

ST. MARY'S UNIVERSITY COLLEGE
FACULTY OF LAW

LL.B THESIS

**A COMPARATIVE STUDY ON THE RIGHT OF CHILDREN
TO BE FREE FROM CORPORAL PUNISHMENT: THE LAW
AND PRACTISE**

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ID NO. EDL 2050/97

ADDIS ABABA, EHTIOPIA
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CHAPTER ONE

1. INTRODUCTION

1.1 BACKGROUND OF THE STUDY

In most parts of the world, corporal punishment has been practiced as a means of disciplinary measure of children. Children's welfare, their enjoyment of rights or otherwise are built around the family, and in schools where they interact with others. To create a better development of children and their human rights, it is imperative to embark up on the

attitude that are used to justify the traditional use of punishment as a measure of enforcing discipline.

A number of successful movements have been made to ban corporal punishment in many countries. Such as Sweden; in 1979, being the first country to forbid corporal punishment by law the second country which banned Corporal punishment is Finland in Article 1.3 of the child custody and rights of access act (1983, effective 1984). In Corporal Punishment was seen as degrading the human dignity and in compatible with the modern penal methods of punishment. In the 1979 Children Convention, one of the very fundamental rights of children is the right to personal integrity and the right to be free from physical violence as any human being.

Corporal punishment, that seems to over shadow its terrible effect in a safe and convincing term, 'discipline', can be exercised by parents, teachers and caregivers as part of their education and upbringing.

Nevertheless, the writer of this paper believes that corporal punishment has not brought long-term remedies except causing problems to the children. In writing this paper, I am not trying to undermine the value of discipline.

At present, different law reforms have been made and other measures are being taken to eliminate corporal punishment from the world. A number of countries have prohibited all forms of corporal punishments in their laws and many others have started to ban the practice of corporal punishment in their country laws. Different reforms have also been made to end corporal punishment in our country. However, there are gaps in national laws, policies and the convention in evading the use of corporal punishment in the country.

The objective of this study is to define the right of children to be free from corporal punishment and to analyze the laws and practice of selected

countries. By focusing on a particular aspect of children's rights, whether at home or at school or other institutions, each chapter tries to clarify the problem of children, difficulties they face and the ways international and national procedures serve to defend them from corporal punishment and the alternative measures that serve to abolish corporal punishment as to disciplining children. It looks that there is a need to reform laws and beliefs towards the practice of corporal punishment.

The writer's exhaustive emphasis is on child's right to be free from corporal punishment by recognizing the significance of laws to safeguard each child's rights. To that end, I will try to show different theories and experiences of other countries in my paper to develop generally applicable guidelines that would protect children from corporal punishment. These guidelines will also be used to critically evaluate and provide a basis for revising the procedural and substantive laws as well as statutes. For the purpose of comparison, I chose two countries, one from developing country where children face similar problem like Ethiopia to see the methods used to free children from corporal punishment, and the other from developed ones that would be exemplary for those moving to abolish all forms of corporal punishment even in a family level.

1.2 STATEMENT OF THE PROBLEM

Now a day, the world is moving towards accepting children's equal rights, the respect for their human dignity and equal protection under the law. Various international instruments like the convention on the right of children and the African charter on the rights and welfare of children recognize the right of children to be protected from all forms of violence including corporal punishment. Different researchers on children at the globe and in Ethiopia revealed that children are physically punished at home, in schools, other institutions and in the society at large. When we

look at the experiences of other countries, even in those countries, which banned all forms of corporal punishment against children, show that the legal prohibition by it self is not enough to end the practice of corporal punishment.

Ethiopia has ratified the CRC in 1992 and as per 19(1), 13(2) the laws regarding children are to be interpreted in light of the constitution. “Furthermore,” Art 36(1) e of FDRE bans corporal punishment. Though there are laws protecting children from corporal punishment, there are also laws that contradict with the convention and Art 36(3) of the constitution.

