

Parental Corporal Punishment as a Tool of Domestic Discipline in India: A Psycho-Legal Discourse

Ravi Kant Mishra

Assistant Professor, Department of Law, North Eastern Hill University, Shillong - 793 022, Meghalaya, India

Email: mishrasiddhi@yahoo.com, rkmishra@nehu.ac.in

(Received on 18 January 2013 and accepted on 25 March 2013)

Abstract – Corporal punishment remains a widely used discipline technique in most Indian families, but it has also been a subject of controversy within the child development and psychological communities. All parents want smart children. This article shows that avoiding spanking and correcting misbehavior in other ways can help that happen. The role which is expected from law to play in stopping corporal punishment of the children within family to ensure their overall development is the key issue in this paper.

Keywords : Corporal Punishment, Domestic Discipline

I. INTRODUCTION

Corporal punishment has been an integral part of how parents discipline their children throughout the history of the mankind and has been a focus of psycho-legal research for decades particularly in underdeveloped countries. Although a growing number of countries has adopted policies or laws that prohibit parents from using corporal punishment as a means of discipline but it's still considered as an effective tool of domestic discipline within the house in most of the societies.

Psychologists and other professionals are divided on the question of whether the benefits of corporal punishment might outweigh any potential hazards; some have concluded that corporal punishment is both effective and desirable whereas others have concluded that corporal punishment is ineffective at best and harmful at worst. This controversy over corporal punishment has inspired a series of recent debates among psychological, sociological, and legal scholars about what corporal punishment does and does not do for children.

Parental corporal punishment is a reality even today. A study shows that even in developed countries like USA corporal punishment of children persists—roughly fifty percent of the parents of toddlers and sixty-five to sixty-eight percent of the parents' of preschoolers in the United States

use corporal punishment as a regular method of disciplining their children. By the time American children reach middle and high school, eighty-five percent have been physically punished by their parents. However, a 'Study on Child Abuse: India 2007' conducted by the ministry of Women and Child Development (2007) shows that about eighty nine percent of children's are facing physical punishment by their parents and every two out of three were victims of corporal punishment in schools in India. These high prevalence rates are in stark contrast to the growing consensus within the social and medical sciences that the risks for substantial harm from corporal punishment outweigh any benefit of immediate child compliance.

Why, then, do parents continue to spank or hit their children in the name of discipline? One reason is its long tradition—the corporal punishment of children has occurred throughout the entirety of recorded history. For centuries in countries around the world, corporal punishment of children occurred in a context in which such punishment was also acceptable as a means of punishing adults for infractions, often in the form of public floggings. But courts throughout the world even in India are no longer allowed to sentence criminals to corporal punishment, short of capital punishment. In contrast, corporal punishment of children by parents remains legal and accepted; in most states parents continue to have a legal defence against assault if their intention in hitting their children was to discipline them. As a result of this long history, corporal punishment has a strong intergenerational tradition in the India.

Parents, after all, learn most of their lessons about how to be a parent from their own parents. It is thus not surprising that adults' support for corporal punishment is significantly related to whether they believe their own parents were supportive of the practice and whether they themselves were physically punished as children. Indeed, children and

adolescents who are spanked themselves tend to be more supportive of corporal punishment than children who have not been spanked. Corporal punishment also persists because it is a practice with strong ties to religion. Religious leaders and religiously inspired parenting experts in our twenty-first century, like their eighteenth century compatriots, make connections between firm discipline and a child's spiritual well-being, and encourage parents to use corporal punishment as an important part of their discipline repertoire.

Parents with conservative affiliations in particular are more supportive of corporal punishment and use it more frequently than do parents of other religious affiliations. Although religious affiliation may explain why some parents continue to use corporal punishment as a means of discipline, a large and growing body of research has challenged the long-held assumption that spanking is a good, and perhaps even a necessary, way to make children better behaved. Despite popular parenting books that encourage parents to try nonphysical means of discipline, practices such as spanking continue throughout the world. Either the conclusions from research are not reaching parents, or they are actively rejecting them and siding with the strong tradition of corporal punishment outlined above.

This article summarizes the current state of knowledge about both the intended and unintended effects of corporal punishment on children. This knowledge base is built upon hundreds of research studies in the fields of psychology, medicine, sociology, social work, education and law each detailing the potential effects corporal punishment may have on children.

II. CORPORAL PUNISHMENT

It is very difficult to define the limits of corporal punishment but the most accepted definition of corporal punishment is given by Straus as follows:

“Corporal punishment is the use of physical force with the intention of causing a child to experience pain but not injury for the purposes of correction or control of the child's behaviour.”

For this article, the term corporal punishment signifies non-injurious, open-handed hitting with the intention of modifying child behaviour. The terms corporal punishment and physical punishment are synonymous: “physical punishment” is more commonly used among parents in India. “Corporal punishment” is commonly used internationally and is used in

India by teachers, principals, and policymakers. Parents tend to use a number of euphemisms to refer to punishment that involves striking their child, including “spank,” “smack,” “slap,” “pop,” “beat,” “paddle,” “punch,” “whup” or “whip,” and “hit”. “Spanking” is the term used most commonly in the developed countries and typically refers to hitting a child on his or her buttocks with an open hand, although some parents may include hitting with objects in their definition of spanking. Throughout this article, “corporal punishment” refers not to the broader array of striking, however designated by parents, but specifically to spanking as so defined here and as administered by parents in the India.

