



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

INDIA – COUNTRY REPORT

Child population: 447,401,000 (UNICEF, 2009)

Summary of necessary legal reform to achieve full prohibition

Settings where explicit prohibition is necessary

home, schools, penal system, alternative care settings

Is there a legal defence for corporal punishment which must be repealed?

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 This section should be amended/repealed to ensure that no legal provision can be construed as providing a defence for the use of corporal punishment.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

Other legislative measures necessary

Schools – Existing legislation prohibits corporal punishment only in primary schools (children aged 6-14). Legislation should be enacted to protect all children in schools from corporal punishment, including those aged 15 and above. Prohibition should also be extended to the state of Jammu and Kashmir.

Penal system – The law should make clear that no child convicted of an offence, including under traditional law, can be ordered to undergo corporal punishment. Explicit prohibition should also be enacted of corporal punishment as a disciplinary measure in all institutions accommodating children in conflict with the law, in all areas of the country.

Alternative care – Explicit prohibition should be enacted in legislation applicable to all alternative care settings, including public and private day care, residential institutions, foster care, etc, in all areas of the country, together with amendment/repeal of section 89 of the Penal Code and the Ranbir Penal Code.

DETAILED COUNTRY REPORT

Legality of corporal punishment

Home

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...” Provisions against violence and abuse in the Penal Code, the Juvenile Justice (Care and Protection of Children) Act (2000, amended 2006), 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 (article 9), but this is not confirmed in legislation.

In the third/fourth state party report to the UN Committee on the Rights of the Child, the Government confirms 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 (para. 40). However, as at September 2011, this Bill had been replaced by a Protection of Children from Sexual Offences Bill which did not prohibit corporal punishment. In 2010 a Prevention of Torture Bill was under consideration but we have no up to date information.

Schools

Corporal punishment is prohibited in schools in the Right to Free and Compulsory Education Act (2009). 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. However, the prohibition in the Act applies only to children aged 6-14 and neither the Act nor the Rules apply in Jammu and Kashmir.

In some states, children in all schools are legally protected from corporal punishment under state laws (Goa, Andhra Pradesh, Tamil Nadu). 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.

Penal system

Corporal punishment is unlawful as a **sentence for crime** under the Penal Code and the Juvenile Justice (Care and Protection of Children) Act, 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. But 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.

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....” There is no explicit prohibition of corporal punishment in penal institutions in Jammu and Kashmir (information unconfirmed).

Alternative care

Corporal punishment is prohibited in care institutions under Chapter VI of the Juvenile Justice (Care and Protection of Children) Rules (see above); it is lawful in non-institutional forms of care under section 89 of the Penal Code (see above). There is no prohibition of corporal punishment in care settings in Jammu and Kashmir, where it is lawful under the Ranbir Penal Code (see above).

Prevalence research

A study carried out by Childline India Foundation between 2009 and 2011 found that students experienced corporal punishment in almost 95% of the 198 schools in 11 states studied, despite it being prohibited. Only 6% of government schools studied and 4% of private schools studied were free of corporal punishment. (Reported in *India Today*, 5 January 2012)

A large scale comparative study (World Studies of Abuse in the Family Environment (WorldSAFE)) which involved surveys with over 14,000 mothers of children under 18, carried out between 1998 and 2003, examined parental discipline in Brazil, Chile, Egypt, India, Philippines, and the United States. In India, the rate of “moderate” physical discipline (including spanking a child’s buttocks, hitting a child with an object, slapping a child’s face and putting hot pepper in a child’s mouth) ranged from 63% in urban and rural communities in Vellore to 89% in a rural community in Bhopal. The rate of harsh physical discipline (including burning, beating up, kicking and smothering a child) ranged from 2.7% in a non-slum community in Delhi to 39% in a rural community in Bhopal. The rate of harsh psychological discipline such as calling children names, cursing them and threatening to abandon them or kick them out ranged from 40% in a non-slum community in Chennai to 81% in a rural community in Lucknow. “Moderate” psychological discipline, including yelling or screaming at children, refusing to speak to them or withholding food was experienced by between 76% of children (in a rural community in Vellore) and 96% of children (in an urban slum community in Nagpur). Non-violent discipline, including explaining why a behaviour was wrong and telling a child to stop, was also widely used (89-99%). The study found that rates of harsh physical discipline were dramatically higher in all communities than published rates of official physical abuse in any country, and that rates of physical punishment can vary widely among communities within the same country. (Runyan, D. et al (2010), “International Variations in Harsh Child Discipline”, *Pediatrics*)

