Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

Corporal Punishments of children in India and justification of parental and quasi-parental authorities

Lakshmisusheela Ramachandran[a]

[a]Tamil Nadu National Law University, Tiruchirapalli, India

Received 18 February 2022; *Accepted* 05 March 2022; *Published* 09 March 2022

Corporal punishments are often administered to discipline a child and these actions are justified, by parents, teachers, and caretakers, on the grounds that this is for the betterment of the child. There is a certain sense of ambiguity with regards to laws that prevent corporal punishments, administered by parental and quasi-parental authorities, in India. The laws in India are limited in their provisions. The extent of parental and quasi-parental authorities in administering such punishments and how these laws defeat the purpose of the protection of child rights must be understood. The scope of the inherent right of parents or quasi-parental authorities in physically chastising the child for correcting him or her, the rationale behind using this authority as a defence for arbitrary punishments, and to establish the significance of overarching laws to prevent such punishments that violate the basic rights that offer protection to children from the harm caused by such punishments must be examined.

Keywords: *punishment, children, parental authority.*

INTRODUCTION

Corporal punishment in the broadest sense means to physically chastise an individual. The physical chastisement of children is often considered the best way to discipline children and to prevent them from doing mischief. Parents and quasi-parental authorities (teachers or any

other person having lawful control over a child) or to whom parental authority has been delegated, often claim this right of theirs to administer unreasonable punishments, which is inappropriate, that violates the very basic rights of children to be protected. The Hon'ble High Court of Delhi had laid down in the case, Parents Forum for Meaningful Education v Union of India and Anr[1], that corporal punishment was violative of Article 14[2] and Article 21[3] of the Indian constitution and the use of "reasonable force" to justify the actions, which is obsolete, of the authorities is against the marked transformation that child rights have gone through and the fact that India has ratified the United Nations Convention on the Rights of the Child (CRC)[4] stands as a testament of that transformation of child rights and the significance of these rights. Even though there are laws to prevent such punishments, these are largely obscure and the vagueness in these laws is often misused by such parental and quasi-parental authorities. Therefore, it is important to have comprehensive legislation to prevent such blatant disregard of existing laws.

PARENTAL AND QUASI-PARENTAL AUTHORITY AS GENERAL DEFENCES: AN OVERVIEW

Parental and Quasi-Parental Authority is regarded as a specific defense in torts. A person can claim defense against tortious liabilities by claiming authority under Parental or Quasi-Parental relationships. Parental authority as a defense means that the parents have the authority to administer corporal punishment and can claim defense due to the parental right that they have over their child and this right can be exercised to prevent the children from doing mischiefs. Even though the common law gave the right to a parent to physically chastise a child it said that they could carry out the punishment as long as it was reasonable and that the parents would be punished if it exceeded the bounds of moderation and the punishment was inflicted mercilessly. Quasi-Parental authority or persons in *loco parentis*(teachers, tutors,

[1] *Parents Forum for Meaningful Education v Union of India and Anr* AIR 2001 Delhi 212
[2] Constitution of India, 1950, art. 21
[3] Constitution of India, 1950, art. 14
[4] 'Fundamentals of Child Rights in India' (*Save the Children India*, 31 March 2020) <https://www.savethechildren.in/child-protection/fundamentals-of-child-rights-in-india/#:~:text=India%2C%20in%20its%20bid%20to,of%20the%20Children%20in%201992.> accessed 08 February 2022

or any others)are persons to whom parents have delegated power to or exercise right, over the child, in a way that is similar to that of a parent but has a lesser right over the child than the parents themselves. Therefore, the people to whom the parental authority was delegated could physically discipline children and claim the defense of this delegated authority. In the case Fitzgerald v Northcote[5], it was laid down that it is assumed that, when a child is sent to a school, the authority of the parents has been delegated, by the parents, to the teachers or the schoolmasters for the welfare of their ward. In the case Regina v Hopley[6], it was held that a teacher or schoolmaster could be presumed as a parent, and they could administer reasonable and moderate punishment for correcting the child.

