **Universal Periodic Review of Pakistan’s human rights record**

Pakistan was examined in the first cycle of the Universal Periodic Review in 2008 (session 2). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendation was made and was accepted by the Government:<sup>8</sup>

“Continue to promote the rights of children, with the hope that the pending Child Protection Bill in Parliament and the Child protection policy being formulated will soon be adopted, (the Philippines), rapidly implement the draft law on the protection of children and speed up the implementation of the 2000 edict for justice for minors (Switzerland)”

Examination in the second cycle took place in 2012 (session 14). No recommendations were made concerning corporal punishment of children. However, the following recommendations were made and were accepted by the Government:<sup>9</sup>

“Continue developing the institutional framework with respect to the promotion and protection of human rights (Jordan);

“Continue its ongoing review of national laws to ensure that they are in line with its international human rights law obligations (Turkmenistan)/Review of all relevant legislation and procedures to ensure systematic incorporation of international human rights obligations and their implementation on all levels of the government (Czech Republic)/Align its national legislation with the ratified international human rights treaties (Slovenia)/Continue working on the harmonization of its legislative domestic framework with the international human rights instruments to which it is a party (Nicaragua);

“Promote the review of national legal provisions in the area of human rights, including constitutional provisions, to bring them into line with international standards (Mexico);

“Expedite the adoption of the Charter of Child Rights Bill (Bhutan);

“Continue its ongoing efforts to advance the rights of women and make similar efforts in the protection and promotion of the rights of children, especially by adopting the relevant legal instruments (Republic of Korea);

“Continue to enhance its efforts to protect women, children and other vulnerable groups against discrimination and violence (Singapore);

“Continue its policies on improving the rights of the child (Jordan)”

## **Recommendations by human rights treaty bodies**

### ***Committee on the Rights of the Child***

(15 October 2009, CRC/C/PAK/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 80 and 81)

“The Committee welcomes the State party’s commitment to eradicate corporal punishment in all settings, as demonstrated by the incorporation of the prohibition of corporal punishment in the National Plan of Action for Children and directives issued in all provinces. The Committee is, however, deeply concerned that corporal punishment is currently lawful under section 89 of the Penal Code of 1860 and extensively used as a disciplinary measure in homes, schools, and alternative care settings and that it is still used in the penal system despite its prohibition through the Juvenile Justice System Ordinance (JJSO).

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<sup>8</sup> 4 June 2008, A/HRC/8/42, Report of the working group, para. 106(12)

<sup>9</sup> 26 December 2012, A/HRC/22/12, Report of the working group, paras. 122(16), 122(17), 122(18), 122(24), 122(40), 122(41) and 122(59); 13 March 2013, A/HRC/22/12/Add.1, Report of the working group: Addendum, para. 4

“The Committee recommends that the State party, as a matter of urgency:

- a) repeal section 89 of the Penal Code of 1860 and explicitly prohibit all forms of corporal punishment in all settings;
- b) set up an effective monitoring system in order to ensure that abuse of power by teachers or other professionals working with and for children does not take place in schools and other institutions; and
- c) introduce public education, awareness-raising and social mobilization campaigns on harmful effects of corporal punishment with a view to changing general attitudes towards this practice and promote positive, non-violent, participatory forms of child-rearing and education.

“The Committee ... is deeply concerned at reports of violence, ill-treatment, corporal punishment, sexual abuse and illegal detention within madrasas and of madrasas being used for military training, as well as instances of recruitment of children to participate in the armed conflict and terrorist activities.

“The Committee recommends that the State party: ...

- c) ensure the protection of children from maltreatment within madrasas through the establishment of an adequate monitoring mechanism; ...
- e) take into account the Committee’s general comment No. 1 (2001) on the aims of education.”

#### *Committee on the Rights of the Child*

(27 October 2003, CRC/C/15/Add.217, Concluding observations on second report, paras. 42, 43, 60 and 63)

“The Committee is deeply concerned that the State party’s Penal Code (sect. 89) allows for corporal punishment to be used as a disciplinary measure in schools and at the fact that corporal punishment is widely practised, especially within educational and other institutions and within the family, many times resulting in serious injuries. The Committee is further concerned that, despite the 1996 Abolition of the Punishment of Whipping Act, whipping is still used as a sentence for Hadood crimes.

“The Committee recommends that the State party, as a matter of urgency:

- a) repeal section 89 of the Penal Code of 1860 and explicitly prohibit all forms of corporal punishment;
- b) abolish the sentence of whipping, under any circumstance or law;
- c) undertake well-targeted public awareness campaigns on the negative impact of corporal punishment on children, and provide teachers and parents with training on non-violent forms of discipline as an alternative to corporal punishment.

