



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

INDIA

BRIEFING FOR THE HUMAN RIGHTS COUNCIL UNIVERSAL PERIODIC REVIEW – 1st session, 2007

From Peter Newell, Coordinator, Global Initiative

info@endcorporalpunishment.org

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.

The Global Initiative to End All Corporal Punishment of Children has been regularly briefing the Committee on the Rights of the Child on this issue since 2002, and 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. There is growing progress now across all regions in challenging this very common form of violence against children. But we are concerned that many States persist in ignoring treaty body recommendations to prohibit and eliminate all corporal punishment. We hope that the UPR Process will give particular attention to states’ response, or lack of response, to the concluding observations from treaty bodies, on this and other key issues.

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, setting a goal of 2009.

This briefing describes the gaps in prohibition in India, despite repeated recommendations to introduce prohibition by the Committee on the Rights of the Child.

We hope the Review will highlight with concern India’s failure to respond to treaty body recommendations and strongly recommend that India introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.

I: Legality of corporal punishment in India

The home

Corporal punishment is lawful in the **home**. The Penal Code (1860) recognises the right of parents to use corporal punishment.

Children have limited protection from violence and abuse under the Penal Code, the Juvenile Justice (Care and Protection of Children) Act (2000, amended 2006), the Protection of Child Rights Act (2005) and the Protection of Women from Domestic Violence Act (2005, in effect 2006).

The National Charter for Children (2003) recognises the right of all children to protection from corporal punishment and other violence and states that “the State shall take legal action against those committing such violations against children even if they be legal guardians of such children” (article 9). But as at November 2007, draft legislation under discussion which purports to prohibit corporal punishment (the Offences Against the Child Bill 2006) retains the right to punish a child, stating in the explanation accompanying section 21 (“Corporal Punishment on a Child”): “(3) Nothing in the Sections referred above shall be an offence, if the Hurt rendered on a child is commensurate to the act undertaken by the child and is not unreasonable and does not harm the physical integrity of the child’s body.”

The first nationwide study of child abuse in India, published by the Ministry of Women and Child Development in 2007, revealed a high prevalence of corporal punishment of children in all the settings. Of almost 12,500 children, 69% reported physical abuse, including corporal punishment, in one or more situations, more commonly boys and young children. The most commonly reported punishment was being slapped and kicked (64%), followed by being beaten with a stave or stick (31%), and being pushed, shaken, etc (5%); for many (16%) the hurt resulted in serious physical injury, swelling or bleeding.¹ The World Studies of Abuse in the Family Environment (WorldSAFE) cross-national project, which examined self-reports by mothers covering the period of the previous 6 months, found the following incidence rates for physical punishment in India: hitting the child with an object not on the buttocks 36%, spanking buttocks with hand 58%, slapping face or head 58%, pulling hair 29%, hitting with knuckles 28%, hitting with object on buttocks 23%.²

Schools and other settings

There is no national prohibition in law of corporal punishment in **schools**. The government has issued instructions to states to stop its use in schools and it is prohibited in the National Policy on Education (1986, modified 1992). One of the goals for education in the 2005 National Plan of Action for Children is to “Take measures to prohibit and eliminate corporal punishment in all schools and learning facilities” (para. 10.2.17). A draft Free and Compulsory Education for Children Bill which proposes prohibiting corporal punishment in schools, applicable to the whole of India, was under discussion in April 2005 but we have been unable to obtain information on its progress.

Some states have prohibited corporal punishment in schools under state law – Andhra Pradesh (2002), Goa (2003), Tamil Nadu (2007), Dehli (2000), West Bengal (2004) and Chandigarh (1990s). Others have prohibited it by policy or government directives – Himachal Pradesh (2007), Rajasthan (2007) and Uttar Pradesh (2007).

In the **penal system**, corporal punishment is unlawful as a sentence for crime under the Juvenile Justice (Care and Protection of Children) Act, which applies to the whole of India except Jammu and

¹ Kacker, L., Varadan, S. & Kumar, P., 2007, *Study on Child Abuse: India 2007*, New Delhi: Ministry of Women and Child Development. See also Saath Charitable Trust/Plan International, India, 2006, *Impact of Corporal Punishment on School Children: A Research Study – Final Report*

² Reported in Krug, E. G. et al. (eds) (2002), *World report on violence and health*, Geneva: World Health Organization

Kashmir, but it is reportedly imposed under traditional justice systems, such as the Pison system.³ It is unlawful as a disciplinary measure in penal institutions.

There is no explicit prohibition of corporal punishment in **alternative care settings**. The first objective of the 2005 National Plan of Action for Children, in the section on children in difficult circumstances, is to protect all children from violence, including corporal punishment (para. 11.2.1), but as at November 2007 this is yet to be reflected in legislation.

II: Recommendations by human rights treaty monitoring bodies

The **Committee on the Rights of the Child** first expressed concern at corporal punishment of children in India in its concluding observations on the state party's report in 2000, when the Committee recommended explicit prohibition in the family, schools and care institutions (CRC/C/15/Add.115, para. 45). In its concluding observations on the second report in 2004, the Committee stated (CRC/C/15/Add.228, 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.”

³ Reported in *Chennaionline.com*, 31 May 2007