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CORPORAL PUNISHMENT: CONCEPT, TYPES AND LAWS ON THE LIGHT OF INDIA

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Abstract:- The legality of various forms of corporal punishment differs by jurisdiction. Corporal punishment has traditionally been considered in many cultures an acceptable way of correction of children by adults with direct authority over them, but, has, in recent decades, fallen into disfavor, especially in Western countries, and has also been criminalized in an increasing number of jurisdictions. Most laws against parental corporal punishment of children are very recent, having been enacted during the past few decades. Corporal punishment of minors within domestic settings, as of 2014, has been officially outlawed in 44 countries. Corporal punishment in schools has been outlawed in many countries, including Canada, Kenya, South Africa, New Zealand and nearly all of Europe. Judicial corporal punishment has long disappeared from European countries, including former states of the Soviet Union. However, it remains lawful in parts of Africa, Asia and Latin America. Corporal punishment is also allowed in some military settings in a few jurisdictions.

Keywords: Corporal punishment, jurisdictions.

I. INTRODUCTION

Spare the rod, or end up in jail. That's the latest warning to teachers who resort to corporal punishment. The Ministry of Women and Child Development has issued a new set of guidelines that bans physical punishment of students. First violation of the ban will invite up to one year in jail, or a fine of Rs 50,000 or both. For subsequent violations, imprisonment could be extended to 3 years with an additional fine of 25,000 rupees. Heads of schools will be responsible to prevent corporal punishment. Teachers found guilty could be denied promotion, and even increments. A child rights cell will be set up in all schools where children can lodge a complaint. Apart from this, the government is also working on the final draft of the Prevention of Child Offences Bill where even parents, relatives and neighbours can be punished for hitting children. The draft bill is expected to include not just physical or sexual abuse, but also verbal abuse, molestation and ragging. This ban comes amidst an angry debate on the issue of corporal punishment in schools across India. The debate was sparked off by the death of Rouvanjit Rawla, the 12-year-old who committed suicide in February, days after being humiliated and caned by the principal of his school, the prestigious La Martiniere School for Boys in Kolkata. Many instances of corporal punishment have come to light since, the most recent involving another prestigious school in Kolkata, St James.

II. OBJECTIVES:

To explain the concept, types and laws of Corporal punishment on the light of India

III. METHODOLOGY:

It is completely based on literature review.

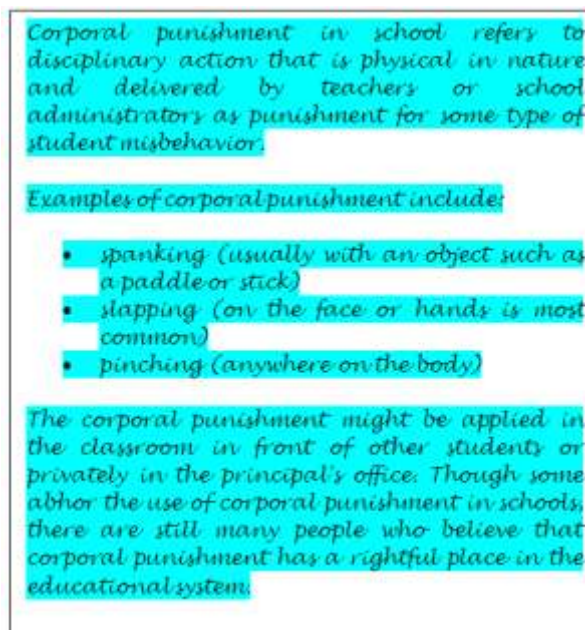
IV.RESULT AND DISCUSSION

Corporal punishment

Corporal punishment is a form of physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming a wrongdoer, or to deter attitudes or behaviour deemed unacceptable. The term usually refers to methodically striking the offender with the open hand or with an implement, whether in judicial, domestic, or educational settings. Corporal punishment is defined by the UN Committee on the Rights of the Child as: "Any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Corporal punishment may be divided into three main types:

- Parental or domestic corporal punishment: within the family—typically, children punished by parents or guardians;
- School corporal punishment: within schools, when students are punished by teachers or school administrators, or, in the past, apprentices by master craftsmen;
- Judicial corporal punishment: as part of a criminal sentence ordered by a court of law. Closely related is prison corporal punishment or disciplinary corporal punishment, ordered by prison authorities or carried out directly by staff.

The legality of various forms of corporal punishment differs by jurisdiction. Corporal punishment has traditionally been considered in many cultures an acceptable way of correction of children by adults with direct authority over them, but, has, in recent decades, fallen into disfavor, especially in Western countries, and has also been criminalized in an increasing number of jurisdictions. Most laws against parental corporal punishment of children are very recent, having been enacted during the past few decades. Corporal punishment of minors within domestic settings, as of 2014, has been officially outlawed in 44 countries. Corporal punishment in schools has been outlawed in many countries, including Canada, Kenya, South Africa, New Zealand and nearly all of Europe. Judicial corporal punishment has long disappeared from European countries, including former states of the Soviet Union. However, it remains lawful in parts of Africa, Asia and Latin America. Corporal punishment is also allowed in some military settings in a few jurisdictions.