A. Causes Behind Corporal Punishment

One of the most accepted and used argument by parents behind corporal punishment is ‘to correct and control child's behaviour’. Whereas the opponents of this view say that the corporal punishment of children offends their basic human rights enshrined in, for example, the United Nations Convention on the Rights of the Child and the European Convention on Human Rights. Children are no longer viewed as mere possessions of their parents but as individuals themselves possessing rights, including in this case, the right of physical integrity. This is a view which seems largely to have been accepted by the developed countries but is not accepted everywhere. The Scottish Law Commission produced a report in 1992, based on a survey of public opinion in Scotland, which drew a distinction between smacking with an open hand and the use of implements such as belts, sticks or other objects. The former was regarded as acceptable, the latter as unacceptable by a large majority of those interviewed. Accordingly, the Commission was not prepared to follow the Scandinavi an example and propose the outright abolition of the parental right to administer corporal punishment. More recently, in England, the Family Division of the High Court held that magistrates were entitled to conclude that a childminder was not unfit to look after children merely because she refused to agree with the local authority's policy requiring all its childminders to refrain from smacking children in their care. Yet more recently it was reported that American public opinion was sharply divided on the fate of teenager Michael Fay sentenced to be caned in Singapore. While President Clinton was instrumental in persuading the Singaporean authorities to reduce the sentence from six strokes to four, there were evidently many in the United States of America who would

gladly have doubled the punishment.

Returning for a moment to the case of the childminder, it was interesting that Anne Davis described the judgment in her favour as a 'victory for family values' since it is abundantly plain that there are no such values in relation to the corporal punishment question. What the case also illustrates (as does the evidence from Scotland) is that there can be widely divergent views on this issue among the indigenous population. Anne Davis was not a member of an ethnic minority. She simply disagreed with the 'official' view on corporal punishment and refused to comply with what she described as 'political correctness'. But does the case of Anne Davis perhaps contradict the argument being presented here that advocates of 'family values' are claiming the existence of an irreducible core of values? Was it not the case that she was relying heavily on the 'family autonomy' argument - the claim that families should be free to differ over the underlying values of child-rearing practices? Undoubtedly there is some force in this but in response it may be said that the recent resurgence of interest in family values is peculiarly associated with conservative thinking which conceives of the traditional family, espousing traditional values, as the only or certainly the most legitimate form of family arrangement. There is perhaps no better illustration of this phenomenon than the campaign of Victoria Gillick in the mid-1980s. Her argument was essentially that the state (represented for these purposes by the Area Health Authority) should not be empowered to intervene in the exercise of parental prerogatives, specifically in relation to contraceptive advice and treatment for minors. It might be seen as a classic illustration of the family autonomy argument. Yet the reality, it could be argued, was that her action was an attempt to reassert the traditional authority of parents in the home and to counteract the more liberal progression towards a concept of children's rights.

III. PARENT VERSUS CHILD: INTENDED EFFECTS

Parents have short- or long-term goals when they use corporal punishment to correct their child's misbehaviour. Their short-term goal is typically to get the child to stop engaging in the unacceptable behaviour-to get the child to comply yet other short-term goals might include getting the child's attention or quickly communicating to the child that the parent is in charge. Parents also have a variety of long-term goals in using corporal punishment, key among which are reducing the likelihood that the child will repeat the undesirable behaviour and increasing the likelihood that the child will behave in socially acceptable ways. Parents

report that they are most likely to use corporal punishment when their child's misbehaviour involved engaging in unsafe behaviours, such as playing with matches, hurting someone else, as by hitting a sibling or a parent, or violating social norms, such as stealing money. Parents' key goals in using corporal punishment thus appear to be to increase their children's immediate and long term compliance and to decrease their children's aggressive and antisocial behaviour.

A. Short-Term Compliance

To know if corporal punishment is effective in the short term, we observe children's behaviour immediately after punishment to see if their behaviour changes as a result. Although corporal punishment is extremely prevalent, those parents who do use it do so rarely, for example, only eighteen times per year by parents of two-year-old children. Thus it is not feasible to observe families at home and wait to view an instance of corporal punishment. Rather, the best way to observe whether corporal punishment induces compliance is by observing children in a laboratory under controlled conditions. Current human subjects-protection committees likely would never allow a study that randomly assigned parents to spank or hit their children. But in the 1980s, before today's stricter guidelines were put in place in USA, a research team at Idaho State University conducted several studies with young children who were referred to psychological clinics for defiance and conduct problems. Parents and children were randomly assigned to a spank or no-spank condition. Parents were told to issue a series of commands to their child; when the child did not comply, the parent was instructed to have the child sit in a time-out chair. Parents under the spank condition were told to spank their child if he or she got up from a time-out chair, called the "parent-release condition." Parents under the no-spank condition were told to use a different technique if their child got up from the time-out chair, typically putting the child in a small time-out room with a barrier to prevent the child from getting out, known as the "barrier-enforcement condition." In other words, these studies examined whether spanking was an effective means of securing child compliance after the child had already defied the parent once and whether it was better than alternative methods.

In the first of four studies, the researchers found spanking in the "parent-release" condition to be significantly more effective at enforcing compliance to the time-out chair than just allowing the child to get up from the chair when

they were ready to comply, known as the “child-release condition.” In the second study, however, spanking was compared with the barrier-enforcement condition, and both techniques were found to be equally effective at securing the child’s compliance. The researchers concluded, “There was no support for the necessity of the physical punishment... components during initial training.” A few paragraphs later, they went further in their conclusion:

Despite the limitations of barrier enforced time-outs for pre-school children, further research is certainly justified. Spanking young children for escape from a time-out chair is an aversive experience for child, mother, and the rapist alike. If procedural difficulties could be overcome, substituting barrier enforcement procedures for physical punishment would be appealing.

A third study by this same research team again found no differences between spank and barrier-enforcement conditions, although both were better than the child-release condition. The authors did counsel against universally recommending spanking, particularly for parents with a history of physically abusing their children:

“Finally, referred parents who have previously abused their children should be taught the Barrier procedure. No matter how carefully one might train the Spank procedure, it could be discriminative of more intense physical punishment. Since the Barrier procedure is usually effective, it is recommended for parents from such populations.”