Despite the existence of the legal prohibitions, studies from the UN and other NGO’s conducted in Ethiopia showed that children are physically punished in schools, at home and other institutions in most parts of the country including Addis Ababa. Hence, exploring the effects of corporal punishment on children and the gaps in the laws and practices as in different studies and experiences of other countries sounds to be essential.

1.3 RESEARCH QUESTIONS

Based on the above background and statement of the problem, the following research questions will be raised in the paper:

- 1.3.1 What are the effects of the use of corporal punishment on children and is corporal punishment an effective means of discipline? Is there any other positive way to discipline children?
- 1.3.2 What is the status of the right of children to be free from corporal Punishment in light of the international instruments and selected National laws?

1.3.3 Are there gaps in Ethiopia's laws as compared to international obligation of the state?

1.3.4 Is it possible to fill the gaps of the law? How?

1.4 HYPOTHESIS

With regard to Article (1) of the CRC a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. Hence, due to her/his age vulnerability, the child needs special protection and care. According Article 19(1) of the convention, the child has the right to be free from any form of physical abuse including corporal punishment. However, this law is not practiced in our country. In different national laws, there are disparities in the use of corporal punishment on children. The issue of corporal punishment against children is an issue of one of the fundamental laws.

In our country, the FDRE constitution prohibits any use of violence against children, but there exist other Federal laws that justify the use of corporal punishment against children as a means of disciplining which contradict to the supreme law of the land. Ethiopia ratified the United Nations convention on the rights of the child and Article 19(1) of the convention specifies that state parties (i.e. governments that ratify the convention) must take appropriate measures to protect children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation." In order to fill this gap and to abolish the legalized form of violence against children, laws that ban the use of all forms of corporal punishment including in homes, and at schools have to be passed and utilized. It should be so in order to create awareness on the adverse effects of corporal punishment on children and apply other positive alternative ways for disciplinary measures.

1.5 THE OBJECTIVE OF THE STUDY

1.5.1 General Objectives

The main objective of this research paper is to show the problem of using corporal punishment and to fill the gaps in protecting children from corporal punishment. The researcher will also examine and demonstrate the problems and the gaps that are related to corporal punishment.

1.5.2 Specific Objectives

This paper has following five specific objectives; namely,

- 1.5.2.1 To raise some critical issues in relation to child maltreatment.
- 1.5.2.2 To analyze the effects of using corporal punishment against children as a discipline measure.
- 1.5.2.3 To give recommendations based on the gaps among Ethiopian laws that legalized the use of corporal punishment against children by taking the experiences of model countries in abolishing all forms of child corporal punishment.
- 1.5.2.4 To further stimulate studies in the area of corporal Punishment of children.

1.6 RESEARCH METHODOLOGY

The method and type of this research is a descriptive survey of literature and analysis of cases in light of international and national laws in relation to corporal punishment against children.

The major source of data for this study is qualitative and secondary source, by which literatures and research reviews will be made to understand the nature, effects and practice of corporal punishment against children in Ethiopia. The practice of Kenya and Finland in this research area will also be raised. Moreover, a primary source of data will be gathered through semi- structured interviews for NGO's and other

responsible organs of the government. This will make the identification some of the problems in the practical implementation of child rights from corporal punishment easier.

1.7 LIMITATION OF THE STUDY

The study will only thoroughly investigate the effects of corporal punishment on children and the law and practice of corporal punishment in the Ethiopia. This will be so due to factors such as: time, finance, adequacy and accessibility of data.

1.8 SIGNIFICANCE OF THE STUDY

It is the researcher's belief that the output of the research will serve as an input for other researchers, NGO's and other legal professionals. It can also make the concerned government organs give emphasis to the issue of corporal punishment and review the existing laws and policies so as to come up with sufficient provisions and policy terms that would govern corporal punishment.

It is also hoped that this research paper will create a better awareness of the consequences of the use of corporal punishment on children on the part of the parties involved in the practice.