“The Committee ... remains deeply concerned that:

- g) the code of conduct for teachers does not prohibit corporal punishment, nor does it deal with the problem of violence against children in school.

“The Committee recommends that the State party: ...

- i) take proactive measures to eliminate violence against children in schools, notably by including in the code of conduct for teachers the prohibition of corporal punishment and by limiting the role of school counsellors to those functions that help the pupil and revoking their disciplinary functions.”

#### *Committee on the Rights of the Child*

(25 April 1994, CRC/C/15/Add.18, Concluding observations on initial report, paras. 12 and 23)

“... the Committee notes the non-compatibility of certain areas of national legislation with the provisions and principles of the Convention, including the punishment of flogging and the death penalty and life imprisonment for children below the age of 18.

“The hope is ... expressed that ... the State party will take into account the Committee’s concerns, particularly its recommendations with regard to the abolition of flogging and capital punishment for children under the age of 18....”

### **Prevalence/attitudinal research in the last ten years**

In a 2013 study by Plan Pakistan, 20% of teachers “fully agreed” and 47% “partially agreed” that “a small amount of physical punishment is necessary for most children”; 41% of parents and other adult family members fully agreed and 38% partially agreed with the statement. Three quarters of teachers and 84% of parents agreed that teachers were justified in beating students who were rude or disobedient; 65% of teachers thought children who violated school rules “deserved” to be beaten, and 85% of parents thought children who stole “deserved” physical punishment. Twenty per cent of teachers fully agreed and 31% partially agreed that frequent “small amounts” of physical punishment had no harmful effect on a child. Students were asked what the most common kind of physical punishment was: 24% said being beaten on the palms of the hand with a stick or ruler, 22% slaps on the face or head. Other answers included being forced to stand or sit in an uncomfortable position, being struck with a stick or ruler on body parts other than the hand, and being kicked. The study, *Stopping the Fear: Why Teachers Use Corporal Punishment*, involved more than 300 students and 137 teachers at 32 schools, half of which were run by the government and half by NGOs or private organisations.

(Reported in *The Express Tribune*, 27 June 2013)

According to a 2010 report by the Society for the Protection of the Rights of the Child (SPARC), up to 35,000 students drop out of high school every year because of corporal punishment.

(Reported in *The Express Tribune*, 27 June 2013)

A 2013 study documented beatings and other physical violence, sometimes amounting to torture, inflicted on child domestic workers.

(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 Rights of the Child & Pakistan Institute of Labour Education & Research)

A study carried out as part of Plan International’s “Learn Without Fear” campaign 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.

(Reported in *The Express Tribune*, 19 November 2012)

According to a 2012 report on violence against children in police and pre-trial detention, corporal punishment is inflicted on children as a disciplinary measure in pre-trial detention.

(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)

According to a 2012 report by Plan International, nearly three-quarters of adult Pakistanis believe their religion allows them to slap their children if they do not behave.

(Global Advocacy Team (2012), *Plan’s Learn Without Fear campaign: Third progress report*, Woking, UK: Plan)

In a survey carried out by the Society for the Protection of the Rights of the Child (SPARC) in 2011, 76% of parents in the Khyber Pakhtunkhwa province were in favour of corporal punishment of children.

A participatory study by Save the Children, UNICEF and the Government of the North West Frontier Province in three districts of NWFP – Peshawar, Hangu and D.I.Khan – revealed that corporal punishment is widely used to discipline children in homes and educational institutions. A total of 155 consultations were undertaken, using participatory research techniques, with 3,582 children aged 6-14 from government and religious schools, 86 consultations with 1,231 parents, and 86 consultations with 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. About 43% of all punishments identified were reported by children in government primary schools, about 30% in government middle schools, 10% in government high schools, and 16% in private schools. Corporal punishment at home and in schools was more frequent the younger the child. There were no significant gender differences – boys and girls were subjected to similar frequencies of punishment. Corporal punishment in homes was reported as being inflicted most frequently by immediate family members such as parents (20.2%), grandparents (24.0%) and older siblings (18.9%) and uncles and aunts (27.3%), followed by close relatives such as cousins and in-laws. Neighbours, village elders, tutors, housemaids and other relations were reported as less frequently beating children. Corporal punishment in schools was most commonly inflicted by the teacher and students assigned discipline duties in the school (49.6%), including class monitor, commander, and assembly commander. Senior students were also frequently reported to be hitting younger children (14.7%).

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

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