



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

BRIEFING ON INDIA FOR THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PRESESSIONAL WORKING GROUP – Oct 2013

*From Peter Newell, Coordinator, Global Initiative
info@endcorporalpunishment.org*

The human rights obligation to prohibit corporal punishment – a key strategy in eliminating all forms of violence

The legality and practice of corporal punishment of girls breaches their fundamental rights to respect for their human dignity and physical integrity, to equality under the law and to protection from all forms of violence – rights guaranteed in the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights instruments. There are strong links between corporal punishment of children – girls and boys – and all other forms of violence, including gender-based violence. As the Committee on the Rights of the Child emphasised in its General Comment No. 8 (2006), addressing corporal punishment is “a key strategy for reducing and preventing all form of violence in societies”.

The near universal acceptance of a degree of violent punishment in childhood and deeply held views that parents and other adults have a “right” to physically punish children can challenge efforts to achieve prohibition. This situation also means that corporal punishment – at least to some degree – is typically not readily perceived as a violent act in the same way as, for example, sexual and other socially unacceptable forms of violence. Physical violence against girls and boys in their own home is typically assumed not to be domestic violence because it is inflicted under the guise of “discipline” or “correction” – a rationale totally unacceptable when the victim is an adult woman. **It is for these reasons that we respectfully urge the Committee on the Elimination of Discrimination Against Women to specifically recommend that corporal punishment be prohibited in the home and all settings.**

This briefing describes the legality of corporal punishment of children in India. In light of General Recommendation No. 19 on Violence against women (1992), the links between corporal punishment of children and all other forms of violence including gender-based violence, and the recommendations of treaty monitoring bodies and during the UPR, we hope the Committee on the Elimination of Discrimination Against Women will:

- **raise the issue of corporal punishment of girls in its List of Issues for India, asking what progress has been made towards prohibiting and eliminating corporal punishment in all settings, including the home, and**
- **recommend to India, in the concluding observations on the fourth/fifth state party report, that corporal punishment is explicitly prohibited in all settings, including the home, as a matter of priority.**

1 The state party's report to CEDAW

- 1.1 The fourth/fifth state report of India to CEDAW (2 May 2013, CEDAW/C/IND/4-5) includes information concerning violence against women but makes no reference to corporal punishment – violence inflicted on girls and boys in the guise of discipline in childrearing and education.

2 The legality of corporal punishment of children in India

- 2.1 *Summary*: In India, corporal punishment is not fully prohibited in any setting. It is prohibited in some but not all schools, penal institutions and care settings; it is not prohibited at all in the home and in day care. It is unlawful as a sentence for crime under national law but is possibly not prohibited in traditional justice systems. The Government has expressed a commitment to prohibition in all settings but this has not yet been achieved.
- 2.2 *Home (lawful)*: Section 89 of the Penal Code 1860 (in Jammu and Kashmir the Ranbir Penal 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 to be likely to cause to that person....” 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.
- 2.3 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 India.¹ In the third/fourth state party report to the UN Committee on the Rights of the Child, dated 2011, the Government confirmed that corporal punishment of children is not considered an offence due to section 89 of the Penal Code; this was to be rectified by the drafting of a Prevention of Offences against the Child Bill which would make corporal punishment an offence. However, this Bill was replaced by a bill on sexual offences – as enacted, the Protection of Children from Sexual Offences Act 2012 does not prohibit corporal punishment.
- 2.4 The Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India in 2012.² In the same year, the Ministry of Women and Child Development proposed amendments to the Juvenile Justice (Care and Protection of Children) Act 2000 which would include a new section on corporal punishment, defining and punishing such punishment in line with the Penal Code provisions on the offences of causing hurt and grievous hurt: we have yet to confirm that proposed amendments would prohibit all corporal punishment, including in the home and including repeal/amendment of section 89 of the Penal Code. As at March 2013, the draft amendments had not been made public. The National Policy for Children 2013, adopted in April 2013, provides for protection of children from “all forms of violence” but specifically refers to corporal punishment only in connection with education (see para. 2.7).
- 2.5 *Alternative care settings (partial prohibition)*: Corporal punishment is prohibited in care institutions under Chapter VI of the Juvenile Justice (Care and Protection of Children) Rules 2007 (see para. 2.8); it is lawful in non-institutional forms of care under section 89 of the Penal Code 1860 (see para. 2.2). There is no prohibition of corporal punishment in care settings in Jammu and Kashmir, where it is lawful under the Ranbir Penal Code.
- 2.6 *Day care (lawful)*: There is no explicit prohibition of corporal punishment, which is lawful under section 89 of the Penal Code 1860 (see para. 2.2).

¹ SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

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

- 2.7 *Schools (partial prohibition)*: Corporal punishment is explicitly prohibited in article 17 of the Right to Free and Compulsory Education Act 2009 but this applies only to children aged 6-14 and not at all in Jammu and Kashmir. In some states, children in all schools are legally protected from corporal punishment under state laws – Goa (Goa Children’s Act 2003, article 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.
- 2.8 *Penal institutions (partial prohibition)*: Corporal punishment in penal institutions is explicitly prohibited in the Juvenile Justice (Care and Protection of Children) Rules 2007 but it is not prohibited in Jammu and Kashmir: the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Bill 2013 would punish cruelty to the juvenile but would not prohibit all corporal punishment.
- 2.9 *Sentence for crime (?partial prohibition)*: Judicial corporal punishment is unlawful 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. In Jammu and Kashmir, the Juvenile Justice Act 1997 and the Ranbir Penal Code do not provide for judicial corporal punishment. There is no provision for judicial corporal punishment in the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Bill 2013, passed by the Legislative Assembly and transmitted to the Legislative Council in March 2013. However, throughout India, corporal punishment may be imposed under traditional justice systems, such as the Pison system: in the absence of explicit prohibition, this appears to be lawful.

3 Recommendations by human right treaty monitoring bodies and during the UPR

- 3.1 *CRC*: The Committee on the Rights of the Child has twice recommended to India that all corporal punishment be prohibited, including in the home – in its concluding observations on the state party’s initial report in 2000³ and on the second report in 2004.⁴
- 3.2 *UPR*: The Government accepted a recommendation to prohibit corporal punishment in all settings made during the UPR of India in 2012.⁵

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@endcorporalpunishment.org
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³ 23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45

⁴ 26 February 2004, CRC/C/15/Add.228, Concluding observations on second report, paras. 44 and 45

⁵ 9 July 2012, A/HRC/21/10, Report of the working group, para. 138(104); 17 September 2012, A/HRC/21/10/Add.1, Report of the working group: Addendum