

INDIA IS COMMITTED TO REFORM ITS LAWS TO PROHIBIT CORPORAL PUNISHMENT IN ALL SETTINGS

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ABSTRACT: Corporal punishment in India is a legally unrecognized type of punishment which in particular has no specific legislation to prohibit the corporal punishment. But corporal punishment in India is also supported by some existing laws on one hand and on other hand the act fall under criminal offence vides legal provisions like IPC. Although Supreme Court of India and many Child Care committees have already framed guidelines for prohibition of corporal punishment in schools. Also it is strictly prohibited worldwide. Therefore, the need of research persists to formulate law against corporal punishment.

Through this research paper, a comparative study of all the Indian laws, policies, guidelines of Convention of India and International is done to prove that corporal punishment shall be strictly prohibited in India on legal basis. And there shall be specific provisions in law particularly against corporal punishment and this is suggested vide this paper that how legal reforms can solve the purpose.

Index Terms: Corporal punishment, Child Care committees, Legal reforms

Introduction

School corporal punishment refers to causing deliberate pain or discomfort in response to undesired behaviour by students in schools. It often involves striking the student on body with an implement such as cane, wooden paddle, slipper, leather strap or wooden yardstick. Less commonly, it could also include spanking or smacking the student with the open hand, especially at the elementary school level.

In the English-speaking world, the use by schools of corporal punishment has historically been justified by the common-law doctrine *in loco parentis*, whereby teachers are considered authority figures granted the same rights as parents to punish children in their care.

The term 'corporal punishment' can be understood in various ways; we therefore propose the following definition: "Corporal punishment is the use of physical force causing pain, but not wounds, as a means of discipline." Spanking, rapping on the head and slapping are forms of corporal punishment which we do not classify as abuse. There are two factors to be taken into consideration when distinguishing between corporal punishment and physical abuse: Corporal punishment is just one of the wrong ways to discipline a child. The aim is not to substitute corporal punishment with psychological abuse but to discipline without using violence.

The use of corporal punishment is strongly rooted in our society and is passed on through generations; however, this doesn't mean that corporal punishment is justified. We just have to consider the treatment of women years ago, which was as different from today, accepting it was wrong and unfair.

The first state to ban corporal punishment in the United States was New Jersey in 1867. But it took 104 years for a second state to follow suit. Currently, there are 31 states that have banned the use of corporal punishment in publicly funded schools. Of the 19 states that do still permit corporal punishment, most are geographically located in the southern U.S.

LEGAL BASIS

INTERNATIONAL LAW

- a) 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."
- b) 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".
- c) 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".
- d) This is complemented by 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.” Article 19(2) lays down that– “Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

CONSTITUTIONAL PROVISIONS

- 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 age
- b) 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 violative of the right to life with dignity.
- c) 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 actualised with the enactment of Right of Children to Free and Compulsory Education Act, 2009.
- d) Article 39(e) directs the State to work progressively to ensure that “... the tender age of children are not abused”.
- e) 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.”

INDIAN PENAL CODE (IPC)

Several provisions of the Indian Penal Code (IPC) relating to varying degrees of physical harm and intimidation can be used to prosecute perpetrators of corporal punishment against children in an institutional setting. These include, inter alia:

- a) Section 305: Abetment of suicide committed by a child;
- b) Section 323: Voluntarily causing hurt;
- c) Section 325: Voluntarily causing grievous hurt;
- d) Section 326: Voluntarily causing hurt by dangerous weapons or means;
- e) Section 352: Assault or use of criminal force otherwise than a grave provocation;
- f) Section 354: Outraging the modesty of a woman;
- g) Section 506: Criminal intimidation
- h) Section 509: Word, gesture or act intended to insult the modesty of a woman;
- i) Till recently, the provisions of Sections 88 and 89 of the IPC were invoked to explain the power teachers exercised when inflicting corporal punishment. These two provisions in the chapter on ‘General Exceptions’ cover harms that may be caused without penal consequence. Section 88 exempts an act from being treated as an offence when the harm was caused “to any person for whose benefit it is done in good faith”. Section 89 exempts acts “done in good faith for the benefit of a person under 12 years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person.” However, contrary to Sections 88 and 89 of the IPC, the Gujarat High Court in its judgement *Hasmukhbhai Gokaldas Shah v. State of Gujarat*, 17 November 2008, has clearly stated that “corporal punishment to child in present days ... is not recognised by law”.

