

राजस्थान सरकार
निदेशालय बाल अधिकारिता

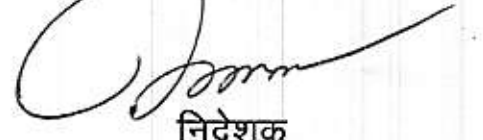
जी 3/1 अम्बेडकर भवन विस्तार, 22 गोदाम पुलिया के पास, जयपुर

क्रमांक: एफ 14(2)0 आई.सी.पी.एस./नि.बा.अ./सान्याअवि/13/14658

जयपुर दिनांक: 23.07.13

आदेश

किशोर न्याय (बालकों की देखरेख एवं संरक्षण) अधिनियम 2000 एवं राजस्थान किशोर न्याय (बालकों की देखरेख एवं संरक्षण) नियम 2011 के अन्तर्गत संस्थागत देखभाल में शारीरिक दण्ड एवं मानसिक प्रताड़ना की रोकथाम हेतु विस्तृत दिशा निर्देशों (संलग्न) को तुरन्त प्रभाव से लागू किया जाता है।



निदेशक
बाल अधिकारिता

क्रमांक: एफ 14(2)0 आई.सी.पी.एस./नि.बा.अ./सान्याअवि/13/14659-909
प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु:-

जयपुर दिनांक: 23.07.13

1. अतिरिक्त मुख्य सचिव, महामहिम राज्यपाल महोदय, राजस्थान।
2. प्रमुख सचिव, माननीय मुख्यमंत्री महोदय, राजस्थान।
3. निजी सचिव, माननीय मंत्री महोदय, सान्याअवि., राज. जयपुर।
4. निजी सचिव, मुख्य सचिव, राजस्थान सरकार।
5. निजी सचिव, अतिरिक्त मुख्य सचिव/प्रमुख शासन सचिव सामाजिक न्याय एवं अधिकारिता/बाल अधिकारिता/ग्रामीण विकास एवं पंचायतीराज/चिकित्सा एवं स्वास्थ्य/गृह/महिला एवं बाल विकास/विधि विभाग/शिक्षा/परिवहन/अल्पसंख्यक मामलात/श्रम/जनजातीय क्षेत्रीय विकास विभाग राजस्थान सरकार।
6. मुख्य कार्यकारी अधिकारी, राजस्थान स्टेट चाइल्ड प्रोटेक्शन सोसायटी, जयपुर।
7. सदस्य सचिव, राजस्थान राज्य बाल अधिकार संरक्षण आयोग, 2, जल पथ, गांधी नगर, जयपुर।
8. समस्त जिला कलक्टर एवं अध्यक्ष, जिला बाल संरक्षण इकाई।
9. समस्त सहायक निदेशक, जिला बाल संरक्षण इकाई।
10. समस्त पुलिस अधीक्षक/उपयुक्त.....।
11. समस्त अध्यक्ष बाल कल्याण समिति.....।
12. समस्त प्रिंसीपल मजिस्ट्रेट, किशोर न्याय बोर्ड.....।
13. समस्त अधीक्षक/व्यवस्थापक, राजकीय सम्प्रेक्षण एवं बाल गृह/गैर राजकीय बाल गृह.....।
14. रक्षित पत्रावली।



निदेशक
बाल अधिकारिता

**Guidelines for Eliminating Corporal Punishment in
Institutional Care**

Rajasthan

2013

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PREFACE

Punishing children is regarded as normal and acceptable in all settings – whether in the Educational Institution, hostels, institutions meant for care and protection or family. It is often considered necessary to discipline children as competent and responsible individuals. The spirit of learning for a child is thereby constrained behind the bars of punishment. Thus the need of the hour is to break the image of discipline and its association with punishment. To eliminate corporal punishment in schools completely NCPCR has developed guidelines to be adopted by all states.

Keeping in mind the alarming rate of complaints in Rajasthan, RSCPCR, has decided to adapt the NCPCR guidelines and further extend them to all sectors where children are vulnerable to corporal punishment viz. Schools, residential institutions, hostels and Institutional care.

With the help of a drafting committee and reference from the Guidelines given by NCPCR, the commission has developed the following guidelines. These guidelines will help stakeholders and officials' in-charge to understand the ill effects of corporal punishment on one hand and understand the need to use Positive discipline on the other. The document also looks at strengthening the redressal mechanisms defining the responsibilities of the State Government and Civil Societies .

1. INTRODUCTION

- 1.1 Children are subject to corporal punishment in schools; institutions meant for care and protection of children such as hostels, orphanages, *ashram shalas*, and children homes etc. A study on 'Child Abuse in India', by the Ministry of Women and Child Development, Government of India 2007, found that in Rajasthan 51.2% of children have agreed being given physical punishment in one or more situations. Sexual abuse among children in the State is reported as 52.50% among boys and 47.50% among girls in various settings. Rajasthan notices 58.8% boys and 41.1% girls who feel mentally harassment through humiliation or comparison i.e. by being shouted at or spoken rudely to or abusive language used when addressing them. Among children in institutional setting Boys – 57.14%; Girls – 42.56% have been mentally abused. A lot of indicators of mental harassment are culturally accepted ways to discipline a child and therefore not perceived as an abuse by adults, parents, teachers, caregivers.¹
- 1.2 Recently media has taken keen interest in highlighting and exposing cases of corporal punishment in educational institutions and institutional care. The increase in reporting has created an alarm in the state of Rajasthan. The death of nine-year-old Piya Chaudhary due to cancer arising out of injuries inflicted on her head by a school teacher in 2010 has triggered a fresh debate on corporal punishment.
- 1.3 Punishing children is often considered as a tool to discipline children and bringing them under the control of the authority of an adult. So pervasive is the justification of corporal punishment that a child may not think her/his rights have been infringed upon. Even if the punishment hurts, the child does not feel the importance of reporting the incident.
- 1.4 Thus Children grow up within a system of values; depending on their life experiences which include punishments, episodes of violence etc. This in long term affects their personality as a whole. Henceforth the need is of an approach that is nonviolent, respects the inherent dignity of the child, and seeks to find a solution based on child's evolving capacities.
- 1.5 The ignorance about positive discipline is evident with the number of cases on corporal punishments in various institutions. The Children and adults need to understand that they have choices or options that are alternatives to misbehavior. Positive Discipline espouses the use of a "wheel of choice" where several alternatives are posted on a circle. Children and adults are encouraged to look at the wheel of choice for options that may be chosen. Hence following guidelines have been developed to recognize Positive Discipline as a tool to regulate the behaviors of children.

