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Corporal Punishment and Child Right: A Comparative Study

ADITI SADHWANI, SASHA CHHABRA, ALEX T THEVARCAD AND JANE SHEBA RANI¹

ABSTRACT

Because every child in the world has one thing in common, their rights and someone violating them.

Corporal punishment and classroom coercion continue to prevail. Corporal Punishment is the deliberate infliction of physical pain and psychological humiliation in order to discipline the child, with respect to schools until the late 20th century when teachers were legally allowed to hit children. Many developed countries adopted the agendas to foster the old mind-set of people that it will only curb poor social conduct and it does not comply with the protection of the dignity of the child. A new government report concluded that corporal punishment was suffered by two out of every three children in study sample of 12,447. Coming to the psychological and social impacts of school corporal punishment, when a child sees another child getting physically reprimanded, this instils a fear in them, and they refrain from doing the same 'crime' as their peer. But at the same time there are adverse long-term psychological impacts on a child because the trauma might act out and show aggressive and anti-social tendencies. It also indicates that students become introverted and grow hatred for schools and may even leave higher education before it's actual completion. Therefore, the government must protect their rights and support awareness campaigns against CP. As laws have already been framed, social reformation is needed. This research paper follows a comparative research and briefly presents situations across the globe and the reasons for it.

Keywords- coercion, discipline, reprimanded, social reformation.

I. INTRODUCTION

The term 'Corporal Punishment' is derived from a Latin word meaning body. It means Physical Punishment. It is a punishment intended to cause physical pain to a person and to affect the human body adversely. The 'corporal' or 'physical' punishment is described by the United Nations Committee as to any punishment in which physical force is used and intended to cause some degree of pain or discomfort, albeit light. When practiced on minors, the

¹ All the Authors are student at Alliance School of Law, Alliance University, India.

methods involve slapping, smacking or spanking children with an implement or the hand. People are seen using a whip, shoe, wooden stick or even a belt as an implement to hit. It can also involve kicking, punching, pulling hair, boxing ears, forcing children to stay in uncomfortable positions or conditions, throwing things at them and forced ingestion (for example- swallow hot spices, etc.). It takes place in many settings, like schools, homes or even educational institutes. Thus, Punishment of this kind is degrading, should be condemned and stopped immediately.

(A) Research Question

There are four questions researched upon in this paper i.e. Whether Corporal Punishments have a detrimental effect on the children?, Is Corporal Punishment related to unintended childhoods adverse outcomes?, If the effects of corporal punishments vary from country to country? and; How does Corporal Punishment affect children's future behavioural and social adjustment?

(B) Existing Legal Situation

It is expected that the law and legal systems can protect children from violence by officials, either at home or in schools, or in justice administration systems that take due account of their childhood, innocence, and inability to understand. Children under seven years of age are excluded from criminal responsibility. Their act is not at all regarded as an offence. This means that, even under penal provisions based on the principles of *doli incapax*, there can be no corporal punishment. According to Section 83 of the IPC, a similar exemption is applied to children over the age of seven and under the age of twelve of immature comprehension. In essence, because of their age and inability to formulate a malicious purpose, a child should not be exposed to ordinary physical punishment practises, including imprisonment for offences. Therefore, any corporal punishment should not be enforced for being a student and having made a mistake by not completing homework or breaking a dress code.

Section 88 of the Indian Penal Code covers an act not intended to cause death, carried out for the benefit of an individual by agreement in good faith. This clause comes under the Master Chastising Student. A head teacher who administers a moderate and fair corporal penalty to a pupil in good conscience to impose discipline in school is covered by this section and under Section 323 such an act is not a crime.

Section 89 of the Indian Penal Code protects an act carried out in good faith by a guardian or by the consent of a guardian for the benefit of children under 12 years of age. The same part, however, states that this exemption would not apply to causing death or trying to cause death,

causing serious injury. These rules also apply to teachers who have quasi-parental authority, i.e., parental consent or delegation of authority, with exceptions, of course. Using unnecessary force, causing serious harm, intent being quite unfair may, with the permission of the guardian, turn the act of the guardian or instructor into an offence, since such events are beyond the reach of good faith.

(C) Literature Review

This Literature review will explore the cultural and social contexts and realities of classroom discipline in India and other Western countries, especially corporal punishment, in order to provide a deeper and more detailed study of the classroom discipline in different countries, and to find out what the difference between Indian classroom and American classroom discipline is. In addition, the main aim of discussing the discipline of the classroom is to look for the best methods for classroom discipline to help teachers handle their students effectively, so this literature review will also address some discipline strategies suggested by scholars.

Awan (2011)² argues that through physical discipline and cruel conduct, students should not be pressured to improve their academic performance. Through inspiration and counselling, their success can be increased. Awan (2014) claims that schools get better outcomes and results using motivation mechanisms and creating a competitive atmosphere among students. In the Educational Boards and other institutions, their students won places. Corporal and non-corporal punishments have been used as a significant means of regulating the discipline of students in schools (Gershoff, 2002)³. Kamal observed corporal punishment by conducting surveys in Bangladeshi schools, particularly at primary and secondary schools, as well as deciding on the schools, which were mainly the councils of control and authority on the part of the perpetrators.