Further, India is a State Party to the Convention on the Rights of the Child. The standard of ‘the best interests of the child’ is now a part of domestic law. In 2006, the Committee on the Rights of the Child explained this obligation further when it reiterated, in General Comment No. 8, “the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment”

In theory, corporal punishment is covered by all the provisions under Indian law that punish perpetrators of physical harm. While these provisions make no distinction between adults and children, in practice, corporal punishment in schools and other institutions tends not to be prosecuted because it is widely accepted socially and regarded as legitimate. So the provisions highlighted in this section, the criminal provisions in particular, have the potential to be used in situations of corporal punishment, but rarely are.

RTE Act, 2009

- a) 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’ under Section 17(1) and makes it a punishable offence under Section 17(2). These provisions read as follows: 17. Prohibition of physical punishment and mental harassment to child – (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 person.

- b) 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”.
- c) The RTE Act does not preclude the application of other legislation that relates to the violations of the rights of the child, for example, booking the offenses under the IPC and the SC and ST Prevention of Atrocities Act of 1989. 5.5 The Juvenile Justice (Care and Protection of Children) Act, 2000 is an important statute that criminalises acts that may cause a child mental or physical suffering.
- d) Section 23 of the JJ Act, 2000 states as follows: “Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.”
- e) Section 23 covers the actions of anyone who has “actual charge or control over” a child. While Section 23 is likely to be applied most often to personnel in childcare institutions regulated by the JJ Act, it arguably applies to cruelty by anyone in a position of authority over a child, which would include parents, guardians, teachers and employers.

SCHEDULED CASTES AND TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

Some provisions of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 can be used to prosecute an adult in the general category who inflicts corporal punishment upon a scheduled caste or scheduled tribe child.

- a) Protection of Civil Rights Act, 1955
- b) 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.

Role of NCPCR and SCPCRs

The National Commission for Protection of Child Rights (NCPCR) and the State Commissions for Protection of Child Rights (SCPCRs) have been entrusted with the task of monitoring children’s right to education under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009, which reads as follows: 31.

Monitoring of child’s right to education –

(1) The National Commission for Protection of Child Rights constituted under Section 3, or, as the case may be, the State Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under the Act, also perform the following functions, namely:-

- (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
- (b) inquire into complaints relating to child’s right to free and compulsory education; and
- (c) take necessary steps as provided under Sections 15 and 24 of the said Commissions for (2)Protection of Child Rights Act.-

The said Commissions shall, while enquiring into any 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. (3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses(a) to (c) of sub-section(1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

As per Section 31.1 of the RTE Act the NCPCR and SCPCRs are 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) .

SUMMARY OF NECESSARY LEGAL REFORM TO ACHIEVE FULL PROHIBITION

Prohibition is still to be achieved in the home, some alternative care settings, day care, some schools and as a sentence for crime in traditional justice systems. Section 89 of the Penal Code 1860, and in Jammu and Kashmir the Ranbir Penal Code, states: “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...” This section should be amended/repealed to ensure that no legal provision can be construed as providing a defence for the use of

corporal punishment. The law should prohibit all corporal punishment, however light, by parents and others with authority over children. Alternative care settings – Corporal punishment is prohibited in care institutions: prohibition should not be enacted in relation to all forms of non-institutional care. Corporal punishment should be prohibited in all alternative care settings (foster care, institutions, places of safety, emergency care, etc) in Jammu and Kashmir. Day care – Corporal punishment should be prohibited in all early childhood care (nurseries, crèches, preschools, family centres, etc) and all day care for older children (day centres, after-school childcare, childminding, etc). Schools – Legislation should be enacted to prohibit corporal punishment of children aged 15, including in Jammu and Kashmir. Corporal punishment should be prohibited in religious schools throughout India. 2 Sentence for crime – The law should make clear that no child convicted of an offence, including under traditional law, can be ordered to undergo corporal punishment.