This quote raises the questions that if the barrier enforcement condition is equally effective and does not carry the risk of escalation into physical injury for the child, why not recommend barrier enforcement of time-outs for everyone?

Finally, in the fourth study, spanking was again found to be no more effective than the barrier-enforcement strategy. The author concluded “physical punishment was not an important component of compliance training procedures”. The author clearly had reservations about recommending physical punishment to parents and clinicians and went on to list the negative unintended consequences of physical punishment: “Unfortunately, physical punishment, which is often used to enforce chair timeouts, models aggression, may provoke aggressive child reactions... clearly distresses the child (e.g., the effect on timeout disruption), and appears less acceptable

toparents than room timeouts...” To summarize across these studies, although corporal punishment was effective at getting children to comply in the laboratory situation, it was not significantly better at doing so than the barrier enforcement time-out strategy. Citing risks for harm to children, the researchers express reservations about corporal punishment while noting its effectiveness. Three of these four studies have been combined with the results of other studies and used in the two main published meta-analyses to date of the effects of corporal punishment on children. In the first meta-analysis of five laboratory or observational studies, child compliance was found on average to significantly improve after corporal punishment, although this average effect size was driven by one very large effect from one of the time-out studies described above. The second meta-analysis compared the effectiveness of corporal punishment in securing child compliance relative to the effectiveness of other techniques in reducing non compliance and antisocial behaviour and found that corporal punishment was more effective than other techniques such as time-out, reasoning, or threats.

How do we square these two sets of findings? It is indeed possible for both things to be true: When corporal punishment is compared with no back-up discipline, it is effective in securing compliance; yet when it is compared with a barrier time-out back-up, a spanking back-up is no more effective than the time-out method. Corporal punishment is thus better than doing nothing, but it is not better than alternative means of discipline that do not carry the risks of physical injury to the child or of increasing child aggression.

B. Long-Term Compliance

Although parents are often focused on securing immediate child compliance, they also value long-term compliance and appropriate behaviour. Indeed, it is the effects on children’s behaviours in the long-term that are (or should be) the primary goal of parents’ discipline, such that children have internalized the reasons for behaving safely and appropriately in new situations and when parents are not around to enforce compliance. The meta-analysis by Gershoff noted that thirteen of fifteen studies (eighty-seven percent) found that parents’ use of corporal punishment was significantly correlated with less long-term compliance and less moral and pro-social behaviour—in other words, corporal punishment was associated with worse rather than better child behaviour. In their meta-analysis, Larzelere and

Kuhn determined that “customary” corporal punishment was no better at promoting the development of children’s conscience or positive behaviour than were other methods of discipline, including reasoning, time-out, taking away privileges, threats, and ignoring misbehaviour. In two more-recent studies not used in either meta-analysis, the more boys were physically punished, the less likely they were to be have in morally appropriate ways; there was no significant effect for girls.

Taken together, these results indicate that corporal punishment is not better than other discipline methods at promoting long-term compliance or moral internalization (that is, the child’s internalizing positive moral values), and in fact may be worse by decreasing these positive behaviours, thus having an effect on child behaviour that is opposite of what parents intended.

C. Reduced Long-Term Aggressive and Antisocial Behaviour

One of the basic reason in which parents resort to corporal punishment is when their children have engaged in aggression, such as hitting another child, or antisocial behaviour, such as lying or stealing. Parents use corporal punishment to convey their strong disapproval of children’s aggressive and antisocial behaviour, but they do so ignoring that corporal punishment is more likely to increase rather than decrease these behaviours. Three psychological theories shed light on why this may be so. From a social-learning perspective, a parent hitting a child models the use of force to achieve desired ends, and when children see that the parent’s aggression is effective at attaining the goal of the aggressor (in this case, immediate child compliance), the child is more likely to imitate the aggressive behaviour in the long-term. The irony, of course, is that the more successful corporal punishment is at stopping aggression immediately, the more likely it is that children will themselves use physical force to get what they want in the future. Social cognitive theory suggests that children who are hit by their parents (and thus physically hurt by them) will develop a tendency to make hostile attributions about others that, in turn, increase the likelihood that they will behave inappropriately in social interactions. Finally, attribution theorists argue that, because corporal punishment uses physical force, its use by parents constitutes an external source to which children can attribute their compliance; corporal punishment does not promote internalized reasons for behaving appropriately. Children who have not internalized the reasons for behaving pro-

socially thus have no reason to behave appropriately when their parents are not there to provide an external reason for doing so.

The research to date on corporal punishment and child aggression is entirely consistent with these expectations from theory. In one meta-analysis of twenty seven studies, every single study found that the more parents used corpora l punishment, the more aggressive their children were. Similarly, twelve of thirteen studies found that the more frequently or severely corporal punishment was administered, the more strongly it was associated with more antisocial behaviour. Although the majority of this research has been conducted in the United States, these findings have been replicated around the world. Indeed, corporal punishment has been associated with more aggression in Canada, China, India, Italy, Jamaica, Jordan, Kenya, Philippines, Singapore, and Thailand, and with antisocial behaviour and other behaviour problems in Brazil, Hong Kong, Jordan, Mongolia, Norway, and the United Kingdom.

Most of this research is not longitudinal or experimental in nature, and thus it is difficult to know definitively whether corporal punishment causes children to be more aggressive and antisocial, or whether aggressive and antisocial children elicit more corporal punishment from their parents. One approach to isolating the parent-to-child effect is to include initial levels of children’s aggressive or antisocial behaviours in statistical models with longitudinal data in order to account for their co-occurrence with corporal punishment. Such a statistical design allows researchers to examine whether early corporal punishment predicts an increase or decrease in children’s later problem behaviours, once their level of early problem behaviours has been taken into account. Longitudinal studies using such a design have found that both initial levels of, and changes in, corporal punishment over the course of childhood continue to predict increases in children’s aggressive or antisocial Behaviour even controlling for initial levels of such behaviours (as well as for social-demographic characteristics such as race, gender, or family socioeconomic status).