It was largely dominant due to factors such as the inclusion of the absence of the strategic guidelines as well as bad media-illustration along with incompetence of the legal permissions. Despite the fact that corporal punishment was calculated as a community practise that was accepted by culture & humanity and should not be dared & used as a method to uphold punishment in educational institutions. But, for the time being, the Bangladeshi community was not familiar with it (Kuiper, 2009). Pearlin (1989) notes that in

² Awan (2010)- A Study of Relationship between Achievement Motivation, Academic Self Concept and Achievement in English and Mathematics at Secondary Level.

³ Gershoff (2002)- Corporal Punishment by Parents and Associated Child Behaviours and Experiences: A MetaAnalytic and Theoretical Review

Egyptian schools, corporal punishment continued to practise at inappropriate rates, and as a result, the rates of abuse are still increasing with multiple ratios. Family-based or school based variables could be due to the difference between the policy statement and current activities.

Cohen was of the opinion that punishment is linked to behavioural issues in the infant in the reciprocal model, which is in turn linked to more inadequate parental discipline. The reciprocal model is complex in nature and involves consideration of the possibility that these effects will not be constant over the years from early childhood through late adolescence and that changes in the parent-child relationship are often triggered by developmental changes in adolescence (Cohen, 1996)⁴. Therefore, numerous studies disclosed the reality that invariant schools around the world have been engaged in corporal punishment. It checked that corporal punishment was a practise used by elementary school teachers as well as the administrators who advanced the discipline during the learning course were concerned. In addition, it has been recognised in the education system as a specific way of preserving discipline.

The findings of the study and examination of the literature showed that corporal punishment has a range of negative effects for physical, psychological and emotional well-being in schoolchildren that could persist well into adulthood. Severe effects, such as defects in brain growth, are also present. In schools and at home, especially with young children, there is a need to end all types of corporal punishment. A change in the attitude of both parents and teachers is also required. The findings of previous research found that at the age of eight years, between twenty and eighty percent of children in all four countries indicated that they had endured corporal punishment at school. It was found in two studies from USA and South Korea that higher rates of corporal punishment were associated with lower math scores and reduced vocabulary scores. Children's learning will also be impaired by children who do not want to go to school because of the fear of punishment. There have also been research that suggest that school corporal punishment in children can lead to mental health and behavioural problems. When disciplined, kids feel physically embarrassed.

(D) Scope & Objective

In order to find out and appreciate the meaning, consequences and nature of corporal punishment in different countries, the researchers have performed a comprehensive research report. This paper aims to prepare a well analysed study with some case laws, stating the circumstances and legal conditions.

⁴ Cohen (1996)- Orderly thinking about a chaotic system.

(E) Methodology

Throughout the report the researchers have adopted a doctrinal approach. Owing to the lack and impossibility of the compilation of the first hand data, a secondary source of information was used. The content is descriptive and analytical. An in dept. analysis was carried out by the researchers on the subject of Corporal Punishment, along with the planning of well analysed comparative study.

II. CORPORAL PUNISHMENT & CHILD RIGHTS

(A) History of Corporal Punishment

Corporal punishment meant physical punishment and in the past, it was very normal. Corporal punishment in the past was not limited to children by any way. It has also been used on grownups. Flogging⁵ has, since ancient times, been a traditional punishment. Before he was crucified, Jesus was flogged. Whipping was a common punishment for small crimes in England from the Middle Ages onwards. Whipping or flogging was a prevalent practice in the British army and navy in the 18th century. In 1881, however, it was scrapped. Birching was among the widely used methods of corporal punishment. This punishment meant hitting a person with birch twigs across the back. Once a common punishment in schools, minor offences could also be imposed by the courts. Birching was outlawed in 1948 in Britain.

Meanwhile, teachers beat children for thousands of years until the late 20th century. The teachers were strict in the ancient world and sometimes beat the pupils. The discipline in the Middle Ages was also extreme. They beat the boys with rods or birch twigs. Punishments were also harsh in Tudor colleges. The instructor also had a stick fastened to it with birch twigs. The boys were struck on their bare buttocks with birch twigs.

Modern Corporal Punishment:

Teachers were licenced to hit kids until the late 20th century. Hitting boys and girls with a bamboo cane became popular in the 19th century. The cane was used in both primary and secondary schools in the 20th century. The tyrant, meanwhile, was a punishment widely used in the 20th century in elementary schools. With a wooden ruler, the teacher struck the child on the side. In secondary schools, this slipper was also used. The euphemism ⁶ is the slipper. It was usually a trainer or plimsoll. A trainer was used by teachers (usually PE teachers) to hit children on the back. The Tawse ⁷ was a punishment that was used in schools in Scotland. It

⁵ Flogging- also called whipping or caning, a beating administered with a whip or rod.

⁶ Euphemism- word or expression used for one considering to be too harsh or blunt.

⁷ Tawse- a thong with a slit end.

was a strap made of leather with two or three tails. It was used for hitting a child's hand in Scotland. The leather strap, meanwhile, was used in several English schools in the 20th century. Children were either struck in the hands or in the back. In addition, children were also, beaten up at work in the 19th century. Children who were lazy were hit with leather straps in textile factories in the early 19th century. In comparison, lazy kids got their heads ducked in a container of water at times. The cane was phased out of most elementary schools in the late 1960s and early 1970s, however. The cane was banned in state-financed secondary schools in England in 1987. In 1999, it was banned in private schools.

