

A Comparative Study On Corporal Punishment About Children,S Right To Legal Protection

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ABSTRACT

Corporal punishment is a widely discussion topic globally with some countries banning it entirely, while others still permit it. This comparative study aims to examine the laws, policies, practices related to corporal punishment in different countries and their impact on children's protection. Legal protection from all violent punishment is not only to protect the childrens from violence but also to raising their social status. Laws which allow adults to inflict violence on children in the name of "discipline" reiterated as a form of punishment. Laws are to ensure that children can no longer be lawfully subjected to violent punishment marks a turning point in society's relationship with children, while giving recognition of children as human beings and rights holders. In enhancing children's position in society, it advances all their other rights.

1. INTRODUCTION

Children have a right to legal protection from all corporal punishment, in the family home and all other parts of their lives. This human right is recognised under international treaties, including the Convention on the Rights of the Child¹: States are legally obliged to enact laws to prohibit corporal punishment and to work to raise awareness of and implement these laws. Research has made the links between "light" corporal punishment and more severe physical violence against children, describing how prohibiting corporal punishment is a basic requirement for child protection systems and a key element of preventing all violence against children. The large body of research is the harmful impact of corporal punishment illustrates how prohibiting corporal punishment is essential not only for children's right to protection from violence, but also for their rights to health, development and education. Detailing on this research, can be used to support rights-based advocacy for prohibition, are available in the Global initiative's review of research on the impact of and associations with corporal punishment, available at www.endcorporalpunishment.org. However, research on the issue can be useful for advocacy, and the message from research is very clear: prohibition, accompanied by government-led population-level measures to raise awareness of and implement the prohibition ,is essential in eliminating corporal punishment.

This paper examines detailing and showing reductions in the approval and use of corporal punishment in some countries which have reformed their laws to prohibit all corporal punishment of children. Progress towards universal prohibition of all corporal punishment is fast accelerating. Almost a quarter of UN member states have now prohibited corporal punishment in all settings including the family home. But research comparing the prevalence of and attitudes towards corporal punishment before and after law reform is available in only a handful. In some states, no research has directly asked children about their experiences; in others, different questions or different samples have been used in studies carried out before and after prohibition, making strict comparison between data difficult. This section summarises research showing these changes in some countries which have reformed their laws to prohibit all corporal punishment of children. But however, on the other there are still some countries to be fully reformed and banning for continuing corporal punishment.

2. REVIEW OF RELATED LITERATURE:

The UN Secretary-General's Study on Violence Against Children (Pinheiro 2006) raised awareness of the problem of school corporal punishment, though since then and in the past decade very high levels continue to be reported globally (Covell and Becker 2011). Much existing research has either been from the standpoint of developmental psychology, or, more recently, focused around rights perspectives (Ennew and Pierre-Plateau 2004; Beazley et al. 2006), accompanied by NGO advocacy.

¹ Committee on the Rights of the Child (2006). General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)

Up to the 2000s, research on corporal punishment tended to be dominated by US research on child abuse, carried out from a developmental psychology perspective, which focused on parental use of corporal punishment (not on school-based corporal punishment) and on later (undesirable) outcomes for children (Ember and Ember 2005).

A large body of (mostly Western) research ‘over the past 40 years has been remarkably consistent in showing that hitting children increases the chances of a child becoming physically aggressive, delinquent, or both’ (Gulbenkian Foundation 1995: 52; Durrant and Smith 2011). The implications for children’s well-being have been less well researched, and these studies tend not to theorise power imbalances on the basis of gender, generation or socio-economic status, though they may disaggregate (descriptively) by socio-economic status, gender or ethnicity.

RipollNúñez and Rohner (2006: 231–2) research is limited by the fact that the targets of punishment – children themselves – are only rarely asked to be the source of information. Thus little is known about children’s perceptions of their own experiences with corporal punishment.

However, as formal schooling has expanded globally, there has been growing awareness of the problematic nature of the quality of schooling in many developing countries. There is now a small body of research on school physical punishment that incorporates children’s accounts of their experiences and recognises children’s agency within a structural/institutional framing of the question (Payet and Franchi 2008, on long-term research conducted in South Africa; Parkes and Heslop 2011; Twum-Danso 2013; and Rojas 2011, for Peru).

