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## ***Child Rights: Right Not To Be Hit***

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### ***Abstract***

*"Children are like wet cement whatever falls on them makes an impression."*

*- Haim Ginnot*

Children must be treated with equality, respect and dignity, not just because they are 'the future of the nation', but also because they are human beings who are born with fundamental freedom and rights even today. A child has to be given protection against various factors, which cover issues relating to sexual abuse, human trafficking, health services, life and survival matters, inhumane treatment and detention etc. Many countries allow parents and teachers to hit their children to bring discipline, which often results in adverse outcomes.

In this paper, the authors will be dealing with child rights concerning the 'Right not to be hit'. The paper explains the consequences of the usage of Corporal punishment in schools as well as in-home against the children. The researcher has also made a comparative analysis of the global perspective toward the ban on such Corporal Punishment. The paper also examines various statutes in India. Finally, the authors give suggestions to control and prohibit the usage of corporal punishments.

***Keywords:*** *Corporal Punishments, Mental Health, Ban, Parents & Teachers, UNCRC, NCPRC & SCPRC.*

## I. Introduction

*"We worry about what a child will become tomorrow, yet we forget that he is someone today."*

-Stacia Tauscher

A Child means a person who has not attained the age of 18 years. The Children are considered the "Supremely important national asset". The future of the nation depends upon the children. Therefore, it is the duty of the Government to make a child lead their life peacefully and help them achieve their dreams and passion.

The Convention on the Rights of Child (CRC) was approved by United Nations in 1989. It is an international agreement having 54 articles and more than 45 rights for a child. It embraces four primary principles which are considered unique, and those provisions are utilised to interpret the other rights of the Convention – Non-discrimination (article 2), the Best Interest of the child (article 3), Right to life survival and development (article 6) and right to be heard (article 12). India ratified the Convention on December 11, 1992.<sup>1</sup>

Article 37<sup>2</sup> of the said Convention deals with Child's rights against inhuman treatment and detention. Article 37 states, "*The States Parties shall ensure that: No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.*"<sup>3</sup>

Corporal Punishment or physical Punishment is an intentional way to cause physical pain to a person as a part of disciplinary action. Parents and teachers often inflict it on children at home and in educational institutions.

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<sup>1</sup> (UNICEF UK) < <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>> Accessed on 02 February 2022.

<sup>2</sup> United Nation Convention on the Rights of Child < [https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC\\_united\\_nations\\_convention\\_on\\_the\\_rights\\_of\\_the\\_child.pdf?\\_ga=2.8109691.851990507.1550227908-1946220540.1549733256](https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.8109691.851990507.1550227908-1946220540.1549733256)> Accessed on 07 February 2022.

<sup>3</sup> The United Nations Convention on the Rights of the Child < <https://www.savethechildren.org.uk/content/dam/global/reports/uncrc-child-friendly-version.pdf>> Accessed on 10 February 2022.

Historically, it has been practised on adults, especially prisoners and enslaved people, but in the present day, it is exploited on children to make the students adhere to the rules and regulations.<sup>4</sup>

In 2001 an organisation called "Global Initiative to End All Corporal Punishment of Children" received its endorsement from UNICEF, UNESCO, the United Nations High Commissioner for Human Rights, the Commissioner for Human Rights of the Council of Europe, the Parliamentary Assembly of the Council of Europe, and the European Network of Ombudsmen for Children was an initiative taken to battle against the usage of Corporal Punishments on students. Furthermore, it battles for the universal forbidding of severe physical and mental punitive measures for protecting children in the home and educational institutions.

## II. Effects Of Corporal Punishment

Children often do not complain, keep silent, and succumb to violence without questioning. Such an Act shows deep hurt in their emotions, and a change in their behaviour often goes unnoticed, preserving added violence on them.

Professor V.K. Vijayan, Institute of Mental Health, is of the view that corporal punishments not only affect a child physically it also has a significant impact on his mental health and academic performance as there is a reduction of self-esteem and dignity of the child. Several international research centres are detailing the negative results of corporal punishment in schools.