(B) Impact on Children

Discipline is one of the basic things a child must learn while growing up. The parents and teachers play a very important role in disciplining a child, there are number of simple and elegant ways to do it, but Corporal Punishment is not one of them. It is a negative reinforcement and has no positive outcome whatsoever. It not only hurts an individual physically but also discourages integrity. Every child deserves to be treated and taught with respect. Children are subjected to physical punishments in schools, homes, educational institutions, hostels, etc. where they should be given care and love. People need to understand and give up their beliefs that punishing a child will do any good. It has deleterious effects. It not only effects a child physically and mentally but it has educational outcomes as well.

Physical Outcome:

Corporal Punishment means a punishment which is indented to cause physical pain to a person, people use various ways such as spanking, hitting, slapping, etc. This may cause pain for while it sometimes it could lead to serious injuries and permanent impairment or even death.

Psychological Outcome:

Physical punishment may cause a temporary pain but it can scar a child for his/ her whole life. Children become more aggressive and destructive. They start facing problems like stress, depression, anxiety and panic from a very young age. This kind of punishment does not discipline a child but makes them fear. They lose their self-esteem and confidence. They start to think that they are not good enough which sometimes leads to becoming suicidal. Trying a to discipline a child though this way ruins the relationship between the child and parent/teacher. It becomes a chronic pattern and destroys a child's intellect, they tend to perform the same practice on their peers, siblings, partners, etc. It becomes part of their adulthood which gives rise to bigger problems like – domestic violence and child abuse.

Educational Outcome:

This evil and inhuman practice also has educational outcomes. Being beaten up by teachers or educational authorities, children fear going to school. They start to have a school phobia; they make up excuses to avoid or simply deny going to school. Due to these punishments a child becomes disruptive in the classroom. He/she becomes poor achievers and loses his/her attention span. They also become retaliated against their teachers. They misbehave with their peers and use the same practice of physical punishment on them. Corporal Punishment is one of the reasons of increased dropout rates.

This form of punishment is not healthy but detrimental⁸. It becomes an obstacle in the growth and development of a child.

III. CORPORAL PUNISHMENT IN INDIA

(A) Problem in India:

A research undertaken in thirteen states in 2007 by the Ministry of Women and Child Development (MWCD) revealed the gravity of this issue and the high incidence of all types of child violence. Of the total sample of over 12,000 children, 69% of them were abused physically. Elevated cases of emotional and sexual violence were also included in the study. An vast number of kids (65.01 percent) reported being beaten at school 21, according to the survey, which indicated that two out of three kids were victims of corporal punishment. The research also found that child violence is seen in all aspects of life, including families, classrooms, employers, care agencies, and on the streets. 22 Punishing children is considered by many in India to be an acceptable way of life; the majority of them encounter it in schools and homes. Orthodox views on child rearing have generally led to this mind-set, thereby treating child violence as insignificant and not requiring action in familiar environments. Schools are required, by whatever means, to discipline children. It is assumed that guardians and family members have absolute power over their children and are entitled to exert their will over them. The continuation of corporal punishment in homes can also be related to the absence of any legal punishments for abusive parental actions and to the unwillingness of law enforcement officials and the general public to intervene in other people's domestic relations. Corporal punishment can be cruel and degrading and has a negative physical and psychological effect on the child, both in the short and long term. In recent years, many incidents have been documented by the media that have impacted children so profoundly that 28 have manifested in very alarming ways. Despite this, the problem has not been treated

⁸ Detrimental- tending to cause harm.

with the urgency it needs and our nation has been slow to put in place measures in all settings to monitor violence against children.

In this area, the landmark judgement was passed by the Delhi High Court, Striking down rules that allowed corporal punishment.. In *Parents Forum for Meaningful Education and Another v. Union 101 of India and Another*⁹, the petitioners challenged some clauses under the Delhi Education Act that allowed corporal punishment in the High Court of Delhi (2000). The Court struck down the clauses in this public interest case as breaching the rights laid down in the Constitution and also claimed that it seemed to them that 'corporal punishment does not comply with the dignity of the child. In addition, in the name of discipline or education, it is inhuman to subject the 102 children to physical violence in school. The court also directed the state to ensure that 'children in schools are not subjected to corporal punishment and obtain education free of fear in an atmosphere of 103 equality and dignity.

Apart from Section 23 of the Juvenile Justice (Care and Safety of Children) 33 Act, 2000(JJ Act)¹⁰, which makes a child's cruelty a punishable offence, there is no clear provision in our law that provides punitive penalties relating to corporal punishment of children. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), has also adopted laws banning child physical punishment and mental harassment. It allows for disciplinary action against educational institution staff who are in violation of this clause. While the government has confirmed its commitment to the CRC Committee in the country report, no specific measures have been taken against violations that occur in home environments.

(B) Child Right Laws in India

There are several acts and treaties that shield children from corporal punishments. All forms of punishment including sexual assault is harmful to the child. Till date, there's no formal definition of corporal punishment of children in Indian law.