D. Summary of Intended Effects

Parents’ goals in using corporal punishment, as in using any form of discipline, are to put an end to inappropriate or undesirable behaviour and to promote positive and acceptable behaviour in both the short and long terms. The

research summarized above indicates that there is very little evidence that corporal punishment is more effective than other techniques in securing immediate child compliance. By contrast, a consistent body of evidence reveals that more corporal punishment by parents is associated with less long-term compliance and pro-social behaviour and with more aggression and antisocial behaviour. Taken together, these studies demonstrate that corporal punishment does not have the effects parents intend when using it and in fact has the reverse effect of increasing undesirable behaviours.

IV. LEGAL STATUS OF PARENTAL CORPORAL PUNISHMENT IN INDIA

Corporal punishment by parents in India is permitted by statute i.e. Section 89 of the Indian Penal Code states: "Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person..." This provision should be repealed and explicit prohibition enacted of all corporal punishment, however light, by parents and others with authority over children. It is not clear that whether parents have a fundamental constitutional right to use physical punishment with their children. However there are few more laws which protect children rights i.e. the Juvenile Justice (Care and Protection of Children) Act (2000, amended 2006), the Protection of Child Rights Act (2005), the Protection of Women from Domestic Violence Act (2005) and the Constitution are not interpreted as prohibiting all corporal punishment in childrearing. The National Charter for Children (2003) confirms children's right to protection from all corporal punishment (article 9), but this is not confirmed in legislation.

In the third/fourth state party report to the UN Committee on the Rights of the Child, the Government confirms that corporal punishment of children is not considered an offence due to section 89 of the Penal Code; this was to be rectified by the drafting of a Prevention of Offences against the Child Bill which would make corporal punishment an offence (para 40). However, as at September 2011, this Bill had been replaced by a Protection of Children from Sexual Offences Bill which did not prohibit corporal punishment. In 2010 a Prevention of Torture Bill was under consideration but we have no up to

date information.

Corporal punishment is prohibited in schools in the Right to Free and Compulsory Education Act (2009). Article 17 states: "(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." The Right of Children to Free and Compulsory Education Rules (2010) provide for implementation of the Act, including awareness raising about the rights in the Act, procedures for monitoring implementation, and complaints mechanisms when the rights are violated. However, the prohibition in the Act applies only to children aged 6-14 and neither the Act nor the Rules apply in Jammu and Kashmir. The Supreme Court has, however, considered the constitutionality of corporal punishment administered by public school personnel at the elementary and secondary levels.

Corporal punishment is unlawful as a sentence for crime under the Penal Code and the Juvenile Justice (Care and Protection of Children) Act, which do not provide for sentencing of offenders to corporal punishment. In Jammu and Kashmir, the Juvenile Justice Act, 1997 and the Ranbir Penal Code do not provide for judicial corporal punishment. But throughout India, corporal punishment may be imposed under traditional justice systems, such as the Pison system: in the absence of explicit prohibition, this appears to be lawful.

Corporal punishment is unlawful as a disciplinary measure in penal institutions under the Juvenile Justice (Care and Protection of Children) Rules (2007), which state in Chapter VI: "Principle of Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment): (a) At all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter, the juvenile or child or juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or the child..." There is no explicit prohibition of corporal punishment in penal institutions in Jammu and Kashmir.

There have been arguments over the legitimacy of the state's rights over parental rights. However, if child abuse is no longer confined to being a family issue, then it is binding on the state to intervene. The recent government

initiatives for child protection are primarily in the area of strengthening existing schemes for children, introducing newer legislations with a strong focus on child rights, and setting up a children's commission. The outcome of these measures will become evident eventually. The risk factors for child maltreatment occur on multiple levels ranging from biological and individual-level factors to societal level risks such as socio-economic inequalities. Thus preventive work is simultaneously required at various levels. In the light of the findings of the national study it is necessary to explore or develop models of prevention of child abuse and neglect within the family. Community-based prevention programmes can help trace missing children, prevent trafficking, facilitate retention of children in schools, and work towards elimination of child labour and child marriage. Mahila mandals, self-help groups and panchayats can play an active role in all such community-based efforts. Along with preventive work, strong mechanisms for convicting the perpetrators are equally crucial.

V. CONCLUSION

In an ideal world, policy making would always be informed by scientific research and be evidence-based. But it is disingenuous to think that just because scientific research suggests something to be so that policy makers will accept the conclusions of the research and craft new policies based on it—policy is often not consistent with research findings. Compounding the general suspicion of scientific research in political circles is the fact that scientists are typically loathe to get their feet wet in the muddy waters of policymaking, particularly for such a hot-button issue as parents' use of corporal punishment.

In contrast to those in the India, legislative bodies around the world have not been deterred by the controversial nature of corporal punishment. Beginning with Sweden's ban in 1979, the last thirty years have seen a total of twenty-nine countries ban outright the practice of corporal punishment of children by parents, teachers, or any other adult in those countries. Half of these bans have been enacted in the last six years by countries beyond northern and central Europe, including Costa Rica, Kenya, New Zealand, Uruguay, and Venezuela. Most, if not all, of these bans have been hotly debated in the respective lawmaking bodies of these countries. Notably, the extant bans have been inspired largely by concern for children's human rights to protection from harm and have often proceeded without a majority of public support. The

UN Convention on the Rights of the Child is the main treaty cited as providing protection for children from violence; the Committee on the Rights of the Child has unambiguously stated that the treaty's Article 19 includes protection from corporal punishment. The India is one of the countries that have ratified the treaty.