¹ 'Child Abuse in India – 2007', by the Ministry of Women and Child Development, Government of India,

2 DEFINITION OF CORPORAL PUNISHMENT

2.1 The United Nations Committee on the Rights of the Child defines corporal punishment as follows: The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices, denying them food during the lunch time etc). In the view of the Committee, corporal punishment is invariably degrading.

In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.² [Emphasis added]

2.2 The Committee also notes that corporal punishment can be inflicted in many contexts: Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems – both as a sentence of the courts and as a punishment within penal and other institutions – in situations of child labor, and in the community.

This definition is a useful benchmark because it emphasizes the various physical forms that corporal punishment might take, and establishes that this full spectrum of physical punishment – even acts that many consider ‘mild’ constitute corporal punishment. There is no threshold below which physical force against a child is acceptable.

2.3 All forms of corporal punishment including sexual abuse are harmful to the child. Currently, there is no statutory definition of corporal punishment of children in Indian law. Definition of corporal punishment can at best only be indicative. In keeping with the provisions of the RTE Act, 2009, corporal punishment could be classified as physical punishment, mental harassment and discrimination.³

The guideline made by RSCPCR follows the following definitions:

² Committee on the Rights of the Child, General Comment No. 8, ‘The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’ (Arts. 19; 28, Para 2; and 37, inter alia) (42nd session, 2006), UN Doc. CRC/C/GC/8 (2006).

³ Guidelines for eliminating Corporal punishment in schools – National Commission for Protection of Child Rights (NCPDR)

2.4 Physical punishment is understood as any action that causes pain, hurt/injury and discomfort to a child, however light. Examples of physical punishment (Educational Institutions, Institutional care, domestic setting and alternative care) include but are not restricted to the following:

2.4.1 Causing physical harm to children by hitting, kicking, scratching, pinching, biting, pulling the hair, boxing ears, smacking, slapping, spanking or with any implement (cane, stick, shoe, chalk, dusters, belt, whip, giving electric shock etc.);

2.4.2 Making children assume an uncomfortable position (standing on bench, standing against the wall in a chair-like position, standing with schoolbag on head, holding ears through legs, kneeling etc.);

2.4.3 Forced ingestion of anything (for example: washing soap, mud, chalk, hot spices, denying them food during the lunch time etc.);

2.4.4 Detention in the classroom, library, toilet or any closed space in the educational institutions, institutional care.

2.4.5 Asking a child to perform some work/task which is not physically appropriate for that particular age.

2.5 Sexual Offence - Sexual Abuse is any incident of sexual contact involving a child that is inflicted or allowed to be inflicted by the person responsible for the child's care. Sexual Offence according to the Protection of Children from Sexual Offences Act, 2012 and Indian Penal Code includes, but is not limited to, the following:

- a. Penetrative Sexual Assault
- b. Aggravated Penetrative Sexual Assault
- c. Sexual Assault
- d. Aggravated Sexual Assault
- e. Sexual Harassment
- f. Using child for Pornographic purposes
- g. Voyeurism
- h. Stalking

2.6 Mental harassment is understood as any non-physical treatment that is detrimental to the academic and psychological well-being of a child. It includes but is not restricted to the following:

2.6.1 Sarcasm that hurts or lowers the child's dignity;

2.6.2 Calling names and scolding using humiliating adjectives, intimidation; mild harassment as keeping a stick on the table by the teacher, showing gestures indicating anger, etc

2.6.3 Using derogatory remarks for the child, including pinning of slogans; remarks on the

child's physical disability/impairment (Physical or Mental or Visual or Hearing or Speech including stammering or speech articulation disorder)

2.6.4 Ridiculing the child with regard to her background or status or parental occupation or caste or disability;

2.6.5 Ridiculing the child with regard to her health status or that of the family – especially HIV/AIDS and tuberculosis;

2.6.6 Belittling a child in the classroom due to his/her inability to meet the teacher's expectations of academic achievement;

2.6.7 Punishing or disciplining a child not recognizing that most children who perform poorly in academics are actually children with special needs. Such slow learners children could have conditions like learning disability, attention deficit hyperactive disorder (ADHD), mild developmental delays etc. Using punitive measures to correct these exceptional children and even labeling them as difficult who may not only fare poorly cognitively, but also may pose behavior challenge in classroom management ;

2.6.8 'Shaming' the child by comparing her to peers in order to motivate and making child improve her performance;

2.6.9 Ridiculing a child with developmental problems such as learning difficulty or a speech disorder, such as, stammering or speech articulation disorder.

2.6.10 Compelling the child and parents for tuitions and extra studies by the teachers

2.6.11 pressurizing the child to choose any particular subject stream for her education

2.6.12 Denying school education if the child is not performing in academics or any such reason/ sending the child back home for any reason or any other action detrimental to the development of the child.

