

Corporal Punishment and Rights of Children

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Abstract

The physical punishments given to children as a disciplinary measure named corporal punishment is so commonly practiced in the country and is so deeply embedded in the society that people don't realize its impact on behavior and psychology of a child that it may in adverse circumstances lead to criminal mindset of the child. The paper deals with corporal punishment as a bane in the society. The meaning of corporal punishment, its impact on society and all aspects regarding it are discussed in detail. The paper focuses on the criminological aspect which could be a result of corporal punishment in adverse circumstances. Impact of such abuse on child, change in his behavior and all the related aspects are discussed in detail. The legal perspective is discussed regarding various laws in this regard are discussed such as provisions of Right to education act,2005, Juvenile Justice (Care and Protection) Act,2015 and various provisions of the Constitution. At last suggestions are put forth to curb such kind of violent abuse against children with conclusion and analysis.

Keyword: Punishments, Behavior, Psychology, Corporal, Criminology.

"Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul." - Dave Pelzer

Introduction

Parens Patriae imposes an unconditional obligation on the state to protect the rights of those who cannot protect their own rights. The foremost duty of the State is to act as a guardian to protect the rights of the masses specially the voiceless like children.

The recent findings witness Corporal Punishments common to 80% of the children on a regular basis, out of which 30% of them faces this about three times a week. The study also shows that 91% of the parents approve

such corporal punishments in school and 74% of the parents admit beating their children as a disciplinary measure for their welfare and betterment (Gershoff). Corporal Punishment has been defined in different versions according to varying degrees this is merely because of cultural and social differences but the most important factor of inconsistency in terminologies is the economical and financial differences. The growth of countries creates a wide impact upon its youth and children and their behaviour which intern become a factor of measurement.

In general terms Corporal Punishment means any kind of physical punishment imposed on children usually by their caretakers taking authoritative custody of them like teachers, guardians ,orphanages and other extra judicial authorities who in common parlance inflict such physical punishment upon the munderth eveil of their betterment and overall growth. Such a phenomenon causes not only harm to their physical health but also mental trauma which causes long lasting effects on the psychological development of the prone children. This kind of neglect, negligence and abuse towards children leave them in an isolated atmosphere which intern leave them vulnerable to various evils like drug addiction, pornography and suicide at such a sensitive age causing mental and physical trauma.

Witnessing a significant number of sensitive cases in this regard, the need of the hour demandsstrict codified guidelines for complete abolition of Corporal Punishment for protecting the dignity of childhood which is hindered because of the ineffective implementation of the established laws in force (Deb).

A Study on Criminological aspect of Child Psychology

Child Psychology is a branch of Psychology that deals with the behavioral aspect of a child. It focuses on the mental development of a child, his way of thinking and related aspects. His near family and society in which he lives has a deep impact on his lifestyle and thinking. At a very early stage, his behavior and thinking is molded with the behavior of people surrounding him. The upbringing, mentality of his parents and near family and society impacts his thinking. The mind of a child is at a developing stage which makes him easily prone to bad influence. Various menace in the society get easily attracted to a child's immature mind.

The brain of a child is very delicate in nature because it is in its growing stage, whatever the conditions may be it will adapt for its survival and make the process for its growth assertive. Anywhere the brain of a child

is exposed to violence and cruelty in any manner it will adapt accordingly and might react in a certain manner. This will create an ideology of hatred which shall be harmful for its growth and prevent welfare thinking. Most important aspect is to create a soothing environment for its development because a lot of people's life will be dependent of that mental psychology (Nargiza, 2022).

The children facing corporal punishment on a regular basis witness violence regularly. When the delicate mind of a child is regularly prone to violence it affects his behavior on a large scale. From a very early stage he is molded to learn and do violence himself. Here somewhere or the other he finds his path to commit crimes. He becomes very prone to alcoholism, drugs, violent activities, fighting etc. These are the possible repercussions of corporal punishment which a child faces in his early life which can be a pathfinder to criminal psyche. According to a nationwide study conducted by titled as "Child Abused in India" conducted in 2007 observed that around 65% school going children had faced some or the other form of corporal punishment by their parents. These were so grave that they feared reporting it to the school authorities. These numbers were relatively high in the rural and government schools (Malti, 2021).

The whole idea is to make things place in such order which does not harm the future generations. Putting too many restrictions and not allowing the child to grow into a mature adult who understands the right and avoid the wrong is very crucial. Through this the mentality will be affected initially and will be hard to be made upright, all this count to such an extent which will help in execution.

The ground level approach will not help but making standardized rules for the educational institutes as they have the real interface with children will create major differences.