Although human-rights concerns are paramount in the international movement to ban corporal punishment of children, the body of research demonstrating the ineffectiveness of corporal punishment as well as its potential for negative side effects has also been influential in spurring legislation to ban corporal punishment. A recent example is New Zealand's passage of a universal ban on corporal punishment of children in 2007. According to the key advocates for the ban, research on the potential negative effects of physical punishment summarized in a report issued by the New Zealand government's Office for the Children's Commissioner was instrumental in building support for the ban: "Growing public concern over family violence and the existence of strong international research evidence discrediting the use of physical punishment were two of the critical factors underpinning pressure for change in New Zealand."

The research evidence has exposed that even in USA many leading professional organizations have made a call for ban on corporal punishment in schools, including the UNICEF, American Academy of Paediatrics, the American Bar Association, the American Civil Liberties Union, the American Medical Association, the American Psychological Association, the National Association of Elementary School Principals, the National Association of Social Workers, and Prevent Child Abuse America. Fewer such organizations have called for an outright ban of corporal punishment in American homes, although prominent professional organizations including the American Academy of Paediatrics and the American Medical Association have endorsed a recent report summarizing the research to date and recommending parents avoid its use.

It is ironic that research that has been conducted primarily in India is informing legal and policy changes in other countries before it has any impact here. Those who continue to argue that there is not enough evidence to support a "blanket injunction against..... spanking" do so in the face of a large and consistent body of research from countries around the world that leads to two clear conclusions. First, corporal punishment is no better than other methods of discipline at gaining immediate

or long-term child compliance. Second, corporal punishment is not predictive of any intended positive outcomes for children and, in contrast, is significantly predictive of a range of negative, unintended consequences, with the demonstrated risk for physical injury being the most concerning. On balance, the risk for harm from corporal punishment far outweighs any short-term good. It is discouraging that such a strong and compelling body of research evidence has not been sufficient to warrant policy change in this country, even though the federal government has accepted responsibility for protecting children from harm and abuse. Despite this evidence and the waning use of corporal punishment in India, a majority of parents continue to use it at some point with their children. If reducing corporal punishment becomes a policy and public health goal in this country, meeting such a goal will require education campaigns targeted at both parents and professionals. As countries such as Sweden have demonstrated, public opinion about corporal punishment lags behind legislation banning the practice, and indeed it is the passage of legislation that can begin or sustain attitude change against corporal punishment. Education campaigns on the harms of and alternatives to corporal punishment are clearly needed here in India, but it may take a legal ban to spur dramatic change in Indians' attitudes about and use of corporal punishment.

REFERENCES

- [1] B. A., LL.B., LL.M., Ph.D. (Law) & P.G. Diploma in Criminology, Assistant Professor, Department of Law, North Eastern Hill University (NEHU), Shillong (Meghalaya) – 793022 (India). E-mail: mishrasiddhi@yahoo.com; smt.siddhi@gmail.com; Ph (O): +91-364-2723894; (M): +91-9436307531.
- [2] Austria, Croatia, Cyprus, Denmark, Finland, Germany, Israel, Italy, Latvia, Norway, and Sweden etc., for details, see, S. H. Bitensky, (1998) "Spare the rod, embrace our humanity: Toward a new legal regime prohibiting corporal punishment of children", *University of Michigan Journal of Law Reform*, Vol. 31, 1998, pp. 353–474; EPOCH-USA. (2000), Legal reforms: Corporal punishment of children in the family, retrieved on 30/06/ 2001 at 03:00 p.m. from <http://www.stophitting.com/legalReform.php>.
- [3] For details, see, D. Baumrind, "A Blanket Injunction against Disciplinary Use of Spanking is not Warranted by the Data", *Pediatrics* 98(4, Pt. 2), 1996, pp. 828–831; D. Baumrind, "The Discipline Controversy Revisited", *Family Relations*, Vol. 45, 1996, pp. 405–415; R. E. Larzelere, "A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment", *Pediatrics*, 98(4, Pt. 2), 1996, pp. 824–828.
- [4] See, for further details, Elizabeth Thompson Gershoff, "Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review", *Psychological Bulletin*, Vol. 128, No. 4, 2002, pp. 539–579; H. Lytton, "Physical Punishment is a Problem, Whether Conduct Disorder is Endogenous or Not", *Psychological Inquiry*, 8, 1997, pp. 211–214; J. McCord, "On Discipline", *Psychological Inquiry*, Vol. 8, 1997, pp. 215–217.
- [5] See, for further details, C. Donaldson, "Corporal Punishment (Special Issue)", *Children's Legal Rights Journal*, Vol. 17(4), 1997; S. B. Friedman, & S. K. Schonberg, "The Short- and Long-Term Consequences of Corporal Punishment (Supplement)", *Pediatrics*, 98(4, Pt. 2), 1996; M. A. Mason, & E. Gambrell, (Eds.), *Debating Children's Lives: Current Controversies on Children and Adolescents*. Thousand Oaks, CA: Sage, 1994.
- [6] See, Rebecca R. S. Socolar (et al.), "A Longitudinal Study of Parental Discipline of Children", *Southern Medical Journal*, Vol. 100(5), 2007, pp. 472–75.
- [7] Michael Regalado (et al.), "Parents' Discipline of Young Children: Results From the National Survey of Early Childhood Health", *Pediatrics*, Vol. 113, 2004, pp. 1952–54; Socolar (et al.), supra note 5.
- [8] Heather L. Bender (et al.), "Use of Harsh Physical Discipline and Developmental Outcomes in Adolescence", *Dev. & Psychopathology*, Vol. 19, 2007, pp. 227–231; see also, Elizabeth T. Gershoff & Susan H. Bitensky, "The Case against Corporal Punishment of Children: Converging Evidence from Social Science Research and International Human Rights Law and Implications for U.S. Public Policy", *Psychol., Pub. Pol'y, & Law*, Vol. 13, 2007, pp. 231–32.
- [9] For details, see, Neela Dabir and Mohua Nigudkar, "Child Abuse: Confronting Reality", *Economic and Political Weekly*, Vol. 42, No. 27/28, 2007, pp. 2863–2866.
- [10] For details, see, American Academy of Pediatrics, "Committee on Psychosocial Aspects of Child and Family Health: Guidance for Effective Discipline", *Pediatrics*, Vol. 101, 1998, pp. 723–26; see also, Elizabeth T. Gershoff, "Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review", *Psychological Bulletin*, Vol. 128, No. 4, 2002, pp. 539–579.
- [11] Leonard P. Edwards, "Corporal Punishment and the Legal System", *Santa Clara L. Rev.*, Vol. 31, 1996, pp. 983–984.
- [12] Elizabeth T. Gershoff, "More Harm Than Good: A summary of Scientific Research on The Intended and Unintended Effects of Corporal Punishment on Children", *Law and Contemporary Problems*, Vol. 73, 2010, pp. 31–56; see also, George Riley Scott, *The History of Corporal Punishment: A Survey Of Flagellation In Its Historical Anthropological and Sociological Aspects*, London, Torch-stream Books, 1986, pp. 37–59.
- [13] Nicholas N. Kittrie (et. Al.), *Sentencing, Sanctions, and Corrections: Federal and State Law, Policy, and Practice*, Foundation Press, 2002, p. 736.
- [14] Deana A. Pollard, "Banning Corporal Punishment: A Constitutional Analysis", *AM. U. L. REV.*, Vol. 52, 2002, pp. 447–472.
- [15] See generally, George W. Holden (et al.), "Child Effects as a Source of Change in Maternal Attitudes Toward Corporal Punishment", *J. Soc. & Pers. Relationships*, Vol. 14, 1997, p. 481.