CORPORAL PUNISHMENT: OLD AND CURRENT LEGAL POSITION

After the parental or quasi-parental authority to inflict physical chastisement for the benefit of the child was recognized in various cases it led the judicial system to be biased towards the administration of corporal punishment provided it is not inflicted excessively. According to Section 1(7) of the Children's and Young person act of 1933(England)[7], the parents, teachers, or any other person who is having lawful control over a child could administer punishment upon the child. The quasi-parental authority of the teachers was not confined to the premises of the school but extended to the acts carried out by the child outside the school premises as well, as laid down in the case Cleary v Booth[8] wherein the defendant was not held liable for administering corporal punishment on two boys who fought on the way to the school. In the case Laxmikant Shri-pat Bhandara v C.R.Gerrard[9], it was held that the teacher or the schoolmaster could administer corporal punishment, and was his duty that arose from the delegation of such authority by the parent to the teacher.

The proximity of the relationship, which would give the authority to the person to carry out the punishment, between the person administering the physical punishment and the child was

[5] *Fitzgerald v Northcote* (1865) 4 F&F 456
[6] *Regina v Hopley* (1860) 2 F&F 202
[7] Children's and Young Person Act, 1933, s 1(7)
[8] *Cleary v Booth* (1893) 1 [QB] 465
[9] *Laxmikant Shripat Bhandare v C.R. Gerrard* AIR 1947 Bom 193

often implied. In the case, Fortinberry v Holmes[10], the defendant, with whom the mother had left the child for him to take care, support, and educate the child as his own and with instructions to not whip the child, was not held liable for whipping the child and the child would not be able to bring suit against the person for a reasonable punishment that was inflicted. This was because when a person considers a child, of not one's own, as one's own and there is a parental character towards this consideration, then the liability for physical chastisement could be measured by that of the relationship presumed by that person with the child. Thus, in this case, since the woman had left the child for him to care and support for the child implied that he could mete out punishments to discipline the child irrespective of the instructions of the mother. However, in circumstances wherein a third party was not explicitly delegated an authority to carry out such physical punishments or in circumstances wherein it was required for a person to carry out such punishment to prevent the child from misbehaving and there was a need to maintain a certain order it was assumed that they stood in *loco parentis* provided the punishment was reasonable. Thus, administering corporal punishment on children was justified and was considered as a privilege of parents and quasi-parental authorities to chastise their child for the larger benefit of the society and to prevent the child from being disobedient, and that administering punishment was given in the interests of a good family.

WHERE SHOULD THE LINE BETWEEN "REASONABLE FORCE" AND "EXCESSIVE FORCE" BE DRAWN?

The administration of corporal punishment, by parental and quasi-parental authorities, was legitimized if it was reasonable and moderate, and they were held for assault or battery if it was excessive. In the case Steber v Norris[11] it was held that whether the corporal punishment was reasonable or excessive does not lie within the discretion of the person who is administering the punishment rather it was a matter that must be left for judicial investigation. While trying to determine whether the nature of the punishment was reasonable or excessive

[10] *Fortinberry v Holmes* [1907] 89 Miss. 373
[11] *Steber v Norris* [1925] 206 [NW] 173

the nature of the mischief done by the child, the kind of article used to carry out the punishment, and the age of the child is to be considered.

If the punishment is of such a nature that it leaves marks on the body, has a chance of disfiguring the child or it may lead to severe neurological damage, then it could be considered excessive. The duration for which the child is physically chastised, the endurance level of a child belonging to a particular age, and the sentiment with which the punishment is carried out, whether it was to pacify one's rage or it was a kind of punishment that would put the child's life in extreme danger are other determinants to categorize a punishment as reasonable or excessive. Administering corporal punishment upon a disabled child could also be considered excessive. Another factor that could be considered to classify a particular act of punishment as reasonable or excessive is to consider whether the act of physically disciplining the child is a regular event or an exceptional incident. If the act of physically chastising a child is not an isolated event, then it could be categorized as excessive.

