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Corporal Punishment in India

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Abstract

Despite strong regulations prohibiting the use of Corporal Punishment in schools, violence against children continues in schools across India. Although it is illegal in Indian Schools, instructors continue to employ various forms of physical punishment. It has mostly been utilized as a disciplinary control tool in schools. Punishing children has long been seen to be a sure-fire way to raise responsible and disciplined youngsters. Children were raised to believe that inflicting damage was a natural part of growing up, so they never suspected that their rights had been violated. Pity has been called love and care in the best interests of the child, so most children have never felt the need to report such incidents. In this article, we will take a closer look at the current situation of corporal punishment in India, as well as the laws and phenomena associated with it.

Introduction

In 2018, a third-grade student, Haricandra Prasad of Sri Caitanya Olampiyad School in Boduppala, was physically scaled by his Hindi professor during the Boduppala Incident.² These are just a few examples of punishing innocent children in the name of discipline, even though corporal punishment is illegal in India. Physical punishments are known as corporal punishment. These penalties are provided for by law only in the case of offenses, which are also investigated by a competent lawfully appointed body.

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² 'Three Corporal Punishment Cases In Three Days' (*The New Indian Express*, 2021) <https://www.newindianexpress.com/states/teelangana/2018/oct/07/three-corporal-punishment-cases-in-three-days-1882253.html> (Accessed 26 September 2021)

KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 01 Issue 02

KnowLaw

Corporal punishment is deeply rooted in the Indian classes. Children have been taught since time immemorial that harm is a normal part of growing up, and they never suspected that their rights had been violated. In addition to the fact that physical punishment leads to serious injury, it also leads to suicide and school drop-out by young people. Although it is a hideous practice, physical punishment is justified by quotations from the ancients and scriptures. These texts praise teachers as gods and justify hurting students. For these reasons, teachers had complete freedom of action in punishing children.

"Despite the legislative structure that strives to abolish physical punishment at all costs," the Madras High Court stated, "this practice is regularly practiced by schools and institutions across the country."³ Even though such sanctions are illegal, they are used at a variety of educational institutions around the country. As Justice Venkatesh stated in his decision since animals are protected from abuse by special legislation, "our children cannot be worse off than animals."⁴

Laws related to Corporal Punishment

All kinds of punishment, including sexual abuse, are harmful to the child. Currently, there is no official definition of corporal punishment against children in Indian law. But there are many laws and regulations to protect a child from corporal punishment.

The Right to Education Act, 2009

According to The Right to Education Act, 2009, the punishment can be classified as physical punishment, mental harassment, and discrimination. Section 17 of the Act prohibits the use of

³ Advocate S, 'Shocking That Children In This Country Are Till Date Being Subjected To Sadistic & Inhumane Culture Of Corporal Punishment: Madras HC - Legal Articles In India' (*Legal Articles in India*, 2021) <http://www.legalservicesindia.com/law/article/1870/17/Shocking-That-Children-In-This-Country-Are-Till-Date-Being-Subjected-To-Sadistic-Inhumane-Culture-Of-Corporal-Punishment-Madras-HC> (Accessed 24 September 2021)

⁴ Madras HC Laments Absence Of Law to Prohibit Corporal Punishment' (*The Hindu*, 2021) <https://www.thehindu.com/news/national/tamil-nadu/madras-hc-laments-absence-of-law-to-prohibit-corporal-punishment/article34001384.ece> (Accessed 26 September 2021)

KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 01 Issue 02

KnowLaw

physical punishments and mental harassment of a child. It states that no child will be subjected to physical punishment or psychological harassment. It is also indicated in this point that anyone who violates the above-mentioned subject to disciplinary action following the terms of service applicable to that person. Section 8 and 9 of the Right to Education Act⁵ oblige the government as well as the agency to "ensure that children belonging to a vulnerable group and children belonging to a vulnerable group are not discriminated against and interfere with education and completion of primary education for whatever reason.

