

Protection of Children against
Corporal Punishment
in
Schools and Institutions

Summary discussions by the
Working Group on Corporal Punishment

NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS

Delhi, December 2008

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INTRODUCTION

DELHI:

Zafar, 16, dropped out of his school in Rohini last year, and now works at Humayun's Tomb as a gardener. 'Maar kha kha khe chod dhiya,'¹

'I was a slow learner, which angered my teacher. At one point I could not tolerate her verbal abuses and dropped out,' laments Raji.

KARNATAKA:

Tulasi, a Class IV student of a government school in Hassan, was beaten by her teacher for 'asking for an extra helping in the afternoon meal.'

JAMMU:

Despite the law proscribing it, a class VI girl was allegedly beaten mercilessly by her teacher for not getting a high score in a school test. She fractured the fingers of her right hand, was in a state of shock and too scared to go back to school.

TAMIL NADU:

My son Shanmugham who is a student of class 11th, went to school one day without his uniform as his only uniform was wet. On that day the Physical education teacher and three other staff of the school beat-up my son for not wearing his uniform. The physical education teacher scolded my son saying that "he could consume poison and die, instead of coming to school without uniform." After this incident at school my son came back home for lunch.... In the afternoon my son went to school, called all the teachers and told them that he has been insulted by them and is consuming poison because of this. He consumed the poison in front of the teachers and students, and died before reaching the hospital.

These are the voices of a few of the children scarred by experiences of corporal punishment. For most children fortunate enough to be in schools, this is an unfortunate everyday reality enough to push them out of school. As is evidenced by the 'voices' profiled above corporal punishment does not mean physical violence on the child, but also verbal insults, humiliation and loss of self esteem. Self perception of children gets altered if not wholly destroyed even before it emerges by such inhuman acts on tender minds.

Government of India has recognized that 65 per cent of school going children are inflicted with corporal punishment.² Corporal punishment has been classified as an act of violence and abuse on children.

Strictly defined 'corporal punishment' is the infliction of pain intended to change a person's behaviour or to punish them. Though it mainly refers to physical pain either through hitting or forcing the child to sit /stand in uncomfortable positions; an evolving definition also includes within its ambit wrongful confinement, verbal insults, threats and humiliation, which are used

¹ These are excerpts from various newspaper reports and complaints that NCPCR received, over the past year.

² 'Study on Child Abuse: India 2007', Ministry of Women and Child Development, Government of India, 2007

with impunity and in utter disregard to the law of land and principles of learning. The Commission has itself received more than 50 complaints of corporal punishment in the past year.

A large body of international research has detailed the negative outcomes of corporal punishment and they are extracted below:

- Escalation: Mild punishments in infancy are so ineffective that they tend to escalate as the child grows older. The little smack thus becomes a spanking and then a beating. Parents convicted of seriously assaulting their children often explain that the ill-treatment of their child began as physical punishment.
- Encouraging violence: Even a little slap carries the message that violence is the appropriate response to conflict or unwanted behaviour. Aggression breeds aggression. Children subjected to physical punishment have been shown to be more likely than others to be aggressive to siblings; to bully other children at school; to take part in aggressively anti-social behaviour in adolescence; to be violent to their spouses and their own children and to commit violent crimes. National commissions on violence in America, Australia, Germany, South Africa and the UK have recommended ending corporal punishment of children as an essential step towards reducing all violence in society.
- Psychological damage Corporal punishment can be emotionally harmful to children. Research especially indicts messages confusing love with pain, and anger with submission. "I punish you for your own sake." "You must show remorse no matter how angry or humiliated you are."³

For organizations working in the field of child rights, corporal punishment is a much studied issue. There have been many studies detailing the kinds of corporal punishment, its negative effects, and positive measures of tackling classroom behaviour, both within the Indian and international context. The use of corporal punishment is not a novel phenomenon in Indian society and educational system, where it is accepted as a convenient form of punishing and disciplining children. What is perhaps novel is the growing understanding that corporal punishment is an act of violence on children.

This discourse has been active since before 1979 when Sweden became the first country to prohibit 'all corporal punishment of children (in schools and home)' by law. The United Nations Convention of the Rights of the Child recognized the same when it stated that, 'State parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity' [Article 28(2)].

This perspective is strengthening its hold within the legislative, executive and judicial bodies of the country. A most notable judgment banishing corporal punishment has been made by the Delhi High Court in 2000.⁴ Citing Article 21 of the Indian Constitution that guarantees a right to life with dignity, the judgment makes an emotional appeal to spare the rod and the child. It states:

³ "IT NEVER DID ME ANY HARM...." Answering common defences of corporal punishment, Global Initiative to End All Corporal Punishment of Children, <http://www.endcorporalpunishment.org/pages/intro/faqs.html> (Last checked 30 December 2008)

⁴ Parents Forum for Meaningful Education and Another vs. Union of India and Another, Writ Petition (C) 196 of 1998

It also appears to us that corporal punishment is not keeping with child's dignity. Besides, it is cruel to subject the child to physical violence in school in the name of discipline or education.

Even animals are protected against cruelty. Cruelty to animals is punishable under section 11 of the Prevention of Cruelty to Animals Act, 1960. Beating, kicking over-riding, over-driving, overloading, torturing or other-wise treating any animal so as to subject it to unnecessary pain or suffering is a criminal offence. Our children surely cannot be worse off than animals. There are instances galore where the children have been traumatised and beaten in schools causing grave injuries to them on account of their innocent pranks, mistakes and mischief.

Child being a precious national resource is to be nurtured and attended with tenderness and care and not with cruelty. Subjecting the child to corporal punishment for reforming him cannot be part of education. As noted above, it causes incalculable harm to him, in his body and mind. In *F.C. Mullin v. Administrator, Union Territory of Delhi and others*, MANU/SC/0517/1981, the Supreme Court held that every limb or faculty through which life is enjoyed is protected by Article 21. This would include the faculties of thinking and feeling.

The state legislatures in a few states have given due recognition to the issue and introduced and amended legislations to abolish corporal punishment in law. The Goa Children's Act categorically states in Sec 4 (2) 'Corporal Punishment is banned in all schools.' Many State Education Acts have been amended as well, particularly in Andhra Pradesh and Tamil Nadu. The 'education departments' in many states have also issued orders and circulars, with the Government of Puducherry (Pondicherry) starting as early as 2001.

The Ministry of Human Resource Development, Government of India, has recently written to all State governments to abolish the practice of corporal punishment in all educational institutions. It is noteworthy that they have made a connection between corporal punishment and children dropping-out of school. This is an important admission.

Every human being has a right to live without violence. We must not forget that children are human too. They have the same rights as everyone else - perhaps more so because given their age and ability, they do not have the strength and resources to fight for this right. It is the bounden duty of all adults and institutions to respect and protect children's rights. Over the past year many gruesome acts of corporal punishment have come to light - some of which resulted in the child's death. Even as we compile this report, yet another child has died after a teacher hit her. We have surely not evolved as a civilization, beyond barbarism, if we continue to treat our children without respect, and have evolved justifications for such acts.

NCPCR Guidelines on Corporal Punishment

It is in the context of all the above that the National Commission for the Protection of Child Rights issued a set of guidelines on 'corporal punishment' and the efforts needed to abolish it within the educational system [Box 1]. The Commission is of the considered view that there is no room for corporal punishment in any deliberation with the child.

These guidelines have been received well in States. In Andhra Pradesh for instance the National Child Labour Project has decided to abide by these guidelines. In Idukki district of Kerala, the district administration and the Child Welfare Committee have started a campaign to make the district 'free of corporal punishment'. The Government of West Bengal has held that 'corporal punishment is to be strictly prohibited'; and the schools may identify counselors and place complaint/suggestion boxes in the schools.

Box 1: Guidelines issued by the National Commission for Protection of Child Rights on Banning corporal punishment, 9 September 2007

Since the time schools have reopened this academic session, there have been news items on the ghastly violence on children in schools. For example in Rajasthan the report was on the death of a student two days after the school teacher beat him up; in Andhra Pradesh the report was on how a school teacher subjected her students to electric shock, with full support and even justification given by the school head master. These are not isolated instances but manifestations of a culture of violence and insensitivity to children and their rights.