HUMAN RIGHTS

Key developments related to corporal punishment happen only in the late 20th century. Years with particular significance to the prohibition of corporal punishment are emphasised.

- 1950: European Convention of Human Rights, Council of Europe. Article 3 bars "inhuman or degrading treatment or punishment".
- o1978: European Court of Human Rights, overseeing its implementation, rules that judicial birching of a juvenile

breaches Article 3.

•1985: Standard Minimum Rules for the Administration of Juvenile Justice, or Beijing Rules, United Nations . Rule 17.3: "Juveniles shall not be subject to corporal punishment."

o1990 Supplement: Rules for the Protection of Juveniles Deprived of their Liberty. Rule 67: "...all disciplinary measures constituting cruel, inhumane or degrading treatment shall be strictly prohibited, including corporal punishment..."

•1990: Guidelines for the Prevention of Juvenile Delinquency, the Riyadh Guidelines, UN. Paragraph 21(h): education systems should avoid "harsh disciplinary measures, particularly corporal punishment."

•1966: International Covenant on Civil and Political Rights, UN, with currently 167 parties, 74 signatories. Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment..."

o1992: Human Rights Committee, overseeing its implementation, comments: "the prohibition must extend to corporal punishment . . . in this regard . . . article 7 protects, in particular, children, . . ."

•1984: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN, with currently 150 parties and 78 signatories.

o1996: Committee Against Torture, overseeing its implementation, condemns corporal punishment.

•1966: International Covenant on Economic, Social and Cultural Rights, UN, with currently 160 parties, and 70 signatories. Article 13(1): "education shall be directed to the full development of the human personality and the sense of its dignity..."

o1999: Committee on Economic, Social and Cultural Rights, overseeing its implementation, comments: "corporal punishment is inconsistent with the fundamental guiding principle of international human rights law . . . the dignity of the individual."

•1961: European Social Charter, Council of Europe.

o2001: European Committee of Social Rights, overseeing its implementation, concludes: it is not "acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence."



CHILDREN'S RIGHTS

Breakthroughs regarding children's rights were made in the early 20th century, but the condemnation of corporal punishment in specific happens only in the late 20th century. Years with particular significance to the prohibition of corporal punishment are emphasised.

•1923: Children's Rights Proclamation by Save the Children founder. (5 articles).

o1924 Adopted as the World Child Welfare Charter, League of Nations (non-enforceable).

•1959: Declaration of the Rights of the Child, (UN) (10 articles; non-binding).

•1989: Convention on the Rights of the Child, UN (54 articles; binding international-law), with currently 193 parties and 140 signatories. Article 19.1: "States Parties shall 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 . . ."

o2006: Committee on the Rights of the Child, overseeing its implementation, comments: there is an "obligation of all States Party to move quickly to prohibit and eliminate all corporal punishment."

o2011: Optional Protocol on a Communications Procedure allowing individual children to submit complaints regarding specific violations of their rights.

•2001: Global Initiative to End All Corporal Punishment of Children launched, "call[ing] on governments to declare their opposition to corporal punishment of children."

•2006: Study on Violence against Children presented by Independent Expert for the Secretary-General to the UN General Assembly.

•2007: Post of Special Representative of the Secretary-General on violence against children established.

CORPORAL PUNISHMENT IN THE HOME

Domestic corporal punishment, i.e. of children by their parents, is often referred to colloquially as "spanking", "smacking" or "slapping." In an increasing number of countries it has been outlawed, starting with

Sweden in 1979. In some other countries, corporal punishment is legal, but restricted (e.g. blows to the head are outlawed and implements may not be used, and/or only children within a certain age range may be spanked). In all states of the United States, and most African and Asian nations, corporal punishment by parents is currently legal; it is also legal to use certain implements such as a belt or paddle. In Canada, spanking by parents or legal guardians (but nobody else) is legal, as long as the child is not under 2 years or over 12 years of age, and no implement other than an open, bare hand is used (belts, paddles, etc. are strictly prohibited). In the UK, spanking or smacking is legal, but it must not leave a mark on the body; in Scotland since October 2003 it has been illegal to use any implement when disciplining a child. In Pakistan, Section 89 of Pakistan Penal Code allows corporal punishment.

