
CHILD ABUSE: A CONFORMIST STIGMA

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ABSTRACT:

The difference between abuse and punishment has not been established in any legislature as of today. This short article talks about the history and origin of laws regarding punishment and abuse towards children. The different types of punishments i.e., Physical and Mental, that a person of authority to a child as per section 2(9) of the Juvenile Justice Act, 2015 inflicts on the child will be discussed and how the Indian courts have dealt with the same. Abuse in the name of “Punishment” as an orthodox was followed by almost everybody in the past to discipline their child. Although the instance is seemingly reduced in the recent years, they are still very prominent in the rural areas of India. This article will give a brief about the judicial standing and understanding of abuse and punishments, how some courts of the highest standings have stuck to the orthodoxly mindset and are not showing progressive improvement in this topic. The article also tries to point out the difference and nexus between abuse and punishment with the help of different statistical data and research articles in order to understand the relationship better.

Keywords: Child Protection, Juvenile Justice Act, Punishment, Abuse, Parents, Teachers.

1. Introduction:

There is a famous saying that goes “Spare the Rod; Spoil the Child”, this means if adults want to bring up a child who is disciplined and responsible, they should punish him with a rod i.e. Corporal Punishments. In the recent past we have seen punishments that led to physical and mental damage for kids and in worst case, death. Most of these punishments were done in good faith to discipline the child, but little did they know it will cause damages to kids that might last even for a lifetime. According to research conducted by WHO¹, children who were subjected to abuse between the age of 0-12 are most likely to be dropouts and may have serious mental problems. Abuses that are mostly Corporal in nature i.e., Physical, are the type that effects the kids and traumatize them. This type of abuse is often from a person of power, or a person who thinks that they have a role in the discipline of a child, e.g., Parents, Teachers, Guardians, Caretakers, etc. In India corporal punishments are a crime and the accused if proved guilty may face up to 10 years imprisonment and a fine of up to five lakh rupees. As per the law, Physical punishments can only be given to people who have the authority legally, to persons who commit criminal wrong doings.

When we talk about a person in authority, it means persons who are allowed by law to punish people physically. In the case of a child this person is a parent, teacher, guardian, etc. they are the person in authority, and they can punish the child. They are protected under the section 88 and section 89 of the Indian Penal Code² which talks about the “*Acts not intended to cause death, done by consent in good faith for person’s benefit*” and Section 89 protects “*Act done in good faith for benefit of a child or insane person, by or by consent of the guardian.*” These two sections give immunity to the acts done by parents, teachers, and guardians towards children. They also justify their actions by saying it was for the benefit of the child, it is for their best interest, and it is solely for the purpose of reforming their child. These are the acts that scar their child for a lifetime which also forms a mindset of violence in them which provokes acts like these to their own children.

2. The Difference between Abuse and Punishment: -

There is a thin line between abuse and punishment. But for the sake of this research paper, we

¹ World Health Organization, Child Maltreatment, <https://www.who.int/news-room/fact-sheets/detail/child-maltreatment> (20th July, 2023).

² See, Indian Penal Code.

will consider abuse as a more heinous act than punishment, which is done in a less cruel manner. As both are done to discipline their child, there is no difference between the reason for inciting such acts by the parents, teachers, or guardians. Abuse is when a person causes wilful and intentional harm to a child knowing that it will cause physical, emotional, mental, or sexual harm. When we look at punishment, the element of causing harm is there, but the extent of harm is very less. The line can be drawn only on the extent of harm³. Any punishment that is in a form of sexual stimulation and activity, incest exploitation is considered sexual abuse to children. Thus, anything affecting or degrading the sexual dignity of a child will only fall under the scope of abuse and not punishment. The reason for this circumstance is that the harm incited by such acts is very high, and it can be either physical, emotional or both. The difference will also include that when a parent or adult takes out their anger on the child with no fault of the child is considered as abuse, whereas punishment will be for a reason that is to discipline the child or etc. There is also a difference in the punishment between a boy child and a girl child. According to research conducted by the UNICEF⁴, there are about 30 different ways that adults stick, to discipline their child, and these punishments differ for a male child and a female child. According to the report, which was done by UNICEF, physical punishments include burning, pinching, slapping, beating with implements like sticks, belts, rods etc. As per the list above, except for pinching and slapping, all other forms of punishments lead to child abuse and maltreatment. Verbal abuse such as blaming, criticizing, shouting, use of foul language, etc. will form a part of child abuse if the same affects the dignity of a child. The last type of punishment is emotional abuse to children, which includes, restricting movement, denying food, discrimination, instilling fear, etc. Except for restricting movement for the child's best interest all other forms of punishments in this category are subject to emotional abuse.

3. Laws regarding Protection of Children from Corporal Punishment: -

Most people are not aware of the available laws in the country restricting them to do certain acts. In India, there are several laws that talk about the rights and roles of children and parents or guardians respectively. Presently, the legislation that has a primary concern on welfare of the children is the Juvenile Justice Act, 2015⁵. This act talks about the care and protection that

³ "The Difference Between Discipline and Abuse", <https://www.hcjfs.org/services/child-protection/know-the-difference-between-discipline-and-abuse/> Last Visited 21st June 2022

⁴ UNICEF, "*Child Discipline: Raising Awareness, Promoting Behaviour Change*" (December 2015), online: UNICEF Data https://data.unicef.org/wp-content/uploads/2015/12/ChildDiscipline_report_Eng_44.pdf.