BATTERY AND ASSAULT

The wrong of battery is a willful application of force on another person without lawful justification. Essentially, the ingredients of battery are an application of force, the act must have been carried out without lawful justification and most importantly it should have been intentional. Assault is when a certain act of the defendant causes a certain amount of apprehension in the mind of the person on whom the act has been aimed or on whom the defendant attempted to carry out the battery. If the acts were excessive the parental and quasi-parental authorities could be held liable for assault or battery and they could not claim the defense of parental or quasi-parental authority. A punishment of reasonable nature is of grave importance and if an act crossed the bounds of reasonableness, then they were held liable for battery or assault. In the case Gillett v Gillet[12], it was held that one may chastise their child with impunity but when one exceeds the bounds of reasonableness and does it willfully then that parent can be held for the battery. In this case, there was a willful application of "excessive

[12] *Gillett v Gillett* [1934] 257 [NW] 719

force", by the stepmother on the child, without lawful justification and thus she was held liable for battery.

In the case Cleary v Booth[13], the defendant was held liable for battery and assault for chastising two children who had fought on the way to school. The defendant, on appeal, was acquitted because it was held that the punishment that was administered was not excessive and the administration of the punishment was well within the rights of a schoolmaster and such quasi-parental authorities could enforce their rights of administering punishment even if the child indulges in mischiefs even outside of the school premises. Therefore, the reasonableness of the force applied in the application of the punishment was used as a tool to define the act as an assault, battery, or both. Even while administering the punishments, parents might restrain due to the warmth that they have towards their child but a quasi-parent might not have such a restraint and thus punishments administered by quasi-parents has a higher chance of carrying out unreasonable physical punishments. Even though an authority has been delegated by the parents, the responsibility of quasi-parents, while administering a physical punishment, was higher. The way of determining the liability of a parent or a quasi-parent through such a method is inherently flawed because the observation of determinant factors is largely subjective and sometimes a punishment, which was seeming of reasonable force, might cause long-term physical or emotional damage or even might have an effect later in life and these effects would have been those that couldn't have been felt earlier or identified earlier.

IMPORTANCE OF CHILD RIGHTS AND THE CHANGING LEGAL POSITION

The focus has now shifted towards protecting the rights of the child and now the emphasis is on their right to live with dignity. Often, such corporal punishments can lead to long-term physical, emotional and psychological problems and since children are vulnerable they may not retaliate in situations where they are physically chastised and often succumb to even fatal injuries. Corporal punishments result in the breach of their rights to live with dignity and to be protected equally under the law. This was recognized by the UN's Committee on the Rights of

[13] *Cleary v Booth* [1893] 1 [QB] 465

the child. The European charter on social rights was revised in 1996 and the states were to take adequate measures to prevent children from violence and the states were instructed to place a complete prohibition on corporal punishment. In Israel, in 2000, the Supreme Court had banned all sorts of corporal punishment irrespective of whether it was reasonable or not, and the defense of "reasonable force" was repealed from their judicial system[14]. Kenya had adopted a new constitution in 2010 and the state had completely prohibited corporal punishments[15]. In the case, Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others[16], the constitutional court of South Africa, which follows the common law system, had banned corporal punishment and recognized the common law defense of "reasonable force" as unconstitutional[17].

Various countries have begun to make references to various international treaties on child rights and other human rights treaties in the judgments, in the case of corporal punishments, that they pass. In the case Parents Forum for Meaningful Education v Union of India and Another[18], the forum had challenged the legitimacy of corporal punishments by quasi-parental authorities in schools, which was provided in the Delhi School Education rules 1973[19], and argues that these rules stood in grave violation of the constitution. The Delhi High Court had ruled in the favour of the forum and had cited various articles from international treaties such as the Convention on the Rights of the child[20]. When the government had tried to justify corporal punishment using the Regina v Hopley[21] case of the English common law, wherein it was laid down that a "reasonable force" could be applied, the court had opined that the judgment concerning this case was archaic and the thoughts of the people had changed over

