

# **Corporal punishment of children in India: Briefing for the Universal Periodic Review, 41<sup>st</sup> session, Oct./Nov. 2022**



*From the Global Partnership to End Violence Against Children, March 2022*

This submission provides an update on the legality of corporal punishment of children in India since its review in the third cycle UPR in 2017. Corporal punishment prohibition is still to be fully achieved in the home, some alternative care settings, day care, some schools and as a sentence for crime in traditional justice systems.

**The legality and practice of corporal punishment of children violates their fundamental human rights to respect for human dignity and physical integrity and to equal protection under the law. Under international human rights law – the Convention on the Rights of the Child and other human rights instruments – states have an obligation to enact legislation to prohibit corporal punishment in all settings, including the home.**

**In India, corporal punishment of children is lawful, despite recommendations to prohibit it by the Committee on the Rights of the Child and during the 2<sup>nd</sup> and 3<sup>rd</sup> cycle UPR of India, respectively in 2012 and 2017.**

**We hope the Working Group will note with concern the legality of corporal punishment of children in India. We hope states will raise the issue during the review this year and make a specific recommendation that India enact a legislation to clearly prohibit all corporal punishment of children in every setting of their lives and repeal all legal defences allowing its use, as a matter of priority.**

## **1 Review of India in the 3<sup>rd</sup> cycle UPR (2017) and progress since**

1.1 India was reviewed in the third cycle of the Universal Periodic Review in 2017 (session 27). Recommendations to prohibit corporal punishment in all settings were made<sup>1</sup> and accepted by the Government.<sup>2</sup>

<sup>1</sup> 8 May 2017, A/HRC/WG.6/27/L.8, Draft report of the working group, unedited version, paras. 5(233), 5(234) and 5(235)

<sup>2</sup> 6 September 2017, A/HRC/36/10/Add.1, Report of the working group: Addendum

- 1.2 Since the review, corporal punishment has remained lawful in most settings of children's lives, and there is no evidence that the Government intends to introduce legislation prohibiting all corporal punishment in the near future.
- 1.3 **We hope the Working Group will note with concern the legality of corporal punishment of children in India. We hope states will raise the issue during the review this year and make a specific recommendation that India enact a legislation to clearly prohibit all corporal punishment of children, however light, in every setting of their lives, and repeal section 89 of the Penal Code 1860 (in Jammu and Kashmir the Ranbir Penal Code), as a matter of urgency.**

## 2 Legality of corporal punishment in India

### ***Summary of current law and opportunities for achieving prohibition***

Corporal punishment of children in India is lawful in the home, some alternative care settings, day care, some schools and as a sentence for crime in traditional justice systems.

Section 89 of the Penal Code 1860, and 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...." This section should be amended/repealed to ensure that no legal provision can be construed as providing a defence for the use of corporal punishment. The law should prohibit all corporal punishment, however light, by parents and others with authority over children.

- 2.1 **Home (lawful):** Corporal punishment is lawful in the home. 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 Government has confirmed that this provides a legal defence for the use of corporal punishment.<sup>3</sup> Provisions against violence and abuse in the Penal Code, the Juvenile Justice (Care and Protection of Children) Act 2015, 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 (art. 9), but this is not reflected in legislation.

---

<sup>3</sup> Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40

2.2 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.<sup>4</sup> 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.<sup>5</sup> However, in 2011 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. 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 below, under “Schools”). The Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India in 2012.<sup>6</sup> 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. The Act as adopted in 2015 did not achieve full prohibition of corporal punishment (see below). The Government again accepted recommendations to prohibit corporal punishment in all settings during the Universal Periodic Review in 2017.<sup>7</sup>

2.3 **Alternative care settings (lawful):** Corporal punishment is prohibited in child care institutions in the Juvenile Justice (Care and Protection of Children) Act 2015, in force from January 2016. Corporal punishment was previously unlawful in child care institutions under the Juvenile Justice (Care and Protection of Children) Rules 2007. But corporal punishment is lawful in non-institutional forms of care under section 89 of the Penal Code 1860 (see under “Home”). There is currently no prohibition of corporal punishment in care settings in Jammu and Kashmir, where it is lawful under the Ranbir Penal Code. The Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Bill 2018 does include prohibition of corporal punishment in child care institutions in its article 76, which mirrors article 82 of the Juvenile Justice (Care and Protection of Children) Act 2015.

2.4 **Day care (lawful):** There is no explicit prohibition of corporal punishment, which is lawful under section 89 of the Penal Code 1860 (see under “Home”). The National Early Childhood Care and Education (ECCE) Policy 2013, adopted in September 2013, provides for services for children up to the age of six. It states that in the provision of early education a National ECCE Curriculum Framework will be developed within six months of notification of the policy and in this context “an enabling and loving environment devoid of corporal punishment will be ensured” (para. 5.2.3). There is no reference specifically to law reform to prohibit corporal punishment, but the policy does provide in general for the development of a Regulatory Framework (para. 5.2.2) and “appropriate legislation” (para. 10.9) to support implementation of the policy.