Children due to fear are often silent and submit to violence without questioning. They sometimes show signals of deep hurt in their behavior but this goes unnoticed, perpetuating further violence on them.

Corporal punishment involves, rapping on the knuckles, running on the school ground, kneeling down for hours, standing up for long hours, sitting like a chair, and beaten with a scale, pinched and slapped, child sexual abuse, torture, locking up children alone in classrooms, 'electric shock' and all other acts leading to insult, humiliation, physical and mental injury, and even death. It is being noticed that corporal punishment in schools both government as well as private is deeply ingrained as a tool to discipline children and as a normal action. All forms of corporal punishment are a fundamental breach of human rights. A slap is as detrimental to the child's right as grievous injury. Indeed there are no gradations since it must be seen that condoning so called 'small acts' actually lead to gross violations. It is also legally impermissible. The Supreme Court has banned corporal punishment for children on December 1 2000 when it directed the State to ensure "that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear". Children are as human and sensitive as adults are, if not more. They need to be secure with a caring atmosphere. Practising non-violence as a highest form of culture begins with seeing children as children. It is necessary for adults to behave with them in a manner that they are not subject to violence and hurt of any kind. In a way fostering such a culture will develop adults as responsible adults who would in turn be vigilant and question those that are breaking the norms of respecting childhood.

It is in this context, that the onus of responsibility in safeguarding children from punishment lies with the schools teachers, education administration at all levels as well as all those responsible for management equally. The National Commission for Protection of Child Rights directs the education departments of all the States to ensure the following:

1. All children are to be informed through campaigns and publicity drives that they have a right to speak against corporal punishment and bring it to the notice of the authorities. They must be given confidence to make complaints and not accept punishment as a 'normal' activity of the school.
2. Every school, including hostels, JJ Homes, shelter homes and other public institutions meant for children must have a forum where children can express their views. Such institutions could take the help of an NGO for facilitating such an exercise.
3. Further a box where children can drop their complaints, even if anonymous has to be provided for in each school.
4. There has to be a monthly meeting of the PTAs or any other body such as the SEC/VEC to review the complaints and take action.
5. The PTAs are to be encouraged to act immediately on any complaints made by children without postponement of the issue and wait for a more grave injury to be caused. In other words the PTAs need not use their discretion to decide on the grievousness of the complaint.
6. Parents as well as children are to be empowered to speak out against corporal punishment without any fear that it would have adverse effect on children's participation in schools.
7. The education department at all levels-block, district and State are to establish procedures for reviewing the responses to the complaints of children and monitoring the action taken on the same suffering from some contagious disease. He is tense and anxious in case the goats are to die, what then would become of him? His brother would not give him food and he could not hope to do any other work.

To delve into the various facets of this social practice, the NCPCR constituted a working group in October 2007, comprising educationists, lawyers, social activists, members of teachers unions, doctors, bureaucrats, and representatives of non-governmental organizations.⁵ The working group was to discuss four specific issues:

- a. Campaign and Advocacy to banish corporal punishment.
- b. Institutional Mechanisms required to tackle corporal punishment
- c. Role of Parents, Parent Teacher Associations, Village Education Committees and Gram Panchayats in abolishing corporal punishment.
- d. Need for specific law on corporal punishment.

The group held intensive discussions over five months. This report is a summary of their work, and their recommendations and conclusions.

⁵ Details of members and Mandate of the Working Group given as annexure

ANSWERING COMMON DEFENSES OF CORPORAL PUNISHMENT⁶

Corporal punishment is a necessary part of upbringing. Children learn from a smacking or beating to respect their elders, to distinguish right from wrong, to obey rules and work hard. Without corporal punishment children will be spoilt and undisciplined.

Everyone needs discipline, particularly self-discipline. But corporal punishment is not a form of inculcating discipline. Research has consistently shown that that it impedes the attainment of respect for discipline. It rarely motivates children to act differently, because it does not bring an understanding of what they ought to be doing nor does it offer any kind of reward for being good. The fact that those parents, teachers and others have to repeat corporal punishment for the same misbehaviour by the same child testifies to its ineffectiveness. In the countries where corporal punishment is banned there is no evidence to show that disruption of schools or homes due to children has increased. This indicates that disruptions everywhere are conveniently blamed on children as they are the most vulnerable. The sky does not fall if children cannot be hit.

Research clearly shows that effective control of children's behaviour does not depend upon punishment for wrongdoing but on clear and consistent limits that prevent it. Therefore modeling and exhibiting behavioral standards necessarily depends on adults. Nurturing a child's behaviour is like growing a fruit. Its quality depends on the inputs. In nurturing a child these inputs are love, tolerance, motivation and encouragement coupled with ease of pace to learn or perform.

I was hit as a child and it didn't do me any harm. On the contrary I wouldn't be where I am today if it were not for my parents and teachers physically punishing me.

Corporal punishment alters and destroys self perception of the victim. People usually hit children because they themselves were hit as children: children learn from and identify with their parents and teachers. It is pointless to blame the previous generation for hitting children because they were acting in accordance with the general culture of the time; nor should bonds of love and gratitude which children have towards their elders be denied. However times change and so also social attitudes with them. There are plenty of examples of individuals who were not hit as children becoming great successes, and even more examples of individuals who were hit failing to fulfill their potential in later life.

Parents often hit out of anger and frustration – children, like adults, can be very wearisome and difficult – and because they have no knowledge of alternative methods. Parents who try alternatives report success.

I'd bet that if you asked children how they'd like to be punished they would choose corporal punishment.

Children have a natural tendency to defend their childhood. If the influential adults in a child's home and school life use corporal punishment, it is not surprising that some children

⁶Radda Barnen. (No date). Hitting people is wrong--and children are people too. London: Association for the Protection of All Children.

may at first defend its use. You don't want to think badly of your parents. The child learns that he or she deserves a beating and that it is a necessary part of growing up. But attitudes will change if children are enabled to reflect on how they felt when punished and are introduced to positive approaches to discipline built on respect, rewards and companionship.

Parents' right to bring up children as they see fit should only be challenged in extreme cases, like child abuse.

The UN Convention on the Rights of the Child replaces the concept of parents' rights with "parental responsibilities", including the right and responsibility to protect the rights of children themselves. The assertion of children's rights seems an unwarranted intrusion to people accustomed to thinking of children as parents' possessions, but children are now recognized as individuals who are entitled to the protection of human rights standards along with everyone else. Other forms of inter-personal violence within families – including wife-beating – are already subject to social control and are unlawful in almost every society. It is quite wrong that children, the smallest and most vulnerable of people, should have had to wait until last for protection.

There is a big difference between a vicious beating and the little smacks that parents often give their children. These are not dangerous, do not cause real pain and cannot be called abuse. Why should these be outlawed?

Firstly, the little smack does cause a child pain and is intended to do so. And sometimes "minor" corporal punishment causes unexpected injury. Hitting children is dangerous because children are small and fragile (much corporal punishment is targeted at babies and very young children). Ruptured eardrums, brain damage, and injuries or death from falls are the recorded consequences of "harmless smacks". People would no longer get away with condemning violence to women, by defending "little slaps".

I only smack my children for safety - for their own sake they must learn about danger.

If a child is crawling towards a hot oven, or running into a dangerous road (likely to cause risk to them) of course you must use physical means to protect them – grab them, pick them up, show them and tell them about the danger. But if you raise your hand to hit them, you are confusing them– by hurting the child yourself, you are confusing the message the child gets about the danger, and distracting their attention from the lesson you want them to learn.

Many parents in our country are bringing up their children in desperate conditions, and teachers and other staff are under stress from overcrowding and lack of resources. Forbidding corporal punishment would add to that stress and should await improvement of these conditions.

This argument is a tacit admission of an obvious truth: corporal punishment is often an outlet for pent-up feelings of adults rather than an attempt to educate children. In many homes and institutions adults urgently need more resources and support, but however frustrating adults' problems may be, venting them on children cannot be justified. Children's protection should not wait on improvements in the adult world, any more than protection of women from violence should have had to await improvement to men's conditions. In any

case hitting children is an ineffective stress-reliever. Adults who hit out in temper often feel guilty; those who hit in cold blood find they have angry and resentful children to cope with.

Corporal punishment is a part of my culture and child-rearing tradition. Attempts to outlaw it are discriminatory.

