**BRIEFING ON INDIA FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 126th session (July 2019)**

*From the Global Initiative to End All Corporal Punishment of Children, May 2019*

**This briefing describes the legality of corporal punishment of children in India. In light of the obligation under international human rights treaties to prohibit all corporal punishment of children, the global commitment to ending violence against children – including corporal punishment – in the context of the 2030 Agenda for Sustainable Development, the recommendations of the UN Secretary General’s Study on Violence against Children, and those made to India by the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination Against Women and during the Universal Periodic Review in 2012 and 2017, we hope the Human Rights Committee will:**

* **raise the issue of corporal punishment of children in its List of Issues Prior to Reporting for India, in particular asking what progress is being made on drafting legislation** **prohibiting corporal punishment of children in all settings,**
* **in its concluding observations on India’s fourth state party report, recommend that prohibition of all corporal punishment of children in all settings, including the home and as a sentence for a crime, is enacted and implemented as a matter of priority.**

**1 The legality of corporal punishment of children in India**

1.1 ***Summary:*** Corporal punishment of children in India is unlawful in penal institutions but it is not fully prohibited in the home, in all alternative care settings, in day care settings, in all schools and as a sentence for a crime under traditional justice systems.

1.2 ***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.[[1]](#footnote-1) 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.

1.3 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.[[2]](#footnote-2) 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.[[3]](#footnote-3) 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).

1.4 The Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India in 2012.[[4]](#footnote-4) 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 its third cycle Universal Periodic Review in 2017.[[5]](#footnote-5)

1.5 ***Alternative care settings (partially 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. The Act states in article 82: “(*1*) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child, shall be liable, on the first conviction, to a fine of ten thousand rupees and for every subsequent offence, shall be liable for imprisonment which may extend to three months or fine or with both. (*2*) If a person employed in an institution referred to in sub-section (*1*), is convicted of an offence under that sub-section, such person shall also be liable for dismissal from service, and shall also be debarred from working directly with children thereafter. (*3*) In case, where any corporal punishment is reported in an institution referred to in sub-section (*1*) and the management of such institution does not cooperate with any inquiry or comply with the orders of the Committee or the Board or court or State Government, the person in-charge of the management of the institution shall be liable for punishment with imprisonment for a term not less than three years and shall also be liable to fine which may extend to one lakh rupees.”

1.6 Corporal punishment is defined in the Act as “the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child” (art. 2(24)). A child care institution is defined as a “children’s home, open shelter, observation home, special home, place of safety, specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services” (art. 2(21)). A “fit facility” is “a facility being run by a governmental organisation or a registered voluntary or non-governmental organisation …” (art. 2(27)). 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.

1.7 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.

1.8 ***Day care settings (lawful):*** There is no explicit prohibition of corporal punishment, which is lawful under section 89 of the Penal Code 1860. 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.

1.9 ***Schools (partially lawful):*** 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”.[[6]](#footnote-6) Law reform has gone some way to prohibiting corporal punishment in schools but is not yet complete.

1.10 Corporal punishment is prohibited in some schools in the Right to Free and Compulsory Education Act 2009 (RTE Act). Article 17 states: “(1) No child shall be subjected to physical punishment or mental harassment. (2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.” 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. In 2014, the Ministry of Human Resources Development issued guidance (”Advisory for Eliminating Corporal Punishment in Schools under Section 35(1) of the RTE Act 2009”) which sets out the national law relevant to corporal punishment in schools, the international human rights standards, steps that may be taken to promote positive child development and not resorting to corporal punishment, and the role of national bodies in implementing the RTE Act, stating (p. 18): “This advisory should be used by the State Governments/UT Administrations to ensure that appropriate State/school level guidelines on prevention of corporate punishment and appropriate redressal of any complaints, are framed, disseminated, acted upon and monitored.” 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.[[7]](#footnote-7) Furthermore, the Act was amended in 2012 to state (art. 1(5)): “Nothing contained in this Act shall apply to Madrasas, Vedic Pathsalas and educational institutions primarily imparting religious instruction.”[[8]](#footnote-8) The amendment followed a ruling by the Supreme Court in April 2012 that the Act does not apply to unaided minority schools.[[9]](#footnote-9)

1.11 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.[[10]](#footnote-10) 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.[[11]](#footnote-11)

1.12 ***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 above).

1.13 ***Sentence for crime (partially 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, 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 Pipon system: in the absence of explicit prohibition, this appears to be lawful.

**2 Recommendations by human rights treaty bodies and during the UPR**

2.1 ***CRC:***The Committee on the Rights of the Child has on three occasions 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 2000,[[12]](#footnote-12) on the second report in 2004,[[13]](#footnote-13) and on the third/fourth report in 2014.[[14]](#footnote-14)

2.2 ***CEDAW:*** In 2014, the Committee on the Elimination of Discrimination Against Women recommended that India take measures to ensure the proper investigation and prosecution of acts of corporal punishment against girls in schools.[[15]](#footnote-15)

2.3 ***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.[[16]](#footnote-16) 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”.[[17]](#footnote-17) At the third cycle examination in 2017, India supported several recommendations to prohibit all corporal punishment of children, including in the home and as a sentence for a crime.[[18]](#footnote-18)

*Briefing prepared by the Global Initiative to End All Corporal Punishment of Children*

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1. Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40 [↑](#footnote-ref-1)
2. SAIEVAC (2011), *Prohibition of corporal punishment of children in South Asia: a progress review* [↑](#footnote-ref-2)
3. Third/fourth report to the UN Committee on the Rights of the Child (2012), ch. 4, para. 40, ch. 4 [↑](#footnote-ref-3)
4. 9 July 2012, A/HRC/21/10, Report of the working group, para. 138(104) [↑](#footnote-ref-4)
5. 6 September 2017, A/HRC/36/10/Add.1, Report of the working group: Addendum [↑](#footnote-ref-5)
6. National Policy for Children 2013, para. 4.6(xv) [↑](#footnote-ref-6)
7. 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.) [↑](#footnote-ref-7)
8. The Right of Children to Free and Compulsory Education (Amendment) Act 2012 [↑](#footnote-ref-8)
9. *Society for Un-aided Private Schools of Rajasthan vs U. O. I. & Anr.*, Write Petitions (C) No. 95 of 2010 et al [↑](#footnote-ref-9)
10. See <http://www.deccanchronicle.com/nation/current-affairs/141017/school-punishes-kids-on-late-fees.html>, accessed 24 October 2017 [↑](#footnote-ref-10)
11. *Hasmukhbhai Gokaldas Shah* v. *State of Gujarat,* 17 November 2008 [↑](#footnote-ref-11)
12. 23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45 [↑](#footnote-ref-12)
13. 26 February 2004, CRC/C/15/Add.228, Concluding observations on second report, paras. 44 and 45 [↑](#footnote-ref-13)
14. 7 July 2014, CRC/C/IND/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 50 and 56 [↑](#footnote-ref-14)
15. 18 July 2014, CEDAW/C/IND/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 26 and 27 [↑](#footnote-ref-15)
16. 23 May 2008, A/HRC/8/26, Report of the working group, para. 86(11) [↑](#footnote-ref-16)
17. 9 July 2012, A/HRC/21/10, Report of the working group, para. 138(104) [↑](#footnote-ref-17)
18. 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); 6 September 2017, A/HRC/36/10/Add.1, Report of the working group: Addendum [↑](#footnote-ref-18)