[14] 'Israel 2000 Supreme Court judgment' (*End Violence Against Children*) <https://endcorporalpunishment.org/human-rights-law/national-high-level-court-judgments/israel-2000-supreme-court-judgment/> accessed 09 February 2022
[15] 'Country Report for Kenya' (*End Violence Against Children,* Febraury 2020) <https://endcorporalpunishment.org/reports-on-every-state-and-territory/kenya/> accessed 12 February 2022
[16] *Freedom of Religion South Africa v Minister of Justice and Constitutional Development and Others* [2019] ZACC 34
[17] Joan E. & Durant, *Corporal punishment: prevalence, predicators and implications for child behaviour and development* (Paris, UNESCO 2005)
[18] Parents Forum for Meaningful Education v Union of India and Anr,AIR 2001 Delhi 212
[19] Mani Gupta, 'Sparing the rod' (*India Today,* 18 June 2010) <https://indianexpress.com/article/opinion/columns/sparing-the-rod/> accessed 13 February 2022
[20] Convention on the Rights of the Child, 1989
[21] *Regina v Hopley* [1860] 2 F&F 202

the years and the fact that India is a signatory to the UN Convention[22] that protects rights of children is a testament to this change and therefore depending on the decisions made in such archaic case laws is futile. Therefore, the outlook towards the administration of physical chastisement has changed and countries have shifted towards promoting alternative ways to discipline the child by keeping in mind the rights of the child that needs to be respected.

ARE THE LAWS IN INDIA INHERENTLY FLAWED?

The administration of physical chastisement is very common in India. It is prevalent both at home and in various educational institutions. Physical disciplining was further legitimized through judgments that favored corporal punishments were in the courts that relied on old English case laws. In the case GB Ghatge v Emperor[23], the Bombay High court had not held the defendant, who was the principal of the school, liable for caning a 16-year-old student. Therefore, the narrative that physical chastisement of the child by parental or quasi-parental authorities began to take form and they continued to escape from the various liabilities. Even though this narrative went through a sea change through cases such as Parents Forum for Meaningful Education v Union of India[24], there still exists an ambiguity in terms of administration of corporal punishment and the lack of comprehensive laws have led the courts to depend on archaic case laws. In 2020, in the case Sister Linsa v Praseed[25], the Kerala high court had laid down that caning of a child as small as a 5-year-old, by the defendant, was proportionate and reasonable and the defendant was not held liable. The court had relied on the common law position and indirectly legitimized the act of physically disciplining a child.

FLAWS IN THE JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

The Juvenile Justice (Care and Protection) Act, 2015[26] was enacted to protect the children who need care and children who are in conflict with the law and provide them with a basic need, treatment, and other rehabilitation services through the various processes and other bodies

[22] Fundamentals of Child Rights in India (n 4)
[23] *G.B. Ghatge v Emperor* 1949 CriLJ 789
[24] *Parents Forum for Meaningful Education v Union of India and Anr* AIR 2001 Delhi 212
[25] *Sister Linsa v Praseed* (2020)
[26] The Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(9)

that have been established. Section 2(9)[27] of the Act defines "best interest of the child" and this definition lays down that any decision that is taken for the child must lead to the emotional and intellectual development of the child and must be taken in such a manner that it fulfills the rights and interests of the child. Administering corporal punishment is against this very definition. The preamble of the act states that this act is enforced concerning children who are in conflict with law and children who require care and protection and this limits the scope of this act because the children who are not in the custody of the state or who are not in child-care institutions but who are physically disciplined by their parents or quasi-parents, such as home tutors, are disregarded. According to section 75[28], anyone who has actual control of or is in charge of a child, if assaults or procures or causes to assault a child could be held liable and shall be punishable for a term that could extend for three years or liable to pay a fine of 3 lakh rupees or both and according to section 82(1)[29] of the act, a person who is in charge of or employed in a child-care institution will be held liable for corporal punishment and the person would have to pay a fine of ten thousand rupees and could also be held liable for imprisonment for subsequent chastisements, which may extend for 3 months, or fine or both.

Both the sections avoid from their purview quasi-parents such as teachers. Section 75, mentions a person who is in charge of a child or actual control, this may include quasi-parents but then there is a certain sense of ambiguity that exists because quasi-parents such as tutors or teachers most obviously do not fall within the ambit of someone in-charge or in actual control. Section 82(1)[30] specifically mentions a person that would be employed or incharge of a child-care institution and thus both parents and quasi-parents will not be held liable for inflicting corporal punishment as this section is limited in its scope. Therefore, we can say that this act is inherently flawed. The act seems narrow and is not seem all-inclusive. Not all children who undergo physical chastisement are children who require special protection or children that are in conflict with the law. Irrespective of the circumstances that the child is coming from and irrespective of the degree of corporal punishment that is administered, all

[27] *Ibid*
[28] The Juvenile Justice (Care and Protection of Children) Act, 2015, s 75
[29] The Juvenile Justice (Care and Protection of Children) Act, 2015, s 82(1)
[30] *Ibid*

sorts of such punishments must be prohibited and not only in certain settings such as child-care institutions, as mentioned in section 82(1)[31], but other settings, such as home, as well.