⁵ See, Juvenile Justice Act, 2015

is to be given to a child of the country. It is necessary to mention that this act, also talks about the “best interest of the child” under section 2(9). This actively demonstrates that any decision made by the parent or guardian on behalf of the child is to be in the best interest keeping in mind the basic rights and needs, identity, social well-being, and physical, emotional, and intellectual development. This clearly shows that any form of corporal punishment does not fall into the scope of this section. According to section 82 of IPC, students are considered as “*Doli Incapax*” which means “*incapable of the evil*”, and thus, there cannot be any form of punishment given to them. This presumption of Doli Incapaxi is rebuttable, and the defence needs to prove that the maturity in the child was absent to understand the consequences of his/her act. Children below the age of 18 are also presumed to be innocent under section 3(i) of the Juvenile Justice Act. This is because they are considered to not know the difference between what is right and what is wrong. Section 83 provides immunity against the crimes done by children under the age of 12 due to the presumption of Doli Incapaxi. The above-mentioned sections are derived or reflective of Articles 15(3) and 39(e) of the Constitution of India. These articles ensure the protection of children in the country. Article 15(3) states “*Nothing in this article shall prevent the State from making any special provision for women and children*”, this action demonstrates that under this article the legislature is free to make special provisions for children. Article 38(e) states that “*that the health and strength of workers, men, and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength*”, which is a directive to safeguard the tender age of the children and to provide them with an opportunity and environment to develop in a healthy and a safe manner and in conditions of freedom and dignity.

There are also international treaties that India is a part of such as the UN Convention of Rights of Children 1989 (UNCRC) which talks about disciplining a child physically or in a violative manner is unacceptable. This is also stated in article 19 of the UNCRC which states the right of a child to be protected from being mistreated in any form. Then there is article 28(2) of the same convention that talks about, and I quote, the member countries should “*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.*”. The following are some statistics regarding corporal punishment to students in their school.⁶ According to this

⁶ “Manual on Safety and Security of Children in Schools (September 2021), National Commission for Protection of Child Rights, accessed [July 20th 2023], available at:

survey done by the Government of India, Ministry of Women & Child Development (2017), shows that 99% of the children in India face corporal punishment in their schools. The UN convention in 2006 passed a law regarding 'The Rights of Children from Corporal Punishment' and also requested all the member countries (which India is a member country) to ensure and eliminate corporal punishment and any form of degrading punishments in schools, homes, etc. The convention also stated that member countries should make their people aware of such legislation to reduce such acts.

Under the constitution of India, articles that will directly or indirectly be violated due to corporal punishments are article 21 which talks about the right to life with dignity and respect, some punishments as stated above might be a cause to lose a child's dignity thus violating this article. Article 21A talks about the right to education, as stated earlier in the paper, research shows that corporal punishments lead to an increase in the dropout rates of children in the country and thus violative of Article 21A. Under IPC sections 323 or 325 are violated if a person causes hurt to a child voluntarily or causes grievous hurt. Section 306 of the Indian Penal Code which talks about the abetment of suicide, which is violated when a child is humiliated to such an extent that he/she commits suicide. Section 506 IPC which also can be violative as it talks about criminal intimidation.

Punishment to the convicts of such acts is in the following acts mentioned below. The Right to Education Act, 2009⁷, prohibits the use of physical punishment on children to discipline them. It bars any kind of physical or mental harassment of a child and provides disciplinary measures against the convict. According to section 75 of the Juvenile Justice Act, wherever a child is being abused, assaulted, or neglected in any manner which causes physical or mental damage to the child, the punishment would be 5 years of imprisonment and a fine of up to 5 lakhs.

4. Indian Case Laws Regarding Corporal Punishments: -

Corporal punishments were established by law in the 1900s by certain judgments of the High Courts. Most of the cases from the 1900s were when the teachers used to can and pinch students to punish them. The students were lefts severely injured because of such acts. The High Court's back in the day relied on an Old English case of G.B. Ghatge vs Emperor⁸ 1948 where it held

[https://ncpcr.gov.in/uploads/165650391762bc3e6d27f93_Manual%20on%20Safety%20and%20Security%20of%20Children%20in%20Schools%20\(Sep%202021\).pdf](https://ncpcr.gov.in/uploads/165650391762bc3e6d27f93_Manual%20on%20Safety%20and%20Security%20of%20Children%20in%20Schools%20(Sep%202021).pdf)

⁷ See, Right to Education Act, 2009

⁸ See, G.B. Ghatge vs Emperor, 1949 CriLJ 789.