2.6.13 Pressurizing child to pay fine in case he/she does not speak in English, completion of homework etc

2.7 Discrimination is understood as prejudiced views and behavior towards any child because of her/his caste/gender, occupation or region, religion and non-payment of fees or for being a student admitted under the 25% reservation to disadvantaged groups or weaker sections of society under the RTE, 2009. It can be latent; manifest; open or subtle. It includes but is not restricted to the following:

2.7.1 Bringing social attitudes and prejudices of the community into the school by using belittling remarks against a specific social group or gender or ability/disability;

2.7.2 Assigning different duties and seating in schools based on caste, community or gender prejudices (for example, cleaning of toilets assigned by caste; task of making tea assigned by gender); admission through 25% reserved seats under the RTE; or non-payment of any prescribed fees;

2.7.3 Commenting on academic ability based on caste or community prejudices; physical or any other disability/impairment as not allowing them to participate in sports activity etc

2.7.4 Denying mid-day meal or library books or uniforms or sports facilities to a child or group of children based on caste, community, religion or gender;

2.8 Deliberate/wanton neglect - is the failure to provide for the child's basic needs. Neglect can be physical, educational, or emotional.

2.8.1 Physical neglect can include not providing adequate food or clothing, appropriate medical care, supervision, or proper weather protection (heat or cold) and abandonment.

2.8.2 Educational neglect includes failure to provide appropriate schooling or special educational needs, allowing excessive truancies, avoidance in class, no response or support to the curiosity instinct of the child

2.8.3 Psychological neglect includes the lack of any emotional support and love.

2.8.4 Neglect also indicates disregard because of the child's gender, caste, class, religion performance, disability etc

2.8.5 Denying the child opportunity/time for recreational activities in educational institutions, institutional care or homes.

2.9 Institutions – According to the Juvenile Justice (need of care and Protection) Act, 2000 means an observation home, or a special home, or a children's home or a shelter home set up, certified or recognized and registered under the Act respectively. These could include both governmental and non governmental and any other institution meant for care and protection of children as drop in center, short stay home, open shelter etc.

3. CONSEQUENCES OF CORPORAL PUNISHMENT (SHORT AND LONG-TERM)

3.1 "There is no ambiguity: 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them." [CRC, General Comment 8, and p.6] the reason for this comment is well established while discussing the consequences of corporal punishment. The consequences can be divided into two aspects as short term consequences and long term consequences –

3.2 Short term Consequences⁴ - repeated corporal punishment of any kind in any situation as in schools, hotels, residential schools, and institutional care, domestic or alternate settings leads to several physical and behavioral patterns. The short term consequences includes difficulty in sleeping, fatigue, feelings of sadness and worthlessness, suicidal thoughts, anxiety episodes, increased anger with feelings of resentment and outbursts of aggression, deteriorating peer relationships, difficulty with concentration, lowered school achievement, antisocial behavior, intense dislike of authority, psycho somatic complaints, tendency for school avoidance and school phobia, running away from hostels, institutional cares', domestic settings or foster care etc.

3.3 Long Term Consequences⁵ - the effects are more evident in long term as adverse physical, psychological and educational outcomes – including increased aggressive and destructive behavior, increased disruptive behavior, vandalism, poor attention span, low self-esteem, anxiety, somatic complaints, depression, suicide and retaliation against parents, teachers, care givers, wardens or people in charge – that emotionally scar the children for life. Children subjected to punishment prefer aggressive conflict resolution strategies with peers and siblings and they do not consider it a violation of their rights. Children subjected to corporal punishment develop predisposition to be violent in their area of control and the subject are mostly their own children and spouse, and hence the vicious cycle of violence and debilitated self growth continues for generations.

3.2.1 (a)The effects of various forms of mental harassment or psychological maltreatment have shown that combinations of verbal abuse and emotional neglect tend to produce the most powerfully negative outcomes; (b) psychological maltreatment is a better predictor of detrimental developmental outcomes for young children than the severity of physical injury experienced by them; (c) it is an indicator most related to behavior problems for children and adolescents; and (d) psychological abuse is a stronger predictor of both depression and low self-esteem than physical abuse.

3.2.2 A chronic pattern of psychological maltreatment destroys a child's sense of self and personal safety.

3.2.3 Subtle and overt forms of discrimination are also known to have a negative effect on the emotional and intellectual health of children.

⁴ Dubanoski RA, Inaba M, Gerkewicz BA: Corporal punishment in schools: Myths, problems, and alternatives. Child Abuse Negl 1983; 7:271-8.

⁵ Guidelines for eliminating Corporal punishment in schools – National Commission for Protection of Child Rights (NCPCR)

4. POSITIVE DISCIPLINE - SOME GUIDELINES FOR AFFIRMATIVE ACTION IN INSTITUTIONAL CARE

4.1 In Institutional Care (includes children homes, observation homes, special homes etc. both governmental and non governmental)

Institutional standards of care as defined in Juvenile Justice (Care and Protection of Children) Act, 2000 and Integrated Child Protection Scheme, 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:

a. The minimum standards of care and protection should be provided to the children residing under the institutional care.

b. Children's Committees — The Rule 56 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states on establishing Children's Committees. The details of the committee are –

(1) Officer-in-Charge (Superintendent of Home) of every institution for juveniles or children shall facilitate the setting up of Children's Committees for three different age groups of children, viz. 6-10 years, 11-15 years and 16-18 years and these Children's Committees shall be constituted solely by children.

(2) Such Children's Committee shall be encouraged to participate in following activities:

- (a) Improvement of the condition of the institution;
- (b) Reviewing the standards of care being followed;
- (c) Preparing daily routine and diet scale;
- (D) Developing educational, vocational and recreation plans;
- (e) Supporting each other in managing crisis;
- (f) Reporting abuse and exploitation by peers and caregivers;
- (g) Creative expression of their views through wall papers or newsletters or paintings or music or theater;
- (h) Management of institution through the Management Committee.

(3) The Officer-in-Charge shall ensure that the Children's Committees meet every month and maintain a register for recording its activities and proceedings, and place it before the Management Committee in their monthly meetings.