No culture can be said to "own" corporal punishment. All cultures have a responsibility to disown it, as they have disowned other breaches of human rights which formed a part of their tradition. There are movements to end corporal punishment of children now in all continents of the world.

If corporal punishment of children is outlawed or criminalized, this will result in outrageous judicial or disciplinary intervention. Children will be encouraged to act like police and spies in the home or school.

In relation to the family home, laws banning corporal punishment are about setting standards and changing attitudes, not prosecuting parents or dividing families. Welfare services recognise that children's needs are best met within their families, so it is important to provide parents with help and support, rather than impose punitive interventions.

Over five million European children are already protected from all physical punishment in their home as well as in institutions. The reforms have not led to a rush of children taking their parents to court over physical punishment, and numbers of children taken into care in Sweden and the other Scandinavian countries are low and reducing.

I bet if there was a poll on the issue a huge majority would support retaining corporal punishment. This country is a democracy but there is no democratic support for ending corporal punishment.

Representative democracies are not run by popular referenda. This means that the elected politicians will, when drawing up new laws and the constitution, make a number of unpopular decisions, based on informed arguments. Proposals to end the physical punishment of children never enjoy popular support before legal or administrative steps are taken to outlaw it. However public attitudes rapidly change once such steps are taken and alternative methods of disciplining are made widely known.

UNDERSTANDING CORPORAL PUNISHMENT AS A DISCIPLINARY MEASURE⁷

Understanding the Problem

The idea of punishment is intimately related to human conceptions of childhood and education. It is an established fact that childhood is only a 19th century construct. Clichéd popular thinking related to children such as 'spare the rod and spoil the child', 'children are empty vessels', 'children need to be moulded' persist in contemporary thinking of educators and has often served as the guiding principles of established school practices. This finds convergence with the ideas of what formal education aims to achieve.

⁷ Prepared by Dr. Poonam Batra, Working Group Member

Within the Indian context, two distinct yet related strands of the idea of education co-exist: the first is to do with the building of character and morals as the most important goal of education; the second, relatively more contemporary in nature is the idea of educating in order to seek adequate means of livelihood and social mobility. While progressive educational discourse associated with the ideas of Gandhi, Tagore, Gijubhai Dewey, Piaget and Vygotsky assert the agency of the child and form a significant part of teacher education courses in India the nucleus of Indian educational practice revolves around the concept of 'discipline'.

Academic performance - the ultimate goal of formal education, is attempted to be met by making 'discipline' the centre of all school activity. Learning to concentrate, learning to perform in examinations and learning to behave in desirable ways are the key means of achieving this goal. This finds immediate endorsement from the parent community in India where formal quality education for the masses remains a mystified phenomenon. The paradox is in the co-existence of a relatively progressive educational discourse that advocates for the 'agency' of the child in her own learning and the preposterous practice of 'disciplining' children to 'perform' in school and board examinations.

Corporal punishment is an oft-used mechanism to discipline children. The intimate relationship between corporal punishment and discipline is not simply a convention of human thinking; it finds legitimacy via definitional assertions in dictionaries as well. 'To discipline' is often stated to mean 'to punish'.

The idea of 'disciplining children' also stems from deep-rooted folk conceptions about children and their relationship with adults. The cultural practice associated with rearing and educating children permeates schooling practices across the country. These are: the hegemonic relationship between adults and children, often manifest in either a culture of patronage towards the young or control through power and the firm belief that education is the 'effective transmission' of 'given knowledge'. Both these have cultural sanction.

Within such a socio-cultural and educational context how would the idea of enforcing 'rights of children' through legislation, work?

The voices and rights of children evidently need a platform that children themselves may not be able to create. The NCPDR is an example of creating an appropriate platform to voice the concern of children, from children's perspective, by concerned adults. It therefore becomes all the more important for adults who stand up for children to continually question their own assumptions about children and the taken-for-granted patronizing attitude towards children often camouflaged under the garb of nurturance and protection.

Corporal punishment also needs to be looked at within the larger context of violence and child abuse that plagues the Indian society and human civilisation. Blurring of boundaries between crime and terrorism; between terrorism and the struggle for freedom; between the struggle for human dignity and the increasing complexities of class-caste-gender-community dynamics and the increasing abuse of children, have manifest more blatantly than ever before. The most vulnerable in a society plagued with legitimized violence, are children...whose stifled voices desperately need to be heard. Although systematic research needs to be done to bring substantial evidence to the argument, is there any denying that violence amongst school children within school premises is a stark contemporary reality across the globe?

Discourse on Punishment

The current discourse on punishment amongst teachers and parents is heavily tilted towards physical punishment rather than mere verbal reprimand. It is also observed that most

communication about corporal punishment is camouflaged in a contrived 'neutral' discourse. As a 14 year old child remarked "Teachers do not know what to say or do, therefore they beat or threaten to beat." Is it that teachers are helpless and do not know how to deal with in-discipline and with children's energy levels?

The issue of punishment is closely associated with the self-image of the teacher as one who needs to be 'in control' in order to be an effective teacher. This idea of control manifests in the popular conception of education which is to 'socialize' children in 'desirable ways' of 'sitting' in a formal class, 'behaving' in school, 'following instructions' from the teacher, talking only when asked to and finishing tasks on time. A study found this to be the view of many teachers who were asked to express their understanding of child-centered education.

Punishment is often also related to teachers' orientation towards children. Most teachers are trained to believe that they need to be judgmental about children and their learning; that they need to be in control. What discipline is, is not clear to many teachers. The unequal power relationships between adults and children further augments the problem. Children internalize cues of authority from school and at home and begin to legitimize violence as a way of life.

The overall vision and culture of a school indicates how children are perceived and treated. Therefore it is important that strategies adopted must evoke sensitivity in adults to children's ways of thinking and perceiving. This should become a major area of focus in all child development courses in pre-service and in-service programmes of teacher education. Listening to children is important for teachers to understand them and feel less angry with the mistakes they make.

LEGAL BASIS FOR STATE INTERVENTION ON CORPORAL PUNISHMENT

As mentioned before there is a growing appreciation for addressing the issue of corporal punishment as an act of violence. There are many provisions through which the State can intervene on banning corporal punishment.

Constitution of India

Art. 21: The interpretation of 'right to life' has been expanded to mean:

1. A life of dignity.
2. A life which ensures freedom from arbitrary and despotic control, torture and terror.
3. Life protected against cruelty, physical or mental violence, injury or abuse, exploitation including sexual abuse.

Art 39. The State shall in particular direct its policy towards securing-

- e. that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength;
- f. that children are given the opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The Juvenile Justice (Care and Protection) Act, 2006

Section 23: Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him/her to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the

child unnecessarily mental or physical suffering, shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

This section has no exceptions to exempt parents or teachers. Though it is intended to punish cruelty by those in authority, it equally applies to parents and teachers. The whole purpose of the Juvenile Justice Act 2000 is to translate the objectives and rights enshrined in Convention on Child Rights, which include separation of juveniles in conflict with law from ordinary judicial proceedings to avoid corporal punishment.

The Juvenile Justice (Care and Protection of Children) Rules, 2007

The Model Rules also enunciate 'fundamental principles' of care and protection with regard to the juvenile justice process and institutional care in Juvenile Homes which explicitly prohibit corporal punishment and maltreatment of children within the juvenile institutional system and lay out duties for the State for protection of children from abuse within the juvenile system:

Chapter II: Principle of dignity and worth

- (a) Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice.....Respect of dignity includes not being humiliated, personal identity, boundaries and space being respected, not being labeled and stigmatized, being offered information and choices and not being blamed for their acts."

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,
- (b) The State has a greater responsibility for ensuring safety of every child in its care and protection, without resorting to restrictive measures and processes in the name of care and protection.

Rules 46 and 60 further specify the juvenile home as an 'abuse free' environment and outline mechanisms to ensure the creation of such an environment:

Rule 46: (3) the environment in an institution shall be free from abuse, allowing juvenile or children to cope with their situation and regain their confidence.

Rule 60: (1) Every institution shall have systems of ensuring that there is no abuse, neglect and maltreatment and this shall include the staff being aware of what constitutes abuse, neglect and maltreatment as well as early indicators of abuse, neglect and maltreatment and how to respond to these.