1. Right to Education Act, 2009

Corporal punishment may be classified as physical punishment, mental torture, and discrimination, as per the Right to Education Act, 2009. Section 17 of the Act forbids a child from undergoing physical punishment and mental harassment. And it specifies that no child

⁹ *Parents Forum for meaningful education and another v. Union of India and another* on 1 December, 2000 Equivalent Citations : 2001 IIAHD Delhi 20, AIR 2001 Delhi 212,89 (2001) DLT 705, 2001 (57) DRJ 456

¹⁰ Section 23 of the Juvenile Justice (Care and Safety of Children) 33 Act, 2000(JJ Act)- Punishment for cruelty to juvenile or child. Whoever , having the actual charges of, or control over, a juvenile or the child, assaults, abandons exposes or wilfully neglects the juvenile or causes 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 both.

will be subjected to mental abuse and physical punishment. It is also established in this section that anyone who contravenes the above-mentioned provision will be at risk of disciplinary action under the rules of service applicable to that person. Sections 8 and 9 of the Right to Education Act¹¹ put a duty on the government and also the organisation to "ensure that, for any cause, the child belonging to the weaker section and also the child belonging to the deprived community is not discriminated against and prevented from pursuing and completing elementary education."

2. Juvenile Justice Act, 2000:

Section 23 of the Current Criminal Justice Act, 2000 allows for juvenile or infant discipline for cruelty. Whoever, has the actual charge of or power over, a juvenile or the child, assaults, abandons, exposes or intentionally neglects the juvenile or causes or causes the juvenile to be attacked, abandoned, exposed or neglected in a manner likely to cause such mental or physical distress to the juvenile or the child unnecessarily, shall be punishable by imprisonment for a period that may extend to six months or fine or with both.-

There are no exceptions to this provision to exclude parents or teachers. While it is meant to punish those in control for cruelty, it extends equally to parents and teachers as well. In order to discourage corporal punishment, the entire purpose of the Juvenile Justice Act 2000 is to interpret the objectives and protections enshrined in the Convention on the Rights of the Child, including the separation of minors in violation of law from ordinary judicial proceedings.

3. Juvenile Justice (Care and Protection of Children) Act, 2015

The child is, as per the Act, any person under the age of 18 years. The Act describes corporal punishment as subjecting a child to physical punishment by a person that includes the intentional infliction of pain as a penalty for an offence or for disciplining or reforming the child. Committee here means the Committee on Child Welfare and the Board means the juvenile justice Board.

The provision of corporal punishment is dealt with in section 82. And it states that any person in charge of or employed by a childcare institution who subjects a child to corporal punishment in order to discipline the child shall be liable, on primary conviction, to a fine of ten thousand rupees and, for each subsequent offence, shall be liable to imprisonment of three months or a fine, or both. If a person is convicted of corporal punishment, he is also liable for

¹¹ Section 8 and 9 of the RTE act- compulsory education, no discrimination against the weaker sections of the society.

dismissal from service. The legislation would also debar him from directly engaging with kids. In the event that the management of the institution where the corporal punishment is recorded does not cooperate with any investigation or comply with the orders of the committee or board or court or government, the person responsible for the management of the institution shall be liable for a period of imprisonment of not less than three years and shall also be liable for fines that may exceed one lakh rupees.

4. Constitutional Provisions

The interests of children have already been safeguarded by our constitution. The various provisions are stated below:

- a) The right to education for children under 14 years of age is included in Article 21 of the Constitution of India, which guarantees the right to life and dignity.
- b) Corporal punishment amounts to brutality and battles against a child's rights and dignity. It also interferes with the child's right to education, because fear of corporal punishment makes the children more likely to skip or totally drop out of school. Corporal punishment, therefore, is violate of the right to a dignified life.
- c) Article 21A of the Constitution provides that, with the enactment of the Right of Children to Free and Compulsory Education Act, 2009, the State shall provide free and compulsory education to all children aged six to fourteen years in the manner that the State may, by statute, determine.
- d) Article 39(e) directs the State to work gradually to ensure that "... the minor age of children are not physically harmed or abused".
- e) Article 39(f) directs the State to work gradually to ensure that 'children are provided opportunities and facilities for healthy growth, in conditions of equality and dignity, and that childhood and youth are protected from abuse and against moral and material abandonment.'

IV. CORPORAL PUNISHMENT IN USA

Depending in the jurisdiction, corporal punishment to children in the United States which involves infliction of physical pain or inconvenience by parents, guardians, educational authorities, for the purpose of punishing objectionable attitudes, is subject to differing legal limits. A type of corporal punishment such as spanking and paddling¹² is commonly encountered by minor children in the United States. The spanking of children is legal in all states as of 2016, despite resistance from medical and social care providers, and as of 2014,

¹² Paddling- utilizing physical force to cause deliberate bodily discomfort

most individuals already feels it is appropriate if it does not require instruments in the United States, corporal punishment is commonly considered separate from criminal child violence, although the definition may also be ambiguous. For toddler-age infants, corporal punishment is more common and persists into the puberty of children. More than 30% of parents in the US report using corporal punishment on children younger than a year old, sometimes with a slap on the hand. Reports conclude that during infancy or puberty, 85% of American young generation is physically disciplined by parents, guardians or teachers. According to a survey conducted in 1985 more than one out of the four parents have also reported using an object, to hit children such as wooden spoon, hairbrush, stick, etc. Race, gender, and social status tend to be critical variables in the practices of U.S. domestic corporal punishment. Boys are more likely to be spanked at home than girls and corporal punishment on the boys seems to be more extreme and violent than on girls. Murray Straus believes that boys are more harmful to corporal punishment. While African-American parents are more likely to prefer physical punishment, reports have shown contradictory findings about whether physical punishment predicts corporal punishment. Affluent households tend to spank the least often at the higher end of social scale, middle-income parents tend to conduct corporal punishment in larger numbers, while parents of lower class tend to do so with much greater frequency. A real-time investigation of mothers in Texas in 2014 showed that during the period of the study, almost half used some sort of corporal punishment. Subjects including small social transgressions¹³ by girls, continued to use spanking when upset and for trivial misdeeds. Mothers who using spanking as a method of punishment seemed to rely on spanking rather than using it as a “last resort” as a punishment. These corporal punishment episodes were typically not successful in preventing inappropriate behaviour. According to the lead author of the report George Holden, - “The recordings indicate that most parents responded impulsively or emotionally, rather than being intentional with their discipline”, contrary to the advice of spanking advocates. The audio recordings in the study showed that mothers tended to spank their children of different ages, an average of eighteen times a week. Researchers had previously estimated that American parents used corporal punishment an average of eighteen times a year. Based on these preliminary results, Holden suggests that self-reporting studies can significantly underestimate the actual incidence. Despite a growing body of research linking corporal punishment by parents with various adverse consequences such as violence, antisocial behaviour, anxiety, and depression in adolescents, public support for ‘right to spank’ remains strong in the U.S. Although support for corporal punishment by American

