

INDIA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 13th session, 2012

*From Sharon Owen, Research Coordinator, Global Initiative,
info@endcorporalpunishment.org*



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

Corporal punishment of children breaches their rights to respect for human dignity and physical integrity and to equal protection under the law. It is recognised by the Committee on the Rights of the Child and other treaty bodies, as well as by the UN Secretary General’s Study on Violence against Children, as a highly significant issue, both for asserting children’s status as rights holders and for the prevention of all forms of violence.

In June 2006, the Committee on the Rights of the Child adopted General Comment No. 8 on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”, which emphasises the immediate obligation on states parties to prohibit all corporal punishment of children, including within the home. Other treaty bodies and also regional human rights mechanisms have condemned all corporal punishment. In October 2006, the report of the UN Secretary General’s Study on Violence against Children was submitted to the General Assembly. It recommends universal prohibition of all corporal punishment as a matter of priority.

The Global Initiative to End All Corporal Punishment of Children has regularly briefed the Committee on the Rights of the Child on this issue since 2002, since 2004 has similarly briefed the Committee Against Torture, the Committee on the Elimination of Discrimination Against Women, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, and in 2011 began briefing the Committee on the Rights of Persons with Disabilities. There is growing progress across all regions in challenging this common form of violence against children. But many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope the Working Group of the UPR will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies on this issue, as well as to the recommendations made during the first cycle of the UPR.

Corporal punishment of children is lawful in India, despite repeated recommendations made by the Committee on the Rights of the Child, questioning on the issue during the initial UPR of India and the Government’s acceptance of a recommendation concerning treaty body recommendations.

We hope the Human Rights Council will highlight with concern India’s record of ignoring treaty body recommendations, while acknowledging recent positive steps, and strongly recommend that legislation be introduced as a matter of urgency to prohibit corporal punishment of children in the home and in all settings, including as a sentence under traditional forms of justice.

1 The initial review of India by the Human Rights Council (2008)

1.1 India was reviewed in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendation on corporal punishment was made during the review, though the issue was raised in a question by Slovenia.¹ However, the following recommendation was made and accepted by India:

“Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico)”²

1.2 Prohibiting corporal punishment of children is a key obligation under the Convention on the Rights of the Child and other international human rights instruments. In 2000, the Committee on the Rights of the Child recommended that India prohibit all corporal punishment in the family, schools and care institutions.³ In 2004, the Committee noted the decision of the New Delhi High Court against corporal punishment in schools under its jurisdiction but expressed concern at its legality in schools in other states; the Committee again recommended that India prohibit all corporal punishment in the family, schools and other institutions.⁴

1.3 India has taken significant steps towards addressing the recommendations of the Committee on the Rights of the Child and, therefore, the above mentioned recommendation made during the initial UPR. In April 2010, the Right to Free and Compulsory Education Act (2009) came into force, prohibiting corporal punishment in all schools for children aged 6 to 14. In India’s third/fourth state party report to the Committee on the Rights of the Child, dated 2011, the Government affirms its commitment to prohibition in all settings.⁵

1.4 Notwithstanding the progress made, law reform has not yet achieved prohibition of all corporal punishment of children in all settings. The prohibition in schools has limited application, and corporal punishment remains lawful in the home and in some penal and care settings (see below).

2 Legality of corporal punishment in India

2.1 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 provision means corporal punishment of children is not considered an offence.⁶

¹ 23 May 2008, A/HRC/8/26, Report of the Working Group on the Universal Periodic Review: India, para. 66

² 23 May 2008, A/HRC/8/26, Report of the Working Group on the Universal Periodic Review: India, para. 86(11)

³ 23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, para. 45

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

⁵ Ministry of Women and Child Development (2011), Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child, section 4, paras. 37-42. Examination of the report by the Committee is still to be scheduled.

⁶ Ministry of Women and Child Development (2011), Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child, section 4, para. 40

2.2 Corporal punishment is prohibited in **schools** in the Right to Free and Compulsory Education Act (2009). However, the Act applies only to children aged 6 to 14, and does not apply at all in Jammu and Kashmir. In some but not all states, state laws provide broader legal protection from corporal punishment in schools (Goa, Andhra Pradesh, Tamil Nadu); in Delhi and West Bengal, High Court rulings have declared corporal punishment to be unlawful in schools.

2.3 In the **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 (2000, amended 2006) and in Jammu and Kashmir under the Ranbir Penal Code and the Juvenile Justice Act (1997). 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.

2.4 Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Juvenile Justice (Care and Protection of Children) Rules (2007), but these do not apply in Jammu and Kashmir.

2.5 With regard to **alternative care settings**, corporal punishment is prohibited in care institutions in 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.

Briefing prepared by the Global Initiative to End All Corporal Punishment of Children
www.endcorporalpunishment.org; info@encorporalpunishment.org
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