

EXTERNAL

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@MEDICAL CONCERN

**Whipping
£PAKISTAN**

Press reports indicate that the punishment of whipping continues to be dispensed and implemented in Pakistan. On 25 August 1991, Reuters reported that two men were administered 30 strokes each as part of their punishment for the rape of a six-year-old girl. They were also each sentenced to 25 years' imprisonment. An Associated Press photograph taken at the whipping shows one of the men, former policeman Kanzoor Ahmed standing braced against a chair, surrounded by uniformed officers, one of whom is administering a stroke with a long-handled whip or cane. The prisoner is chained at the hands.

Other known cases of whipping over the past year are listed in the table attached to this document. They are drawn from Pakistan press reports and can be assumed to constitute only a fraction of the incidence of the punishment of whipping in Pakistan. Amnesty International is concerned that whipping is a cruel, inhuman and degrading punishment which contravenes such international human rights standards as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and Article 7 of the International Covenant on Civil and Political Rights.

Whipping is provided in the Pakistan Penal Code as a punishment for a variety of offenses mostly related to theft. It is also provided by the Pakistan Prison Rules as a punishment for major offenses against the rules. This contravenes Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners which prohibits corporal punishment for disciplinary offenses. In addition to the punishment of whipping by court order in Pakistan, the police in 1990 reportedly administered whippings without judicial process.

Background

Corporal punishment, including whipping, was widely used in the past in the Indian subcontinent during the British colonial period. The Pakistan Penal Code of 1860 (PPC) and the Code of Criminal Procedure, 1898 (CCP) both date from the British colonial period and are based on the common law. Section 53 of the PPC states that:

"The punishment of whipping added by the Whipping Act may be awarded as an alternative or an additional punishment for certain offenses. It may be awarded as an alternative

punishment for offenses under sections 378, 380 and 382 [forms of theft], 443, 444, 445 or 446 [forms of trespass and housebreaking]. ... It may be awarded in lieu of or as additional punishment for offenses under Sections 375 [rape: repealed under Offence of Zina (Enforcement of Hudood) Ordinance, VII of 1979], 377 [unnatural offenses], 390 [robbery] or 391 [dacoity (armed robbery)]. ... It may be awarded in lieu of any other punishment to juveniles (persons under 16) for offenses punishable under the Code except offenses under Chapter IV, in Sections 153-A and 505, offenses punishable with death. ..."

The Criminal Procedure Code, 1898, regulated the implementation of the sentence of whipping. It was superseded by the *Execution of the Punishment of Whipping Ordinance of 1979* (see below). The Pakistan Prison Rules provide whipping of not less than 15 lashes as a punishment for major offenses against the rules, such as mutiny or "conduct seriously affecting the discipline of the prison" or "assault on public servants or visitor or when other punishments have failed to deter ... the commission of offenses of specially grave nature".

The punishment of whipping was also introduced under a number of martial law regulations after the military takeover of General, later President, Zia-ul-Haq in 1977. It was inflicted in the martial law period (1977 to 1985) on both political and criminal prisoners, sometimes in public.

The Islamic Hudood Ordinances of 1979 provide whipping both as a *hudd* and as a *tazir* punishment for a variety of offenses. An offence is liable to a *hudd* [plural: *huddood*] punishment, i.e. a specific mandatory punishment laid down in the Koran or Sunnah, if certain conditions are fulfilled and sufficient evidence is available. If these conditions are not fulfilled the offence is liable to *tazir* punishment, i.e. discretionary punishment decided upon by the court. The *Offence of Zina (Enforcement of Hudood) Ordinance, 1979* deals with sexual offenses such as rape (*zina-bil-jabr*) and adultery (*zina*). Persons convicted of rape or adultery liable to *hudd* are to be sentenced to death by stoning if they are married or to 100 lashes to be administered in a public place if they are unmarried. The *tazir* punishment for rape and adultery is imprisonment and 30 lashes which are to be inflicted in public. The *Offence of Qazf (Enforcement of Hudd) Ordinance, 1979* deals with the offence of wrongfully imputing *zina*; persons convicted of having committed *qazf* liable to *hudd* are to be sentenced to 80 lashes while the *tazir* punishment is 40 lashes and imprisonment. The *Offence Against Property (Enforcement of Hudood) Ordinance, 1979* sets out penalties for theft and other offenses involving property; the *hudd* punishment is amputation while the *tazir* punishment involves imprisonment with whipping. The *Prohibition (Enforcement of Hudd) Order, 1979* lays down a *hudd* punishment of 80 lashes for the offence of consuming alcohol.