In the report made by the Society for Adolescent Medicine, it has identified that victims of corporal punishment often develop *"deteriorating peer relationships, difficulty with concentration, lowered school achievement, anti-social behaviour, intense dislike of authority, somatic complaints, a tendency for school avoidance and school drop-out, and other evidence of negative high-risk adolescent behaviour."*

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<sup>4</sup> Children And Corporal Punishment "Right not to be hit, also a Children's right" (2008)  
<<https://rm.coe.int/children-and-corporal-punishment-the-right-not-to-be-hit-also-a-childr/16806da87b>> Accessed on 9<sup>th</sup>

## **1. Physical Health Issues:**

Physical punishment is any action that causes pain, hurt/injury and discomfort to a child, however petite. Instances of physical Punishment comprise but are not constrained to the following- Causing physical harm to children by hitting, kicking, scratching, pinching, biting, pulling the hair, boxing ears, smacking, slapping, spanking or with any implement such as a cane, stick, shoe, chalk, dusters, belt, whip, giving electric shock etc. or making children assume an uncomfortable position like standing on the bench, standing with a schoolbag on the head, holding ears through legs, kneeling etc. and also involves detention in the classroom, library, toilet or any closed space in the school. Corporal punishments cause physical damage to children to a large extent, including direct body pain and aches and temporary and permanent disablement; it also leads to death many times. Moreover, such Punishments violate the fundamental right to live peacefully and in good health.

## **2. Encouraging Violence:**

Aggression breeds aggression. When grown-ups practice corporal punishments, children are taught that violence is a suitable reaction to any conflict or misunderstanding with their peers. Many types of research prove that children subject to physical punishments grow to be persons with violent behaviour and antagonism. They are seen as more anti-social with their siblings and other students at school. It also makes them believe that hitting is an acceptable way to deal with a problem. The children subjected to corporal punishment, such children when they become parents, treat their spouses and children with aggression and violence. Such punishment may legitimise violence for children in interpersonal relationships because they tend to internalise the social relations they experience. A person exposed to such physical violence shows maladaptive conduct later in life.<sup>5</sup>

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<sup>5</sup> Susan H. Bitensky “The United Nations Convention On The Rights Of The Child And Corporal Punishment Of Children: Ramifications For The United States” (1997)  
<<https://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1007&context=facpubs>>

### 3. Mental Health Outcomes:

Corporal punishments not only cause physical harm to the children but are also imperilled to emotional, mental and psychological problems. The child is affected beyond the temporary pain inflicted. Severe psychological and emotional problems have been found to occur in children who have been the target of corporal punishment. Treating such harsh punishments to children results in low self-esteem, anxiety, somatic complaints, depression, and even suicide—the blend of physical and verbal abuse results in emotional neglect, which directly affects their mental health. Psychological maltreatment and abuse bring the outcome of depression and detrimental developmental issues in young children. In addition, such maltreatment kills the child's sense of personal safety.

A report by UNICEF in 2007 found that psychological damage reflects the child's self-esteem and self-confidence and produces other long-term negative consequences of corporal punishment. Many researchers found that the main consequence of such punishments includes running away, being truant, fearing teachers or school, helplessness, and humiliation. It is also revealed that the child withdraws from social activities as he/she feels the inhibition, helplessness, inferiority, rigidity, shame and self-doubt.<sup>6</sup>The victims and the students who also witness corporal punishments risk developing emotional issues.

A study exposed roughly one-half of students who are endangered to severe punishment cultivates an illness called Educationally Induced Post-Traumatic Stress Disorder (EIPSD). In this ailment, symptomatology is analogous to Post-Traumatic Stress Disorder (PTSD). As with PTSD, EIPSD can be identified by a varying combination of symptoms characteristic of depression and anxiety. This mental health imbalance is induced by significant stress; with EIPSD, the stress is the inflicted punishment.

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<sup>6</sup> Unicef India, < <http://unicef.in/story/197/all-you-want-to-know-about-corporal-punishment>> Accessed on 7 February 2022.

#### 4. Academic Performance:

Universally it is recognised that any punishments like smacking, hitting, beating, slapping, etc., comes in the way of children's growth and development of full potential. These punishments not only physical harm but their in-school behaviour and academic performance are also abridged. Studies state that the schools which are in the practice of applying harsh punishments have performed academically worse in comparison with the schools that forbid such punishments.

The children who are the victims of corporal punishments withdraw themselves from academic activities and disengage from education.

The ubiquitous custom of physical violence in school as disciplinary action against the students creates an overall hostile atmosphere in school, directly impacting the children's ability to achieve intellectually.<sup>7</sup>

Many parents are forced to withdraw their children from school due to the implications of stringent punitive measures on primary school children. As a result, the children resorted to home schooling, affecting their social and academic lifestyle.