- [16] Shari Barkin (et al.), "Determinants of Parental Discipline Practices: A National Sample from Primary Care Practices", *Clinical Pediatrics*, Vol. 46, 2007, p. 64; Anthony M. Graziano (et al.), "Subabusive Violence in Childrearing in Middle-Class American Families", *Pediatrics*, Vol. 98, 1996, pp. 845-46; Rebecca R. S. Socolar & Ruth E. K. Stein, "Spanking Infants and Toddlers: Maternal Belief and Practice", *Pediatrics*, Vol. 95, 1995, pp. 105-08; for details, see generally, Mary E. Bower-Russa (et al.), "Disciplinary History, Adult Disciplinary Attitudes, and Risk for Abusive Parenting", *J. Community Psychol.*, Vol. 29, 2001, p. 219.
- [17] Kirby Deater-Deckard (et al.), "The Development of Attitudes about Physical Punishment: An 8-Year Longitudinal Study", *J. FAM. PSYCHOL.*, Vol. 17, 2003, pp. 351-56.
- [18] See Generally Philip Greven, *Spare The Child: The Religious Roots Of Punishment And The Psychological Impact Of Physical Abuse*, Knopf, 1991.
- [19] See Generally James C. Dobson, *The New Dare To Discipline*, Wheaton, Tyndale House Publishers, 1996.
- [20] Elizabeth Thompson Gershoff (et al.), "Parenting Influences from the Pulpit: Religious Affiliation as a Determinant of Parental Corporal Punishment", *J. Fam. Psychol.*, Vol. 13, 1999, pp.307-15.
- [21] Bill Cosby & Alvin F. Poussaint, *Come On People: On The Path From Victims To Victors*, Nashville (USA), Thomas Nelson Inc., 2007, pp. 67-73; See Generally William Sears & Martha Sears, *The Discipline Book: Everything You Need To Know To Have A Better-Behaved Child—From Birth To Age Ten*, Little, Brown and Co., (1995).
- [22] See generally Gershoff, *supra* note 11; Robert E. Larzelere & Brett R. Kuhn, "Comparing Child Outcomes of Physical Punishment and Alternative Disciplinary Tactics: A Meta-Analysis", *Clinical Child & Fam. Psychol. Rev.*, Vol. (8), 2005, p.1.
- [23] M. A. Straus, *Beating the devil out of them: Corporal punishment in American families*. New York, Lexington Books, 1994.
- [24] See, for details, Phillip W. Davis, "Threats of Corporal Punishment as Verbal Aggression: A Naturalistic Study", *Child Abuse & Neglect*, Vol. 20, 1996, pp. 289-29; Lynetta Mosby (et al.), "Troubles in Interracial Talk About Discipline: An Examination of African American Child Rearing Narratives", *J. Comp. Fam. Stud.*, Vol. 30, 1999, pp. 489-514.
- [25] Article 19 requires States Parties to 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, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child'.
- [26] Article 3 provides that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'.
- [27] Andrew Bainham, "Family Law in a Pluralistic Society", *Journal of Law and Society*, Vol. 22, No. 2, 1995, pp. 234-247.
- [28] For a discussion of the Scandinavian laws and a more wide-ranging treatment of the whole issue of corporal punishment, see the Scottish Law Commission, *Report on Family Law no. 135 (1992)*, at paras, 2.67-2.105. See, also, A. Bainham, "Reforming Scottish Children Law: Sense from North of the Border", (1993) *Journal of Child Law*, Vol. 5, 1993, p. 3.
- [29] The authority was refusing to register Ms. Davis under s. 71(7)(a) Children Act 1989. It was following guidance issued by the Department of Health to local authorities in The Children Act 1989 Guidance and Regulations, vol.2, para. 6.22. This provided:
- [30] "Corporal punishment (smacking, slapping and shaking) is illegal in maintained schools and should not be used by any other parties within the scope of this guidance."
- [31] This was, however, followed by a departmental circular in 1993 which made it plain that the above guidance did 'not displace the need for local registration authorities to reach their own judgments on the overall fitness or unfitness of applications for registration'.
- [32] Joan E. Grusec & Jacqueline J. Goodnow, "Impact of Parental Discipline Methods on the Child's Internalization of Values: A Re-conceptualisation of Current Points of View", *Developmental Psychol.*, Vol. 30, 1994, p. 4.
- [33] Thomas F. Catron & John C. Masters, "Mothers' and Children's Conceptualizations of Corporal Punishment", *Child Development*, Vol. 64, 1993, pp. 1815-1820; George W. Holden (et al.), "Why 3-Year-Old Children Get Spanked: Parent and Child Determinants as Reported by College-Educated Mothers", *Merrill Palmer Q.*, Vol. 41, 1995, pp. 431-42; Carolyn Zahn-Waxler & Michael Chapman, "Immediate Antecedents of Caretakers' Methods of Discipline", *Child Psychiatry & Hum. Dev.*, Vol. 12, 1982, pp. 179-189.
- [34] Murray A. Straus & Julie H. Stewart, "Corporal Punishment by American Parents: National Data on Prevalence, Chronicity, Severity, and Duration, in Relation to Child and Family Characteristics", *Clinical Child & Fam. Psychol. Rev.*, Vol. 2, 1999, pp. 55-60.
- [35] See, for details, Elizabeth T. Gershoff, "More Harm Than Good: A Summary Of Scientific Research On The Intended And Unintended Effects Of Corporal Punishment On Children", *Law and Contemporary Problems*, Vol. 73, 2010, pp. 31-56.
- [36] Arthur W. Bean & Mark W. Roberts, "The Effect of Time-Out Release Contingencies on Changes in Child Noncompliance", *J. Abnormal Child Psychol.* Vol. 9, 1981, pp. 95-103.
- [37] Dan E. Day & Mark W. Roberts, "An Analysis of the Physical Punishment Component of a Parent Training Program", *J. Abnormal Child Psychol.*, Vol. 11, 1983, pp. 141-150.
- [38] Mark W. Roberts & Scott W. Powers, "Adjusting Chair Time-out Enforcement Procedures for Oppositional Children", *Behav. Therapy*, Vol. 21, 1990, pp. 257- 275.
- [39] Dan E. Day & Mark W. Roberts, "An Analysis of the Physical Punishment Component of a Parent Training Program", *J. Abnormal Child Psychol.*, Vol. 11, 1983, pp. 141-150 cited in Mark W. Roberts, "Enforcing Chair Timeouts with Room Timeouts", *Behav. Modification*, Vol. 12, 1988, pp. 353-375.