¹³ Transgressions- an act that goes against the law

adults has steadily declined since 1960's, the practice remains more accepted than in Europe. Approximately 71% of American adults agreed with the argument that children often require a 'nice, hand spanking'. According to the 2004 General Social Poll, down from 84% in 1986. That figure remained steady at approximately 70% through 2010 and 2012. Nonviolent supervision recommended by the American Academy of Paediatrics, the American Association of Infant and Adolescent Psychology and National Health Association as an alternative to corporal punishment. Strategies include : Encouraging positive conduct, allowing the child to be instructed by natural outcomes (along with explanations if necessary), Punitive¹⁴ consequences related to aberrant behaviour (such as taking away their stuff, if they disobey or don't listen) and simple time-outs, which will help them to think about what they have done. The American Academy of Paediatrics discourages corporal punishment because the methods of non-physical correction perform well to prevent the harmful effects of physical punishment including: making children more abusive or offensive, actually causing physical harm to them and teaching them that is permissible to physically harm a loved one. Professionals say the secret to discipline includes: interaction, respect, love, persistence, getting over the issue once the punishment is complete, adjusting discipline to child's age and learning how to understand where there could be an external influence that drives actions (such as being hungry or harassed at school). Control of corporal punishment is performed at the state level in public and private schools. There is no federal policy on corporal punishment in schools. In 1977, the United States Supreme court ruled that school pupils were not subject to the Eighth Amendment provisions banning "cruel and inhuman punishments" and that teachers could discipline children without parental permission. Corporal Punishment in schools is banned in 128 countries in the world, this practice is illegal in Europe, Canada, Australia and New Zealand which makes the United States of America the only western-world country where corporal punishment in schools is still allowed. In public schools, 31 states and the District of Columbia have prohibited corporal punishment, corporal treatment in private schools in Iowa and New Jersey is also unconstitutional. Corporal punishment in both public and private schools is legal in 19 American states.

(A) Legal Position

Corporal punishment as a criminal penalty is unconstitutional. There is no provision in federal or state legislation for judicial corporal punishment. Corporal Punishment is legal in the home in all states. State regulations confirm the rights of parents to implement physical

¹⁴ Punitive- inflictive or intended as punishment

form of punishment to discipline their children and there is no existence of any legal provision against abuse or violence as banning all corporal punishment in childrearing. In Minnesota, a study of several statues lead to several legal scholars to believe that corporal punishment is not allowed in that state, although a parent, legal guardian or caretaker can use appropriate force to restrain or correct a child under the statute (Sec. 609.379. ¹⁵[Cr.]) and convictions for physical assault involving corporal punishment have been reversed by the Minnesota Court of Appeal. In June 2015, in a case study surrounding corporal punishment of a child by her father, the Massachusetts Supreme Court released a decision overturning the initial conviction for assault and battery and including “guidelines” for the application of corporal punishment. The ruling lay down the following “framework”: “...we hold that a parent or guardian may not be subjected to criminal liability for the use of force against a minor child under the care and supervision of the parent, provided that (1) the force used against the child is reasonable; (2) the force is reasonably connected to the intent of fostering the well-being of a minor, including the avoidance or discipline of wrongdoing by a minor; and (3) force used does not inflict or generate a significant risk of causing physical damage (other than fleeting or minor discomfort, intermittent marks), gross deterioration or serious mental trauma. This strategy successfully combines respect for parental decisions on the treatment and upbringing of minor children with the compelling interest of the Commonwealth in defending children from violence by ensuring that the force be fair and fairly relevant to a valid intent. Additionally, through This method clarifies the purpose of the reasonableness requirement and gives guidelines to courts and parents by defining those forms of force that are invariably unfair. In the same case, a Bill is being discussed to allow parents and caregivers to refrain from using corporal punishment (Bill H3647). The Bill was released to the House Rules Committee in September 2016. In August 2017, the Utah Supreme Court overturned the ruling of a juvenile court that ruled that under the Utah Law, parents who had spanked their children with a belt were guilty of assault. The Supreme Court found out that the juvenile court refused to show that the spanking caused harm to the children as described in the Utah Code (physical, emotional, or developmental damage or harm), instead stipulating that the spanking caused harm as a natural consequence. "The Supreme Court has rejected the introduction of the per se provision by the juvenile court that" hitting a child with a belt or rope or other object is violence "as too broad and theoretically applicable to inoffensive circumstances such as" throwing a pillow or a rolled-up pair of

¹⁵ SEC.609.379- Reasonable force, Reasonable force may be used upon or toward the person of a child without the child’s consent , when used by parents or guardians or teacher.

socks at a child or playfully hitting a child with a Nerf sword as part of a game. A policy statement was released in November 2018 by the American Academy of Paediatrics (AAP) calling for parent education on constructive and successful parenting methods and the reduction of physical and humiliating discipline, including verbal abuse. In February 2019, the American Psychological Association (APA) issued a related statement.