Corporal punishments bring adverse educational outcomes such as aggressive and destructive behaviour, disruptive classroom behaviour, vandalism, poor academic achievement, poor attention span, etc.

Because of corporal punishments, there is an outbreak of drop-out rates in educational institutions. Moreover, the students victimised because of such severe disciplinary action prefer to avoid school and develop school phobia, low self-esteem, and retaliation against the teacher.

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<sup>7</sup> “*Corporal Punishment in Schools and Its Effect on Academic Success*”, Human Rights Watch <<https://www.hrw.org/news/2010/04/15/corporal-punishment-schools-and-its-effect-academic-success-joint-hrw/aclu-statement>> Accessed on 5 February 2022.

### III. Global Perspective Of Corporal Punishment

Corporal Punishment of children has become the most vital subject around the world. The U.N. Committee on the Rights of the Child has defined corporal punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, and has called it a form of violence against children"<sup>8</sup>. Although few countries have passed legislation and specific laws regarding the same, there are still many countries in which children are victimised. Sweden became the first Country to outlaw corporal punishment in 1979, and as of 2018, a total of 53 countries have followed suit<sup>9</sup>.

#### A. Sweden:

Sweden, in the year 1979, became the first-ever Country<sup>10</sup> to change the law to protect the right from not being hit either by parents or the teachers, especially the primary school children. As a result, Sweden has the lowest child abuse death rate worldwide. Sweden outlawed smacking and other forms of physical punishment, and only four child abuse deaths were recorded between 1981 and 1996. The main goal of the ban on corporal punishment was to increase the awareness of child abuse and encourage the public to shelter the children from such risks. The Penal Code punishes Assault (the infliction of "bodily injury, illness or pain upon another") with imprisonment up to two years, or if petty, with a fine or imprisonment up to six months which is given under Article 5 of the Instrument of Government; aggravated Assault is punished with imprisonment between one- and six-years Article 6.

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<sup>8</sup>Elizabeth T. Gershoff, 'School Corporal Punishment in Global Perspective: Prevalence, Outcomes, and Efforts at Intervention' (2017) 22(SUP1): 224–239 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5560991/>> Accessed on 18 January 2022.

<sup>9</sup>("Map of the 53 Countries That Ban the Corporal Punishment of Children")( 11 July 2018) <<https://brilliantmaps.com/corporal-punishment/>> Accessed on 06 February 2022.

<sup>10</sup>("Corporal punishment policies around the world") <<http://edition.cnn.com/2011/WORLD/asiapcf/11/08/country.comparisons.corporal.punishment/index.html>> (9 November 2011) Accessed on 08 February 2022.

### ***B. Austria:***

In Austria, no defences are available to those who administer corporal punishment to children. Corporal Punishment is unlawful as a disciplinary measure in penal institutions. Article 109 of the Penal Service Act sets out disciplinary measures for penal institutions and makes no place for corporal punishment in the nation.<sup>11</sup>

### ***C. Pakistan:***

The slogan of the Government of Pakistani, which has been very common for the last decade among Pakistanis, "Not to beat But Love", which means "Maar Nahi Pyaar", is strictly observed by the Government<sup>12</sup>. In schools where corporal punishment is a widespread phenomenon. Pakistan's new Government has set its view on enforcing a ban on corporal punishment, which has been widely accepted in schools and other institutions worldwide. Recently Prime Minister of Pakistan Imran Khan has also approved a ban on corporal punishment in schools<sup>13</sup>. Previously ban on corporal punishment by assemblies, the Government faced many implementation issues. Imran Khan believes that the federal Government, including the education department, must ensure that no child is humiliated where such punishments are common in practice. Anyone found guilty of the same is charged under Section 89 of Pakistan Penal Code, 1860, which allows only moderate penalties for corporal punishment, must be repealed and should be six years imprisonment as well as a Rs. 50,000 fine as mentioned in the Khyber Pakhtunkhwa Child Protection and Welfare Act<sup>14</sup>. Section 33 of the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010 also abolishes corporal punishment in the same way as the current law passed by the National Assembly.

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<sup>11</sup> ("Prohibition of corporal punishment") <<https://endcorporalpunishment.org/reports-on-every-state-and-territory/austria/>> Accessed on 11 February 2022.