Juvenile Justice (Care and Protection of Children) Act

Section 2(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015⁶, is in the best interests of the child, meaning that the basis on which a decision is made about the child must be the best interests of the child. Basic human rights, needs, social, mental, and physical development, not to mention the fact that corporal punishment serves none of these purposes. In addition, section 3(i) of the 2015 JJ Act mentions the "presumption of innocence" principle which underlines the presumption that a minor child is innocent and incapable of committing the offense.

Section 75 of the Act mentions the penalty for child abuse. It stipulates that if a person who is a guardian of a child attacks, abandons, intentionally ignores, or commits another act that causes unnecessary physical or mental suffering to the child, he or she will be punished with imprisonment of up to 3 years or a fine up to 1 lakh or both.

Section 82 deals with the use of corporal punishment, stipulating that any person in charge of an educational institution who uses corporal punishment under the pretext of disciplining children will be liable to a fine of 10,000 rupees and will be punished with imprisonment for

⁵ (Legislative.gov.in, 2021) https://legislative.gov.in/sites/default/files/A2009-35_0.pdf (Accessed 26 September 2021)

⁶ (Legislative.gov.in, 2021) https://legislative.gov.in/sites/default/files/A2009-35_0.pdf (Accessed 26 September 2021)

KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 01 Issue 02

KnowLaw

each subsequent offense 3 months or a fine or both. In addition, such a person may be dismissed from work and be prohibited from working directly with children.

Constitution of India

Violence against children violates the right to life referred to in Art.21 of the Indian constitution because it violates their right to a dignified life. In addition, corporal punishment violates the Right to Education referred to in Art. 21A, also they increase dropout rates. In the case of *Hansmukhbhai Golakdas Shah v. the State of Gujarat 2008*⁷, the Gujarat Supreme Court ruled that corporal punishment is not recognized by law. Article 39 (e) requires the state to gradually ensure that "young children are not subjected to violence". Article 39 (f) prescribes that the state should work progressively to provide "children with opportunities and opportunities for healthy development."

Indian Penal Code, 1860

Sections 82 and 83 of the Indian Penal Code exempt from criminal liability for any acts committed by minor children. In addition, violence against children is a crime under the Indian Penal Code⁸ and carries liability for harm under Section 323; seriously detrimental to health under Section 325; voluntary inflicting of serious bodily injuries by hazardous agents following art.326; the use of criminal force following Section 352; Section 506 criminal intimidation; insulting female modesty or a word, gesture, or action intended to offend female modesty following Section 354 or 509; and if a child commits suicide by humiliation, IPC Section 305 applies in the instigation to commit suicide.

People often justify their actions by the argument that such punishment is necessary for a child's development as it ensures that the child grows up without any signs of misbehaviour. They are protected from IPC sections 88 and 89. Section 88 protects "Acts that are not intended to cause death, committed in good faith for the benefit of a person" and section 89 protects "Acts

⁷ Criminal Appeal No. 92 of 1996

⁸ (*Legislative.gov.in*, 2021) <https://legislative.gov.in/sites/default/files/A1860-45.pdf> (Accessed 26 September 2021)

KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 01 Issue 02

KnowLaw

committed in good faith for the benefit of a child or mentally ill person along with the help or consent of the guardian"⁹.

The United Nations Convention on the Rights of Child

Article 19 of the 1989 UN Convention on the Rights of the Child (UNCRC) mentions the right of these children to be protected from any kind of injury and states that the use of corporal punishment for disciplinary purposes is simply unacceptable. Governments should ensure that children are properly cared for and protected from the violence, abuse, and neglect of anyone caring for them. Article 28 (1) 2 requires States Parties to "take all necessary measures to ensure observance of school discipline with respect for the human dignity of the child and following the present Convention".

The NCPDR has also issued various guidelines on managing corporal punishment in schools and dealing with complaints from children. One guideline requires each school to set up a "corporal punishment monitoring team" to investigate complaints about corporal punishment.