V. CORPORAL PUNISHMENT IN SOUTH KOREA

(A) Current Situation

Present-day Korea stays partitioned between the rich, exceptionally developed, western situated South and poor people, socialist, neutralist North. According to Radio Free Asia Report, school caning or paddling has been commonplace in the South but unknown in the North. It may be something of an embarrassment for anti-Corporal Punishment agitators in the West that in Korea it is the hugely successful, democratic "good guys" who kept the cane and the paddle, and the risible, basket-case "bad guys" who annulled it.

In the South, an ill-prepared attempt was made to ban school Corporal Punishment in 1998 but this caused consternation and was quickly revoked. Corporal punishment thus remained completely lawful everywhere until 2010, when Gyeonggi Province (a region surrounding, yet excluding, the capital, Seoul) reported a new "Students' Rights" initiative under which, among other things, corporal punishment would be banned. Many educators, and other groups, in various parts of the country opposed abolition.

In Seoul itself the issue became a convenient one : there were angry disputes, to the point of aggravations in the streets between contradicting demonstrators, about proposals to annul Corporal Punishment. The education ministry and "several moderate civic groups" were against annulment, however liberal-controlled city council pressed ahead with a ban anyway that very month. There was talk of litigation in the Supreme Court about whether the city council was exceeding its constitutional powers.

The new local restrictions on corporal punishment proved to be rather controversial, with claims being made of a collapse in discipline of certain schools. The lawful position in the nation as a whole is currently unclear, with some ongoing news reports suggesting that all physical Corporal Punishment throughout South Korea that utilises an implement to cause pain has been banned.

There is an Australian documentary that describes the South Korean situation and at that very moment the government was told to be planning to extend the Corporal Punishment ban

throughout the entire nation but had not yet done the same. The film focuses to an debatable excessive degree on spur-of-the-moment brutality by angry, uncontrollable teachers, which is not the same thing as proper, formal corporal punishment, as a member of the teachers' union points out in the film. On this view, Corporal Punishment is being shunned out with the brutality bathwater.

In a well-established cultural tradition, parents would traditionally present their sons' and daughters' teachers with symbolic canes ("the stick of love") at the start of the school year, signifying a handing-over of responsibility and authority for the students' discipline to the school. These are not canes in the traditional British sense (thin whippy rattan) but thick, rigid sticks, more likely to bruise than sting if applied with vigour. A news article quotes central government rules governing the use of Corporal Punishment. For elementary and middle-school students, the cane was supposed to be up to 1 cm thick and only 50 cm long (in my view too short for an effective punishment cane). Elementary school students may receive five strokes or beatings while the middle school students received ten.

The maximum number of strokes of the cane for high-school students is ten, but this may be with a different cane which is of 1.5 cm in diameter and 60 cm long (still unusually short by international standards). Teachers challenged the imposition of these rules and it appears they were not enforced by the authorities. Not only were the sticks bigger, but a few teachers were caught seen punching the students with fists or hitting them around the head. In my personal view, it is regrettable that the powers given to the teachers seem to have made little effort to curb this kind of angry brutality, which puts the idea of all corporal punishment in a bad light. However, a survey taken found that 70% of middle- and high-school students thought their teachers' use of corporal punishment was fair, but that it should be limited to severe cases of insubordination.

Another survey report found large majorities of students, teachers and parents supporting Corporal Punishment. Overall, three quarters of respondents were opposed to a complete ban. Nevertheless, the small opposition Democratic Labour Party actively campaigned for abolition of Corporal Punishment. Many Korean fictional films about schools and young people include caning scenes as a matter of course, suggesting that it is accepted as a cultural norm in education. The punishments are usually shown being administered in front of the class, but also sometimes outside the school, in full view of the general public.

Video clips of Corporal Punishment which were carried out in classrooms or school corridors have propagated on a couple of Korean websites since the spread of mobile phones that also

function as video cameras. Mass punishments wherein many students are given punishment all together, would appear to be quite common one.

Punishment applied to the clothed posterior seems to have been most usual, the student most typically being required to hold a "push-up" posture, hands on the floor with backside in the air. In other cases the student bends over a desk or chair in the British manner, or just stands upright facing the wall, or sometimes is made to kneel on the floor or on a desk.

However, caning of the students on their hands, their bare calves, the back, the thighs (back or front), or the soles of the feet was also apparently usual, despite the rules mentioned above, which encourage that boys should be disciplined on their buttocks and girls on their thighs. Sometimes the canes deployed looks more like a thick club or broomstick than anything that could really be called a cane, again which is going against the said rules. In other cases it is something akin to the American paddle, while other teachers use a baseball bat. Anecdotal¹⁶ evidence suggests that the caning of girls was particularly usual, and that they might be as likely to be caned as boys, in sharp contrast to most other countries, where school Corporal Punishment is or was predominantly (and in a few cases, such as Singapore and New Zealand, exclusively) a male phenomenon. (Other exceptions to this generalisation are Thailand and Vietnam).