In February 2008 the National Commission for Protection of Child Rights published a report on the state of penal institutions for children in conflict with the law, based on a detailed study of juvenile care centres (“juvenile homes”) across the country. Physical punishment was found to be a dominant disciplinary method in 70% of the centres. (Reported in *BigNewsNetwork.com*, 18 February 2008)

In 2007, the Ministry of Women and Child Development published the first nationwide study on child abuse in India, based on the experiences of 12,447 children aged 5-18 years from across 13 states and also involving 2,324 young adults (aged 18-24) and 2,449 stakeholders (adults holding positions in government departments, private service and urban and rural local bodies, and individuals from the community). The study revealed a high prevalence of corporal punishment of children in all settings – homes, schools, institutions and on the streets. Of the total number of children, 69% reported physical abuse, including corporal punishment, in one or more situations, more commonly boys and young

children. Nearly three out of four 5-12 year olds (72.2%) reported physical abuse in one or more situations, 70.6% of 13-14 year olds, and 62.1% of 15-18 year olds. The most commonly reported punishment was being slapped and kicked (63.7%), followed by being beaten with a stave or stick (31.3%), and being pushed, shaken, etc (5%). For many (15.6%) the hurt resulted in serious physical injury, swelling or bleeding. (Kacker, L., Varadan, S. & Kumar, P. (2007), *Study on Child Abuse: India 2007*, New Delhi: Ministry of Women and Child Development)

As part of the Supporting Positive Alternatives in Raising Kindness in Education (SPARKE) project, questionnaires for teachers, parents and 201 students aged 8-18 were administered before and after a project which aimed to promote the use of positive discipline in five schools in northern India. Before the project, 78.9% of boys and 40.7% of girls aged 8-11, 74.1% of boys and 54.3% of girls aged 12-15 and 80% of boys and 65.2% of girls aged 16-18 had experienced corporal punishment in the past year. More than eight teachers in ten (83.33%) had used corporal punishment, 43.52% “occasionally”, 33.33% a few times a month and 6.48% at least once a week. Types of corporal punishment included forcing children to stay in uncomfortable or painful positions or do physical exercise, twisting children’s ears, slapping, pinching, caning and kicking children. Students also experienced verbal punishments, such as being ridiculed or insulted. Before the project, 72.28% of teachers wanted to find alternatives to corporal punishment and 87.74% thought that teaching staff needed training in alternative disciplining methods. Nearly seven in ten teachers (68.32%) and 44-87% of students said they would like to be part of a group in their school working against corporal punishment. After the project, 33.33% of boys and 10.34% of girls aged 8-11, 52.24% of boys and 34.69% of girls aged 12-15 and 48.15% of boys and 25.93% of girls aged 16-18 had experienced corporal punishment in the past ten months. Before the project, between 39% and 69% of students thought corporal punishment should be used in school; afterwards 13%-39% thought it should be used, with 52-80% thinking it should not be used and 73-84% saying they would like their teachers to use positive discipline methods instead of corporal punishment. (Cedar Woods Consulting Group for SOIR-IM (2007), *Supporting Positive Alternatives in Raising Kindness in Education: The SPARKE Research Report*)

According to statistics from UNICEF relating to the period 2001-2007, of girls and women aged 15-49, 54% think that a husband is justified in hitting or beating his wife under certain circumstances. (UNICEF (2009), *Progress for Children: A report card on child protection*, NY: UNICEF)