<sup>12</sup> Malik Haqnawaz, DanishAsma Iqbal, 'Corporal Punishment and its Effects in Pakistan'

<sup>13</sup> Javed Khan, 'Pakistan authorities work to end Corporal Punishment in Schools' *Asia News* (Pakistan, 10 October 2018)

<sup>14</sup> *Ibid* at 12.

It says, "Corporal Punishment stands abolished. Its practice in any form is prohibited under Section 89 of the Pakistan Penal Code. The Institute for Social Justice considers this development a very positive step taken by the Government. It will pave the way for good practices and lead to a safe and protected environment for the Children. It will ultimately lead to increasing literacy rates and improve the quality of education worldwide.

#### **D. Norway:**

The Norwegian Government has drafted specific laws to ban corporal punishment, introduced decades ago. State Secretary Astri Aas-Hansen of the Ministry of Justice has said that it must be clear that the children also have the same rights as the adults do in Norway. Even the parents should know they do not have any right to punish their children<sup>15</sup>. If it is wrong to smack an adult, it should also be wrong if anyone smacks a child. In 1987, an amendment to the Parent and Child Act read: "*The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health.*"

#### **E. Brazil:**

The Brazilian Senate approved the law forbids teachers and parents from physically punishing minors. The experts have said that the habit of physically punishing a child will lead to low self-esteem. Brazil is the 38<sup>th</sup> Country to ban physical punishment in schools and homes. By enacting this legislation is an increase in the percentage for the protection of children from 5% to 8% due to the legal ban of Corporal Punishment provided in the said statute.

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<sup>15</sup> 'Norway: Plan to ban Corporal Punishment Once and for All' *CRIN* (Norway, 26 November 2013)

## F. Nepal:

Like every other Country facing the issue of corporal punishment, it is no new root for such kind of Punishment in Nepal. There are no special laws to ban corporal punishment. However, the Government have enacted a Children's Act, 2048 (1992). Article 39 of the said Act has authorised the chief welfare homes to use any mild punishment if the child behaves unruly and is not disciplined. However, the Act does not provide the children with any Physical Punishment.<sup>16</sup>

## IV. Position In India

Most schools in India advocate this type of punishment- 'spare the rod and spoil the child is the famous quote among the teachers and parents. However, there are several provisions in the constitution and other statutes which prohibit the usage of corporal punishments.<sup>17</sup>

Article 21<sup>18</sup> deals with the right to life and dignity, which also interferes with a child's right to education. However, as already pointed out, the children's academics are affected because of fear of corporal punishment, thereby directly violating their fundamental rights. Moreover, Corporal Punishment violates the right to live with dignity.

Article 39(e)<sup>19</sup> directs the state to ensure that the tender age of the children is not abused.

Article 39(f)<sup>20</sup> directs the state that it should work progressively to ensure that children are provided with opportunities to grow in a healthy atmosphere conditioned with freedom and dignity.

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<sup>16</sup>Physical Punishment at School: A Study

<[https://resourcecentre.savethechildren.net/sites/default/files/documents/corporal\\_punishment\\_report\\_summary-hs\\_scn-libre.pdf](https://resourcecentre.savethechildren.net/sites/default/files/documents/corporal_punishment_report_summary-hs_scn-libre.pdf)> Accessed on 31 January 2022.

<sup>17</sup> (Urban Pro) < <https://www.urbanpro.com/a/punishment-in-schools-in-india-what-the-law-says/2653029>> Accessed on 31 January 2022.

<sup>18</sup> The Constitution Of India, 1949

<sup>19</sup> *Ibid.* 8

<sup>20</sup> *Ibid.* 8

There are many provisions in the Indian Penal Code, 1860 dealing with various degrees of physical harm. The most crucial section is Section 321 and Section 323, which deals with voluntarily causing hurt. The section penalises the violators with imprisonment of either description for a term which may extend to one year, with a fine which may extend to one thousand rupees, or with both. Persons engaging in Corporal punishment can be penalised under this section. A Person using Corporal Punishment toward a child is also considered to be committing a crime under Section 351 and 352<sup>21</sup>, which deals with Assault.

The Juvenile Justice (Care and Protection of Children) Act 2000 is a significant statute that criminalises the acts which cause a child either physical or mental suffering or both. For example, section 23<sup>22</sup> of the Act states that any person having control over a child assaults the child shall be punishable with imprisonment for a term which may extend to 6 months or fine or both.

The Right of Children to Free and Compulsory Education Act, 2009 forbids any form of physical punishment and mental harassment to a student under Section 17 (1), a punishable offence under Section 17 (2).