Most research on school corporal punishment in India is undertaken by NGOs, and very little of it addresses the history and context of school disciplinary practices, nor the pressures on teachers in a highly bureaucratised and rapidly expanding system (Balagopalan and Subrahmanian 2003). No official statistics of incidences of corporal punishment are kept, but recent NGO and government reports on ‘child abuse’ broadly suggest that about two-thirds of children experience corporal punishment in school, slightly more boys than girls. The Government of India commissioned research that included a sub-study with 3,163 children aged 5 to 18 in 13 states, who were asked about physical abuse by teachers (Kacker et al. 2007).

In all age groups, 65 per cent reported being beaten at school. Corporal punishment is widely used in both government and private schools as a tool to discipline children. But most children do not report the matter or confide about it to anyone, and suffer silently (Bartholdson 2001; Chakraborty 2003; Devi Prasad 2006).

Being hit on the palms of the hands with a cane by a teacher is common, but research has also found that teachers use a range of other punishments (NCPCR 2010), including forcing children to kneel in uncomfortable positions, slapping or spanking, and beating on the knuckles. Most of the research is based on collecting data with few examples of children describing their experiences. Further, research tends not to explore the degree or severity of punishment – From a human rights perspective, both severe and ‘mild’ physical punishment are unacceptable, of course. However the study emphasise the importance of eliciting and analysing children’s views about their experiences of punishment, because their accounts shed light on children’s everyday realities.

3. OBJECTIVES OF THE STUDY

This comparative study aims to provide a clear and concise analysis of the history and prohibition of corporal punishment and its effects of physical punishment upon the children in different countries all over the world. The study further aims to explain the comparison of prohibition of corporal punishment and its consequences which also tries to understand what form law reform which will take depends on the constitutional framework and the viability of change through strategic litigation or a legislative process. And it also to study over the human centric approach upon the children rights protecting under all laws and legislative framework.

4. METHODOLOGY OF THE STUDY

It is a multi-jurisdictional comparative study of different countries initiated against corporal punishment declaring it to be illegal one. The purpose of comparing these among countries is the exposition of the process used to realise the abolition of corporal punishment. The study initiated here is the descriptive methodology.

5. ROLE OF DIFFERENT COUNTRIES IN PROHIBITION AND PROTECTION OF CHILDREN RIGHTS TOWARDS CORPORAL PUNISHMENT

SWEDEN : In 1979, Sweden became the first country in the world to prohibit all corporal punishment of children and ever since became a model for other countries. The Ministry of Justice ran a large-scale campaign about the new law which resulted in a very high level of public awareness of the law: In 1981, over 90% of Swedish families were aware of the prohibition on corporal punishment² Since prohibition, there has been a consistent decline in adult approval and use of physical punishment. In the 1970s, around half of children were smacked regularly; this fell to around a third in the 1980s,

² Modig, C. (2009). Never Violence – Thirty Years on from Sweden’s Abolition of Corporal Punishment, Save theChildren Sweden and Swedish Ministry of Health and Social Affairs

and a few per cent after 2000.³ In 2000, studies carried out on behalf of the Parliamentary Committee on Child Abuse and Related Issues found a marked change in parental support for corporal punishment: from 53% in 1965 to 10% in 1999. The studies involved interviews with parents of 1,609 children, teachers nationwide classroom questionnaire completed by 1,764 children aged 11-13 years i.e. classes of (5-6) and a nationwide postal survey completed by 1,576 20 year-olds.⁴ In 2010 study there was believed that it was necessary to use corporal punishment to bring up their child.⁵ Research in 2011 with more than 1,500 12-16 year olds found that 83.8% disagreed that “parents have a right to use mild forms of corporal punishment on their children (e.g. smacking)” and 93.6% agreed that “children must be protected from all forms of violence”.⁶

FINLAND: Finland’s 1983 prohibition of corporal punishment was accompanied by a public education campaign. Government efforts to eliminate all corporal punishment continue through the Ministry of Social Affairs and Health’s 2010-2015 action plan to reduce corporal punishment of children. The action plan aims to continue and accelerate the progress made, focusing particularly on reducing corporal punishment of groups of children who are particularly likely to experience it (including young children, children with disabilities and children of immigrant families). The views of almost 400 children which proposes to increase support for parents, provide education on children’s rights to relevant professionals and provide information for children at school and online. There is a high level of awareness of prohibition: a 2012 survey found that 97% of parents knew corporal punishment was prohibited.⁷