The National Policy on Education (1986)

Para 5.6 Child-Centered Approach: A warm, welcoming and encouraging approach, in which all concerned share solicitude for the needs of the child, is the best motivation for the child to attend school and learn. A child-centered and activity-based process of learning should be adopted at the primary stage. First generation learners should be allowed to set their own pace and be given supplementary remedial instruction. As the child grows, the component of

cognitive learning will be increased and skills organised through practice. The Policy of non-detention at the primary stage will be retained, making evaluation as disaggregated as feasible. Corporal Punishment will be firmly excluded from the educational system and school timings as well as vacations adjusted to the convenience of children.

The National Charter for Children (2003)

This charter acknowledges the principles and provisions of the Constitution and of the 1974 National Policy as comprising its guiding frame, and includes 'neglect' and 'degrading treatment' in its listing of conditions from which children must be protected. The charter states its intent to 'secure for every child its right to be a child and enjoy a healthy and happy childhood... and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse...' and asserts that 'the state and community shall undertake all possible measures to ensure and protect the survival, life and liberty of all children.'⁸

Article 7 (f): The State shall ensure that school discipline and matters related thereto do not result in physical, mental, psychological harm or trauma to the child.

National Plan of Action for Children 2005 (NPA)

One of the core objectives of the NPA is "to protect all children against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, pornography, corporal punishment, torture, exploitation, violence, and degrading treatment".

United Nations Convention on Rights of the Child, 1989 (India acceded to this convention in 1992)

Article 3

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

⁸Thukral and Abbasi (2007), Ensuring Child Protection, Seminar India, Issue 574, June

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 28

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

General Comments of the Committee on the Rights of the Child

In 2001, the Committee on the Rights of the Child issued General Comment No. 1 on the aims of education (CRC/GC/2001/1), emphasising that the education process itself should be based on and promote the rights guaranteed by the Convention.

General Comment No. 1 also states that: "...Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely in accordance with article 12(1) and to participate in school life. Education must also be provided in a way that respects the strict limits on discipline reflected in article 28(2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline..."⁹

The Committee has reflected this interpretation in its concluding observations on States parties' reports under the CRC, recommending that they should prohibit all corporal punishment. In June 2006 the Committee adopted its General Comment No. 8 on the right of the child to

⁹ Committee on the Rights of the Child (2001), General Comment No. 1 The Aims of Education, CRC/ GC/2001/1, para 8

protection from corporal punishment and other cruel or degrading forms of punishment (articles 19, 28(2) and 37, inter alia; CRC/C/GC/8).

The Committee states that the purpose of the General Comment is “to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.”

The Committee comments: “Addressing the widespread acceptance or tolerance of corporal punishment of children and eliminating it, in the family, schools and other settings, is not only an obligation of States parties under the CRC. It is also a key strategy for reducing and preventing all forms of violence in societies.”¹⁰

WHAT ARE THE LAWS TO PROTECT CHILDREN AND PROSECUTE OFFENDERS?

Name of the Act

Indian Penal Code

Section 82 “Nothing shall be an offence which is done by a child under seven years of age.”

Section 83 “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

Section 319 “Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

Punishment Subject to exception under section 334 IPC

Section 323 Imprisonment of either description for a term which may extend to one year, or fine which may extend to one thousand rupees or both.

Section 320 Grievous hurt
The following kinds of hurt only are designated as grievous:

- First - Emasculation
- Secondly - Permanent privation of the sight of either Eye
- Thirdly - Permanent privation of hearing of either Ear
- Fourthly - Privation of any member or joint.
- Fifthly - Destruction or permanent impairing of the powers of any member or joint.
- Sixthly - Permanent disfiguration of the head or face
- Seventhly - Fracture or dislocation of a bone or tooth
- Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

¹⁰ Committee on the Rights of the Child (2006), General Comment No. 8, The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (articles 19, 28(2) and 37, inter alia), CRC/C/GC/8

- Punishment Subject to exception under section 335 IPC
- Section 325 Imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- Section 355 “Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”
- Section 503 “Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or cause that person to do any act he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means to avoiding the execution of such threat, commits criminal intimidation.
- Explanation: A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”
- Punishment Imprisonment of either description for a term which
- Section 506 may extend to two years, or with fine, or with both.
If threat be to cause death or grievous hurt, etc.
Imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Juvenile Justice (Care and Protection Of Children) Act, 2000

- Section 23. Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.
- Section 24 (1) Whoever, employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.
(2) Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.
- Section 25 Whoever gives, or causes to be given to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in the case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Section 26 Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment and keeps him in bondage and withholds his earnings or uses such earnings for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

In view of National Charter for children, 2003 and CRC and other laws all rules and in the State Education Acts are in conflict with the declared policy of the country and are devoid of the force of law. Further all rules under the education Acts of various states stipulate conduct of service rules and therein bar use of violence against student, parent or colleague any act of corporal punishment on children by a teacher necessarily requires to be punished as an violation of the code of conduct of service which must be implemented strictly.

WHAT MAKES CORPORAL PUNISHMENT POSSIBLE IN INDIA?

Despite the clear cut constitutional mandate in article 21 justifications for inflicting corporal punishment on children in schools and homes still exists in laws or the rules made under various state laws at present in force.

Though 'hurt' caused by an 'act' to the 'body' and to the 'mind' constitutes an offence under section 323 of the Indian Penal Code; in the context of corporal punishment inflicted on children, such a 'hurt' does not constitute an offence. Sections 88 and 89 of the IPC provide immunity to a person causing 'hurt' to a child if the act is 'done in good faith, not intending to cause harm, and by consent whether expressed or implied'.

In Sec 88 (IPC) states : Act not intended to cause death, done by consent in good faith for person's benefit - Nothing which is not intended to cause death, 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 any person for whose benefit it is done in good faith, and who has given a consent whether expressed or implied, to suffer that harm, or to take the risk of that harm.

Section 89 (IPC) gives indemnity for acts committed against children below the age of 12 years. "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 expressed 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.

Thus effectively the law does not recognize corporal punishment as an 'offence'. This impedes the task of prosecution of inflictors of corporal punishment, in cases where they are teachers or parents. They can take security behind the clause of 'good faith' specially in instances when they have not caused visible harm to the child, like say to the 'mind' or say to the 'esteem' or say to the 'peer perception' of the fellow students. Moreover it has been found that the existence of the theory of 'good faith' often leads the judges to take a pro-teacher interpretation.

The other act that impedes prosecution particularly of government teachers is Section 197 of the Criminal Procedure Code, 1973 which gives protection to a person who is still a 'public servant'

at the time the prosecution is launched, and also when he is no longer a public servant. There are three facets in the consideration of the protection given by Section 197 of the Cr.P.C. to the acts done by public officers.

- (i) The act complained attaches to it the official character of the person doing it;
- (ii) The official character or status of the accused gave him an opportunity of doing the act, and
- (iii) The offence is committed at a time when the accused was engaged in his official duty.

The School Education Rules are another case in point. Although many states have banned corporal punishment by amending their acts and rules, it still comes as a surprise to many that beating of children was not only condoned but explicitly permitted in the rules to the education acts of many states. For example, Rule 37 of the Delhi Education Rules (1973), contained the following clauses right up to 2000.

Rule 37, Forms of disciplinary measures

- (i) The following shall be the disciplinary measures which may be adopted by a school in dealing with-
 - (a) all students:-
 - (i) detention during the break, for neglect of class work, but no detention shall be made after the school hours,
 - (ii) corporal punishment
- (4) (a) Corporal punishment may be given by the head of the school in cases of persisting impertinence or rude behaviour towards the teachers, physical violence, intemperance and serious form of misbehaviour with other students
- (b) Corporal punishment shall not be inflicted on the students who are in ill-health.
- (c) Where corporal punishment is imposed, it shall not be severe or excessive and shall be so administered as not cause bodily injury.
- (d) Where cane is used for inflicting any corporal punishment, such punishment shall take the form of strokes not exceeding ten, on the palm of the hand.
- (e) Every punishment inflicted on a student shall be recorded in the Conduct Register of such student.

The above clauses were struck off only in 2000, following a Delhi High Court Order. Nonetheless the Delhi Legislative Assembly is guilty of not amending the 'rule' to bring it in line with the judgment.