(4) The Officer-in-Charge shall ensure that the Children's Committees are provided with essential support and materials including stationary, space and guidance for effective functioning.

(5) The Officer-in-Charge shall, as far as possible, seek assistance from local voluntary organization or child participation experts for the setting up and functioning of the Children's Committees.

(6) The local voluntary organization or child participation expert shall support the Children's Committees in the following:

(a) Selecting their leaders;

(b) Conducting the monthly meetings;

(c) Developing rules for the functioning of Children's Committees and following it;

(d) Maintaining records and Children's Suggestion Book and other relevant documents; and

(e) Any other innovative activity.

(7) The Management Committee shall seek a report from the Officer-in-Charge on the setting up and functioning of the Children's Committees, review these reports in their monthly meetings and take necessary action where required.

b. Facilitating the age-wise separation of children: Harsh ragging and physical, sexual abuse by older children are found to be the most serious forms of corporal punishment at the Homes. Thus age-wise separation of boys/girls in homes should be done to curb the incidents. Active supervision during bed and bath times can be considered.

c. Staff and Children Interaction: There is a need to increase the Staff and Children interaction in Institutional care. The Children Committee with the help of the voluntary organizations should organize for meetings for the interaction.

d. Role of Counselors – The staff and children can take help from the counselors in the Juvenile guidance bureau. They can act as a helping hand to the staff in dealing with difficult children through therapy and can act as a link between the staff and children

e. Governance and Monitoring

- Every Home or NGO working on the protection issues should have a Child Protection Policy, which should be guiding document during thee intervention
- A standardized discipline code of conduct should be developed for all child care takers in Homes and should be reinforced through on-going training and linkages with performance measurement of staff.
- Management Committees must be strengthened/activated 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 and need to monitor

- Mandatory development of individualized care plans, which incorporate input from social workers, probation officers, care takers, parents and children regarding stress factors, trauma and behavioral linkages and feed into individual remedial/rehabilitative measures should be regularly monitored / appropriately shared with child care takers
- 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.

e. Management Committee: The Rule 55 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states the establishment of management committees with specific duties.

- Every institution shall have a Management Committee for the management of the institution and monitoring the progress of every juvenile and child.
- In order to ensure proper care and treatment as per the individual care plans, a juvenile or child shall be grouped on the basis of age, nature of offence or kind of care required, physical and mental health and length of stay order.
- The Management Committee should meet every month and some of the issues to consider and review are —
 - vocational training and opportunities for employment;
 - education and life skills development programmes;
 - social adjustment, recreation, group work activities, guidance and counseling;
 - review of progress, adjustment and modification of residential programmes to the needs of the juveniles and children;
 - daily routine;

f. Inspection Committees: The Rule 63 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states the establishment of State, District or City level inspection committees with specific duties.

- The inspection committees shall visit and oversee the conditions in the institutions and appropriateness of the processes for safety, well being and permanence, review the standards of care and protection being followed by the institutions, look out for any incidence of violation of child rights, look into the functioning of the Management Committee and Children's Committee set up under rules 55 and 56 of these rules and give appropriate directions.
- The team shall also make suggestions for improvement and development of the institution.

5. LEGAL PROVISIONS

5.1 Corporal punishment amounts to abuse and militates against the freedom and dignity of a child. It also interferes with a child's right to education because fear of corporal punishment makes children more likely to avoid school or to drop out altogether. Hence, corporal punishment is a breach to child's right to life with dignity. The United Nations Convention of Rights for Child clearly states in Article 19(1) of the Convention, which requires States to– *“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.”* India being a signatory of the UNCRC compliments the aforesaid with some constitutional provisions to a child as –

- a. Article 21 of the Constitution of India which protects the right to life and dignity includes the right to education for children up to 14 years of age⁶...
- b. Article 21A of the Constitution provides that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” This fundamental right has been actualized with the enactment of Right of Children to Free and Compulsory Education Act, 2009.
- c. Article 39(e) directs the State to work progressively to ensure that “... the tender age of children are not abused”.
- d. Article 39(f) directs the State to work progressively to ensure that “children are given 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.”

5.2 The Supreme Court order (Unnikrishnan v. State of Andhra Pradesh, (1993) 1 SCC 645; M.C. Mehta v. State of Tamil Nadu & Ors, (1996) 6 SCC 756) on 01 December 2000, 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”.

5.3 National Policy on Education, 1986 states that “corporal punishment will be firmly excluded from educational systems”. (Section 5.6)

5.4 The National Charter for Children 2003 recognizes a child's right to protection against corporal punishment. (Article 9 (a))

5.5 The Right of Children to Free and Compulsory Education Act, 2009 prohibits physical punishment and mental harassment to the child.

The Act states:

(1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such persons. The enactment of the new legislation is the first step towards the universal prohibition of corporal punishment in schools and other educational institutions.

5.6 National Commission for Protection of Child Rights recognizes Corporal punishment as an offense and has issued guidelines to eliminate it from schools.

5.7 Central Board of Secondary Education issued a letter to all the Head's of Institutions dated 7th July 2002, that no child will be subjected to any kind of corporal punishment at any point of the schooling process. Further schools should adopt methods of positive discipline.

5.8 Government of Rajasthan-

- The State Child Policy, mentions adoption of special measures to eliminate discrimination against children on the grounds of birth, sex, disability, religion, caste, creed or socio – economic status and ensure equal access to education and basic social services.
- The State Girl Child Policy, 2013, mentions in context of girls that elimination of all kinds of social discrimination in teaching, learning methods.