FLAWS IN THE RTE ACT, 2009

The RTE Act, 2009[32] was enacted in 2009 and emphasizes the importance of free and compulsory education, for children between the ages 6-14 thus implementing the fundamental right to free and compulsory, Article 21-A[33], as guaranteed in the constitution. Section 17(1)[34] of this act completely bars physical chastisement and mental harassment of a child by one of the most important sets of quasi-parents that are teachers and others employed in various educational institutions. Section 17(2)[35] of the act provides for a disciplinary action that would be taken against the person depending on that individual's service rules. The act applies to children belonging to 6-14 years and therefore children below the age of 6 and children between the age of 14-18 are not considered in the act. Children as young as 4 or 5 years do get physically chastised by parents and quasi-parents and therefore the narrow age range must be widened as according to the Indian laws a child is deemed to have attained majority at the age of 18 and the children belonging to the age group,14-18, will be considered as

Even though the act provides for a complete bar on corporal punishment there are certain flaws in the act. This act was amended in 2012, following the case Society for Unaided Private Schools of Rajasthan v Union of India and Another[36] and as a result of which unaided-schools were avoided from the purview of this act. Therefore, the people who physically chastise children, in such unaided minority schools, will not be held liable under this act. Similarly, children attending Vedic Pathshalas, Madrasas, and other institutions that impart religious instructions were also avoided from the purview of this act[37]. There have been instances, wherein religious instructors in such institutions, such as Madrasas, have physically chastised

[31] *Ibid*
[32] Right of Children to Free and Compulsory Education Act, 2009
[33] Constitution of India, 1950, art. 21-A
[34] The Right of Children to Free and Compulsory Education Act, 2009, s 17(1)
[35] The Right of Children to Free and Compulsory Education Act, 2009, s 17(2)
[36] *Society for Un-aided Private Schools of Rajasthan v Union of India & Another* (2010)
[37] The Right of Children To Free And Compulsory Education (Amendment) Act,2012, s 2(5)

children and leaving such institutions from the purview of the act aids these religious instructors to escape from their liabilities. Therefore, we can say that this act downplays corporal punishment because the provisions of the act must be widened as it is limited in scope. Even though this act aimed towards achieving a complete bar on corporal punishment, children are still chastised in schools and other educational institutions and the added limitation of this act leads to the ineffective enforcement of this act.

SCOPE FOR DEFENSES IN PROVISIONS OF CRIMINAL LAW: HOW DOES IT INDIRECTLY LEGITIMIZE CORPORAL PUNISHMENT?

The various judicial and quasi-judicial authorities have claimed defenses under the sections of the Indian Penal Code (IPC), 1860[38]. This further has endorsed the narrative that corporal punishment must be carried out for the best interest of the child and is to bring a sense of reformation in the child. Section 88[39] of the IPC provides that a person will not be held liable if an act, which is not intended to cause death, is done with consent (expressed or implied), in good faith, and for the benefit of the person, on whom the action has been carried out. Section 89[40] provides that one would not be held liable if an act is carried out in good faith for the benefit of a child (under twelve years of age) or an insane person by the guardian or with the consent of the guardian.