The AP integrated Educational Rules (1966) as amended up to August 1986 also provide an example of the kind of rules that need to be changed in order to eradicate corporal punishment.

122. Punishments: The following are some standard forms of punishments which may be resorted to in schools:-

(a) fines; (b) corporal punishment, (c) Suspensions, (d) expulsion, and (e) rustication (debarring),

- (1) The first punishment may be imposed by the headmaster for minor offences in accordance with a set of rules to be framed by the headmaster/headmistress.
- (2) Corporal punishment shall not be inflicted in schools except in case of moral delinquency such as deliberate lying, obscenity of word or act or flagrant insubordination and then it shall be limited to six cuts on the hand and be administered only by or under the supervision of the headmaster. Corporal punishment should never be inflicted in any recognized school on boys of Classes XI and XII. The headmaster shall record in a register (Appendix 19) every case in which corporal punishment has been inflicted, specifying the name, class and age of the pupil, the date, the nature of the offence and amount of punishment.
- (3) Suspension should rarely be employed and should not be imposed for more than one month at a time. It may be resorted to as an alternative to corporal punishment in cases where the parents object to that punishment or where that punishment is otherwise objectionable.

Tamil Nadu recognised private Schools (regulation) Rules 1974

51. PUNISHMENT: Corporal punishment shall not be inflicted in schools except in a case of moral delinquency such as deliberate lying, obscenity of word or act of flagrant insubordination and then it shall be limited to six cuts on the hand and be administered only by or under the supervision of the headmaster. Corporal punishment should never be inflicted in any recognized school on boys of Standard X. The headmaster shall record in a register (Appendix 16) every case in which corporal punishment has been inflicted, specifying the name, class and age of the pupil, the date, the nature of the offence and the amount of punishment. Gross cases of immorality and insubordination shall be punished by expulsion subject to the conditions specified in rule 49.

The above rule has hence been amended, but continues to be child-unfriendly. The amended rule now reads:

- 51: GUIDELINES FOR SELF- DISCIPLINE Today the teacher has to earn the respect of both students and their parents. Children especially in the upper grades do not hold their teacher in awe they used to. It is no longer fashionable to be the rigid, authoritarian, traditional and disciplinarian of by gone days.

There is no longer one way to run a classroom. At present there are more children with more behavior problems in the Public and Private schools. Most of our teachers have only been trained in how to teach nice normal children with no emotional problems....

Students may be encouraged to follow appropriate behavior by way of awarding prizes and Certificates. Such a positive state will be helpful to (teachers to) convey (to) their students that good behavior will be rewarded....

Some of the examples for corrective measures

1. Choosing an activity as self-punishment like watering plants, duty in the library, cleaning the playfield
2. Following directions of the class-teacher like washing the blackboard, running around the field, cleaning the campus etc.

The declared purpose for the amendment clearly showcases a lack of appreciation of the child's human dignity. The rule cruelly implies that children are no longer nice and normal; and that having emotional problems is abnormal for children. The teachers need to change their behavior not because children deserve to be treated with respect, but because it is no longer fashionable to do so! Even when they recommend corrective measures of self-punishment- the acts include watering plants, cleaning the blackboard and library duty. We need to challenge this assumption that these activities are uninteresting and constitute punishment. In a society that should aspire to the wholesome development of a child through reading extra-curricular books, tending and fostering the environment are we to imply that these activities are not rewarding but punishing!

There still remain on the statute/rule book plethora of such 'rules' and 'Acts' that run contra to the constitutional mandate guaranteeing right to life and provisions of UNCRC which has been acceded to by the Government of India as far back as in 1992. The Commission suggests that the 'child' ought to be brought within the ambit of the protective shield legislated by way of 'Prevention of domestic violence against women's Act 2005' as child has a first right to a home and is more vulnerable and more likely to be abused as compared to a grown up in a home. The Commission will continue to strive to bring that about as soon as can be.

LAWS AGAINST CORPORAL PUNISHMENT IN OTHER COUNTRIES

Every developed, industrialized country in the world and many developing nations in Asia and Africa have made the violent punishment of school children illegal. Sixteen nations totally ban physical punishment of children.

Sweden was the first country in the world to ban all corporal punishment of children. In 1979, the Swedish Parliament voted to prohibit corporal punishment, or the "right" of parents to chastise their children. Swedish Member of Parliament Sixten Pettersson stated "In a free democracy like our own, we use words as arguments, not blows. We talk to people and do not beat them. If we can't convince our children with words, we shall never convince them with violence."

The 1979 ban was the final result of half a century of education and legal progress on the issue of child abuse in Sweden. Corporal punishment had actually been banned in Swedish grammar schools as early as in 1927 and in elementary schools later on since 1958. Now, a quarter of a century after the Swedish Parliament voted against hitting children, attitudes towards corporal punishment show that less than 10% of the people living in Sweden defend corporal punishment of children. According to the Swedish Institute for Statistics, younger generations are much less in favour of using physical punishment than elder generations.

In the United Kingdom all "child care organisations" have a statutory duty placed on them by the Act:

- (a) to refer names to the Secretary of State in certain specified circumstances for possible inclusion on the PoCA List;
- (b) when they propose to offer someone employment in a child care position, to check, through the Criminal Records Bureau, whether an individual is included on the PoCA List or List 99;
- (c) not to employ a person in a child care position if that person is included on the PoCA List or List 99,
- (d) to cease to employ someone in a child care position if it is discovered that the individual is included in the PoCA List or List 99.

In 1986 General Assembly and Conference of the two Churches supported the abolition of corporal punishment in New Zealand schools.

California law prohibits the hitting of them in schools, day care centers and foster care. It also makes it a crime to inflict "unjustifiable" physical pain on a child. The bill also would allow prosecutors to seek felony charges against those accused of shaking babies, and it would allow judges to require violators to attend parenting classes. California prosecutors have been trying to figure out "exactly where abuse begins and appropriate corporal punishment ends."

WHAT CAN WE DO?

There are several stakeholders in the present situation and the roles and responsibilities of each towards securing children's rights have to be recognized. The important stakeholders are the teachers, the children, the parents and the community, the education departments and the State. If initiative is taken at each level then we would help deliver children from this abhorring practice.

TEACHERS and USE OF POSITIVE DISCIPLINE

The idea of 'positive discipline' techniques concentrate on reinforcing positive behavior of children. Durrant in her study states that 'positive discipline' is based on the idea that children are born without knowing what we expect of them. Positive discipline is considered to be a non-violent approach which respects the inherent dignity of the child, and seeks to find solutions based on child's evolving capacities. It is an approach to teaching that gives them information and supports their growth based on their age specific needs.¹¹

What positive discipline is:

- Positive discipline is about long-term solutions that develop your child's own self-discipline.
- Positive discipline is clear communication of your expectations, rules and limits.
- Positive discipline is about building a mutually respectful relationship with your child.
- Positive discipline is about teaching your child life-long skills.
- Positive discipline is about increasing your child's competence and confidence to handle challenging situations.
- Positive discipline is about teaching courtesy, non-violence, empathy, self-respect, human rights and respect for others.

What positive discipline is not:

- Positive discipline is not permissive parenting.
- Positive discipline is not letting your child do whatever he wants.
- Positive discipline is not about having no rules, limits or expectations.
- Positive discipline is not about short-term reactions or alternative punishments to slapping and hitting.

Children's Voices in the Classroom:

Rule-making:

Children have to be encouraged to respect the need to maintain class decorum. This can be done by firstly involving children in making the rules of class-behaviour and discipline. If children feel they made the rules, then they are more likely to follow it. Once agreed upon, these rules should be well publicized amongst students, teachers and parents as well.

The participation of children in maintaining class-discipline is well ensured through the class-monitor system. Monitors are asked to notify the teacher about those children who are 'making a noise' and in many instances the monitors are given sticks to hit other children. This system very successfully pits one child against the rest of the class, dividing the class, and fuelling discontent towards the class-monitor. Such practices of delegated authority should be discouraged.