Laws that Protect Children and prosecute offenders

5.9 The Juvenile Justice (Care and Protection of Children) Act (2000, amended 2006, 2011) provides punishment for cruelty to juveniles or children both in and beyond childcare institutions. The Act makes no exceptions and intends to punish cruelty by those in authority; it applies equally to parents, guardians and teachers

Legal provisions under the Juvenile Justice (C&P) Act, 2000			
Section	Offence	Punishment	Onus
23	Assault, abandonment, exposure or willfully neglect of a juvenile or a child causing unnecessary mental or physical suffering	Imprisonment for 6 months and /or fine	Any one can report to Police or CWC
24	Forceful employment or Beggary	Imprisonment for 3 years and fine	
25	Provide intoxicating liquor or any narcotic drug or psychotropic substance	Imprisonment for 3 years and fine	
26	Keep in Hazardous employment or bondage	Imprisonment for 3 years and fine	
Source : Juvenile Justice (Care and Protection of Children) Act (2000, amended 2006, 2011)			

5.10 The Indian Penal Code also provides for specific legal provisions which can be used for crimes of corporal punishment as indicated in Table 2. In order to ensure punishment of offenders an appropriate complaint must be made at the nearest police station which must file an FIR quoting the relevant sections of the Indian Penal Code.

Legal provisions under the Indian Penal code			
Section	Offence	Punishment	Onus
305	Abetment of suicide committed by a child	Death or imprisonment for life or imprisonment for life and fine	Any one can report to Police or CWC
323	Voluntarily causing hurt	Imprisonment for 1 year or fine	
325	Voluntarily causing grievous hurt	Imprisonment for 7 years and fine	
326 A	Voluntarily causing hurt by dangerous weapons or means	Imprisonment for not less than ten years but which may extend to imprisonment for life and fine of 10 lakh rupees.	

326 B	Voluntarily throwing or attempting to throw acid.	Imprisonment for five years but which may extend to seven years and fine.
352	Assault or use of criminal force otherwise than a grave provocation	Imprisonment for 3 months or fine or fine of Rs. 500, or both
354	Outraging the modesty of a women or a girl	Imprisonment of 1 year which may extend to 5 years, and with fine.
354A	(1) Sexual harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favors. (2) Sexual harassment of the nature of making sexually-colored remark or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.	Imprisonment which may extend to 5 years or with fine or with both. Imprisonment which may extend to 1 year or with fine or with both.
354B	Assault or use of criminal force to woman with intent to disrobe.	Imprisonment of not less than 3 years but which may extend to 7 years and with fine.
354C	Voyeurism	Imprisonment of not less than 1 year but which may extend to 3 years and with fine for first conviction. Imprisonment of not less than 3 year but which may extend to 7 years and with fine for second or subsequent conviction.
354D	Stalking	Imprisonment of not less than 1 year but which may extend to 3 years and with fine.
376	(1) Sexual assault (2) Sexual assault by a police officer or a public servant or Member of armed forces or a person being on the management or on the staff of a jail, remand home or other place of custody or women's or children's institution or by a person on the management or on	Rigorous imprisonment of not less than 7 years but which may extend to imprisonment for life and with fine. Rigorous imprisonment of not less than 10 years but which may extend to imprisonment for life and with fine.

	the staff of a hospital, and sexual assault committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted	
376A	Person committing an offence of sexual assault and inflicting injury which causes death or causes the person to be in a persistent vegetative state	Rigorous imprisonment of not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life or with death.
376C	Sexual intercourse by a person in authority	Rigorous imprisonment for not less than 5 years but which may extend to 10 years and with fine.
376D	Sexual assault by gang	Rigorous imprisonment for not less than 20 years but which may extend to imprisonment for life which shall mean the remainder of that person's natural life and compensation to the victim.
376E	Repeat offenders	Imprisonment for life which shall mean the remainder of that person's natural life or with death.
506	Criminal intimidation	Imprisonment for 2 years or fine if it leads to suicide imprisonment for life
509	Word, gesture or act intended to insult the modesty of a woman	Imprisonment for 2 years or fine or both
Source - Indian Penal Code; The Criminal Law (Amendment) Ordinance, 2013		

5.11 Right to Education Act, 2009 - The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which has come into force with effect from 1 April 2010, prohibits 'physical punishment' and 'mental harassment'.

Sections 8 and 9 of the RTE Act place a duty on the appropriate Government and the local authority to "ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds".

Legal provisions under the Right to Education Act, 2009		
Section	Offence	Punishment
17 (1), (2)	Prohibition of physical punishment or mental harassment to child	Liable to disciplinary action under the service rules applicable to such person
Source - Right to Education Act, 2009		

5.12 In relevant cases, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be used to lodge a complaint. Most offenses are non-bailable and carry stiff minimum imprisonment.

Legal provisions under the Sc/St (Prevention of Atrocities) Act, 1989		
Section	Offence	Punishment
3 (1)(i)	Forcible consumption of any inedible or obnoxious substance	Imprisonment for not less than 6 months and fine
(ii)	Forcible removal of clothes and parade naked or any similar act which is derogatory to human dignity	
(vi)	Forcible beggary or bonded labor	Imprisonment for not less than 6 months and fine
(x)	Intention insults or intimidation with the intent to humiliate	
(xi) and (xii)	Assault or use of force and sexual abuse	Imprisonment for not less than 6 months and fine or imprisonment for life with fine or death penalty
3 (2)(i) and ii)	Fabrication of evidence	
Source – Sc/St (Prevention of Atrocities) Act, 1989		

5.13 Protection of Civil Rights act 1955 - Various provisions of the Protection of Civil Rights Act, 1955 can be used to prosecute a person/ manager/trustee as well as warrant resumption or suspension of grants made by the Government to the educational institution or hostel on the ground of untouchability.

5.14 Protection of Children from Sexual Offence (POCSO) Act, 2012 - is gender neutral and protects children (below eighteen years) from any kind sexual abuse, harassment or assault.