CORPORAL PUNISHMENT IN SCHOOLS

Corporal punishment of school students for misbehaviour has been outlawed in many countries. It involves striking the student on the buttocks or the palm of the hand in a premeditated ceremony with an implement specially kept for the purpose such as a rattan cane or spanking paddle, or with the open hand. There may be restrictions in some jurisdictions, e.g. in Singapore caning is permitted for boys only. School corporal punishment, an official punishment for misbehaviour by school students, involves striking the student a given number of times in a generally methodical and premeditated ceremony. The punishment is usually administered either across the buttocks or on the hands, with an implement specially kept for the purpose such as a rattan cane, wooden paddle, slipper, leather strap or wooden yardstick. Less commonly, it could also include spanking or smacking the student in a deliberate manner on a specific part of the body with the open hand, especially at the elementary school level. Advocates of school corporal punishment argue that it provides an immediate response to indiscipline and that the student is quickly back in the classroom learning, rather than being suspended from school. Opponents argue that physical punishment is ineffective in the long term, interferes with learning, produces numerous harmful side effects, and is a form of violence that transgresses against children's rights. In the United States and the United Kingdom, and generally in the English-speaking world, the use by schools of corporal punishment has historically been covered by the common law doctrine of *in loco parentis*, whereby a school has the same rights over minors as their parents. In most places nowadays where it is allowed, corporal punishment in public schools is governed by official regulations laid down by governments or local education authorities, defining such things as the implement to be used, the number of strokes that may be administered, which members of staff may carry it out, and whether parents must be informed or consulted. Depending on how narrowly the regulations are drawn and how rigorously enforced, this has the effect of making the punishment a structured ceremony that is legally defensible in a given jurisdiction and of inhibiting staff from lashing out on the spur of the moment. The first country in the world to prohibit school corporal punishment was Poland, in 1783

INDIA

Corporal punishment is still used in most of India. The Delhi High Court banned its use in Delhi schools in 2000. 17 out of 28 states claim to apply the ban, though enforcement is lax. A number of social and cultural groups, including Shankaracharya, are campaigning against corporal punishment in India. In many states, corporal punishment is still practised within most schools

Spare the rod, or end up in jail. That's the latest warning to teachers who resort to corporal punishment. The Ministry of Women and Child Development has issued a new set of guidelines that bans physical punishment of students. First violation of the ban will invite up to one year in jail, or a fine of Rs 50,000 or both. For subsequent violations, imprisonment could be extended to 3 years with an additional fine of 25,000 rupees. Heads of schools will be responsible to prevent corporal punishment. Teachers found guilty could be denied promotion, and even increments. A child rights cell will be set up in all schools where children can lodge a complaint. Apart from this, the government is also working on the final draft of the Prevention of Child Offences Bill where even parents, relatives and neighbours can be punished for hitting children. The draft bill is expected to include not just physical or sexual abuse, but also verbal abuse, molestation and ragging. This ban comes amidst an angry debate on the issue of corporal punishment in schools across India. The debate was sparked off by the death of Rouvanjit Rawla, the 12-year-old who committed suicide in February, days after being humiliated and caned by the principal of his school, the prestigious La Martiniere School for Boys in Kolkata. Many instances of corporal punishment have to light since, the most recent involving another prestigious school in Kolkata, St James. (source 'My Teacher Pulled My Hair, Called Me a Dog')

In India corporal punishment extends till brutality and the Supreme Court introduced a law in the year 2000 to ban corporal punishment. The Indian Penal Code is supposed to protect children from being subjected to punishment in schools in India; however there are loopholes in the law that aids the use of such brutal punishments in school. According to IPC section 83, any child who has not done homework or has not dressed in an appropriate fashion should not incite any form of corporal punishment in schools in India. The Indian Penal Code, Section 88 provides the Headmaster or a guardian the freedom to inflict pain through corporal punishment in schools in India as long as the reason is justifiable. The Section 23 of the Juvenile Justice Act 2000 prohibits cruelty to children. The law does not excuse teachers and parents if they are liable for assaulting or exposing a juvenile to unnecessary f punishment. There are many contradictions that can be found in the law pertaining to corporal punishment . If Headmasters are allowed to use brutal punishment on children up to a certain point, the Headmaster himself becomes the judge of the extent to which he can carry on the penalty. Since he himself is the judge, the children are at his mercy and no other person is present to supervise the delivery of punishment and this dilutes the provisions in the law for the safety of children. At the same time using excessive force and punishing a child for a cause that is not justifiable is prohibited under the section 89 of the IPC. The law says that incidents outside the scope of good faith are prohibited. (1) 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 age². 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.

(2) 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.

(3) Article 39(e) directs the State to work progressively to ensure that “... the tender age of children are not abused”.

(4) 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:

- Section 305: Abetment of suicide committed by a child;
- Section 323: Voluntarily causing hurt;
- Section 325: Voluntarily causing grievous hurt;
- Section 326: Voluntarily causing hurt by dangerous weapons or means;
- Section 352: Assault or use of criminal force otherwise than a grave provocation;
- Section 354: Outraging the modesty of a woman;
- Section 506: Criminal intimidation;
- Section 509: Word, gesture or act intended to insult the modesty of a woman;

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”.