Since prohibition, there have been dramatic declines in the prevalence of corporal punishment. A major 2008 study on violence against children published by the Police College of Finland involved over 13,000 children aged 12-15 and was designed to allow direct comparison with research on the topic carried out in 1988. In 1988, around a quarter of children had been “smacked” before age 14, and around two thirds had had their hair pulled. In 2008, around 10% had been “smacked” and around a third had had their hair pulled. The overall percentage of children who had experienced “mild” punitive violence from their parents declined from 72% in 1988 to 32% in 2008; the percentage of children who had experienced severe punitive violence dropped from 8% to 4%. There was a clear reduction in all forms of corporal punishment and other parental violence against children in the past twenty years, with the most significant reduction in the “relatively mild forms of violence previously considered socially acceptable types of corporal punishment” (p.160).⁸ A 2012 study, again by the Police College, involved more than 3,000 parents of children aged under 13 and found that less than 1% of parents reported hitting their children with an object, punching them or kicking them. Adult approval of corporal punishment has declined since prohibition. A series of six nationally representative surveys carried out by the National Institute of Legal Policy, Central Union for Child Welfare and research company Taloustutkimus between 1981 and 2012 show a consistent decline in adult acceptance of corporal punishment: from 47% in 1981 to 15% in 2012.⁹ A study carried out in 2011 and published in 2014, which involved a survey of a representative sample of 4,609 15-80 year olds from Western Finland, found that the proportion of people who were slapped and beaten with an object during childhood decreased after corporal punishment was prohibited in 1983. The study found that experience of corporal punishment was associated with reporting indications of alcohol abuse, depression, mental health problems, and schizotypal personality and with having attempted suicide in the past year. The study examined in relation to data on murders of children and found that the decline in physical punishment was associated with a similar decline in the number of children who were murdered.¹⁰

AUSTRIA: School Prohibition was achieved in 1989. A 2013 study found that who grew up mostly after prohibition, were less likely to have been slapped or smacked on the bottom by their parents than other people.¹¹

GERMANY: Germany’s 2000 prohibition was accompanied by a 15-month nationwide awareness-raising campaign, “More Respect For Children”, run by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. In 1992, 30% of young people (aged over 11) reported they had been “thrashed,” while in 2002, 3% of young people reported this. In 1996, 83% of parents surveyed believed a “mild slap on the face” was legally admissible.¹² Corporal Punishment has been prohibited in schools since 1970’s under Civil Code. Practicing Corporal Punishment is a crime under Juvenile Courts Act, The Criminal Code and The Criminal Procedure Code. A longitudinal study carried out in Germany from 1996 to 2007 showed that the number of German parents believing corporal punishment is legally admissible declined for almost all

³ ibid

⁴ Janson, S. (2000). Children and abuse-Corporal Punishment and other forms of child abuse in Switzerland

⁵ Lansford, et al. (2010). “Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender”, International Journal of Pediatrics.

⁶ UNICEF. (2011). Nordic Study on Child Rights to Participate 2009-2010.

⁷ Central Union for Child Welfare (2012), Attitudes to disciplinary violence, Finland: Central Union for Child Welfare & Taloustutkimus Oy, reported by Central Union for Child Welfare, (2014)

⁸ Ellonen, N. et al (2008), Lastenjanuorten väkivaltakokemukset. Tutkimusperuskoulun 6. - 9. luokan oppilaiden kokemastaväkivallasta, Poliisiammattikorkeakoulun Raportteja 71/2008

⁹ Sariola, H. (2012) Violence against children and sexual abuse in Finland, presentation given at the Central Union for Child Welfare, Helsinki (2012) Central Union for Child Welfare

¹⁰ Österman, K. et al (2014) “Twenty-Eight Years After the Complete Ban on the Physical Punishment of Children in Finland: Trends and Psychosocial Concomitants”, Aggressive Behaviour, 9999, 1-14

¹¹ Spectra Marktforschung (2013), Gewaltverbot in der Erziehung: trendmessung zu 2009

¹² Bussmann, K. D. (2009), The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison, Halle Wittenberg: Martin-Luther-Universität

forms of corporal punishment throughout this time.

