



Legal Repercussions of Corporal Punishment and Child Rights – A Comparative study

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A Child may not understand what does corporal punishment mean, but the child will surely explain the trauma if you make him understand that, the word ‘corporal’ or ‘physical’ punishment is defined as, “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 – whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices)....¹

Ms. Meena G², a class VI student, was beaten black and blue by the Marathi teacher after he noticed her talking while he was teaching. He beat her until her back was badly bruised. Actually the poor girl had pointed out the mistake of the teacher for which he lost control and abused the kid³.

A class X student Mr. M died after he was allegedly made to do sit ups as punishment in the school. The victim's parents allege that after the punishment, the boy suffered a breakdown and died in the hospital.⁴

Children of reputed public school in Pune complained of corporal punishment by one of their school bus attendants, Ms. K.S. The children faced physical and mental pressure.⁵

This is something that we see frequently in the newspapers today. This triggered my mind to see why poor and innocent children are abused like this.

Recently it has been observed as a serious problem as corporal punishment has rendered people limbless, blind and in severe cases the cost was life. Moreover Child rights have become the zeal of the day. Child cannot fight independently for his rights. He needs someone for his protection as the most vulnerable group in the society being children; they are abused by their own caretakers and outsiders. When corporal punishment is conducted by parents the question arises as to, “is it a crime to punish once own children?” When the same act is performed by teacher or guardian, it becomes serious matter. So there is a need to lay down parameters as to can punishment be levied? If yes then who can punish? How should a kid be punished?

The Committee on the Rights of the child is of the view that corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which 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.” This problem is seen in juvenile homes, orphanages, day care centers and everywhere where children are there.

Why should children be abused by their parents?

Parenting a child is a great responsibility which with time is getting tougher today. Parents do feel that children should be subjected to corporal punishments, so that they become better citizens in future. This phenomenon of corporal punishment is not new but existed in the ancient period. Biological parents have control to inflict CP⁶. How much CP can be inflicted is something we need to ponder upon. Being biological parents nobody can stop them from exercising their rights over their children. Though many countries have banned it, there is no law against this in India. But at certain situations when one exceeds beyond the limits of human rights, then they need to face the law. Because of the harshness in CP that exists today, there is a need to control and free our society from harsh Corporal Punishments.

¹ The Committee on the Rights of the Child in the General Comment No. 8

² Name Changed

³ Times of India; Pune Mirror ; dated 12 September 2012.

⁴ <http://ibnlive.in.com/newsttopics/corporal-punishment.html>

⁵ Times of India;Pune Mirror; dated 18 September 2012.

⁶ Corporal Punishments

Why teachers, guardians or other care takers abuse children?

Punishments or Sanctions are laid down so that the children would have fear or deterrence in their mind. Deterrence theory has moral and social sanctions in it. According to the moral impact, a child inflicted with this pain will have it in his or her sub conscious mind and there would be an inner restraint by which he will not commit the same mistake again.

When we look at the social impact according to criminology there is fear in the society because of which other kids would refrain from doing the same act.

Such acts of hatred and ill-treatment do not just disturb children for the time being, they also have long term psychological impact. Children lose their self confidence and may even start developing complexes. It can affect their academics and concentration. It could affect cognitive abilities of children. Most of the delinquents across the world have a record of suffering from corporal punishments. Such punishments lead to aggressive behaviour in the kids.

If you look at the old Gurukula system of education in India, punishments existed but they were not in the same form, punishment were like bowing up and down 100 times or some difficult task was assigned to the kids. Even at home punishments as such were not levied. These harsh forms of punishments developed in the modern century when man has less time to spend with kids. So at home due to impatience and lack of time, man gets violent on the innocent life. Teachers and other caretakers also have less time, no patience and attack the kid and relieve their frustrations. People today are more frustrated than they were in the past. Therefore nobody bothered much for the kids and their rights, but today we need to think for them because they are our future. When we analyse the corporal punishments in India, it is increasing. Every child has a story to share. Two out of three children will give you a report of abuse is what the sociologist says. Child abuse is something which has to be handled with care as child is more valuable and known to be the most vulnerable section of the society.