The statistics clearly indicate that the percentage is going higher and higher which is resulting in more physical violence and mental pressure to the children. This is because of high working and family pressure, the most important awareness shall only come through family planning at the time of family planning the parents should be made aware about the brain changes that occur during the growth of the child and how it can result in disturbed behavior which could be harmful not only for the family but also for the society. The procedure cannot be established through rules and other regulations so it can only be made by application of principles which are made sure. These are principle that can only be made applicable

by the medical field experts and school counsellors. Therefore, it will be helpful to create several camps and schemes within private institutions with the help of public offices which shall give proper funding for execution of these strategies (Nayak & Pattnaik, 2020).

Legal Perspective

The basic Human right related to right to life and liberty is enshrined in **Article 21** of the Indian Constitution. It states that no individual shall be subject to any kind of alienation of his right to life and personal liberty except for the procedure established by law. Corporal Punishment is the violation of both the elements.

It is the duty of state to protect fundamental rights specially for those who are incapable and voiceless. As right to life does not only mean right to liberty but has a very wide ambit and includes right against harassment of all kinds. In the case "**Olga Tellis vs Bombay Municipal Corporation (Slum Dwellers case)**" the Supreme Court observed that right to life is a wider scope and one statute cannot bring justice to it. It should be given more spheres as per the changing norms of society and international standards. Article 45 of the Indian Constitution emphasises the importance of early childhood care and education of children below six years of age. This provides an ambit for the state machinery to work towards the welfare of the children, also it is important from the perspective of participation of NGOs and other civil societies. Whenever the government formulates any policy for child development, then private organisation through their outreach programmes have to implement these policies (Hall, 2021).

There are several welfare legislations for prevention of offences against children, but concerning corporal punishment, there is no specific legislation completely prohibiting it. **Article 39(e)** of the Indian Constitution, directs the State for providing facilities to prevent exploitation of children. The Right to Education, Act, 2005 and Juvenile Justice (Care and Protection), Act, 2015 state provisions for prevention of corporal punishments in educational institution and other places.

The Supreme Court in the case "**Parents Forum for Meaningful Education v. Union of India**", observed that merely providing financial assistance and economic support to the children or there family is not sufficient but a proper and care free environment is necessary for overall growth and development.. In the case of "**F.C.Mullin vs Administrator, Union Territory of Delhi and others**", the Supreme Court observed every action

and every protest which is made is and shall be protected and enshrined to be protected under Article 14 of the Indian Constitution.

Suggestions

Analyzing corporal punishment in the current regulatory framework of the country, the following suggestions are put forth in this regard:

1. For every suppressed social problem awareness is the first step so that it comes in light and can be cured in the society. Especially, when the matter is of corporal punishment on a child who is vulnerable and immature, it is suggested that the means of awareness should be child friendly such as through advertisements on cartoon channels, awareness programs in schools through creative, innovative and interactive methods so that it directly reached the heart and mind of the child. The basic objective behind this is to imbibe a basic understanding in children facing corporal punishment that it is wrong and must be stopped.
2. For resolution of problems of children who are suffering from corporal punishment such as in schools, it is essential that a committee should be constituted in educational institutions which is easily accessible and approachable by children with Counsellors to whom children can open up and share their problems for quick resolution and disciplinary actions against those found guilty. This committee can also work on an informal basis and listen to problems of children who face abuse elsewhere, can talk to their parents and suggest appropriate course of action for resolution of such problems.
3. In spite of various provisions in various other laws that deal with corporal punishment, there is no specific legislation that deals and prohibits all aspects of corporal punishments. It is suggested that a consolidated Code should be formulated that which deals with various types of corporal punishments, appropriate mechanism and authorities for its implementation, various penalties and punishments for those using Corporal Punishment against the children. A systematic legislation and regulatory framework is required to protect the basic child rights enshrined as fundamental rights in the Constitution.
4. A change cannot be made unless society at large acknowledges the problem. The evil of Corporal Punishment in society is so

deep with a very less awareness because people in general use corporal punishment for children without realizing the severe negative impacts of the problem. The awareness is required not only for children but also for parent's teachers and caretakers, a change in psychology need to be made that corporal punishment is not necessary for as a disciplinary measure to treat children in fact it will have a negative impact on their future. Such awareness needs to be made by government programmes, advertisements and such other means which arte easily accessible to the general public. This is required for protection of rights of children.

Conclusion

Children are voiceless. It is the duty of the State to protect the rights of those who cannot stand for their own rights, especially the children who are the future of the country. The above mentioned statistics and case laws show that corporal punishment is a matter of serious concern which negatively impacts the behavior and psychology of the child which may lead to a criminal mindset. Provisions prohibiting corporal punishment are stated in Right to Education Act, 2005 and Juvenile Justice (Care and Protection Act) Act, 2015.

The need of the hour demands proper implementation of legislations for those found guilty. The way laws are important, in the same way implementation is important. A regulatory committee shoul be constituted in educational institutions to resolve the problems of children facing such abuse and to create awareness among children, parents, teachers, caretakers and other concerned so that such evil can be removed from society. Article 21 is provided to every person. Its ambit is wide to include rights of children against corporal punishment and various other kinds of abuses.

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