¹¹ Durrant, Joan 2007, "Positive Discipline - What it is and How to do it" Save the Children, Sweden

Dispute-Resolution:

Resolution of class-disputes should also involve children. A good example followed in CIE Basic School, Delhi is the organization of 'bal-adalat'. This class-room practice starts with stating the issue of dispute before the class. Then the involved parties (children) present their arguments justifying their actions. After discussing the issue, the entire class decides the directions to give. The entire exercise is facilitated by the teacher.

All India Teachers Forum for Child Rights:

In Andhra Pradesh, an active forum of over teachers has begun a campaign on abolishing corporal punishment. The members of this Forum organize meetings in various cities with other teachers and discuss the problems that teachers face in teaching, the issue of corporal punishment and the reasons for abolishing it. In one of the many instances the teachers of a particular school were so inspired, that all the teachers of the school took their sticks and walked in a procession outside the school, and buried the hitting sticks, returned to school and declared that from that day forth, they would not hit their children. Some other converts have said, "Since I stopped hitting children in my class, one drop-out child has returned to school". The Forum is successfully reaching out to teachers and helping them grapple with discipline and teaching problems. This peer-to-peer learning is proving to be a very effective way of sensitizing teachers and school managements about the harmful effects of corporal punishment and the immediate need to stop it.

COMMUNITY INTEREST

The parents and local community need to take an interest in schools. The parent-teacher meetings need to be convened regularly to help the teacher and the parent to understand the child's problems and make a joint effort at helping the child.

Role of parents:

Parents are in most cases the first adults to whom a child takes his/her problems. Their participation in their child's development should be recognized and facilitated and they should be empowered with knowledge of their child's rights. The ill-effects of all kinds and degrees of corporal punishment should be explained to them so that they can respond to their child effectively. It is necessary to ensure that children are not victimized due to 'silent' parents who do not ask questions unless directly affected. In the process child continues to suffer the ill-effects of such inaction on the part of the parents, unless such noticeable harm is suffered by the child as makes all else sit up at once. By then invariably, it is too late for the child.

Orientation meeting:

All schools may be asked to organize an orientation meeting of staff and parents of children at the beginning of the academic session. The participants of the meetings may include local NGO, Block Education Officer and District Education Officer also. The participants shall be sensitized on the 'rights of children' to respect, care, health, and an education free from fear. The parents opinion should be actively sought.

Notice Board:

A notice-board in every school must display the names and contact details of the PTA members, BDO and DEO. PTAs to be encouraged to act immediately on complaints by children before further injury is caused

Suggestion Box:

Parents and children are to be encouraged to speak out against corporal punishment without fear that it would have adverse effect on the children's participation in school. Every school shall have a suggestion box which is accessible to everyone- students, teachers, parents and school staff. This box should be opened regularly. The Karnataka School Development Management Committees (SDMC) have a detailed redressal mechanism which could be emulated by all. Therein the President of the SDMC receives the complaints and forwards them unopened, to a higher body which is the Civic Amenities Committee (CAC) in their case. In cases of child abuse the CAC constitutes a 3-member enquiry team of which 2 are women and one should be from an NGO not working in that school. This team will conduct investigation and submit report within 15 days, in which the team can recommend that the accused be warned, or suspended, or dismissed. In all cases the accused person shall be asked not to discharge his/her duties pending enquiry.

Social Audit:

A community social audit of the school will increase awareness amongst the community about the school practices, regularity of teacher attendance and teaching, condition of school amenities, etc. Knowledge being the first step towards action, this will also build ownership amongst the community for the school.

EDUCATION DEPARTMENT

Since corporal punishment is tied to the larger context and concern of the prevalence of violence in society, popular constructs of childhood and education, it is important to bring Teacher Education Institutes into the fold of institutionalized mechanisms. This would involve addressing teachers through both the pre-service and in-service teacher education programmes.

Pre-service Courses of Teacher Education

These would include courses offered by DIETs and CTEs, University Departments offering Bachelor's Degree in Teacher Education, other certificate and diploma courses, including private institutions. The following suggestions are made:

NCTE in its norms for Teacher Education Programmes should stipulate a mandatory provision to include and integrate the study of children, their development and learning and the interdisciplinary study of the construct of childhood. More specifically Teacher Education courses should include the following:

- Constructs of discipline, classroom organization and management and the study of children's' learning need to be integrated in courses of child development. This should include a critical examination of existing practices of discipline in schools.
- A clear shift needs to be made from the current focus on courses of Educational Psychology to courses on Child Development and Learning. The current courses focus on models of instruction and learning theories rather than the developing child. The child has to be brought into the centre in teacher education programmes so that prospective teachers engage with the idea of teaching specific children rather than the application of theories of learning and instruction keeping in mind an abstract universalized notion of a child.
- Courses of Child Development should integrate separate units of study on the 'Rights of Children' including Education as a Fundamental Right, debates and concerns.
- Child Development courses should also integrate the study of the construct of childhood especially within the Indian context, rather than propagate 'abstract, universalistic, textbook constructions of 'who a child is?' This will help teachers to view children within the context of the larger socio-cultural, economic and political milieu.

- Child Development and Foundation courses in Education should integrate the study of popular notions and assumptions about children and education so that prospective teachers get the opportunity to critically examine their own thinking about children and education.
- Child development courses should also include training on key forms of learning disabilities such as 'dyslexia' and remedial classroom and out of class responses which help teachers develop tailored classroom practices and effective parent / teacher conferencing
- Courses need to address the issue of why children fail or are unable to perform. In traditional teacher training the dominant pattern is to leave the onus of learning to children. There exists a major gap in teachers' perception of their role in enabling children to learn. The current system absolves the teacher of any responsibilities towards learning. This orientation can change only through a concerted focus on courses that engage teachers with issues of children's thinking and learning and error analysis.
- Courses in Teacher Education should have mandatory projects and field-based assignments to enable a more relevant discourse rather than only abstract theory. This will enable the use of theory to critically examine social reality and personal conceptions and social constructions.

In-service Teacher Education

- All in-service programmes need to have a dedicated focus on issues of child rights, discipline and corporal punishment. Need to create forums for teachers to discuss issues related with discipline and the difficulties teachers face in dealing with diverse and unpredictable behaviour patterns
- Teachers need to engage with issues of why children are beaten and when. They need to be engaged through the workshop mode on how concerns of classroom organization and management and children's learning can be handled using various kinds of techniques of drama and self-development, rather than an easy resort to punishment. Workshops need to be organized with systematic inputs from psychiatrists, child psychologists, pediatricians and counselors to sensitize teachers on the impact of corporal punishment on children and the role of the teachers in enabling a non-threatening learning environment in schools.
- Issues with regard to redressal mechanisms for children and peer pressure to restrain the use of corporal punishment should be the centre of discussions during in-service programmes.
- A major divide between the socio-economic and cultural background of teachers and children in most state schools is a key factor in perpetuating the problem of corporal punishment. It would be strategic to develop and disseminate short films/video clips on the vulnerability of children and the responsibility of adults. This could be done through Doordarshan and Edusat programmes. The community radio can also be used for this purpose.
- This is likely to sensitize teachers. The strategy should be to appeal to adults (including teachers) in their capacity as parents...in a sense urging them to start thinking about the deleterious effects of physical punishment and their role in combating it. Teachers and parents need to understand that punishment amounts to disrespecting a child in front of all. The dignity of the child is at stake when teachers punish. This will also address the sanction that parents often give in justifying child beating for academic non-performance and matters of discipline.
- Mechanisms can be evolved with teachers to actively discourage violence amongst children in school settings. For instance, could we have a set of rules for children in class developed by children along with the teachers?
- The system of monitors in classes, chosen from among the students needs to be a major focus of discussion with the aim to completely abolish the "use" of monitors to punish

children by beating them. Currently class monitors substitute teachers in maintaining discipline by threatening and often resorting to physical beating. This has particularly led to a process of legitimizing violence amongst children, while absolving the teacher.

- The introduction of the concept of a Home Room (zero period) period everyday and a Home Room Teacher (HRT) who encourages children to share and express their experiences and feelings openly needs to be put in place.
- Principles of 'restorative justice' which focus on collaborative problem solving, and self reflective, restorative approach to discipline are now being utilised across the world in educational and juvenile justice settings. In-service training should equip teachers to use conferencing and mediation techniques incorporating these principles for use with students, peers and parents.
- There is need to include school counselors (wherever available), school principals and heads in organizing concerted workshops on the issue of corporal punishment, classroom management and discipline in schools.
- In-service training should equip teachers to be able to identify behavioural and other signs of child abuse and appropriate utilisation of confidential reporting and referral processes to school counselors, authorities etc.