International measures

Convention on Child Rights provides for:

Article 19 of the Convention on the Rights of the Child 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...*"

Article 28(2) of UN CRC requires the State parties to "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."

Similarly, Article 29(1) (b) of the Convention emphasizes that the "State parties agree that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations".

Further, Article 37(a) of UN CRC requires States Parties to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment".

It has many other provisions for the protection of the child. But this article mainly deals with the corporal punishments.

Psychological Impact: Corporal punishment leads to adverse physical, psychological and educational outcomes – including increased aggressive and destructive behaviour, increased disruptive behaviour in the classroom, vandalism, poor school achievement, poor attention span, increased drop-out rate, school avoidance and school phobia, low self esteem, anxiety, somatic complaints, depression, suicide and retaliation against teachers – that emotionally scar the children for life.

The effects of various forms of mental harassment or psychological maltreatment have shown that (a) 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 the indicator most related to behaviour problems for children and adolescents; and (d) psychological abuse is a stronger predictor of both depression and low self-esteem than physical abuse. A chronic pattern of psychological maltreatment destroys a child's sense of self and personal safety. Subtle and overt forms of discrimination are also known to have a negative effect on the emotional and intellectual health of children.⁷

Corporal Punishments in China

Corporal punishment is prohibited in schools in articles 21 and 63 of the revised Law on the Protection of Minors (2006), article 17 of the Regulation of Kindergarten administration issued by the State Council, article 6 of the Provision of Kindergarten work standards issued by the Ministry of Education, article 16 of the Compulsory Education Law (1986), article 20 of the Rules on the implementation of the Act, and article 37 of

⁷ Guidelines_for_eliminating_Corporal_Punishment_in_schools.pdf

the Teachers' Law (1994). It is also prohibited in work-study schools for children found to have perpetrated serious misbehaviour under the Law on the Prevention of Juvenile Delinquency (1999, article 36)⁸ Corporal punishment is unlawful as a sentence for crime. It is not a permitted punishment under the Criminal Law.

Corporal punishment is prohibited as a disciplinary measure in penal institutions in article 248 of the Criminal Code, article 36 of the Law on the Prevention of Juvenile Delinquency (see above), article 14 of the Prison Law, article 22 of the People's Police Law, and in the Regulations on the Behaviour of People's Police on Duty in Custody-houses (2001).

"The Committee is concerned that in mainland China the existing regulations banning corporal punishment in schools are unevenly implemented. It is also concerned that corporal punishment in the home is not banned and continues to be socially acceptable.

"The Committee is concerned that corporal punishment within the family is not prohibited by law and continues to be practiced in the home in the Hong Kong and Macau SARs.

"The Committee urges the State party, in all areas under its jurisdiction:

a) to explicitly prohibit by law corporal punishment in the family, schools, institutions and all other settings, including penal institutions;

b) to expand public education and awareness-raising campaigns, with the involvement of children, on alternative non-violent forms of discipline in order to change public attitudes about corporal punishment."⁹

Corporal punishments in USA

Corporal punishment is lawful in the home in all states. State laws confirm the right of parents to inflict physical punishment on their children and legal provisions against violence and abuse are not interpreted as prohibiting all corporal punishment in child rearing. In Minnesota, examination of several laws led some legal experts to conclude that corporal punishment is not permitted in that state, but according to the legislation a parent, legal guardian or caretaker may use reasonable force to restrain or correct a child (Sec. 609.379. [Cr.]) and the Minnesota Court of Appeal has overturned convictions for physical abuse involving corporal punishment.