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

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.

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".

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.

The Juvenile Justice (Care and Protection of Children) Act, 2000

Section 23 of the 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."

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.

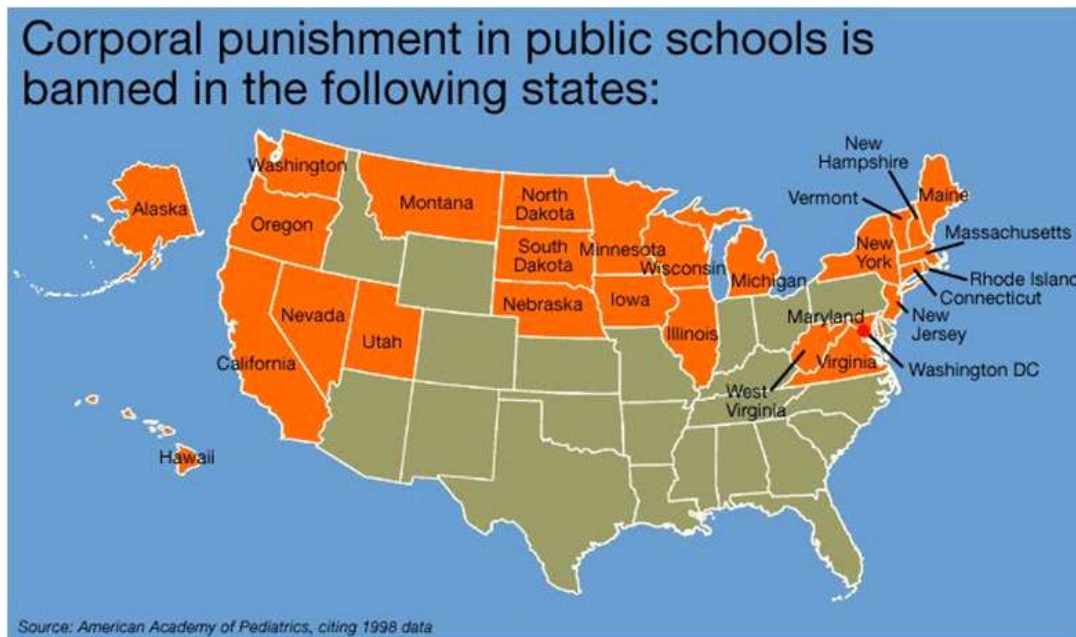
Protection of Civil Rights Act, 1955

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.

CONCLUSION:

Corporal punishment is the infliction of physical pain in response to wrongdoing, typically by methodically striking a particular part of the offender's body with an implement such as a paddle, or with the open hand. Its purpose is to correct, reform and deter the miscreant, and to deter others from similar misconduct. Spanking of children and teens, whether at home or at school, is the most usual kind of corporal punishment. Parents are urged by the Bible to spank their offspring when they misbehave, for instance in Proverbs 13:24 (He who withholds the rod hateth his son). Darrel Reid, head of Focus on the Family - Canada (an evangelical Christian group) said that "The theological underpinning for family corporal punishment is tied up with the responsibility that God gives families for raising the young. You can find it particularly in the early books of the Bible, where God says your responsibility is not just nurturing but also correcting them." Some people oppose the spanking of children, and in some countries (e.g. Sweden) it is illegaleven for parents to do so. Swedish Member of Parliament Sixten Pettersson stated "In a free democracy like our own, we use words as arguments, not blows. We talk to people and do not beat them. If we can't convince our children with words, we shall never convince them with violence". In some states of the United States a

foster parent may not spank a foster child. Claiming to draw upon the latest research on brain development, therapist Alice Miller attacks childhood corporal punishment and asserts that spanking causes emotional blindness and leads to mental barriers that cut off awareness and the ability to learn new ways of acting. If this cycle repeats itself, the grown child will perpetrate the same "abuse" on later generations, Miller alleges. However, British teachers have warned that student behavior has markedly declined in Britain since the abolition of corporal punishment in British schools about a quarter century ago. A poll of 814 teachers, conducted by Association of Teachers and Lecturers and published in 2012, found a third had been hit or kicked by a student in the previous academic year. Judicial corporal punishment is the infliction of physical pain upon a person's body as punishment for a crime or infraction, such as by caning or whipping. This kind of penalty remains on the statute book in several Asian, Middle Eastern and African countries. The last US State to retain whipping as an official punishment for crime was Delaware, in the 1950s. In a broad sense, corporal punishments include flogging, beating, branding, mutilation, blinding, and the use of the stock and pillory. The Torah (Judaism) describes some forms of corporal punishment for certain crimes and sins. The Bible contains seven verses that relate to the spanking of children.



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