NEW ZEALAND: Prohibition of all corporal punishment was achieved in 2007. A 2008 survey involving a nationally representative sample of 750 adults found a high awareness of the law change (91%) and found that attitudes and knowledge of the law had changed even in the one-year period since its introduction¹³. A 2013 survey which used questions and a methodology comparable to the 2008 survey and earlier studies confirmed that acceptance of physical punishment of children was declining steadily. In 2013, 40% of respondents thought it was sometimes alright for parents to physically punish children, compared to 58% in 2008, more than 80% in 1993 and more than 90% in 1981. The proportion of parents with children under 18 who thought it was alright to use physical punishment with children fell from 62% in 2008 to 35% in 2013¹⁴. A 2012 poll of 500 parents of children aged under 12 found that 44% had not smacked their children since the 2007 law change which prohibited all corporal punishment of children. Twenty-nine per cent said they had smacked “rarely”, 21% “occasionally” and 1% “frequently”¹⁵. This contrasts with a 1997 study in which 1,025 18 year olds were asked about their recall of punishment before the age of 16 years, and which found that nine out of ten had been physically punished. More than half (56.4%) reported regular frequent smacking, 30.8% regular hitting on the head or body with fists and 29.5% regular hitting with a cane, strap or similar object¹⁶. In response to public anxieties about possible prosecutions of parents for “light smacking”, when the ban was being introduced the Government undertook to ask the police to collect data on their responses to cases of parental physical punishment. The New Zealand Police Force produced eleven reviews of police activity between the prohibition of all corporal punishment of children in June 2007 and the end of 2012. The final review confirmed that a very small number of parents had been prosecuted: in the first 5 years after the law change, police attended a total of 143 incidents of “smacking”, of which eight were prosecuted. In all the other cases, a warning was given or no further action was taken by the police; in many cases parents were referred to support services¹⁷. A 2009 study by the Ministry for Social Development which used police data and data from the government agency responsible for child protection confirmed that there had been no evidence of disproportionate state interference in childrearing, including unwarranted investigation or prosecution for light smacking, since prohibition¹⁸.

ROMANIA : Full prohibition was achieved in 2004. A 2012 study found that fewer children reported experiencing corporal punishment from their parents than in a similar study carried out in 2001. In 2001, 84% of children said their parents hit them with a hand without leaving a mark; by 2012, this had fallen to 62%. In 2001, 29% of children reported being hit with objects by their parents and 10% being hit so hard it left a mark. By 2012 these figures had fallen to 18% and 5% respectively. The study also found a decrease in parents’ use of verbal abuse: 22% of children reported experiencing this in 2001, compared to 16% in 2012¹⁹.

POLAND : Successive studies carried out on behalf of the Ombudsman’s office, each involving around 1,000 residents of Poland aged 15-75, found decreases in the social acceptance of parents hitting children since the achievement of full prohibition in 2010. In 2013, 60% of respondents agreed that “there are situations when a child needs to be smacked”, compared to 68% in 2012, 69% in 2011 and 78% in 2008. In 2013, 33% disagreed with the statement, compared to 29% in 2012, 27% in 2011 and 19% in 2008.²⁰ A comparison of research carried out in 1994 and 2008 did not reveal similar decreases in public approval of corporal punishment, suggesting that law reform and accompanying public education activities had an impact on public opinion. The 2011 study showed a high rate of awareness of the law: 74% of respondents agreed that “beating of a child is unlawful”.²¹ In 2013, 45% thought the prohibition of corporal punishment was right and would have positive effects.

UNITED STATES: The United States has a mixed approach with some states banning corporal punishment, while some States still permit it.

INDIA : India has laws prohibiting corporal punishment under RTE 2009, but implementation is inconsistent till now. About 42% of the population of India consists of children, defined as persons less than 18 years of age. There are about 43 crore children in the age group 1-18, of which about 18 crore are young child below 6 years of age. The private and public schools in India number up to 9,56,609 (Ministry of Human Resource Development, Government of India, 2000-01) that includes primary, middle and higher secondary. Corporal punishment was prohibited in schools in 17 states/union territories under

¹³ UMR Research (2008), Omnibus Survey Report: One year on: Public attitudes and New Zealand’s child discipline law, Office of the Children’s Commissioner

¹⁴ Wood, B. (2013), Physical punishment of children in New Zealand – six years after law reform, EPOCH New Zealand

¹⁵ Reported in New Zealand Herald, 2 April 2012

¹⁶ Fergusson, D.M. & Lynskey, M.T. (1997), “Physical punishment/maltreatment during childhood and adjustment in young adulthood”, Child Abuse & Neglect, 21(7), 617-630

¹⁷ New Zealand Police (2013), Eleventh review of police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007

¹⁸ Hughes, P. (2009), Report to the Minister for Social Development and Employment, Wellington: Ministry for Social Development