CHAPTER TWO

2. REVIEW OF RELATED LITERATURE

2.1 HISTORICAL DEVELOPMENT AND THE CONCEPT OF CHILD AND CORPORAL PUNISHMENT

2.1.1 DEFINITION

2.1.1.1 WHO IS A CHILD?

The term "child" could be understood in a various ways, because different scholars and literature gives their own definition based on their

cultural values and socio-economic perspective. In other word, because of different social, economic and cultural values and understanding there is no clear and universal definition about child.

The following are some of the definition from different dictionaries:

Child: a Young person from birth to the age of full physical development¹.

Child: a young person from the time they are born until they are about 14 year's old².

A Minor: is a person of either sex who has not attained the full age of eighteen years.

The above two stated definition of child has various, meanings. To begin with the first definition a child is a young person from birth to the age of full physical development in this definition it doesn't specify the age and it is vague definition because what does it mean the age of full physical development.

- ✓ The second definition of child is specified the age i.e. 14 but what about children more than 14 does that mean they are attained the age of majority this definition is contradict with UNCRC and ARCWC because both of the intentional instruments define a child under the age of eighteen years.

Moreover, international, regional and national legal instruments give various definition of child. Article 1 of the united nation convention on the rights of child (UNCRC) defines a child as "Every human being below the age of eighteen years unless under the law applicable to the child majority is attained earlier." (Art 1 of united nation convention on the right of child (UNCRC) 1998.

Similarly, the African charter on the rights and welfares of the child (ACRWC) give the definition of child in the following manner. "Every

human being below the age of eighteen years” (ACRWC, art 1 CRC, Resolution 44/25 November 1989).

The basic difference between the two legal instruments is, the UN convention on the rights of child maintains this definition and add the possibility of attaining majority below this age if the applicable law of the state so permits. In the latter cases, any human being below the age of eighteen can benefit from the provision of the child charter regardless of the contemplation of the domestic law of the particular states.

In the CRC the child may be deprived of the conventions right and privileges if the domestic law of the particular state provides for majority to be attained before the age of eighteen.

Therefore, it seems safe to conclude that the African child right’s charter is more protective of the rights of the child as compared to the UN child convention.

The international labor organization (ILO) convention also addresses the term “child” to means a person below the age of eighteen. (Article 2 of the ILO convention, No. 182). Child labor is the employment of children less than a specified legal age. But this is not universal accepted definition of child labor various definitions of the term are used by international organization like, trade union and other interested groups (Art 2 of the ILO Convention, No, 182).

2.1.1.2 Definition of Child by Federal Laws of Ethiopia

- ✓ In Ethiopian legal context the term “child” is defined in different laws like in the civil code, revised family code.
- ✓ With regard to Article 215 of the revised family code it states that: A minor is a person of either sex who has not attained the full age of eighteen years.

- ✓ According to art 198 of the civil code of Ethiopia it states that:

“A minor is a person of either sex who has not attained the full age of eighteen years”.

Both the Revised Family Code and the Civil Code of Ethiopia states similar definitions and the two codes are used the word “minor” rather than “child”

Therefore, there is no universal accepted definition with regard to the term “child.” However, most of them use the limitation age of a child is eighteen years.

2.1.1.3 Definition of Corporal Punishment

- ✓ **Corporal Punishment** – is the physical punishment of people, especially by hitting them¹ (Oxford Advanced learner’s dictionary, 7th edition: 342).
- ✓ **Corporal Punishment** – is physical punishment, such as caning or flogging² (Concise Oxford English Dictionary, 10th edition, 1999:319).
- ✓ **Corporal Punishment** - can be defined as a painful, intentionally inflicted (typically, by striking a child) physical penalty administered by a person in authority for disciplinary purposes. Corporal punishment can occur any where, and whippings, beatings, paddling, and flogging are specific forms of corporal punishment (Cohen, 1984).
- ✓ Black’s law dictionary defines corporal punishment as
- ✓ Physical punishment: Punishment that is inflicted upon the body (including imprisonment) (Black’s law Dictionary, 8th edition 2004:1269).