After the Pakistan People's Party came to power in December 1988, the incidence of whipping was substantially reduced. Although Prime Minister Benazir Bhutto stated during a visit to the USA in 1989 that whipping was no longer carried out in Pakistan, the sentence continued to be passed and Amnesty International received reports of two public whippings in 1989. In one of these cases *The Muslim* [Islamabad] reported on 1 February 1989 that the prisoner lost consciousness after receiving 15 lashes; he was then examined by a medical officer and declared fit to receive the remaining 15 lashes. He collapsed after the whipping. In July 1990 police in Lahore, Punjab province, reportedly took 18 men to a mosque and lashed them publicly, without a sentence having been passed by any court. The men had been arrested for watching pornographic films. They were moved to jail the following day. It is not known to Amnesty International whether any action was taken against the policemen involved.

In August 1990 President Ghulam Ishaq Khan dismissed the government of Prime Minister Benazir Bhutto; an interim government was appointed until elections in October, which were won by the Islamic Democratic Alliance. In November 1990 the government of Mian Nawaz Sharif

was sworn in. Under the interim government as well as under the government of Mian Nawaz Sharif the punishment of whipping has frequently been dispensed and Amnesty International has received several reports that the sentence has been carried out (see list attached).

Regulations for implementing the punishment of whipping

The implementation of the punishment of whipping was regulated by the Code of Criminal Procedure, 1898 in Sections 390 to 395, which was superseded by the *Execution of the Punishment of Whipping Ordinance, 1979* (EPWO). It specifies that the whip "preferably ... of leather, or a cane or a branch of a tree ..." shall be no longer than 1.22m and no thicker than 1.25cm".

Under the EPWO, whipping is to be carried out only in the presence of an authorized medical officer and in a public place to be specified by the provincial government. Before the punishment of whipping is implemented a thorough medical examination of the prisoner is to be carried out by an "authorized medical officer so as to ensure that the execution of the punishment will not cause the death of the convict". If the convict is "too old or too weak" whipping must be "applied in such manner and with such intervals that the execution of the punishment does not cause his death". If the convict is ill, the whipping is postponed until "the convict is certified by the authorized medical officer to be physically fit to undergo the punishment". In the case of a pregnant woman, whipping is postponed until "two month after the birth of the child or miscarriage".

The ordinance stipulates that the person carrying out the sentence of whipping "shall be impartial and of mature understanding"; "he shall apply the whip with moderate force without raising his hand above his head so as not to lacerate the skin of the convict". The lashes should "be spread all over the body of the convict" avoiding "the head, face, stomach or chest or the delicate parts of the body of the convict".

The law provides that a man is whipped while standing and a woman while sitting. Whipping may be stopped at any stage if "the authorized medical officer is of the opinion that there is apprehension of the death of the convict"; it will be resumed when the medical officer confirms that the prisoner is physically fit to undergo the rest of the punishment. If the medical officer is of the opinion that the prisoner cannot undergo the whipping as a whole or in part, the matter must be referred to the courts.

Amnesty International's concerns and recommendations

Amnesty International opposes the punishment of whipping. It considers it to constitute a cruel, inhuman and degrading punishment which contravenes a number of international human rights standards. 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." The punishment of whipping is also prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights (article 7). Principle 6 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

"No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment."

Principle 7 of the same Body of Principles enjoins that "States should prohibit by law any act contrary to the rights and duties contained in these Principles ...".

In Amnesty International's view, the role of the doctor in this punishment conflicts with the international standards of medical ethics such as the World Medical Association's Declaration of Tokyo adopted in 1975, which states that "The doctor shall not countenance, condone or participate in the practice of torture or other cruel, inhuman or degrading procedures..." and "shall not be present during any procedure" falling within the categories of torture or cruel, inhuman or degrading treatment.

Similarly the United Nations' Principles of Medical Ethics adopted in 1982 state:

"It is a gross contravention of medical ethics as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment." (article 2)

Article 4(b) further states that it contravenes medical ethics for doctors and other health professionals to:

"certify, or participate in the certification of prisoners or detainees for any form of treatment of punishment that may adversely affect their physical or mental health ... or to participate in any way in the infliction of such treatment or punishment"

In the past, doctors in Pakistan have condemned provisions for cruel, inhuman or degrading punishment. In 1983, during the martial law period, the Karachi branch of the Pakistan Medical Association passed a resolution condemning the continued use of the punishment of flogging, describing it as "inhuman and against the dignity of man" and pointing out that it can "cause serious physical damage and irreversible psychological trauma especially in young people". The Karachi branch called upon the government "not to involve the medical profession in the process of flogging and to stop such punishment on humanitarian and medical grounds".

Amnesty International urges the government of Pakistan:

- to ensure that no further sentences of whipping are awarded or carried out;
- to ensure that the police do not carry out extrajudicially the punishment of whipping and that the police officers responsible for such acts be brought to justice;
- to consider the abolition of the punishment of whipping in law;
- to amend the Pakistan Prison Rules and remove the provision of the punishment of whipping in conformity with the UN Standard Minimum Rules for the Treatment of Prisoners;
- to ratify the relevant human rights instruments cited above.

