

## **Corporal punishment in children: The Sri Lankan scenario**

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Corporal punishment is defined by the United Nations Committee on the Rights of the Child as: "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light"<sup>1</sup>. Corporal punishment and physical abuse are commonly viewed along a continuum, so that, when corporal punishment is administered too severely or frequently the outcome can be physical abuse<sup>2</sup>. The American Academy of Paediatrics has concluded that corporal punishment is ineffective at best and harmful at worst<sup>3</sup>. Canadian researchers dug through 20 years of published research and found that spanking fails to change a kid's behaviour and can cause long-term damage. They found that kids who are spanked are more likely to be depressed, aggressive, antisocial and anxious<sup>4</sup>. In Sri Lanka, there have been few studies on corporal punishment and physical abuse. The most detailed study was by De Zoysa, Newcombe, and Rajapakse in 2008, on 12-year-old Sinhala speaking school children. It reported a high prevalence and frequency of corporal punishment<sup>5</sup>.

The Penal Code Amendment Act No. 22 of 1995<sup>6</sup> provided for the offence of Cruelty to Children (section 308A) which reads as follows:

- (1) "Whoever, having the custody, charge or care of any person under eighteen years of age, wilfully assaults, ill-treats, neglects, or abandons such person or causes or procures such person to be assaulted, ill-treated, neglected, or abandoned, in a manner likely to cause him suffering or injury to health (including injury to, or loss of sight or hearing, or organ of the body or any mental derangement), commits the offence of cruelty to children.
- (2) Whoever commits the offence of cruelty to children shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine and be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person".

Through the Penal Code Amendment Act No. 16 of 2006<sup>7</sup>, Section 308A was amended by the addition of the following explanation: "injury" includes psychological or mental trauma. However, article 82 of the Penal Code<sup>8</sup> states: "Nothing, which is done in good faith for the benefit of a person under twelve years of age, or, of unsound mind, by 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 be likely to cause, to that person".

Article 341 of the Penal Code<sup>8</sup> provides for the offence of "criminal force". It states: "Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending illegally by the use of such force to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use "criminal force" to that other".

However, Illustration (i) of article 341<sup>8</sup> states that if a schoolmaster, in the reasonable exercise of his discretion as master, flogs one of his scholars, he does not use criminal force, because, although he intends to cause fear and annoyance to the scholar, does not use force illegally.

Article 71 of the Children and Young Persons Ordinance (1939)<sup>9</sup> provides for the offence of Cruelty to Children and Young Persons. 71(1) states: "If any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three years, or to both such fine and

imprisonment". In addition, 71(6) states: "Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person having lawful control or charge of a child or young person to administer punishment to him".

Thus, currently in Sri Lanka, corporal punishment is lawful in the home, at school and in alternative care settings such as public and private day care, residential institutions, foster care, etc. Although section 2 of Circular No 2005/17, issued by the Ministry of Education in 2005, states that corporal punishment should not be used in schools, this had not been confirmed in the legislature.

A National Action Plan for the Promotion and Protection of Human Rights 2011-2016<sup>10</sup> (NAPHR), has been approved by the Cabinet and its implementation strategy was approved in 2011. NAPHR 2011-2016 Goal No. 7.5 is the elimination of corporal punishment in schools. The activities envisaged are as follows:

- Implement effectively existing legislation/policy /circulars prohibiting corporal punishment and establish a reporting procedure so that instances of corporal punishment can be reported effectively.
- Enact and enforce legislation to prohibit corporal punishment in schools and educational institutions.
- Create awareness among parents, teachers and principals on the law and on alternate forms of discipline consistent with the dignity of the child.
- Establish a grievance mechanism to report corporal punishment.
- Conduct periodic survey on the incidence of corporal punishment to ascertain statistics on corporal punishment.

There seems to be some degree of apparent or perceived ambiguity and possible conflicts in the many documents, circulars and legislative pronouncements regarding corporal punishment in Sri Lanka. In view of the clear scientific evidence for the obvious ineffectiveness and potentially harmful long-term effects of corporal punishment in children, what is probably the need of the hour is a clear, explicit and unequivocal legal declaration on the matter in question.

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