- ✓ Past forms of corporal punishment included branding, blinding, mutilation, amputation, and the use of the pillory and the stocks. It was also an element in such violent modes of execution as drowning, stoning, burning, hanging, and drawing and quartering. In most parts of Europe and in the United States, such savage penalties were replaced by imprisonment during the late eighteenth and early nineteenth centuries, although capital punishment itself remained. Physical chastisement became less frequent until, in the twentieth century, corporal punishment was either eliminated as a legal penalty or restricted to beating with a birch rod, cane, whip or other scourge. In ordinary usage the term now refers to such penal flagellation. "Gordon Hawkins corporal punishment," in 1 encyclopedia of crime and justice 251 (Sanford H, Kadish ed., 1983)

2.1.1.4 Historical Development Child Rights in General

Various national and international legal documents give different rights to children that ensure the right and best interests of children to be guaranteed the opportunity to exercise their rights.

Even if, different legal instruments give various type of right for children, the issues of child rights are grossly violated in the country. Children of Ethiopia are still suffering from untold child right abuses that culminated into full scale poverty in security, conflict, etc. in present day, Ethiopia has legislated and ratified different national and international legal instruments related to child's rights. It is important to know that, most legal instruments spell out different type of child rights Such as political, civil, economic and cultural rights. In this topic he will see various child rights it spell out in international, regional and national legal instruments.

The United Nation Assembly has adopted various binding documents aimed at ensuring promotion of the rights of children, inclusion of specific provision referring to the rights of children in universal declaration of human rights. It spells out a serious of political, civil, economic, social and cultural rights.

A number of international conventions guaranteeing specific human rights have been concluded under the auspices of the UN. Such convention included convention on the right of child, which presented compendium diverse rights described in nearly forty articles. It included; the right to life, the right to nationality, the right best interest of the child shall be in primary consideration.

The convention also guarantees every child's rights to education it requires the government make access of primary education for all children. The right to be protected against work that exploits them or its detrimental to their health physical and psychological development. It also enshrined guarantee to protect from in human treatment and other form of cruel.

International Covenant on Civil and Political Rights also provided the following rights, "Every child shall have, with out any discrimination as to race, color, sex, language, religion, national or social or region, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state". (Article 24(1) of international Covenant on Civil and Political Rights (ICCPR). In addition, every child has the right to be registered immediately after birth, and shall have a name and has the right to protection of the law against such interference or attack. Moreover, the African charter also provides different type of child rights provision on the rights and welfare of the child (ACRWC). The ACRWC, containing 48 articles, is a detailed and comprehensive instrument virtually mentioning

everything that relates to the conception of child rights. It resembles the UN Convention of the Right to the Child. The African Child Charter, provide the following rights for African children. The best interest of the child is dubbed as the primordial consideration in all decision reached by any person or authority affecting interests of the child.

The peculiar feature of this charter, like the African charter on human rights, is that it provide for the responsibility and duty of the child ranging from working 'for cohesion of the family' to contributing to the promotion and achievement of African unity.

Where as, the FDRE Constitution clearly stipulated the right of child under Article 36. It provides different type of rights for every Ethiopian child, such as the right to life, the right to acquire name and nationality, the right to know and be carried for by his or her parents or legal guardians.

Beside, every child has the right to be free of corporal punishment or cruel and in human treatment in schools and other institutions responsible for the care of children.

In all actions laws, policies and activities concerning the child under taken by any person or authority the best interest of the child shall be the primary consideration by the branches of government and other concerned organs.

Beside this, other national legislative gives different rights to children. The Revised Family Code is one of domestic law which provided the right of children. It provides important rules which incorporated the principles of the best interest of the child. It gives priority to the well being, up bringing and protection of children in accordance with the international convention and the constitution of FDRE.

At least, it may be concluded that, unless the legal policies are implemented, they cannot be recognized as the rights of children. This is because; the full implementation of the legal policy and institutional framework gives guarantees to those children that their rights would be respected.