¹⁹ Save the Children Romania (2014), Child Neglect and Abuse: National Sociologic Study (English summary), Save the Children & Child Protection Department, Ministry of Labour, Family, Social Protection and Elderly

²⁰ Ombudsman for Children (2013), Annual Report of the Ombudsman for Children of the Republic of Poland for 2013, Warsaw: Office of the Ombudsman for Children

²¹ TNS OBOP (2011), Social resonance of the amendment to the Act on Counteracting Domestic Violence, Ombudsman for Children of the Republic of Poland

individual State laws/ policies. However, there is currently no national prohibition in law of corporal punishment in schools, other than the under Right to Education Act, wherein only disciplinary punishment to erring teacher is provided for. Therefore, admitting the New Education Policy indicates and embarks some lights upon it.

State of Prohibition in India State-wise

State/ Union Territory	Legal Status	Law/ Policy
Andhra Pradesh	Banned	School Education Secretary, I.V. Subha Rao issued Government order (GO Ms No 16) on February 18, 2002, replacing the provisions on corporal punishments issued earlier in GO Ms No. 1188 in 1966. Through the new order, the Andhra Pradesh government imposed a ban on corporal punishment in all educational institutions by amending Rule 122 of the Education Rules (1966), violations of which should be dealt with under the Penal Code.
Chandigarh	Banned	Corporal punishment was prohibited in Chandigarh in the 1990s.
Chhattisgarh	Planning to Ban	In January 2008, it was reported that the Chhattisgarh Government is planning to enact a law to ban corporal punishment in schools in the wake of an incident in which an eight-year-old child lost vision after a teacher pricked her eye with a pin.
Delhi	Banned	The Delhi School Education Act (1973) had provision for corporal punishment, which has been struck down by Delhi High Court in a petition filed by Parents Forum For Meaningful Education. In December 2000, the Delhi High Court ruled that provisions for corporal punishment in the detrimental to the dignity of children.
Goa	Banned	The Goa Children's Act 2003 (No. 18, passed on 30 th April 2003 by the state Assembly) banned corporal punishment in Goa. Sec 4 (2) of the said Act categorically states that 'Corporal Punishment is banned in all schools.'
Haryana	Banned	In December 2007, the Director General of Education in Haryana, through a letter to all district education officers, directed them to put a blanket ban on corporal punishment in schools.
Himachal Pradesh	Banned	In 2001, the government banned corporal punishment to students completely by adopting a new Education code. In 2007, the Education Ministry further clarified that corporal punishment in all private schools were also banned but the head of any educational institution could impose a fine of Rs. Five on an erring student for late attendance, foul language and other bad habits.
Karnataka	Banned	In 2007, the issued a ban on corporal punishment after a student was beaten by seven teachers at her school for not doing her homework.
Orissa	Banned	In 2004, the Orissa government imposed a ban on corporal punishment in all state-run and private schools in the state with the Chief Minister issuing of the school and education department.

Puducherry	Banned	In December 2007, the Director of School Education issued a statement that all schools in Puducherry (formerly Pondicherry), including those under private managements, have been directed not to practice corporal punishment on students.
Punjab	Banned	In June 2006, the State Government decided that there would be no corporal punishment for the students and decided to do away with Article 191 of the Punjab Education Code that permitted principals and headmasters to punish senior male students for misconduct.
Tamil Nadu	Banned	Corporal punishment was prohibited in Tamil Nadu in June 2003 through an amendment of Rule 51 of the Tamil Nadu Education Rules prohibiting the infliction of mental and physical pain during “corrective” measures.
Uttar Pradesh	Banned	In October 2007, The Chief Secretary in a government order marked as “Most important/ High priority”, banned corporal punishment in government, aided and private schools.
West Bengal	Banned	In February 2004, the Calcutta High Court ruled that caning in state schools in West Bengal was unlawful A PIL has also been filed by Tapas Bhanja (advocate) in the Calcutta High Court.
Gujrat	Banned	To be verified No details available.
Madhya Pradesh	Banned	To be verified No details available.
Maharashtra	Banned	To be verified No details available.