In research in urban schools in Andhra Pradesh in 2006, 59% of students said they had been hit on the palms of the hands with a cane by a teacher and 71% had witnessed this kind of punishment in school. Other corporal punishment experienced by children included being forced to kneel in uncomfortable positions, being slapped or spanked and being beaten on the knuckles; 45% said they had witnessed corporal punishment which caused swelling and 22% had seen it cause bleeding; 13% had witnessed corporal punishment which necessitated a visit to a doctor later. Only 25% of students who experienced corporal punishment at school chose to tell their parents about it; 23% of those who did not said this was because their parents would beat them too. Children from lower income groups were more likely to experience corporal punishment. The research involved nearly 600 children and over 300 adults, including teachers and parents, through interviews and group discussions. (Devi Prasad, B. (2006), *Spare the Rod and Save the Child: A Study of the Corporal punishment in urban schools of Andhra Pradesh*, Child Rights Advocacy Foundation-Vijayawada)

Large scale research in 2006 looked at children’s experiences of corporal punishment in schools and in the home in one district in each of four states – Uttar Pradesh, Bihar, Rajasthan and Andhra Pradesh. The research involved 1,591 children mostly from 41 schools as well as members of various children’s organisations. Parents, teachers, community members, government officials and other adults were also consulted. The study found corporal punishment to be an accepted way of life in all the schools and communities visited, most commonly hitting with hands and stick, pulling hair and ears, and telling children to stand for long period in various positions. Threats of physical violence were also common. Severe forms of corporal punishment included being severely kicked, starved, tied with rope to chairs/poles followed by beatings, and being assigned physically strenuous labour (e.g. in the fields). In all schools, there would be at least five beatings every day, in addition to other more moderate

forms of punishment. (Saath Charitable Trust/Plan International, India (2006), *Impact of Corporal Punishment on School Children: A Research Study – Final Report*)

A 2004 study by the NGO Aapanach found that, of 350 children surveyed from public, private, and municipal schools, over 75% reported being punished at school, and nearly 60% said the most frequent form of punishment was caning or hitting with a ruler. It was common for the whole class to be punished (66%). A third (33%) reported cases of severe injury due to punishment. (Reported in *cities.expressindia.com*, 7 April 2007)

A survey in 2004 of 1,500 adolescents in ten government schools of Chandigarh, carried out by the Advanced Pediatric Center, PGI found that the prevalence rate of corporal punishment was 22%. (Reported in *Chandigarh Newslines*, 21 June 2007)

Recommendations by human rights treaty bodies

Committee on the Rights of the Child

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

“The Committee notes the decision of the New Delhi High Court of December 2000 regarding prohibition of corporal punishment in the schools under its jurisdiction, but remains concerned that corporal punishment is not prohibited in the schools of other states, in the family, nor in other institutions for children, and remains acceptable in society.

“The Committee strongly recommends that the State party prohibit corporal punishment in the family, in schools and other institutions and undertake education campaigns to educate families, teachers and other professionals working with and/or for children on alternative ways of disciplining children.”

Committee on the Rights of the Child

(23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45)

“With respect to article 37 (a) of the Convention, the Committee is concerned by numerous reports of routine ill-treatment, corporal punishment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children living and/or working on the streets by law enforcement officials.

“Amendment to the Juvenile Justice Act is recommended to provide for complaints and prosecution mechanisms for cases of custodial abuse of children. In addition, the Committee recommends the amendment of section 197 of the Code of Criminal Procedure, which requires government approval for prosecution of law enforcement officials when complaints of custodial abuse or illegal detention are alleged; and section 43 of the Police Act, so that police cannot claim immunity for actions while executing a warrant in cases of illegal detention or custodial abuse.

“In the light of articles 19 and 39 of the Convention, the Committee is concerned at the widespread ill-treatment of children in India, not only in schools and care institutions but also within the family.

“The Committee recommends that the State party take legislative measures to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse of children in the family, schools and care institutions. The Committee recommends that these measures be accompanied by public education campaigns about the negative consequences of ill-treatment of children. The Committee recommends that the State party promote positive, non-violent forms of discipline as an alternative to corporal punishment, especially in the home and schools. Programmes for the rehabilitation and reintegration of abused children need to be strengthened, and adequate procedures and mechanisms established to receive complaints, monitor, investigate and prosecute instances of ill-treatment.”

Universal Periodic Review

India was examined in the first cycle of the Universal Periodic Review in 2008. No recommendations were made concerning corporal punishment of children. Examination in the second cycle is scheduled for 2012.

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