In the case, Ganesh Chandra Saha v Jiw Raj Somani[41] the school headmaster was acquitted even after the child, who was 12 years of age at the time when the punishment was administered, was caned and was even given fists and a blow. The court had held that section 88[42] and section 89[43] will not be attracted in this case as it was done in good faith and that the consent of the child or the guardian of the child is implied from the fact that the child was sent to the school and thus it is implied that the child would be under the discipline of the school and that administration of reasonable punishment is necessary for the maintenance of

[38] Indian Penal Code,1860
[39] Indian Penal Code,1860, s 88
[40] Indian Penal Code,1860, s 89
[41] *Ganesh Chandra Saha v Jiw Raj Somani* AIR 1965 Cal 32
[42] Indian Penal Code,1860, s 88
[43] Indian Penal Code,1860, s 89

discipline and would benefit the child. The ease with which parents and quasi-parents can claim this defense under criminal law indirectly legitimizes corporal punishment as they put on a garb of acting in good faith and escapes from the liabilities imposed by the law. The parents and quasi-parents justify their actions by claiming the defense that they acted in good faith and the express or implied consent of the guardian or child is misinterpreted. These sections must be revoked or amended so that it is not misused as a defense for physical chastisement and all-inclusive laws that completely prohibit corporal punishment irrespective of whether it is moderate or not must be enforced.

IS THERE A VIOLATION OF FUNDAMENTAL RIGHTS GUARANTEED BY THE CONSTITUTION OF INDIA?

Corporal punishment is in clear violation of the fundamental rights that are guaranteed by the constitution. Corporal punishment is in clear violation of Article 21[44] of the Indian constitution that guarantees the right to lead a life with dignity, a life that ensures freedom from any kind of abuse and freedom from despotic control. Further article 21-A[45] of the Indian constitution guarantees the right to free and compulsory education to children. The administration of corporal punishment by quasi-parental authorities in educational institutions often leads the children to withdraw from such institutions and thus depriving them of their right to education. Inflicting such physical punishments by parents and quasi-parents breaches the fundamental right guaranteed under Article 21[46] because such punishments lead to physical, emotional, and often psychological damage and harm to the development of the child.

Corporal punishment also violates Article 14[47] of the Indian constitution. This article guarantees equality before the law or equal protection of the laws to every citizen within the territory of India. Irrespective of the degree of the punishment that has been administered and the person who has administered the punishment, parents or quasi-parental authorities, a person must be held liable and not holding a defendant liable for reasonable punishment and

[44] Constitution of India, 1950, art. 21
[45] Constitution of India, 1950, art. 21-A
[46] Constitution of India, 1950, art. 21
[47] Constitution of India, 1950, art. 14

holding a person liable for excessive punishment, under the law, breaches the right to equality of the children in both such circumstances because corporal punishment is an inherently wrong act. Therefore, the administration of corporal punishment is in clear violation of fundamental rights guaranteed under the constitution. The punishments that are administered are not in harmony with the rights guaranteed under the constitution and the vulnerability and the lack of knowledge that children possess about their fundamental rights are misused and taken advantage of.

SUGGESTIONS

Due to the ambiguousness concerning laws that bar corporal punishments and due to the prevalence of such acts by both parents and quasi-parental authorities, there is a need for amendment of laws or the introduction of more stringent and comprehensive laws that is devoid of any lacunae which lead people to take defenses. The existing laws are flawed and restricted and therefore need to be made more inclusive and the ambit of the provisions of these laws must be widened. Alternate ways by which children can be disciplined must be ventured into rather than relying on physical disciplining of children which can make a long-term negative impact on the child. Alternate disciplining techniques such as grounding, wherein children are prevented from living in their house except for places such as schools, hospitals, houses of worship, etc for a short period. Another way by which a child can be disciplined is to take away the privileges such as the internet, video games, electronic gadgets, etc, or any other privileges which a particular child cherishes for a short duration. The most significant way in which a child can be disciplined is by making them understand the consequences of their actions and encouraging them to be self-aware. Children could also be rewarded or praised for good behavior to motivate them to not do mischiefs.

CONCLUSION

Enforcement of new comprehensive legislation and amendment of existing laws is required to prohibit corporal punishment completely. The employment of words such as “reasonable force” to justify the actions of parental or quasi-parental authorities is irrelevant and every act

of physical punishment, however light it may be, violates the rights of the child. Relying on archaic case law decisions is futile because the rights of children have undergone a radical change over the years and depending on the judgments of these case laws is inefficacious. The act of physical chastisement is intrinsically iniquitous and hiding behind the garb of parental or quasi-parental authority to administer such punishments is deep-rooted in the fact that such punishments work for the benefit of the child when, in reality, it does more damage.