



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

**BRIEFING ON INDIA FOR THE
COMMITTEE ON THE RIGHTS OF THE CHILD,
PRESESSIONAL WORKING GROUP – October 2013**

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This briefing describes the legality of corporal punishment of children in India and the Government’s stated commitment to prohibition. In light of the Committee’s General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, its previous recommendations on the issue, the recommendations to prohibit made during the UPR in 2012 (accepted by the Government) and the importance of eradicating this form of violence given by the UN Secretary General’s Study on Violence against Children, we hope the Committee will:

- **in its List of Issues for India, raise the issue of corporal punishment of children, in particular asking what steps are being taken to ensure that all corporal punishment, without exception, is explicitly prohibited in the home and other settings?**
- **in its concluding observations on India’s third/fourth report, recommend that legislation is enacted to explicitly prohibit all corporal punishment in all settings, including the home and in all schools, as a matter of priority, and that prohibition is enforced through appropriate public education and professional training on positive, participatory and non-violent forms of education and childrearing.**

1 India’s report to the Committee on the Rights of the Child

1.1 The third/fourth state party report to the Committee on the Rights of the Child makes extensive reference to corporal punishment, including greater awareness in the Government of the problem of corporal punishment, increased reporting of corporal punishment, research on the issue, and legislative and non-legislative measures taken to address the problem.¹ We note in particular the Government’s acknowledgment that

¹ [2011], CRC/C/IND/[3-4], Third/fourth state party report, paras. 6, 100, 125, 32, 33, 34, 35, 38, 40-44, 48, 50 and 166

sections 88 and 89 of the Penal Code provide a legal defence against charges of causing “hurt” in cases of corporal punishment on a child.² The Government states its intention to address this in the proposed Prevention of Offences against the Child Bill 2009, being drafted by the Ministry of Women and Child Development.

- 1.2 Following preparation of the report, the Prevention of Offences against the Child Bill was replaced by a bill on sexual offences. Prohibition of corporal punishment is now being proposed in the form of amendments to the Juvenile Justice (Care and Protection of Children) Act 2000. **We hope the Committee will urge the Government of India to ensure that the amendments to this Act explicitly prohibit all corporal punishment, without exception, and in such a way that sections 88 and 89 of the Penal Code no longer provide a legal defence for the imposition of corporal punishment on a child.**

2 The legality and practice of corporal punishment of children in India

- 2.1 *Summary*: Corporal punishment is lawful in the home throughout India. In settings outside the home – in schools, the penal system and alternative care settings – law reform to date has achieved partial but not complete prohibition of corporal punishment.
- 2.2 *Home (lawful)*: Corporal punishment is lawful under section 89 of the Penal Code 1860 (in Jammu and Kashmir the Ranbir Penal Code), which 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. 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.
- 2.3 *Schools (partial prohibition)*: Corporal punishment is prohibited in article 17 of the Right to Free and Compulsory Education Act 2009. The Right of Children to Free and Compulsory Education Rules 2010 provide for implementation of the Act, including awareness raising about the rights in the Act, procedures for monitoring implementation, and complaints mechanisms when the rights are violated. However, the prohibition in the Act applies only to children aged 6-14. Neither the Act nor the Rules apply in Jammu and Kashmir.
- 2.4 In some states – Goa, Andhra Pradesh and Tamil Nadu – children in all schools are legally protected from corporal punishment under state laws. In others – Delhi and West Bengal – High Court rulings have made corporal punishment unlawful.
- 2.5 *Penal system – sentence for crime (partial prohibition)*: 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, and there is no provision for judicial corporal punishment in the Jammu and Kashmir Juvenile Justice (Care and Protection of

² *ibid.*, para. 40, page 81

Children) Bill 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.

2.6 *Penal system – disciplinary measure in penal institutions (partial prohibition)*: Corporal punishment is unlawful as a **disciplinary measure** in penal institutions under the Juvenile Justice (Care and Protection of Children) Rules 2007. But there is no explicit prohibition of corporal punishment in penal institutions in Jammu and Kashmir: the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Bill 2013 would punish cruelty to juveniles but would not prohibit all corporal punishment.

2.7 *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, but it is lawful in non-institutional forms of care under section 89 of the Penal Code. There is no prohibition of corporal punishment in care settings in Jammu and Kashmir, where it is lawful under the Ranbir Penal Code.

3 Recommendations by human rights treaty bodies and during the UPR

3.1 *CRC*: The Committee on the Rights of the Child has twice recommended that corporal punishment of children in India be explicitly prohibited in the family, schools and institutions – in its concluding observations on the initial report in 2000³ and on the second report in 2004.⁴

3.2 *UPR*: India was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendations were made specifically concerning corporal punishment of children, but the Government accepted a recommendation to take account of treaty body recommendations in developing a national action plan for human rights.⁵ The second cycle review took place in 2012 (session 13). The Government accepted the recommendation to “introduce legislation to prohibit corporal punishment of children in all settings”.⁶

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
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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 23 May 2008, A/HRC/8/26, Report of the working group, para. 86(11)

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