

**Bill No. 48 of 2022**

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2022

By

SHRIMATI APARUPA PODDAR, M.P.

A

BILL

*further to amend the Indian Penal Code, 1860.*

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2022.

Short title  
and  
commencement.

5 (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 88 of the Indian Penal Code, 1860 (hereinafter referred to as the Code) the following proviso shall be added at the end, namely:—

Amendment  
of section 88.

10 “Provided that nothing in this section shall exempt teachers, parents or caregivers from liability of having committed an offence by using force or

inflicting any punishment, physical or mental, that has the potential of causing harm to the child under eighteen years of age, physically or emotionally.”.

Amendment of section 89.

**3.** In section 89 of the Code,—

(i) for the words, “benefit of a person under twelve years of age, or of unsound mind,”, the words, “benefit of a child under eighteen years of age, or of a person of unsound mind,” shall be substituted; and 5

(ii) after the fourth proviso, the following proviso shall be inserted, namely:—

“Fifthly.—That this exception shall not exempt teachers, parents or caregivers from liability of having committed an offence by using force or inflicting any punishment, physical or mental, that has the potential of causing harm to the child, physically or emotionally.”. 10

## STATEMENT OF OBJECTS AND REASONS

The United Nations Committee on the Rights of the Child defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”. Such punishments commonly range from hitting a child with a hand such as smacking, slapping, spanking, shaking, etc. or equipment such as a whip, stick, belt, etc. It may also include forcing children to stay in uncomfortable positions, belittling, humiliating or denigrating them, etc.

Corporal punishment, commonly understood in the context of a teacher and student, also extends to caretakers in alternative care institutions such as orphanages, juvenile homes, foster care homes, hostels, etc. and parents. By virtue of the quasi-parental authority they enjoy, they find themselves in the position to educate, and often, discipline the child using any means they see fit. Under the garb of getting disciplined, children are punished. Punishments, both violent and non-violent, have gruesome impact upon the mental and physical well-being of a child.

The UNICEF has found that around 60 per cent. of children between 2 to 14 years of age experience corporal punishment at the hands of their caregivers. The World Health Organization has found that corporal punishment defeats the goals it sets to achieve, by triggering harmful psychological and physiological responses. Apart from the obvious physical harms caused due to violent or strenuous punishment, such children are far more likely to experience issues such as depression, anxiety low self-esteem, alcohol and drug dependency, feelings of hostility, delinquency and increased aggressiveness, all of which continue to into adulthood.

Article 39(e) and 39(f) of the Constitution of India direct the State to ensure that the tender age of children is not abused and they are allowed to develop in a healthy manner and in conditions of dignity. Article 21 of the Constitution further guarantees to all a life of dignity, one that is robbed from victims of corporal punishment, who have to go through physical violence and denigration, that is most often public. The Committee on the Rights of the Child has iterated by way of General Comment No. 8 that upholding the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment is an obligation of all State Parties to the Convention on the Rights of the Child, India being one of them.

While many statutes at present attempt to abolish corporal punishment, there exists a lacuna, leaving sections 88 and 89 of the Indian Penal Code, 1860 as the only applicable law. Section 17 of the Right of Children to Free and Compulsory Education, 2009 makes corporal punishment, both physical and mental, a punishable offence but applies only to children ages 6 to 14 years. This means that all children are not being equally protected against corporal punishment, violating Article 14.

The Guidelines for Eliminating Corporal Punishment in Schools released by the National Commission for Protection of Child Rights also acknowledge the contribution of Sections 88 and 89 in enabling corporal punishments. In many cases such as *M. Natesan vs. State of Madras and Anr.* AIR 1962 Mad. 216, *Ganesh Chandra Saha vs. Jiw Raj Somani* AIR 1985 Cal. 32, *Abdul Vaheed vs. State of Kerala* 2005 CriLJ 2054, these sections have been utilized by teachers to escape the liability of corporal punishment. Such a benefit has also been extended to teachers in the recently concluded case of *Ambika S. Nagal vs. State of Himachal Pradesh* CRMMO No. 331 of 2018.

The objective of this Bill is, therefore, to protect our children from corporal punishments, by taking away the immunity that Sections 88 and 89 of the Indian Penal Code, 1860 grant to its perpetrators. It is only by doing so the responsibility of taking necessary precautions to ensure that no child is subjected to any physical or mental harassment and is disciplined only through positive engagement that is cast on the State by the National Policy for Children 2013 and the Draft National Plan of Action for Children, 2016 can be fulfilled completely.

Hence this Bill.

NEW DELHI;  
16 *February*, 2022.

APARUPA PODDAR

ANNEXURE

EXTRACT FROM THE INDIAN PENAL CODE, 1860

\* \* \* \* \*

**88.** 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 express or implied, to suffer that harm, or to take the risk of that harm.

Act not intended to cause death, done by consent in good faith for person's benefit.

\* \* \* \* \*

**89.** Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: Provided—

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

Provisos. First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

\* \* \* \* \*

LOK SABHA

---

A

BILL

further to amend the Indian Penal Code, 1860.

---

*(Shrimati Aparupa Poddar, M.P.)*