Source: internet (MoWCD-2006=MoWCD-2007)

World Statistics

According to the statistics, following 34 countries, children are protected from all corporal punishment as these states have full abolition of corporal punishment":

Honduras (2013), South Sudan (2011), Albania (2010), Congo Republic of (2010), Kenya (2010), Tunisia (2010), Poland(2010), Liechtenstein (2008), Luxembourg (2008), Republic of Moldova (2008), Costa Rica (2008). Togo (2007), Spain (2007), Venezuela (2007), Uruguay (2007), Portugal (2007), New Zealand (2007), Netherlands (2007), Greece (2006), Hungary (2005). Romania (2004). Ukraine (2004), Iceland (2003), Germany (2000), Israel (2000), Bulgaria (2000), Croatia (1999), Latvia (1998), Denmark (1997), Cyprus (1999), Austria (1898), Norway (1987), Finland (1983), Sweden (1979). 26 more states are committed to full prohibition and/ or are actively debating prohibitionist bills in parliament.

20 States Allow Corporal Punishment in Schools



Source: internet

Table 1: Summary of Legal Status of Corporal Punishment in all settings

State	PIL possible	Prohibited in the Home	Prohibited in Residential Care	Prohibited in Foster Care	Child Care	Prohibited in Independent Schools	Prohibited in State Schools	Prohibited in Penal Institutions	Prohibited as a sentence for a crime
NSW	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Old	No	No	Yes	Yes	Yes	Not explicitly prohibited	Policy only	Yes	Yes
NT	Yes	No	No	No	No	Yes	Yes	Yes	Yes
Vic	No	No	No	No	Yes	Yes	Yes	Yes	Yes
Tas	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
ACT	No	No	Yes	Yes	Yes	Yes	Yes	Not explicitly prohibited	Yes
WA	Yes	No	No	No	Yes	Not explicitly prohibited	Yes	Not explicitly prohibited	Yes



SA	Yes	No	Yes	Licencing requireme nt	Yes	Yes	Yes	Yes	Yes
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Source: internet

Table 1.1: Applicable Legislation/Regulation relating to corporal punishment in specific settings

State	Setting	Legislation/Regulation
NSW- Commonlaw State	Home	Permitted under common law (R v Hopley), but the application of the defence of reasonable chastisement is limited by section 61AA of the Crimes Act 1900 (NSW)
	ChildCareand Family Day Care	Prohibited under section 166 of the Children (Education and Care Services) National Law (NSW)
	State Independent Schools and	Prohibited under subsections 35(2A) and 47(1h) of the Education Act 1990 (NSW)
	Penal Institutions	Prohibited under section 22 of the Children (Detention Centres) Act 1987 (NSW)
Qld – Code State	Home	Permitted under section 280 of the Criminal Code Act 1899 (Qld)
	Public schools	Prohibited at a policy level – policy yet to be obtained
	Private schools	Ambiguity since there is no explicit prohibition

			Foster care, Residential care	Prohibited under subsection 122(2) of the Child Protection Act 1999 (QLD) Prohibited under section 166 of the Education and Care Services National Law (QLD) Prohibited under regulation 16(4) of the Youth and Justice Regulation 2016 (QLD)
				Prohibited
	FosterCare	Permitted under common law		Prohibited under Regulation 16(4)(a) of the Youth and Justice Regulation 2015
	ChildCare	Prohibited under section 106 of the Children’s Services Act 1996 (Vic)	Penal Institutions (Vic)	

	State and Independent Schools	Prohibited under subsection 4.3.1(6)(a) and subsection 2.4.60(1)(f) of the Education and Reform Act 2006 (Vic); and Regulation 24 schedule 5 note 7 and schedule 6 note 2 of the Training Reform Regulation	(Old)	
		Schedules 166(1)(a), (2)(a), (3)(a) and (4)(a) of the Education and Care Services National Law 2010 (Vic)	Home, Residential Care, Foster Care and Child Care	Permitted under subsection 162(2) of the Education Act 2015 (NT)
		Prohibited in under section 487(c) of the Children, Youth and Families Act 2005 (Vic)	tial Care, Foster Care	
Tas – Code State	Home	Permitted under section 50 of the Criminal Code Act 1924 (Tas)	and Child Care	1 Code Act 1983 (NT)
	Foster Care and Child-care	Prohibited by policy and licensing guidelines		Prohibited under section 162(2) of the Education Act 2015 (NT)
	State and Independent Schools	Prohibited under subsection 248(2) of the Education Act 2016 (Tas)	School	
NT – Code State				
			Detention Centres (Penal Institutions)	Prohibited under section 153(2)(d)(i) of the Youth Justice Act 2005 (NT)
Vic – Common law State			Home	Permitted under common law - R v Hopley and R v Terry
			Residential Care and	