- [40] See generally, Elizabeth T. Gershoff, supra note 3; Robert E. Larzelere & Brett R. Kuhn, "Comparing Child Outcomes of Physical Punishment and Alternative Disciplinary Tactics: A Meta-Analysis", *Clinical Child & Fam. Psychol. Rev.*, Vol. 8, 2005, p.1.
- [41] Bean & Roberts, supra note 42; Elizabeth T. Gershoff, supra note 3, at p. 545 table 3. Robert E. Larzelere & Brett R. Kuhn, supra note 49, at p. 17. Bean & Roberts, supra note 42 at p. 102.
- [42] See generally Martin L. Hoffman, "Affective and Cognitive Processes in Moral Internalization", in E. Tory Higgins (et.al.), *Social Cognition and Social Development*, 1983, p. 236; Mark R. Lepper, "Social-Control Processes and the Internalization of Social Values: An Attributional Perspective", in E. Tory Higgins (et.al.), *Social Cognition and Social Development*, 1983, pp. 294-95. Elizabeth T. Gershoff, supra note 3 at p. 547 table 4. Robert E. Larzelere & Brett R. Kuhn, supra note 49, at p. 25.
- [43] David C. R. Kerr (et al.), "Parental Discipline and Externalizing Behaviour Problems in Early Childhood: The Roles of Moral Regulation and Child Gender", *J. Abnormal Child Psychol.*, Vol. 32, 2004, pp. 369-379; N. L. Lopez (et al.), "Parental Disciplinary History, Current Levels of Empathy, and Moral Reasoning in Young Adults", *N. Am. J. Psychol.*, Vol. 3, 2001, pp. 193-200.
- [44] Catron & Masters, supra note 38, at p. 1815; Holden (et al.), supra note 38, at pp.441-42; Zahn-Waxler & Chapman, supra note 38, at p. 189.
- [45] See generally, Albert Bandura & Richard H. Walters, *Adolescent Aggression: a Study of the Influence of Child-Training Practices and Family Interrelationships* (1959); Leonard D. Eron (et al.), *Learning of Aggression in Children* (1971).
- [46] See generally Kenneth A. Dodge, "A Social Information Processing Model of Social Competence in Children", in Marion Perlmutter (ed.), *18 Minnesota Symposium On Child Psychol.*, (1986), p. 77; see also Bahr Weiss (et al.), "Some Consequences of Early Harsh Discipline: Child Aggression and a Maladaptive Social Information Processing Style", *Child Development*, Vol. 63, 1992, pp. 1321-1331.
- [47] See generally Martin L. Hoffman, supra note 54; Mark R. Lepper, supra note 54. Elizabeth T. Gershoff, supra note 3 at p. 547 table 4.
- [48] J.M. Meeks Gardner (et al.), "Determinants of Aggressive and Prosocial Behaviour Among Jamaican Schoolboys", *W. Indian Med. J.*, Vol.56, 2007, pp. 34-38.
- [49] Sara R. Jaffee (et al.), "The Limits of Child Effects: Evidence for Genetically Mediated Child Effects on Corporal Punishment but Not on Physical Maltreatment", *Developmental Psychol.*, Vol. 40, 2004, pp. 1047-1055.
- [50] Diana Baumrind (et al.), "Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff (2002)", *Psychol. Bull.*, Vol. 128, 2002, pp. 580-589; Gershoff, supra note 3, at p.565-66; Larzelere & Kuhn, supra note 49, at p. 31-32.
- [51] Patricia Cohen & Judith S. Brook, "The Reciprocal Influence of Punishment and Child Behaviour Disorder", in Joan McCord (ed.), *Coercion And Punishment In Long-Term Perspectives*, 1995, pp. 154&160-61.
- [52] See generally, for details, NCPCR summery report, "Protection of Children against Corporal Punishment in Schools and Institutions", 2008, available at http://www.ncpcr.gov.in/Reports/Protection_of_Children_against_Corporal_Punishment_in_Schools_and_Institutions_December_2008.pdf (last visited on 05/02/2012 at 03:00 p.m.).
- [53] In some states, children in all schools are legally protected from corporal punishment under state laws (Goa, Andhra Pradesh and Tamil Nadu). In Delhi, provisions for corporal punishment in the Delhi School Education Act (1973) were struck down by the Delhi High Court in 2000, and in 2004 the Calcutta High Court ruled that caning in state schools in West Bengal was unlawful.
- [54] Supra note 12; for details, see also, http://www.unicef.org/india/child_protection_5386.htm (last visited on 01/12/2011 at 08:00 p.m.).
- [55] See for details, http://www.unicef.org/india/banning_corporalpunishment.pdf. (last visited on 05/02/2012 at 03:00 p.m.).
- [56] Retrieved from <http://www.endcorporalpunishment.org/pages/progress/reports/india.html#Lawfulness> on 02/02/2012 at 03:00 p.m. Corporal punishment is prohibited in care institutions under Chapter VI of the Juvenile Justice (Care and Protection of Children) Rules (see above), but we have no information on comparable provisions in Jammu and Kashmir. It is lawful in non-institutional forms of care under section 89 of the Penal Code and, in Jammu and Kashmir, the Ranbir Penal Code (see above).
- [57] Sandra M. Nutley (et al.), *Using Evidence: How Research Can Inform Public Services*, Bristol, The Policy Press, 2007, pp. 1-2.
- [58] Global Initiative to End All Corporal Punishment of Children, States with Full Abolition, <http://www.endcorporalpunishment.org/pages/frame.html> (last visited 14/09/2010 at 03:00 p.m.).
- [59] Susan H. Bitensky, *Corporal Punishment of Children: A Human Rights Violation*, Michigan, Transnational Publishers, 2006, p.159; Rowan Boyson, *Equal Protection For Children: An Overview Of The Experience Of Countries That Accord Children Full Legal Protection From Physical Punishment*, NSPCC, 2002, pp.64-65.
- [60] Convention on the Rights of the Child, G.A. Res. 44/25, at 3, U.N. GAOR, 44th Sess. U.N. Doc.A/RES/44/25 (Nov. 20, 1989).
- [61] U.N. Comm. on the Rights of the Child, General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Articles 1,28(2), and 37, Inter Alia), at p. 6, para.18, U.N. Doc. CRC/C/GC/8 (Mar. 2, 2007). Rowan Boyson, supra note 75, at p. 6.
- [62] Anne B. Smith (et al.), *The Discipline and Guidance of Children: Messages From Research*, New Zealand Office of the Children's Commissioner, 2005, pp. 7-16 Cited in Gershoff, Supra Note 3, at p. 547 Tbl.4.
- [63] See generally Beth Wood (et al.), *Unreasonable Force: New Zealand's Journey towards Banning the Physical Punishment of Children*, Wellington, Save the Children- New Zealand, 2008. Ibid at p. 31.