Performance Measurement

In establishing appropriate institutional mechanisms, which deter corporal punishment, other systemic drivers, which create pressures for negative behaviours and violation of child rights also need to be addressed. One such key driver is performance measurement of teachers. Performance measurement systems which are only focused on the single dimension of reported examination marks of students (as an indicator of performance of both teachers and students) rather than a multi-dimensional assessment which includes total student development and classroom development (teacher's ability and efforts to create positive and non-violence based classroom learning cultures) do not reinforce positive behaviours and create pressures for negative behaviours.

Re-orientation of teacher performance measurement systems could include:

- Introduction of 360 degree evaluations which include peer review evaluations and student evaluations of teachers (through processes which protect confidentiality and ensure constructive feedback such as communication of evaluation results on 'aggregate' basis etc)
- Reward positive behaviours and link promotions, salary increases to multi-dimensional performance attributes including achievement of standards for 'peaceful, positive learning' classrooms by teachers

Other In-School Mechanisms:

- Maintenance of register by Department of Education of violators with regard to practice of corporal punishment to enforce range of child protection measures in addition to the relevant legal actions. This would include non-renewal of teacher appointments for serious/repeat offenders or subsequent school placements only with appropriate counseling processes/probationary measures etc.
- Consider establishment of mandatory in-school or 'visiting' psycho-social and career guidance counseling services to provide independent, professional outlet for both teachers and students in addressing major areas of stress and classroom conflict.

Institutional standards of care in Juvenile Homes which specifically incorporate the following key measures to address the conditions supporting the prevalence of child abuse / corporal punishment in Homes need to be implemented as a priority:

Governance and Monitoring

- A standardised discipline code of conduct should be developed for all child carers in Homes and should be reinforced through on-going training and linkages with performance measurement of staff.
- Management Committees must be established in all Homes to ensure appropriate governance, oversight and transparency of Homes and together with civil society ensure a focus on prevention of child abuse.
- Mandatory development of individualised care plans, which incorporate input from social workers, probation officers, carers, parents and children regarding stress factors, trauma and behavioural linkages and feed into individual remedial/rehabilitative measures should be regularly monitored / appropriately shared with child carers.
- Ethical enquiry processes regarding abuse must be established for the protection of both children and staff and prevention of exploitation
- Configuration of Homes to allow small group care with each unit having primary care giver to promote family based care environment versus regimental correctional facility based, dormitory style arrangements.
- Parent and guardian involvement in Homes must be established as a cornerstone of Juvenile Homes with regular parent / guardian visitation, phone communication, home visits and involvement of parents / guardians in care plan development and participation in joint parent/child counseling.

Complaint Redressal

- All Juvenile Homes should establish a complaint mechanism for children where anonymity is preserved. A complaint box, (appropriately placed for both confidential child and parent complaints) should be accessed regularly by the Child Welfare Committee and Juvenile Justice Board members, who follow established redressal processes for complaint action management and forward copies of complaints and periodic action taken reports to the State CPCR and NCPCR.
- Assessment of Home specific segregation of children requirements to minimise risk factors for abuse
- Register of child abuse offenders in institutions to be maintained by Social Welfare/ Social justice departments to ensure barring from future employment in child facing roles.

Capacity development

- Child Rights Clubs, Bal Sabhas or Children's Committees must be established in every Juvenile Home to provide children with an opportunity to learn about their rights and responsibilities, develop mediation skills and participate in the operation of the Homes.
- Regular on-site training for child facing staff and carers including child rights, childcare and development, special needs and referral processes.
- All institutions should have mandatory in-house or access to professional counseling resources with regular individual and group level counseling services provision in Homes to handle emotional, socialisation and disciplinary problems.
- Counselors, psychologists and medical staff should ensure that they are alert to signs of physical /mental abuse during check-ups and counseling sessions and refer concerns to CWC and JJB
- All Homes should have access to dedicated, specialised rehabilitative resources and facilities for children with special needs including mandatory access to de-addiction centres.

THE STATE

There is a need to amend existing central and state laws and rules to bring them to conform to national and international rights commitments.

Detailed Recommendations of the Working Group to Banish Corporal Punishment

A. Statutory Measures

- During the discussions of the working group it was realized that the 'rules' devised under the 'state education acts' are more harmful than the act itself. There is an immediate need to amend existing central and state laws and rules to bring them to conform to national and international rights commitments.
- In the drafting of this document, it was realized that there exists no common, easily accessible repository of state educational rules, ordinances etc. Such a repository in the public domain, whether on a website or in a law / educational library, would make it possible for the public to periodically review the current statutory positions in respect of many child rights. All too often it is seen that a right conferred in the law can be diffused or denied in its rules. The status of laws and rules needs to be constantly monitored.
- A central legislation, in exercise of the concurrent status of education in the Constitution, could be considered.
- Alternately, could the Commission move the Supreme Court to declare a ban on Corporal punishments in all schools, hostels, and other institutions, educational or otherwise? The same order may also:
 - Require all existing statutes and rules to be audited and changed to conform to national and international rights commitments.
 - A date in the reasonable future may be set for the ban to come into effect – so as to offset backlash and to counter resistance.
 - Require that in the interim period, there should be a programme of:
 - nation wide publicity about the law
 - nation wide educational campaign challenging public misconceptions of corporal punishment
 - teacher training in positive discipline
 - enforcement of teacher pupil ratios; curbing of multi-grade teaching
 - 'Ahimsa wadi school' competitions
 - national survey to benchmark status of corporal punishment
 - Education of parents on lack of relationship between hitting and learning
 - Require amendment of acts and rules
 - to give voice to parents in management of schools
 - to make it the responsibility of the head of the school to protect children
 - Require activation of child help lines / letter envelopes

B. Institutional Mechanisms

Schools are identified as the main site where corporal punishment has assumed endemic proportions. Authoritative relationships between teachers and children, legitimized by the existing system of education are an extension of the adult hegemony over the child. Teachers and heads of schools work together to discipline children with the aim to cultivate desirable behaviour, inculcate morals and values and ensure academic performance - the unstated yet widely practiced aim of schooling.

Common sites of corporal punishment are schools, homes, destitute and juvenile homes, crèches, day care centres, aganwadis and balwadis, work places of children and non-formal centres of education. An appropriate institutional framework ought to create mechanisms for addressing the variety of adults (parents, care takers, balwadi workers) engaged with children apart from teachers and a redressal mechanism for children who are victims of corporal punishment.

– Reaching Out to Children:

- Universalising the Child Help Line Service – 1098 - in all States and districts for children to approach in the event of any measure of corporal punishment on the individual child or peer. This should be established as a telephone line and a PO Box number, both of which should have an identical number that would be easy for children to recall. The telephone service should be available toll-free from all telephone lines. This number should be widely displayed by the State Departments of Education in schools, institutes of education and offices and through an official communiqué to every concerned institution. Written announcements to this effect should be made at the time of admissions in all schools. The community radio can also be used for this purpose.
- Developing sensitivity towards children and exercising restraint in reprimanding children resorting to physical beating, can be achieved through a short daily activity during school assembly. This can take the form of singing select songs that express sensitivity towards children, reading news about children, celebrating an achievement of children or children reading a piece of poetry or thoughts.

– Provision in School Textbooks

- A precise statement on the 'rights of the child' along with the provision of a Child Help Line Service should be printed on the first page of every textbook that children use from Class IV onwards, so that it is easily accessible to any child.
- Social Science and Language textbooks can have a chapter devoted to the issue with available information on redressal mechanisms.

– Advocacy against Corporal Punishment

- Social advertising should be led by NCPCR in collaboration with NCERT, MHRD and State Education Departments.
- Institute annual events around this theme to be followed up with conventions and seminars amongst teachers/parents and institutes of teacher education such as BEd

colleges and DIETs. Schools and teachers can be selected for giving awards for creating alternative methods of disciplining children.