that the school master's authority to inflict corporal punishment on students is in accordance with the student's "parental authority" over them. The courts also relied on the immunity that IPC sections 88 and 89 gave as a general exception to cases of such matter. Thus, back in the 1900s, they considered that corporal punishment by a teacher is the same as "parental authority" and that corporal punishment was done for the benefit of the child is not an offense under the legislature. Laws were then established by the Delhi School Education 1973 that empowered school headmasters to can up to 10 stokes to a misbehaved child. But this witnessed a change in the year 2000 when the Delhi High Court struck down this provision. This was the first act in the legislation which was against corporal punishments. In this decision, the court held that physical punishments would amount to cruelty to the children and will traumatize them forever. The court in its judgment also said that "*when there is cruelty to animals criminalized, why not cruelty to children*". This decision according to judicial reports was based on surveys that were conducted which showed an increase in the dropout rates due to corporal punishments. This made the court realize it was violative of the fundamental right, right to education, under the constitution of India. The courts also considered the International Law which talks about steps to protect children from violence, torture and degrading treatment, and India's obligations to follow them while coming up with this decision.

Then in the later stages came the introduction of the Right to Education Act, 2009 and the Juvenile Justice Act 2015 which made corporal punishments illegal in India. This is after the courts recognized the effect corporal punishments had on children even if the punishment did not cause grave hurt to the children. But unfortunately, few High Courts continued to consider that corporal punishment was for the best interest of the students and teachers had an implied authority to inflict corporal punishment. This can be seen in the case of *Ambika S. Nagal vs State of Himachal Pradesh*⁹ where a teacher slaps two students twice in front of the class. Both the students later died by suicide, because of the humiliation experienced by them due to this act. The Himachal Pradesh High Court denied the charges of assault and causing hurt against the teacher and held that the teacher is not liable for assault. The court, in this case, chose to rely on the age-old law of the English courts and considered this act of the teacher lawful instead of the new and progressive judgment.

Another case where the judgment was against the new and progressive judgment of the Delhi High Court was that the judgment that was passed by the Kerala High Court in the case of

⁹ See, *Ambika S. Nagal vs State of Himachal Pradesh* on 10 June, 2020

Sister Linsa vs Praseed¹⁰. In this case, the court held that the canning of students in a ‘not so grave manner’ may be allowed to the teachers even if the kid is 5 years old. This judgment fails to understand the effect of corporal punishments and diminishes its seriousness. The court in this case did not understand the other effects which are non-physical in nature, such as mental trauma, humiliation, etc. which are also serious damages caused to the child.

These decisions clearly show that the Indian Judiciary is stuck to the orthodox of the old English laws and judgments and is not showing any progressive development on corporal punishments and their effects. These decisions clearly depict that the courts are inconsiderate of the children who are also rightsholders under the constitution of India. They also forget that any act done by the teacher should also fall within the constitutional limits of the country and not violate them.

5. Conclusion

Corporal Punishments should not be a form of teaching good behaviour to children, it should not be considered as an option at all. The act of corporal punishment is not advisable in today’s society. People must understand that children are vulnerable creatures of society, and following the old orthodox will create an imbalance between the teacher and the student. Lack of knowledge of such facts may also encourage adults to follow corporal punishment. Evidently, in the rural areas, the use of corporal methods to discipline a child is still at large. People should understand that there are many other ways that adults can resort, to discipline a child. Even though the Indian Government has completely banned corporal punishments, there is still a large section of people who stick to such acts. The courts in some cases as explained above also have to stop legitimizing corporal punishments. By legitimizing corporal punishments, the courts pave way for schools to function in an oppressive manner leading to harassment and abuse for a child. The increase in suicide rates due to corporal punishments is not the objective of corporal punishments but sadly it indirectly is. We cannot have a disciplined and responsible child when we don’t have a child. The ban on corporal punishment is for a better future for the children of the current society.

The NCPRC guidelines for eliminating corporal punishments are that every school should have to develop a mechanism where the grievances of the students are met with clear cut protocols.

¹⁰ See, Sister Linsa vs Praseed on 23 November, 2020

These guidelines also include that every school have a drop box where a student can drop his/her complaint, and with total anonymity the school has a duty to look into such situations. The guidelines also require every school to have a 'Corporal Punishment Monitoring Cell' which consists of two teachers, two parents, one doctor, one lawyer (nominated by DLSA), counsellor, an independent child rights activist of that area and two senior students from that school. This committee shall look into the complaints regarding corporal punishments.

There is also a confusion in the law when a headmaster of a school is given permission to punish the child, then the headmaster acts as a judge in the situation and he decides what is wrong and right, this dilutes the power of the legislature and the judiciary but most importantly it does not recognize the rights and safety of children.

With all the information presented above we can conclude that the corporal punishment is child abuse and any other sorts of emotional punishment which exceeds the limits and damages the dignity of a child is also an abuse to the child. Punishments are meant to make children learn from their mistakes, not to scare them for ever because of the mistake. This also encourages kids to grow up and treat other kids the same way. Acts that make the child understand that they are in the wrong without any abuse attached to it should be followed as a form of punishment. Shouting and humiliating in front of the whole class is something that will cause emotional harm to the child, and it is not encouraged under any circumstance. Parent and teachers should also try to understand the intellectual understanding of different kids and treat them accordingly. As this is an increased concern in the society, people must understand and law and adhere to it.

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