- [64] Centre for Effective Discipline, U.S. Organizations Opposed to School Corporal Punishment, <http://www.stophitting.com/index.php?page=usorgs> (last visited on 10/12/2009 at 09:00 p.m.).
- [65] Phoenix Children's Hospital, Report on Physical Punishment of Children, List of Endorsers, October 1, 2009, <http://www.phoenixchildrens.com/about/community-outreach-education/pdfs/childabuse-prevention/Report-on-PP-List-of-Endorsers-October-1-2009.pdf>(last visited on 10/12/2009 at 09:30 p.m.).DianaBaumrind(et al.), supra note66, at p. 586.
- [66] See generallyChild Abuse Prevention and Treatment Act of 1974, 42 U.S.C. § 5101 (1974); Jill Goldman (Et Al.), U.S. Dep't of Health And Human Services, A Coordinated Response to Child Abuse and Neglect: The Foundation for Practice 9 (2003).
- [67] Murray A. Straus & Anita K. Mathur, "Social Change and the Trends in Approval of Corporal Punishment by Parents from 1968 to 1994", in DetlevFrehsee (et al.), *Family Violence Against Children: A Challenge For Society*,Berlin, Walter de Gruyter & Co., 1996, pp. 91- 96 fig.1.
- [68] Elizabeth T. Gershoff& Susan H.Bitensky, "The Case Against Corporal Punishment of Children: Converging Evidence from Social Science Research and International Human Rights Law and Implications for U.S. Public Policy", *Psychol., Pub. Pol'y, & Law*, Vol. 13, 2007, pp. 231-232.
- [69] Joan E. Durrant, "Legal Reform and Attitudes Toward Physical Punishment in Sweden", *Int'l J. Child. Rights*, Vol. 11, 2003, pp. 147-169; StaffanJanson, "Response to Beckett, C. (2005): The Swedish Myth: The Corporal Punishment Ban and Child Death Statistics", *Brit. J. Soc. Work*, Vol. 35, 2005, pp. 1411-1414.