Legal provisions under the Protection of Children from Sexual Offence Act, 2012			Onus
Section	Offence	Punishment	Any one can report to Police or CWC
11	Sexual Harassment	Imprisonment up to 3 years and also liable to fine	
7	Sexual Assault	Not less than 3 years but may extend to 5 years and also liable to fine	
3	Penetrative Sexual Assault	Not less than 7 years, may extend to imprisonment for life and also liable to fine	
9	Aggravated Sexual Assault	Not less than 5 years, may extend to 7 years and also liable to fine	
5	Aggravated Penetrative Sexual Assault	Rigorous Imprisonment for not less than 10 years, may extend to imprisonment for life, also liable to fine	
14 (1)	Using a child for pornographic purposes	Imprisonment Up to 5 years and fine	
	Using a child for pornographic purposes, after having been convicted previously for same offence	Imprisonment Up to 7 years and fine	
14 (2)	Penetrative Sexual Assault while using a child for pornographic purposes	Not less than 10 years with fine and may extend to life imprisonment	
14 (3)	Aggravated Penetrative Sexual Assault while using a child for pornographic purposes	Rigorous imprisonment for life with fine	
14 (4)	Sexual Assault while using a child for pornographic purposes	Not less than 6 years with fine and may extend to 8 years	
14(5)	Aggravated Sexual Assault while using a child for pornographic purposes	Not less than 8 years with fine and may extend to 10 years	
15	Storing, for commercial purpose, any pornographic material in any form involving a child	Imprisonment Up to 3 years or fine or both	
18	Attempting to commit any offence under this Act	One half of the longest term of imprisonment provided for that offence with fine and may extend to one half of the imprisonment for life	
21(1)	Failure to report or record the commission of an	Imprisonment Up to 6 months or fine or both	

	offence	
22(1)	Making false complaint or providing false information against any person, solely with the intention to humiliate, extort, threaten or defame such person	Imprisonment Up to 6 months or fine or both
22(3)	Making false complaint or providing false information against a child for victimising a child under any offence under this Act	Imprisonment up to 1 year or fine or both
Source - Protection of Children from Sexual Offence Act, 2012		

6. REDRESSAL MECHANISM

6.1 Institutional Care

It is in this context, that the onus of responsibility in safeguarding children from punishment lies with the head of the institution, management and administration at all levels

Internal Mechanism

- a. All the stakeholders in reference to Institutional Care need to understand that abuse and exploitation are part of corporal punishment thus strict actions needs to be taken against them.
- b. Each staff member to sign a **Child Protection Policy/Code of conduct Declaration** which will include all offences and punishment in regards to Corporal Punishment
- c. **Child Protection Policy/ Code of Conduct Declaration of the Institutional Care**
 - Every Institute providing institutional care to children need to develop their child protection policy- with code of conduct and other procedures as part of their annual plans by engaging children and Management committee. The policy need to be revived and modified every year.
- d. **The Rule 60 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states on the several actions that should be taken incase of abuse and exploitation of the juvenile or child - In the event of any physical, sexual or emotional abuse, including neglect of juveniles and children in an institution by those responsible for care and protection, the following action shall be taken:**
 - the incidence of abuse and exploitation must be reported by any staff member of the institution immediately to the Officer-in-Charge on receiving such information;
 - when an allegation of physical, sexual or emotional abuse comes to the knowledge of the Officer-in-Charge, a report shall be placed before the Juvenile Justice Board or Child welfare Committee, who in turn, shall order for special investigation;
 - the Juvenile Justice Board or Child Welfare Committee shall direct the local Police Station or Special Juvenile Police Unit to register a case, take due cognizance of such occurrences and conduct necessary investigations;

- the Juvenile Justice Board or Child Welfare Committee shall take necessary steps to ensure completion of all inquiry and provide legal aid as well as counselling to the juvenile or child victim;
- the Juvenile Justice Board or Child Welfare Committee shall transfer such a juvenile or child to another institution or place of safety or fit person;
- the Officer-in-charge of the institution shall also inform the Chairperson of the Management Committee and place a copy of the report of the incident and subsequent action taken before the management committee in its next meeting;
- in the event of any other crime committed in respect of juveniles or children in institutions, the Board or Committee shall take cognizance and arrange for necessary investigation to be carried out by the local Police Station or Special Juvenile Police Unit;
- The Juvenile Justice Board or Child Welfare Committee may consult Children's Committee set up in each institution to enquire into the fact of abuse and exploitation as well as seek assistance from relevant voluntary organizations, child rights experts, mental health experts or crisis intervention centres in dealing with matters of abuse and exploitation of juveniles or children in an institution.

e. Capacity Enhancement

- Regular on-site training for child facing staff and care takers 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, socialization and disciplinary problems.
- Counselors, psychologists and medical staff should ensure that they are alert to signs of corporal punishment as defined in the definitions during check-ups and counseling sessions and refer to the concerned department or agencies
- In house training of all the wardens and caretakers on issues related to child development and behavior modification of delinquents. The trainings should also include concept of corporal punishment and ill effects of it on children

- f. Performance Assessment** - As a part of the annual assessment process all the staff members should have a yearly appraisal where they have to justify actions and where they should be rewarded for their achievements. In case of regular reporting on Corporal punishment in the institution, appropriate action will be taken by the statutory body