RECOMMENDATIONS AGAINST CORPORAL PUNISHMENT

Universal Periodic Review of India's human rights record India was examined in the first cycle of the Universal Periodic Review in 2008 (session 1). No recommendations were made specifically concerning corporal punishment of children. However, the following recommendation was made and was accepted by the Government:¹² "Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico)" Examination in the second cycle took place in 2012 (session 13). The following recommendation was made during the review:¹³ "Introduce legislation to prohibit corporal punishment of children in all settings (Liechtenstein)" The Government accepted the recommendation.¹⁴ In 2017 India underwent its third cycle examination (session 27). The following recommendations were made:¹⁵ "Introduce legislation to prohibit corporal punishment of children in the home and in all other settings, including as a sentence under traditional forms of justice (Liechtenstein); "Introduce comprehensive and continuous public education, awareness raising and social mobilization programs on the harmful effects, of corporal punishment (Liechtenstein); "Establish a database of all case of violence against children and explicitly prohibit all forms of corporal punishment of children under 18 of age in all settings (Zambia)

The Government accepted all three recommendations.

Recommendations by human rights treaty bodies Committee on the Rights of the Child (7 July 2014, CRC/C/IND/CO/3-4, Concluding observations on third/fourth report, paras. 47, 48, 50 and 56)

"The Committee notes the legal prohibition of corporal punishment in all educational and care institutions. However, it remains concerned that: a) such prohibition in educational institutions only applies to children between 6 and 14 years;

Committee on the Rights of the Child (26 February 2004, CRC/C/15/Add.228, Concluding observations on second report, paras. 44 and 45) "The Committee notes the decision of the New Delhi High Court of December 2000 regarding prohibition of corporal punishment in the schools under its jurisdiction, but remains concerned that corporal punishment is not prohibited in the schools of other states, in the family, nor in other institutions for children, and remains acceptable in society. "The Committee strongly recommends that the State party prohibit corporal punishment in the family, in schools and other institutions and undertake education campaigns to educate families, teachers and other professionals working with and/or for children on alternative ways of disciplining children." Committee on the Rights of the Child (23 February 2000, CRC/C/15/Add.115, Concluding observations on initial report, paras. 38, 40, 44 and 45)

Committee on the Elimination of Discrimination Against Women (18 July 2014, CEDAW/C/IND/CO/4-5 Advance Unedited Version, Concluding observations on fourth/fifth report, paras. 26 and 27)

India's commitment to prohibiting corporal punishment India expressed its commitment to prohibiting all corporal punishment of children, including in the home, in its third/fourth report to the UN Committee on the Rights of the Child in 2011. The commitment was reaffirmed when the Government accepted the recommendation to prohibit corporal punishment in all settings made during the Universal Periodic Review of India in 2012 and again in 2017. Summary of necessary

REFERENCES:

- [1] December,2008,Delhi, Protection of Children against Corporal Punishment in Schools and Institutions, Working Group on Corporal Punishment, National Commission for Protection of Child Rights (NCPDR)
- [2] Ratanlal & Dhirajlal, The Indian Penal Code, Lexis Nexis,35th Edition
- [3] Ratanlal & Dhirajlal, The Code of Criminal Procedure, Lexis Nexis, 20th edition,2011
- [4] VN Shukla's Constitution of India, 11th Edition,Eastern Book Depo
- [5] Universal's The Right of Children To Free and Compulsory Education Act,2009, 2017