Schools

There is no prohibition at federal level of corporal punishment in all public and private schools. In 1977, the US Supreme Court found that the Eighth Amendment, which prohibits cruel and unusual punishment, did not apply to school students, and that teachers could punish children without parental permission (*Ingraham v Wright*,¹⁰ 430 U.S. 651 (1977)). Corporal punishment is unlawful in public schools in 31 states and the District of Columbia, though in some of these there is no explicit prohibition. Corporal punishment is unlawful in public and private schools in Iowa and New Jersey. It is lawful in public and private schools in 19 states.

Penal system

Corporal punishment as a sentence for crime has been ruled unconstitutional by the Supreme Court, and no federal or state laws permit its use as a sentence of the courts.

The 1977 Supreme Court ruling stated that the Eighth Amendment protected convicted criminals from corporal punishment. However, we have been able to identify only around 30 states which have prohibited by law all corporal punishment as a disciplinary measure in juvenile detention. In many others, policy states that corporal punishment should not be used but this has not been confirmed in legislation. The American Correctional Association's standards for juvenile detention facilities call for "written policy, procedure, and practice that protect juveniles from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment". The comment to the standard states: "In situations where physical force or disciplinary detention is required, only the least drastic means necessary to secure order or control should be used."¹¹

Conclusion: Corporal Punishment may be the best means of achieving instant obedience because of its presumed deterrent effect.¹² Developing a violence free society is difficult but not impossible. Moreover there

⁸ <http://www.endcorporalpunishment.org/pages/pdfs/states-reports/China.pdf>

⁹ CRC recommendations in the survey report of 2005 on Corporal Punishments.

¹⁰ Petitioners, pupils in a Dade County, Fla., junior high school, filed this action in Federal District Court pursuant to 42 U.S.C. §§ 1981-1988 for damages and injunctive and declaratory relief against respondent school officials, alleging that petitioners and other students had been subjected to disciplinary corporal punishment in violation of their constitutional rights. The Florida statute then in effect authorized corporal punishment after the teacher had consulted with the principal or teacher in charge of the school, specifying that the punishment was not to be "degrading or unduly severe." A School Board regulation contained specific directions and limitations, authorizing punishment administered to a recalcitrant student's buttocks with a wooden paddle. The evidence showed that the paddling of petitioners was exceptionally harsh. The District Court granted respondents' motion to dismiss the complaint, finding no basis for constitutional relief. The Court of Appeals affirmed.

¹¹ <http://www.endcorporalpunishment.org/pages/pdfs/states-reports/USA.pdf>

¹² Corporal punishment of children and crime in ethnic group context

are some initiatives to curb the menace of Corporal Punishments. NCPCR¹³ is entrusted with all the duties of child protection and it believes that all forms of CP is against human rights. Supreme Court has provided with some guidelines on CP to all. Since last two years Indian Government at least have considered to provide for guidelines to the schools asking them not to indulge in corporal punishments. But continuous cases of CP being reported in newspapers shows the need for law to provide with strict laws against them. There are many other measures which government can think about like:

- 1) B.Ed or D.Ed qualification which is the requirement for teachers should have a component on CP or train the teachers, parents and all other members who are directly or indirectly related to the child with special training of avoiding CP. The Gujarat High Court in its judgement Hasmukhbhai Gokaldas Shah v. State of Gujarat, (the accused had insulted and abused the child and lead him to suicide) has clearly stated that “corporal punishment to child in present days ... is not recognised by law”.
- 2) We do not think much about positive disciplining. This concept of Positive Disciplining was developed by Alfred Adler and Rudolf Dreikurs originated in the 1920s. It simply means rewarding the child for good behaviour and trying to discourage the negative behaviour.
- 3) The society, parents, staff of schools and all other concerned members should be sensitized about CP and its impact on child’s health.
- 4) There is a need of standard rules of CP, may be in the form of legislation to be provided to schools and parents. Let the children be taught in the beginning of their life that they can raise the issue of CP if it is severe in nature.

There are alternatives which can be adopted for CP. Today there is a need for a special law to deal with child abuses and Corporal Punishments. Let us not forget that they are our future and we need to build our future strong and secure.

¹³ National Commission For Protection of Child Rights