- g. **Notice Board** - A notice-board in every institution must display the names and contact details of the Childline – 1098, Child Welfare Committee/Juvenile Justice Board members and District Child Protection Unit, Rajasthan State Child Protection Society, RSCPCR. The children could get in touch with the authority directly in case the other mechanisms fail.
- h. **Suggestion/Complaint box** - The Rule 55 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states the establishment of Suggestion Box with specific duties. The Management Committee shall set up a complaint and redress mechanism in every institution and a Children's Suggestion Box shall be installed in every institution at a place easily accessible to juveniles and children away from the office set up and closer to the residence or rooms or dormitories of the children.
- The Children's Suggestion Box, whose key shall remain in the custody of the Chairperson of the Management Committee, shall be checked every week by the Chairperson of the Management Committee or his representative from District Child Protection Unit, in the presence of the members of the Children's Committees.
 - If there is a problem or suggestion that requires immediate attention, the Chairperson of
 - The Management Committee shall call for an emergency meeting of the Management Committee to discuss and take necessary action.
 - The quorum for conducting the emergency meetings shall be five members, including two members of Children's Committees, Chairperson of the Management Committee, Member of Committee or the Board as the case may be and the Officer-in-Charge of the institution.
 - In the event of a serious allegation or complaint against the Officer-in-Charge of the institution, he shall not be part of the emergency meeting and another available member of the Management Committee shall be included in his place.
 - All suggestions received through the suggestion box and action taken as a result of the decisions made in the emergency meeting or action required to be taken shall be placed for discussion and review in the monthly meeting of the Management Committee.
 - A Children's Suggestion Book shall be maintained in every institution where the complaints and action taken by the Management Committee are duly recorded and such action and follow up shall be communicated to the Children's Committees after every monthly meeting of the Management Committee.

- The Board or Committee shall review the Children's Suggestion Book at least once in three months.

External Mechanism

- i. **Social Audit** - The Rule 64 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states that the state government will evaluate and annually review matters concerning to corporal punishment in terms of any form of abuse or neglect of children under institutional care, functioning of staff of the institutions in relation to corporal punishment. The social audit shall be carried out with support and involvement of organizations working in the field of mental health, child care and protection and autonomous bodies like the National Institute of Public Co-operation and Child Development, Indian Council for Child Welfare, Childline India Foundation, Central and State level Social Welfare Boards, School of Social Work and School of Law.
- j. **Child Welfare Committee and Juvenile Justice Board**
 - All Homes should have access to dedicated, specialized rehabilitative resources and facilities for children with special needs including mandatory access to de-addiction centers.
 - Regular visits to homes (atleast twice a month)
 - Interaction with children must be ensured during the visits
 - Ensuring that all children are receiving basic requirements without any discrimination and neglect.
 - Check the Complaints and suggestions of from the suggestion box and take appropriate action
- k. **Inspection Committee**
 - The Rule 63 of the Rajasthan Juvenile Justice (Care and protection of children) Rule 2011 states the establishment of Inspection Committees by the State Government. These committee shall constitute State, District or city level inspection committee on the recommendation of the Selection Committee constituted under rule 91of these rules.
 - The inspection committees shall visit and oversee the conditions in the institutions and appropriateness of the processes for safety, well being and permanence, review the standards of care and protection being followed by the institutions, look out for any incidence of violation of child rights, look into the functioning of the Management

Committee and Children's Committee set up under rules 55 and 56 of these rules and give appropriate directions.

- The team shall also make suggestions for improvement and development of the institution.
- The team shall consist of a minimum of five members with representation from the State Government, the Juvenile Justice Board or Child Welfare Committee, RSCPCR, medical and other experts, voluntary organizations and reputed social workers.
- The inspection shall be carried out at least once in every three months.
- The inspection visit shall be carried out by not less than three members.
- The team may visit the institutions either by prior intimation or make a surprise visit.
- The follow up action on the findings and suggestion of the children shall be taken by all concerned authorities.
- The action taken report, findings and suggestions from the Inspection Committee shall be sent to the State and District Child Protection Unit and the State Government.

6.2 Awareness Building - "Knowing one's Rights "- The awareness generation should be done by using appropriate target group specific IEC materials -

- All children should be informed through campaign 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.
- Wall paintings on Educational Institution, Anganwadi centers and government homes on the ill effects of corporal punishment and the important phone numbers of officials to report Corporal Punishment
- It would be strategic to develop and disseminate short films/video clips on the vulnerability of children and the responsibility of adults.
- Wall paintings on homes on the ill effects of corporal punishment and the important phone numbers of officials to report Corporal Punishment
- Developing small handy booklets on Rights of children, mechanisms for reporting etc.
- Involvement of Child Protection Units and Officers at various levels – Panchayat, Block, District and state under the integrated child protection Scheme to promote positive discipline and the various methods that could be used.

7. ROLE OF STATE GOVERNMENT AND CIVIL SOCIETY

7.1 The nodal departments for the implementation of the guidelines would be Directorate for Child Rights.

- Orientation of the staff on issues and consequences related to Child Rights so that in case the complaint is referred to the department the officers are sensitive to the issues.
- Child Protection Policy for each department/institution should be developed.
- Strict direction to appropriate authorities to ensure the implementation of the guidelines.
- Code of Conduct to be signed by all the staff in all levels of Educational institutions and residential institutions, all agencies under Institutional care of children.
- Encouraging the staff in various departments who have effectively addressed the issues on corporal punishment.
- Promotions of violence free Educational Institution and institutions.
- Appropriate orders to be issued and the guidelines to be circulated in educational institutions, institutional care and domestic and alternative settings
- The Children parliament should be established in all Educational Institution and the Education Department shall issue a detailed guideline on Children Parliament.
- Develop a cadre of master trainers on Positive discipline.
- Maintenance of register by Department of Education/Social Justice and Empowerment of violators with regard to practice of corporal punishment to enforce range of child protection measures in addition to the relevant legal actions. In case of Education Department this would include non-renewal of teacher appointments for serious/repeat offenders or subsequent school placements only with appropriate counseling processes/probationary measures etc.
- Appointment of qualified counselors in institutional care to provide help to the children and stakeholders.
- Consider establishment of mandatory in-school or 'visiting' psycho-social and career guidance counseling services to provide independent, professional outlet for both children and staff at the implementing levels.
- The incidents of corporal punishment can be an important aspect to renewal for private institutions.
- Commissioner, Directorate for Child Rights can be the nodal persons to monitor the implementation of the guidelines.
- The details and persons of contact of Commission, Childline and Child Welfare Committees should be painted on the walls of the Educational Institution.
- The Directorate for Child Rights to promotion research studies on child rights in Rajasthan.
- Orientation workshops for concerned officers on Corporal Punishment and Positive Discipline.