Partial list of criminal sentences prescribing whipping, Pakistan: August 1990-August 1991

Date	Name or number of those sentenced	Location	Charge	Sentence	Whipping executed?
August 1991					
15 May 1991	Mohammed Alam	Quetta	possessing heroin	40 years RI ¹ ; 20 lashes; fine	not known
February 1991	Shehla Gill Nasim Begum Sikader (alias Tippo)	Lahore	Section 13 Hudood Ordinance (brothel keeping)	life imprisonment 30 lashes, fine	bail granted, punishment suspended during appeal.
February 1991	Four males	Mithdar	rape [1 man] narcotics [3 men]	40 lashes [other punishment not known] 10, 10 and 15 lashes	yes
January 1991	Khan Zaman aged 14	Lalian	rape	5 years RI; 40 lashes	not known
January 1991	Nawaz		criminal assault on a girl	4 years RI; 40 lashes	not known
December 1990	Niadeem	Karachi	heroin dealing	Not known	yes
December 1990	Yousaf	Kasur	rape	25 years; 30 lashes	not known
December 1990	M.Ramsan M.Hussain Mst Pahani (Mother of Ramzan)	Islamabad	abduction (section 11 Hudood Ordinance 1979) Section 16, Hudood Ordinance 1979 Section 10, Hudood Ordinance 1979	life imprisonment 30 lashes (both men) 7 years, 25 lashes (both men) 20 years RI, 5 lashes (all 3), 20 years, 30 lashes (Ramzan)	not known not known
August 1990	M.Fayyaz	Lahore	drug offenses (Drug Ordinance	5 years RI; 30 lashes	not known

¹ RI: rigorous imprisonment

Date	Name or number of those sentenced	Location	Charge	Sentence	Whipping executed?
			1979)		
August 1990	Luky Okonki David Ochina	Islamabad	possession of heroin	10 years RI; 10 lashes; fine	not known
August 1990	Naeem Amin	Islamabad	Section 10(3)	20 years RI; 20 lashes	not known
August 1990	Siraj	Islamabad	drug possession, Article 3 and 4 of prohibition order 1979	15 years RI; 20 lashes	not known

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To: Medical professionals
From: Medical Office / Research Department - Asia
Date: 18 September 1991

MEDICAL LETTER WRITING ACTION

**Whipping
PAKISTAN**

KEYWORDS

Theme: cruel, inhuman and degrading punishment/corporal punishment/medical ethics/whipping

Profession/association: medical personnel

SUMMARY

AI remains concerned at the use of whipping - both judicial and extrajudicial - in Pakistan. Doctors are required to certify prisoners' fitness and to attend the carrying out of the punishment. AI is urging an end to the use of whipping in Pakistan.

RECOMMENDED ACTIONS

Letters are requested from medical professionals to the addresses given below.

Letters to government authorities should:

- express concern at the whipping of Kanzaor Ahmed and other prisoners carried out in Pakistan in the recent past;
- state your belief that whipping is a cruel, inhuman and degrading punishment which contravenes international human rights standards;
- express your professional concern at the role required of the doctor in connection with such punishment [you could note the medical codes which rule that such a role is unethical for a doctor].
- urge the government to end the application of corporal punishment and to repeal legislation which provides for whipping.

Addresses

President Ghulam Ishaq Khan Prime Minister	
The Presidency	Mian Nawaz Sharif
Murree Brewery Road	Office of the Prime Minister
Rawalpindi	Islamabad
Pakistan	Pakistan

Please send copies to the Pakistan Medical Association and the Pakistan Medical and Dental Council with a brief covering letter:

- To the PMA: urge them to continue to oppose whipping and to make their position publicly known
- To the PMDC: urge them as a body regulating medical practice in Pakistan to give a lead on medical participation on cruel punishments by stating such involvement to constitute unethical behaviour

The President	Dr Syed Ehtram Ali
Pakistan Medical Association Secretary	
PMA House	Pakistan Medical and Dental Council
Garden Road	30 Kamal Attaturk Avenue
PO Box 7267	Islamabad
Karachi 3	Pakistan
Pakistan	

Copies can also be sent to

Pakistan Medical Forum	Medicus
15 Nadir House	Pakistan Chowk
I.I. Chundrigar Rd	Dr Ziauddin Ahmed Rd
Karachi 2	Karachi 1
Pakistan	Pakistan
(monthly medical journal)	(monthly medical journal)

Medical News Fortnightly
 Medical News Ltd
 Aiwan-e-Saddar Rd
 Havelock Rd
 Karachi
 Pakistan

and to diplomatic representatives of Pakistan in your own country

Each medical group is requested to send **one** copy to the World Medical Association:

World Medical Association
 28, avenue des Alpes
 01210 Ferney-Voltaire

France