National Commission for Protection of Child Rights (NCPCR) and the State Commission for Protection of Child Rights (SCPCR)<sup>23</sup> have been entrusted with monitoring children's right to education under Section 31<sup>24</sup> of the Right of Children to Free and Compulsory Education Act, 2009. In addition, it is also the commission's responsibility to ensure that Section 15 of the Protection of Child Rights Act, 2005 which deals with initiation of proceedings for prosecution in case of violation of child rights, has been fulfilled.

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<sup>21</sup> Indian Penal Code, 1860

<sup>22</sup> The Juvenile Justice (Care and Protection of Children) Act 2000

<sup>23</sup> Guidelines for Eliminating Corporal Punishment in Schools <<http://ncpcr.gov.in/showfile.php?lid=153>> Accessed on 19 January 2022.

<sup>24</sup> Right of Children to Free and Compulsory Education Act, 2009

NCPCR has framed few guidelines for eliminating Corporal Punishment in school:

- i. Only the concerned teachers should respond to the behaviours of children relating to cleanliness, not keeping up in time, academic-related issues and not meeting classroom expectations of school authorities.<sup>25</sup>
- ii. The school should provide a clear protocol to guide the teachers relating to troublesome and offensive behaviour where the school counsellor must intervene.
- iii. The child and adolescent psychiatrist should also help the children to develop a sense of self-discipline that leads to positive self-esteem. The psychiatrist should constantly interact with the child, his parents and teachers to help him build trust and conduct workshops to solve the child's difficulties.<sup>26</sup>

**V. Suggestions:**

- i. Campaigns and publicity should be made against corporal punishment, and it must be brought to the notice of the authorities of educational institutions.
- ii. The children must be given the confidence to complain against the authorities who give them harsh punishments, and also, they should be informed not to accept punishment as a regular activity in the school.
- iii. A forum must be formed where children can express their opinions. Such forum should be constituted in every educational institution, hostels, juvenile justice home and shelter home.
- iv. Parent-teacher Association must be conducted frequently, i.e. not more than a time gap of a month, to discuss the problems of the child and come up with a solution.

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<sup>25</sup> (Childline 1098 Night and Day) < <http://www.childlineindia.org.in/India-and-UNCRC.htm>> Accessed on 9 February 2022.

<sup>26</sup> *Ibid* 13

- v. Parents should also be empowered to protest against corporal punishment without any fear that it might have an adverse effect on children's education and participation in the school.
  
- vi. Teachers and schools should be encouraged to develop positive behaviour Support rather than harsh disciplinary tactics. While the former has proved a safe and productive learning environment, the latter has been proved to cause many harmful effects on the later part of the child's life.

India should take steps to ban corporal punishments completely like Sweden. It need not prohibit punishments but only corporal punishments. Such punishment should also be conditioned with reasonable restrictions. Heavy penalty and imprisonment should be imposed on the persons indulging in such offence, and an act has to be enacted altogether banning Corporal Punishments & also provide same rights as the adults enjoy, as in existence in Austria and Norway respectively. A strict country like Pakistan has also taken measures to prohibit Corporal punishment by regarding it as Anti- Social activity. India is a vast country with a vast population where a child's growth and development are significant for the nation, and not only the Right to Childhood is also adversely affected, but it should ban and punish the person who is guilty of such an offence.

## VI. Conclusion

Every human being has a right to live without violence. We must not overlook that children also have the right as human beings. They have equal rights as everybody else – conceivably even more because of their age and skill; they do not have the power and means to fight for their privileges. It is the bounden obligation of all adults and institutions to respect and protect children's rights. Corporal Punishment violates human rights to physical integrity and human dignity

Children are vulnerable to the environment and surroundings they are in, owing to their developing minds. The state should ensure that an environment in which a child spends most of his time, like school, is suitable for their growth and development. No discrimination should be made among the children who are in conflict with the law and not and who are to be given special care and not. No nation can flourish if the children of such a nation suffer. There are several mechanisms of the state, nation and other nations around the world whose help should be secured to protect the children's rights. As discussed, this form of punishment has been prevalent in India for a long time, and unfortunately, it continues to exist even today.

As rightly observed by Zambia's Human Rights Commission director, Enoch Mulembe, corporal punishment is evil. *"Disciplining children by corporal punishment and other inhuman ways is evil. We should encourage non-violent ways of discipline because corporal punishment has proved to be destructive.*