	Penal Institutions	Permitted
CT– Code State	Home	Permitted under common law –R v Hopley
	DayCare, Residential Careand Foster Care	Prohibited under section 741of the Children and Young People Act 2008 (ACT)
	Stateand Independent Schools	Prohibited under sub section7(4)o f the education Act 2004 (ACT)
	Penal Institutions	Not explicitly prohibited in the Children and Young People Act 2008 (ACT), but also not among permitted disciplinary measures
WA– Code State	Home, Residential Care and Foster Care	Permitted undersection 257of the Criminal Code Act1 913 (WA)
	ChildCare	Prohibited under sub section85(2)of the Child Care Services(Child Care)Regulations 2006 (WA)
	Family Da y Care	Prohibited under subsection166(4)(a) of the Education and Care Services National Law (WA) Act 2012
	StateSchools Private Schools	Prohibited under regulation 40of the School Education Regulations 2000(WA) Ambiguity since there is no explicit prohibition
	Penal Institutions	Not explicitly prohibited

SA– Commonlaw State	Home	Permitted under common law (R v Hopley). The defence of reasonable chastisement is found in subsection 20(2) of the Criminal Law Consolidation Act 1935
	ChildCare	Prohibited under section 32(1) of the Education and Children’s Services Act 2019 (SA)
	Residential Care	Prohibited under section 13(a) of the Family and Community Services Regulations 2009 (SA)
	Penal Institutions	Prohibited under section 29 of the Youth Justice Administration Act 2016 (SA)
State and Independent Schools		Prohibited under section 83 of the Education and Children’s Services Act 2019 (SA)

Source: internet (Corporal Punishment is prohibited as a sentence for a crime in all States and Territories).

Comparative Study

The comparing countries which have prohibited all corporal punishment and those which have not can showcase the effects of prohibition. A 1999 study of more than 10,000 people aged over 24 in 208 cities in 14 EU countries found that in states which had prohibited all corporal punishment, the average level of acceptance of physical punishment was lower than in states where corporal punishment was not prohibited. States with lower levels of acceptability of physical punishment of children had lower rates of deaths of children caused by “maltreatment”²².

In a study carried out between October and December 2007, 5,000 parents were interviewed across five European countries: Sweden, Austria and Germany, which have prohibited corporal punishment, and France and Spain which had not prohibited corporal punishment at the time of the study (Spain prohibited all corporal punishment in December 2007). The study found that nearly all forms of corporal punishment were used significantly less in countries which had prohibited than in those where corporal punishment was still lawful. For example, while over half of parents in France and Spain had “spanked” their child’s bottom, only 4% of parents in Sweden and around 17% of parents in Austria and Germany had done so. Nearly half the parents in Spain and France had used severe corporal punishment (a resounding slap on the face, beating with an object or severe beating) on more than one occasion, compared with 14% of parents in Austria and Germany and 3.4% of parents in Sweden. Parents in nations where corporal punishment was prohibited at the time of the study showed lower acceptance of justifications for corporal punishment: 20% of parents in Spain and 27% of parents in France agreed that “a slap on the face is sometimes the best/quickest way to deal with a situation”, compared with 15% of parents in Germany, 13% of parents in Austria, and 4% of parents in Sweden. The study concluded that “there can no longer be any doubt about the violence-reducing effect of a ban on childrearing violence”²³. Similarly, a 2002 study of the countries which had prohibited corporal punishment at the time (**Sweden, Finland, Norway, Austria, Cyprus, Denmark, Latvia, Croatia, Israel and Germany**) found that public education which is not underpinned by legal reform has limited success, but public education coupled with law reform can lead to significant shifts in attitudes and behaviours²⁴.

6. CONCLUSION

Corporal punishment breaches international human rights treaties and obligations. For this reason, the common law must be developed to remove the contentious and essentially subjective defence of reasonable chastisement. Furthermore, legislation must be amended or repealed to ensure that corporal punishment is no longer to be permitted. Legislation that protects the human rights of all people, especially children, will go a long way in establishing a rights- based approach to all matters involving children. Every human being has a right to live without violence. We must not forget that children are human too.