The Regressive Judicial Discourse

Unfortunately, even after Indian law has rejected corporal punishment, some courts still try to follow the old orthodox rules and believe that harming students is necessary and teachers have the right to do it to children. In the Himachal Pradesh case, the student committed suicide after being hit twice by the teacher. The teachers were sued for the assault. The Himachal Pradesh High Court dismissed all charges against the teacher and ruled that slapping the teacher was not an assault.¹⁰ Kerala's High Court considers corporal punishment to be problematic only in cases of serious damage to health, as evidenced by its decisions.

⁹ Sakshi, "Corporal Punishment against Students and the Law" (*Jus Corpus* October 1, 2021) <https://www.juscorpus.com/corporal-punishment-against-students-and-the-law/>

¹⁰ Machaiah R, 'The Regressive Judicial Discourse On Corporal Punishment In India' (*Bar and Bench - Indian Legal news*, 2021) <https://www.barandbench.com/columns/the-regressive-judicial-discourse-on-corporal-punishment-in-india> (Accessed 25 September 2021)

KnowLaw Journal

Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 01 Issue 02

KnowLaw

Is a Law enough?

While various laws are outlawing corporal punishment, the use of such forms of punishment is still widespread across the country. A recent study by the NGO Agrasar found that more than 80% of children on Gurugram face daily corporal punishment.¹¹ This clearly shows that there is a deeper problem here than what meets the eye. Teachers use these methods due to a lack of awareness or interest in exploring options other than violence. They often feel their emotional uplift due to factors such as low wages, unequal student-teacher ratios, underfunded schools, etc., and pounce on students. Unless these structural drivers of violence are taken into account, legislation is unlikely to provide containment. Other steps, such as improving the teacher-student relationship, assigning counsellors to children, etc., may also help discourage corporal punishment.

Corporal Punishment and its Consequences

Needless to say, any form of punishment will have serious and long-term consequences for the child's psyche, and will also hinder its development in the long run. But one very disturbing fact about corporal punishment is that it is a vicious circle. Whoever has been hit will feel that it is possible to hit as well, and this is disturbing. Corporal punishment leads to a variety of detrimental physical, psychological and educational effects, including increased aggressive low-income. Behaviour, poor classroom grades, decreased attention, increased dropout or irregular school attendance, self-doubt, anxiety, depression, etc., worse total suicide. It may seem like it will only affect your child until he or she goes to school, but it can leave a scar so deep that it can last a lifetime.

¹¹ News C, and News g, '80% Of Government School Children Face Corporal Punishment, Says Study | Gurgaon News - Times Of India' (*The Times of India*, 2021) <https://timesofindia.indiatimes.com/city/gurgaon/80-of-government-school-children-face-corporal-punishment-says-study/articleshow/68087661.cms>

KnowLaw Journal

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Volume 01 Issue 02

KnowLaw

Conclusion

Even now, the practice of physical punishment continues because most people believe in the concept of old age: "don't spare your rod, pamper the baby." It is necessary to change the way people think. People need to understand that there is no evidence that corporal punishment turns children into responsible citizens. On the contrary, children subjected to corporal punishment may even resort to violence as a retaliatory measure or may become physically abused adults. So the time has come to bring people to the right and develop intolerant attitudes to corporal punishment. The child is the future of our country and must be protected for the development of the country. The child is subjected to corporal punishment not only at school but also at home. While it is important to scold a child for doing something wrong, we cannot deny the attachment effect that children crave. Rural children have to endure corporal punishment from parents at home and teachers at school. Children need time to embrace and learn new things, and parents need to interact positively with them. Includes:

First, pay attention to the child and try to understand his/her behaviour and try to scold the child only with words. Then ignore minor bugs. Likewise, realize that your child needs help, not punishment. In addition, participation in life skills, education in schools, including the improvement of children's communication and interpersonal skills, and finding new ways to deal with stress and anger in children at school and at home.