---

<sup>4</sup> SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review*

<sup>5</sup> Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40, ch. 4

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

<sup>7</sup> 6 September 2017, A/HRC/36/10/Add.1, Report of the working group: Addendum

2.5 **Schools (lawful):** Corporal punishment is lawful in some schools. The National Policy for Children 2013 states that in education, the state shall “ensure no child is subjected to any physical punishment or mental harassment” and “promote positive engagement to impart discipline so as to provide children with a good learning experience”.<sup>8</sup> Law reform has gone some way to prohibiting corporal punishment in schools but is not yet complete. Corporal punishment is prohibited in some schools in the Right to Free and Compulsory Education Act 2009 (RTE Act). However, the Act – including the prohibition of corporal punishment – applies only to children aged 6-14; neither the Act nor the Rules apply in Jammu and Kashmir, and according to Government figures for 2013 corporal punishment was banned in schools under the Act in only 34 states/territories.<sup>9</sup> Furthermore, the Act was amended in 2012 to state (art. 1(5)): “Nothing contained in this Act shall apply to Madrasas, Vedic Pathshalas and educational institutions primarily imparting religious instruction.”<sup>10</sup> The amendment followed a ruling by the Supreme Court in April 2012 that the Act does not apply to unaided minority schools.<sup>11</sup>

2.6 In some states, children in all schools are legally protected from corporal punishment under state laws – Goa (Goa Children’s Act 2003, art. 41), Andhra Pradesh (Education Rules 1966, amended 2002, rule 122), Tamil Nadu (Education Rules, amended 2003, rule 51) and possibly in Telangana.<sup>12</sup> 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. A ruling by the Gujarat High Court in 2008 confirmed 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.<sup>13</sup>

2.7 **Penal institutions (unlawful):** Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Juvenile Justice (Care and Protection of Children) Rules 2007, which state in Chapter VI: “Principle of Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment): (a) At all stages, from the initial contact till such time he 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 or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or the child....” However, 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) Act 2013 punishes cruelty but does not prohibit all corporal punishment.

The Juvenile Justice (Care and Protection of Children) Act 2015 confirms prohibition in observation homes and other institutions for children in conflict with the law (art. 82) (see under “alternative care settings” above).

2.8 **Sentence for crime (lawful):** 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,

---

<sup>8</sup> National Policy for Children 2013, para. 4.6(xv)

<sup>9</sup> 1 May 2014, CRC/C/IND/Q/3-4/Add.1, Reply to list of issues, pp. 29 and 31. (There are 29 states, seven Union Territories and one National Capital Region in India.)

<sup>10</sup> The Right of Children to Free and Compulsory Education (Amendment) Act 2012

<sup>11</sup> *Society for Un-aided Private Schools of Rajasthan vs U. O. I. & Anr.*, Write Petitions (C) No. 95 of 2010 et al

<sup>12</sup> See <http://www.deccanchronicle.com/nation/current-affairs/141017/school-punishes-kids-on-late-fees.html>, accessed 24 October 2017

<sup>13</sup> *Hasmukhbhai Gokaldas Shah v. State of Gujarat*, 17 November 2008

which do not provide for sentencing of offenders to corporal punishment. In Jammu and Kashmir, the Juvenile Justice (Care and Protection of Children) Act 2013 and the Ranbir Penal Code do not provide for judicial corporal punishment. 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 rights treaty bodies

- 3.1 **CRC**: The Committee on the Rights of the Child has expressed concern at corporal punishment of children in India and recommended it be explicitly prohibited in the family and other institutions – in its concluding observations on the state party’s initial report in 2000,<sup>14</sup> on the state party’s second report in 2004<sup>15</sup> and on the state party’s third-fourth report in 2014.<sup>16</sup>
- 3.2 **CEDAW**: In its concluding observations on the state party’s fourth-fifth report in 2014,<sup>17</sup> the Committee on the Elimination of Discrimination on Violence Against Women recommended prosecution of acts of corporal punishment against girls at school.
- 3.3 **CRPD**: In its concluding observations on the state party’s initial report in 2019,<sup>18</sup> the Committee on the Rights of Persons with Disabilities expressed concern at corporal punishment of children in all settings and recommended that the Government combat and end all forms of violence against girls and boys with disabilities.

*Briefing prepared by End Corporal Punishment on behalf of the Global Partnership to End Violence Against Children*

[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org); [secretariat@end-violence.org](mailto:secretariat@end-violence.org)

---

<sup>14</sup> 23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45

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

<sup>16</sup> 7 July 2014, CRC/C/IND/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 50 and 56

<sup>17</sup> 18 July 2014, CEDAW/C/IND/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 26 and 27

<sup>18</sup> 29 October 2019, CRPD/C/IND/CO/1, Concluding observations on initial report, paras. 32, 33, 34 and 35