– School-Society Watch

- To support the mechanism for redressal available for children and to combat the problem amongst teachers and other adults, a dedicated group of young journalists can be established whose job would be to investigate and follow up reported cases of corporal punishment.
- This group of journalists should be from within the print and multi-media.
- A dedicated time on select TV channels can also be allocated for the reporting of such investigated cases. This will act as a society-watch mechanism that deters teachers and other adults from indulging in the physical beating of children.
- This mechanism can be suitably linked to available academic Research Institutions/NGOs/ University Departments (Education, Social Sciences, Social Work, Women's Studies) that can maintain a documentation of cases with critical reflections and commentary. Documents of this kind can be disseminated for use by researchers as well as for purposes of training during pre-service and in-service programmes of teacher education.

C. Activate Parents, PTA and VEC's to combat Corporal Punishment

The NCPCR shall prepare an information package aimed at sensitizing the various stakeholders, such as teachers, teacher training institutes, education bureaucracy, district administration, parents and children. This package may include:

- a. Rules and regulations on corporal punishment
- b. Ruling of the Delhi High Court on the issue
- c. Rights of a child under UNCRC
- d. Whom to contact for redressal of grievance in case of child subjected to corporal punishment

D. Campaign and Advocacy

The multi media package may consist of an album of multi-coloured illustrations in the form of exemplar ideas for posters, charts, calendars, advertisements, drawings, cartoons, comics, quizzes, with catchy phrases, slogans, quotations as well as some audio video spots for conveying messages against corporal punishment. A dummy album may be got prepared by an advertising agency and the ideas for preparing posters, charts, hoardings, calendars etc. can be drawn from that album. The ideas may be woven around.

1. Raising consciousness of parents and teachers about self defeating and negative consequences of corporal punishment and futility of its use.
2. Enabling reflection on, "use of corporal punishment as a deterrent" and looking for alternative ways of handling situations.
3. Advocating the need for refrain and management of anger, acts of violence, verbal aggression in day to day life as children emulate the adults and ultimately learn violence as a tool to control situations.

The advocacy material should not carry prescriptive messages rather aim at self-analysis and reflection.

Annexure:

(a) Working Group for 'Protection of Children against Violence and Corporal Punishment in Schools'

This working group comprised educationists, lawyers, social activists, members of teachers unions, doctors, bureaucrats, representatives of UNICEF and other NGOs. They were mandated to:

1. To review the Department of Education's guidelines/policy on corporal punishment.
2. To undertake in depth review of the existing positive practices of getting a feedback by the school management from children and their parents regarding punishment in schools and their efficacy.
3. To enlist opinions of school teachers and teacher unions, education bureaucracy, NGOs, and educationists on corporal punishment and their opinions on how to stop the practice.
4. To review existing legal framework/case law against corporal punishment.
5. To evolve a policy and strategies for stopping corporal punishment in schools in relation to the following:
 - a. campaign and advocacy;
 - b. institutional framework to prevent corporal punishment at all levels from the school, block, district state and national level;
 - c. involvement of PTAs, VECs, gram panchayats etc. to prevent corporal punishment;
 - d. Introducing processes to prevent corporal punishment and action taken by the education bureaucracy;
 - e. Policy/guidelines for prevention of corporal punishment;
 - f. Need for specific law on corporal punishment.

Members: Chetna Kohli (UNICEF), Dipa Dixit (Member, NCPCR), Kusum Jain (PFME), Prof. Nalini Juneja (NUEPA), Niranjan Singh (Joint Commissioner, Navodaya Vidyalaya Samiti), Prof. Poonam Batra (Central Institute of Education), P.S. Sharda (Lawyer), Dr. Salil Mehta, Dr. Srinivasan (Pediatrician), S. Eswaran (All India Primary Teacher's Federation), Suraj Kumar (White Lotus Trust) and Dr. Sushma Gulati (NCERT).

(b) Recommendations from the Chennai Public Hearing

The National Commission for the Protection of Child Rights (NCPCR) conducted a Public Hearing on “Corporal Punishment, all forms of Torture & Degrading Treatment, Sexual Abuse and neglect of Children in Schools and Hostels in Tamil Nadu” on 23rd January 2008, in Chennai. The Jury was dismayed to find that there were about 10 children who had committed suicide after being subjected to corporal punishment, and more than 8 children subjected to rape. Immediate steps need to be taken make the institutions more accountable for protecting children.

The hearing brought to light some very important issues which need to be addressed at the level of policy-formulation. We present a few recommendations for necessary action.

General Recommendations:

1. The Institution (school/hostel/childrens home) should be held responsible for the welfare of the children enrolled with it. In the case of any injury/ill-health/assault/death the institution will be held summarily responsible for the same, in the same manner as the police is held responsible for the inmates in the police stations/prisons etc.
2. The institution management shall pay compensation in the event of death/injury and hospitalization of any child, due to any incidence that happens in the institution.
3. In every case of violence against children the respective Education Department/Board has to conduct a parallel investigation. The PTA has to be involved in such an investigation.
4. In any case of child sexual abuse, if the parent withdraws the case, the Government must take cognizance of the offence and proceed without harming the child and taking strict action against the accused.
5. Whenever a child has made a statement of discrimination, a case needs to be booked under the SC/ST (POA) Act.
6. In cases of corporal punishment, the Education Department/Board shall conduct a social audit on corporal punishment with the children.
7. The Child Welfare Committees in each district have to be supported and strengthened to protect children’s welfare.

In case of Child's Death or (Attempt to) Suicide, and Hospitalization:

8. Every case of suicide shall be treated as 'abetment of suicide', and the management of the institution will be held accountable.
9. It should be noted that an 'attempt to suicide' by a child cannot be registered as an 'attempt to suicide' under law, as it would be doubly victimizing the child.
10. In case of suicide/sexual harassment/hospitalization resulting due to the action of a teacher(s), the accused shall be suspended pending enquiry.
11. Whenever a child has been admitted to a hospital with suspicious injury/ill-health, the Hospital must record a medico-legal case; and record the child's statement.
12. The Education Department or SWJD shall devise protocols to follow whenever a child takes ill in any hostel, such as how will the child be transported to the hospital (make budgetary provisions), will parents be provided monetary support to travel to the school and take the child home etc.

Private Institutions

There were many cases of child rights violations in private hostels and schools presented in the Hearing. The Commission recommends that the Government should constitute a committee to review:

13. Licensing procedures of private child care/educational institutions.
14. Institute procedures of regulation and monitoring of these private institutions.

Through this public hearing the Jury felt that there is a greater emphasis on protecting institutions over protecting children. It must be understood that we can protect institutions only by protecting children and their rights.

(c) Short notes on corporal punishment and verbal criticisms

Spanking/slapping/smacking/hitting¹²

Sometimes parents think that slapping a child's hand, spanking her bottom or hitting her with a switch will teach her an important lesson. Actually, what physical punishment teaches children is that: we communicate important things through hitting hitting is an acceptable response to anger the people who they depend on to protect them will hurt them they should fear their parents, rather than trusting them to help and to teach their home is an unsafe place for learning and exploration.

We need to think about what we want to teach our children in the long term. If we want to teach them to be non-violent, we must show them how to be non-violent. If we want to teach them how to stay safe, we need to explain to them and show them how to do this. Think about the effect that being hit has on adults. When we are hit, we feel humiliated. We don't feel motivated to please the person who has hit us; we feel resentment and fear. We might even feel like getting even. Hitting children harms our relationships with them. It doesn't give them the information they need to make decisions. And it doesn't increase their respect for us.

Criticism¹³

Sometimes parents try to correct their children by telling them that they are bad, rude, clumsy, immature, or incompetent. When children hear such criticism, they feel rejected and they feel like failures. If they see themselves as bad, they are more likely to do things that we think are bad. If they see themselves as incompetent, they are less likely to try to master new skills. Children are learners. They depend on us to build their knowledge and their skills. They need our encouragement and support.

Children with high self-esteem are more successful because they are willing to try. They are happier because they feel good about their abilities to cope with failure. They have better relationships with their parents because they know their parents believe in them. Parents can do a lot to build their children's self-esteem. They can recognize their children's efforts, even if they're not perfect appreciate their children's desire to help support their children when they fail and encourage them to keep trying tell their children all the things that make them special.

We all thrive on encouragement. Replacing criticism with encouragement can have a powerful effect on your child.

¹² Joan Durrant

¹³ Ibid