²²Gracia, E. & Herrero, J. (2008), “Is It Considered Violence? The Acceptability of Physical Punishment of Children in Europe”, Journal of Marriage and Family, 70: 210–217

²³Bussmann, K. D. (2009), op cited

²⁴Boyson, R. (2002), Equal Protection for Children: An overview of the experience of countries that accord children full protection from physical punishment, London: National Society for the Prevention of Cruelty to Children

They have the same rights as everyone else - perhaps more so because given their age and ability, they do not have the strength and resources to fight for this right. It is the bounden duty of all adults and institutions to respect and protect children's rights. Over the past year many gruesome acts of corporal punishment have come to light - some of which resulted in the child's death. The use of violent behavior against students is never an acceptable means of punishment - it harms students physically, psychologically and academically. The use of corporal punishment in schools is interfering with students' right to be treated with dignity and, as a result, is interfering with their right to a quality education. Corporal punishment was not effective and that more effective disciplinary methods existed; most teachers do not use corporal Punishment, but many favor keeping it as an option and that smaller classes, increased parental Involvement, improved teacher training and the development of specific discipline plans would all help to improve student conduct. Teachers should be educated in the use of alternative methods of discipline, with an emphasis on employing evidence-based behavior modification and other techniques to maintain control of the classroom without resorting to violence.

REFERENCES

- [1] Save the Children Romania (2014), Child Neglect and Abuse: National Sociologic Study (English summary), Save the Children & Child Protection Department, Ministry of Labour, Family, Social Protection and Elderly
- [2] Österman, K. et al (2014) "Twenty-Eight Years After the Complete Ban on the Physical Punishment of Children in Finland: Trends and Psychosocial Concomitants", *Aggressive Behaviour*, 9999, 1-14
- [3] Spectra Marktforschung (2013), Gewaltverbot in der Erziehung: trendmessung zu
- [4] Wood, B. (2013), Physical punishment of children in New Zealand – six years after law reform, *EPOCH New Zealand*
- [5] New Zealand Police (2013), Eleventh review of police activity since enactment of the Crimes (Substituted Section 59) Amendment Act 2007
- [6] Ombudsman for Children (2013), Annual Report of the Ombudsman for Children of the Republic of Poland for 2013, Warsaw: Office of the Ombudsman for Children
- [7] Sariola, H. (2012) Violence against children and sexual abuse in Finland , presentation given at the Central Union for Child Welfare ,Helsinki (2012) Central Union for Child Welfare
- [8] Central Union for Child Welfare (2012), Attitudes to disciplinary violence, Finland: Central Union for Child Welfare & Taloustutkimus Oy, reported by Central Union for Child Welfare, (2014)
- [9] Reported in New Zealand Herald, 2 April 2012
- [10] TNS OBOP (2011), Social resonance of the amendment to the Act on Counteracting Domestic Violence, Ombudsman for Children of the Republic of Poland
- [11] UNICEF .(2011). Nordic Study on Child Rights to Participate 2009-2010.
- [12] Lansford, et.al. (2010). "Corporal Punishment of Children in Nine Countries as a Function of Child Gender and Parent Gender", *International Journal of Pediatrics*.
- [13] Busmann, K. D. (2009), The Effect of Banning Corporal Punishment in Europe: A Five-Nation Comparison, Halle Wittenberg: Martin-Luther-Universität
- [14] Hughes, P. (2009), Report to the Minister for Social Development and Employment, Wellington: Ministry for Social Development
- [15] Modig, C. (2009). Never Violence – Thirty Years on from Sweden's Abolition of Corporal Punishment, Save the Children Sweden and Swedish Ministry of Health and Social Affairs
- [16] Busmann, K. D. (2009), op cited
- [17] Gracia, E. & Herrero, J. (2008), "Is It Considered Violence? The Acceptability of Physical Punishment of Children in Europe", *Journal of Marriage and Family*, 70: 210–217
- [18] UMR Research (2008), Omnibus Survey Report: One year on: Public attitudes and New Zealand's child discipline law, Office of the Children's Commissioner
- [19] Ellonen, N. et al (2008), Lastenjanuortenväkivaltakokemukset. Tutkimusperuskoulun 6. - 9. luokan oppilaiden kokemastaväkivallasta, Poliisiammattikorkeakoulun Raportteja 71/2008
- [20] Committee on the Rights of the Child (2006). General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)
- [21] Boyson, R. (2002), Equal Protection for Children: An overview of the experience of countries that accord

children full protection from physical punishment, London: National Society for the Prevention of Cruelty to Children

[22] Janson. S.(2000). Children and abuse-Corporal Punishment and other forms of child abuse in Switzerland

[23] Fergusson, D.M. &Lynskey, M.T. (1997), “Physical punishment/maltreatment during childhood and adjustment in young adulthood”, Child Abuse & Neglect, 21(7), 617-630