(B) Legal Reforms:

The National Human Rights Commission of Korea is an autonomous legal government body set up in 2001 as per the Paris Principles. Its orders are to receive complaints and explore claimed instances of basic liberties infringement¹⁷ or segregation, notwithstanding leading examination on laws, frameworks and approaches and giving proposals and suppositions on common freedoms issues.

In October 2008, the Government withdrew its booking to Paragraph 3 of Article 9 of the Convention on the Rights of the Child which specifies that the appearance of the child to keep in touch with the two guardians consistently will be respected.

The Act on the Protection of Children and Juveniles from Sexual Abuse was revised in April 2010. With the alterations, the legal time limit for sexual maltreatment against youngsters and adolescents is suspended until the casualty arrives at legitimate time of greater part. In addition, the court is needed to arrange indicted sex guilty parties against youngsters and adolescents to take custom curriculum or treatment, notwithstanding correctional sentence.

¹⁶ Anecdotal- not necessarily true or reliable

¹⁷ Infringement- action of breaking the terms of the law.

Extra corrections to the Act on the Protection of Children and Juveniles from Sexual Abuse were made in September 2011. Put into impact in March 2012, the alterations perceive young men and male adolescents as survivors of assault, make intercourse or sexual profane attack perpetrated against youngsters with handicaps deserving of law regardless of whether attack or terrorizing isn't went with, and command a lawful portrayal program to offer free legitimate help to kids and adolescent casualties of sexual maltreatment in criminal procedures. Sex guilty parties against children and adolescents are additionally dependent upon required probation subsequent to carrying out full punishment. Likewise, online specialist organizations are answerable for erasing obscene materials open by juveniles and adolescents with a punishment for rebelliousness.

The Child Welfare Act was revised in August 2011 and will be placed into impact in August 2012. With the update, the Minister of Health and Welfare is needed to direct reviews like clockwork concerning the overall condition of kids. The consequences of the reviews will be advertised and joined into the Framework on Policies for Children. The Children Policy Coordinating Committee, expected to be revitalized by the amendment of the Act subsequent to having been deferred since 2008, will consider on the Framework before its finish. The resumption of crafted by the Committee will likewise add to thorough consultation and coordination of children related arrangements including the usage of applicable international deals.

Elementary and middle school training is mandatory in the Republic of Korea. Since the very first UPR, the administration has taken different measures to guarantee the privilege to schooling for all children, with uncommon consideration given to understudies from low-pay families or those with handicaps. Government money related guide programs custom fitted for understudies in need have additionally been accessible:

KRW 473.4 billion was distributed to give school supper help to 1.07 million understudies from low-pay family units in 2011, and 720,000 understudies in country territories profited by free school dinners adding up to KRW 345.9 billion.

A system to give schooling to children with disabilities as proper to their advancement stage has been started. Infants with disabilities are offered free instruction help, and children with incapacities who are three years of age or more seasoned are given pre-school training, while children of school age get more consideration as the quantity of staff at communities for supporting training of kids with handicaps has been expanded and uncommon schools for kids with inabilities give all-day classes and after-meeting programs. Children who are unfit

to go to class have more occasions to gain from instructors visiting their homes or foundations.

Furthermore, to guarantee instructive occasions to dropouts failing to adjust to customary schools, the Government redid elective instruction projects and supports their activity by offering help for preparing for instructors and educational plan advancement.

In 2011, the Act on Welfare Support for Children with Disabilities was established as a lawful structure for extensive help for children with inabilities. To empower youngsters with inabilities to lead an autonomous life inside their networks, an assortment of help measures are given by the Act, including support for their consideration and clinical costs.

No enactments explicitly ensure opportunity of articulation and opportunity get together of students, yet they are not confined by any law all things considered. Various neighbourhood workplaces of education have planned understudies' privileges statutes, all of which specify that the opportunity of articulation of students will be ensured. A few statutes guarantee opportunity of assembly also.

Child abuse is a wrongdoing deserving of the Criminal Act and the Child Welfare Act. The latter denies actual physical abuse, sexual harassment, psychological abuse, disregard, abandonment, and child trafficking as well as forcing the children to beg on the streets for money. There are 44 provincial child protection organizations across the country that get reports of child abuse, investigate the location of claims, and offer crisis assurance.

VI. RELEVANT CASE LAWS

1. P. Sankunni v. C.S. Venkatraman AIR1922 Mad 200; (1922) ILR 45 Mad 548

Judges: Oldfield J and Venkatasubbaih

This is a petition filed in the Madras High Court challenging the lower court's order that granted Rs.150 as damages to a principal for assaulting a student at his school. The students, including the complainant, expressed their excitement by clapping hands on the last day of the term and at the end of the last period. In the opinion of the principal, the show had gone beyond reasonable boundaries and so he went into the class where the noise came from. On entering, he found that the complainant was shaking a rickety desk along with others. It was alleged that the child tried to shake the desk even after the other boys ran away. The principal (as he admits) gave the pupil's cheek two slaps.

The tribunal therefore ruled that the penalty was neither immoderate nor unfair. Since the complainant had acknowledged that the principal bored him with no ill-will or animosity and

had also given the complainant good advice on previous occasions. So, for the gratification of passion or rage, the penalty was not administered. The plaintiff was therefore not entitled to any damage.