Role of Civil Society/NGO's

- The NGO's could act as a resource support to the effective functioning of the children Parliament/Children Committees.
- Support departments in developing their child protection policy and code of conduct on the lines of the guidelines from RSCPCR.
- Be engaged as a resource support in conducting workshops on Positive discipline on various stake holders.
- Development of IEC materials.
- They should be hand holding for the staff of the institutions.
- The Management committees can take guidance and assistance of the NGO's
- The NGO's can develop and implement several modules which will aim at the over all development and effective use of time of the child when under the institutional care
- The Civil Society/NGO's shall act as a monitoring body, which will bring complaints to the commission and Child Protection structures.
- Conduct research and studies on Positive Discipline as a effective medium for Child development.
- Support a child in rehabilitating/recovering, who has been victimized.
- Support child and family to peruse legal action or any other suitable action against concerned and help them receiving their entitlements.

8. MONITORING

The monitoring of the guidelines would be done by both the concerned Child Welfare Committees (CWC), Juvenile Justice Boards (JJB) and Rajasthan State Commission for Protection of Child Rights (RSCPCR)

8.1 Juvenile Justice Boards (JJB) - The Board consists of a Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman. Every such bench shall have the powers conferred by the Code of Criminal Procedure 1973 (Central Act No. 2 of 1974).

The Board shall perform the following functions in relation to Corporal Punishment

1. Monitoring institutions for juveniles in conflict with law regarding incidents of corporal punishments by the staff of the institutions
2. Pass necessary direction to the district authority and police in case of any violations in this regard
3. Maintain liaison with the Committee in respect of children needing care and protection;

8.1 Child Welfare Committee (CWC) - CWC is a statutory body appointed as a competent authority for all children in need of care and protection by the Juvenile Justice Act 2000. The CWC has the same powers as a metropolitan magistrate or a judicial magistrate of the first class.

The functions of the CWC with reference to corporal Punishment includes -

1. Reach out to such children in need of care and protection who are not in a position to be produced before the Committee, being in difficult circumstances.
2. Direct the Child Welfare Officers or Probation Officers or non-governmental organizations to conduct corporal punishment inquiry and submit a report to the Committee.
3. Maintain a periodic review and follow up on the progress of every child.
4. Visit institution where children are sent for care and protection or adoption on a periodic basis to review the condition of children in institutions in reference to corporal punishment, and suggest necessary action with support of the State Government
5. Co-ordinate with the Police and other agencies to identify cases in corporal punishment in the community, educational institutions and institutional care.
6. Maintain a suggestion box to encourage inputs from children and adults alike and take necessary action.

8.2 Rajasthan State Commission For Protection Of Child Rights (RSCPCR) has been entrusted with the task of monitoring and act as a guiding light to agencies dealing with issues related to Protection Right of children. Thus in this process they have been assigned to directly monitor children's right to education under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009 and monitor the effective implementation of POCSO under Section 44 of the Protection of Children from Sexual Offences Act of 2012. Thus all the cases under these acts have to be directly monitored by the commission.

8.2.1 Monitoring of child's right to education – (1), RSCPCR, shall, in addition to the functions assigned to them under the Commission for Protection of Child Rights Act, also perform the following functions, namely:-

- i. examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- ii. inquire into complaints relating to child's right to free and compulsory education; and
- iii. Take necessary steps as provided under Sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

(2) The Commission shall, while enquiring into matters relating to child's right to free and compulsory education under clause(c) of sub-section(1), have the same powers as assigned to them respectively under Sections 14 and 24 of the said Commissions for Protection of Child Rights Act.

8.2.2 As per section 31.1 of the Right to Education Act the RSCPCR is supposed to:

- i. Examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- ii. Inquire into complaints relating to child's right to free and compulsory education;
- iii. Take necessary steps as provided under Sections 15 and 24 of the Commissions for Protection of Child Rights Act.

Under Section 32(3) and (4) of the RTE Act, the SCPCRs are the appellate authority to receive appeals from the aggrieved persons who would prefer such appeals when their grievances relating to children's right to education are not redressed by the designated local authorities under Section 32(2).

8.2.3 As per section 44 of the POCSO Act- The main undertakings of the commission will include –

- Monitor the designation of Special Courts by State Governments;
- Appointment of Public Prosecutors by State Governments;
- Formulation of the guidelines for the use of non-governmental organisations, professionals and experts or persons having knowledge of psychology, to be associated with the pre-trial and trial stage to assist the child, and to monitor the application of these guidelines;
- Designing and implementation of modules for training police personnel and other concerned persons;

- Support the State Governments for the dissemination of information relating to the provisions of the Act;
- Call for a report on any specific case of child sexual abuse falling within the jurisdiction of a CWC.
- RSCPCR will collect following information and data from the relevant agencies:-
 - number and details of offences reported under the Act;
 - whether the procedures were followed, including those regarding timeframes;
 - details of arrangements for care and protection of victims of offences under this Act
 - Details regarding assessment of the need for care and protection of a child by the concerned CWC.

8.2.4 RSCPCR will ensure implementation by –

- Seeking district reports through the District Collector on the incidents of Corporal Punishment and actions taken in the Districts.
- Forming groups to monitor the status in areas of high alert.
- Appointment of Representatives to monitor incidents and actions for corporal Punishment.
- Inspections of educational institutions and homes.
- Regular district visits to monitor the progress of the pending cases and addressing the grievance redressal.
- Updating from the Childline, CWC and other agencies on complaint status
- Public hearing on Corporal Punishment
- Social audit etc.