2. Prafulbhai J.Vaghela and Anr. v. Pankaj Srikrishnakumar Saxena, Gruhpati and Ors

Judge: Akil Kureshi

In the case of the death of two children who went missing from the Gurukul they were operating, the accused made this plea to quash the FIR filed against him and were later found dead on the nearby river banks. The two boys, aged 11 and 10, were admitted to Gurukul and went missing from school one evening. The complaint was lodged alleging offences punishable under Sections 304, read against the petitioners under Section 114 of the Indian Penal Code, and Section 23 of the Juvenile Justice (Care and Protection) Act, 2000. Unique criminal petitions were also brought by the children's fathers demanding an injunction to investigate the deaths of the children and to take action against the criminals. The children were also alleged to have died because of the incompetence of the people in charge of the Gurukul. The accusation against the accused is that the timely search was not carried out and that the lives of the children may have been spared if it had been carried out.

As far as Section 304 is concerned, the Court quashed the FIR and allowed the police to continue their investigations under Section 304 A and Section 23 of the Juvenile Justice Act, 2000.

3. Ingraham v. Wright - 430 U.S. 651, 97 S. Ct. 1401 (1977)

Judge: Justice Lewis Powell

The case centred on James Ingraham, an eighth-grade student at Florida's public junior high school, who was paddled by the principal in 1970, despite being restrained by the assistant principal and the assistant to the principal. More than 20 times, Ingraham was struck and needed medical attention. On behalf of Ingraham and Roosevelt Andrews, another school student who had also been paddled, a lawsuit was filed. The lawsuit argued that the use of corporal punishment violated both the ban on cruel and unusual punishments of the Eighth Amendment and the Fourteenth Amendment's due process clause, which requires advance notice and an opportunity to be heard. The case was rejected by a circuit judge, and the ruling was upheld by the appeals court.

The case was argued before the U.S. in November 1976. The Court Supreme. The court ruled the next year that corporal punishment in public schools was not protected by the Eighth

Amendment. The justices held that only those convicted of a crime were protected by the amendment. Justice Lewis F. Powell, Jr., wrote in the majority opinion that the prisoner and the schoolchild, divided by the harsh facts of criminal prosecution and imprisonment, stand in entirely different circumstances. As regards the Fourteenth Amendment, the Supreme Court ruled that it did not breach the due process clause because corporal punishment was allowed and restricted by common law. The judges acknowledged the procedural protections of the different states that subject teachers and administrators who imposed unfair or unnecessary corporal punishment on civil or criminal li In reaching its decision, the court gave considerable emphasis to the historical tradition of corporal punishment in public schools in the United States, the long-standing provision of common law that corporal punishment b In the opinion of the court, the practise of judicial deference to the decision of educators and school administrators on children's education was also influential. Furthermore, the judges defined some considerations, such as the child's age and the form of punishment, that are taken into account by the courts in making determinations as to whether corporal punishment is fair.

VII. CONCLUSION

As discussed in the paper, the researchers have looked into three different countries namely India, USA and South Korea and have come to the conclusion that Corporal Punishment is still prevalent and existing today. The only case where the law permits physical form of punishment only in case of crimes and not in civil wrongs. Teachers often justify their act of punishing the students on the ground that it is beneficial or for the best interest of the student but little do they know that it is disrupts the social well-being, the physical and emotional development of the student and in some cases, they may develop violent and harmful means of retribution. Students are presumed to be innocent and therefore should not and cannot be subjected to Corporal Punishment. It can be said that Corporal Punishment given to children is similar to child abuse and there needs to be a stop to it. People should be made known of the laws that are there against Corporal Punishment and most importantly need to change their mind-set and resort to a zero-tolerance policy towards any sort of harm or violence against children as there are a lot more ways to illustrate the difference between the good and the bad to the students and Corporal Punishment is not one.

VIII. SUGGESTIONS

1. In our opinion, there is thus an immediate need in schools and other settings to discuss the issue of corporal punishment and abuse against boys and girls. There is a need to question

the power structures that enable adults to use humiliating forms of punishment, in some cases leading to the injury or even death of young children. Current studies in childhood and later life on the adverse physical and psychological impact of corporal punishment and other forms of abuse adds more persuasive grounds for condemning the practise.

2. There is thus an immediate need in schools and other settings to discuss the issue of corporal punishment and abuse against boys and girls. There is a need to question the power structures that enable adults to use humiliating forms of punishment, in some cases leading to the injury or even death of young children. Current studies in childhood and later life on the adverse physical and psychological impact of corporal punishment and other forms of abuse adds more persuasive grounds for condemning the practise.

3. As many Western cultures, Indian culture must cease to cater to the belief in the family's sanctity when parents breach a child's rights to develop in a healthy and nurturing atmosphere. Changes in policy and legislation do not seem to match changes at the school level, and this means that it is also important to take into account other factors, particularly the opinions of parents on corporal punishment, and broader issues related to how adults are viewed by boys and girls in society at different ages. There is a need to discuss school procedures, processes and frameworks.

4. For example, the development of a repertoire of classroom management skills relevant to alternative approaches to discipline, such as non-violent discipline, strong communication skills and conflict resolution techniques, by smaller class sizes and better resourced classrooms as well as through providing resources to teachers. As Subrahmanian(R Subrahmanian) states, much greater attention needs to be paid to how children, families, and teachers adopt, obtain and observe wide education policies.

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