2.1.1.5 History of Corporal Punishment

While the early history of corporal punishment is unclear, the practice was certainly present in classical civilizations, being used in Greece, Rome, Egypt and the ancient kingdom of Israel, for both judicial and educational discipline. Practices varied greatly, though scourging and beating with sticks were common. Some states gained a reputation for using such punishment cruelly; Sparta, in particular, used frequently as a sport of a disciplinary regime designed to build will power and physical strength. Although the Spartan example was unusually extreme, corporal punishment was possibly the most frequent type of punishment. The maximum penalty allowed in the Roman Empire 39 lashes with a whip, applied to the back and shoulders or "fasces" (similar to more modern birch rods though consisting of 8-10 lengths of willow rather than birch), applied to the buttocks.

Such punishments would commonly draw blood, and were frequently inflicted in public. In the Roman Empire (which covered most of Europe, Germany and Russia excepted, at its height) by law the maximum penalty was 40 "lashes" or "strokes", though it was common practice to administer 39, to ensure the law was not broken. Amongst those who suffered this punishment the most notable were perhaps the English queen Boudice in c. 55 (2) and Jesus Christ.³

In Medieval Europe, corporal punishment was encouraged by the attitudes of the medieval church towards the human body, with flagellation being a common means of self-discipline. In particular, this

had a major influence on the use of corporal punishment in schools, as educational establishments were closely attached to the church during this period. Nevertheless, corporal punishment was not used uncritically; as early as the eleventh century saint Anselm, Archbishop of Canterbury was speaking out against what he saw as the cruel treatment of children.

From the sixteenth century on wards, new trends were seen in corporal punishment. Judicial punishments were increasingly made in to public spectacles, with the public beatings of criminals intended as a deterrent to other would – be miscreants. Mean while, early writers on education, such as Roger Asham, complained of the arbitrary manner in which children were punished. Probably the most influential writer on the subject was the English philosopher Jhonlocke, whose some thoughts concerning education explicitly criticized the central role of corporal punishment in education. Locke’s work was highly influential, and in part influenced polish legislators to ban corporal punishment from Poland’s schools in 1783.

During the eighteenth century the frequent use of corporal punishment was heavily used, both by philosophers and legal reformers. Merely inflicting pain on miscreants was seen as in efficient, influencing the subject merely for short period of time and effecting no permanent change in their behavior. Some believed that the purpose of punishment should be reformation, not retribution. This is perhaps best expressed in Jeremy Bent ham’s idea of a Panoptic prison in which Prisoners were controlled and surveyed at all times, perceived to be advantageous in that this system reduced the need of measures such as corporal punishment.

A consequence of this mode of thinking was a diminution of corporal punishment throughout the nineteenth century in Europe and North America. In some countries this was encouraged by scandals involving

individuals seriously hurt during acts of corporal punishment. For instance, in Britain, popular opposition to punishment was encouraged by two significant cases, the death of Private Frederick John White, who died after a military flogging in 1847, and the death of Reginald Chancellor, who was killed by his school master in 1860. Events such as these mobilized public opinion, and in response, many countries introduced through regulation of the infliction of corporal punishment in state institutions.

The use of corporal punishment declined through the twentieth century, though the practice has proved most persistent as a punishment for violation of prison rules, as a military field punishment and in schools.

2.3 Historical Administration of Corporal Punishment by parents and its effect on children

2.3.1 Administration of punishment in early time

In formal punishment medical supervision is often considered necessary to assess whether the target of punishment is in a fit condition to be beaten and to oversee the punishment to prevent serious injury from occurring. The role of the medical officer was particularly important in the nineteenth century, a time in which severe punishment was common, but growing public criticism of the practice encouraged medical regulation. One common problem with corporal punishment is the difficulty with which an objective measure of pain can be determined and delivered. In the nineteenth century scientists such as Alexander Bain and Francis Galetton Suggested scientific solution to this, such as the use of electricity. These were, however, unpopular and perceived as cruel. The difficulty in inflicting a set measure of pain makes it difficult to distinguish punishment from abuse, and has contributed to calls for the abolition of the practice.

2.3.2 Modern Use of Administration of Punishment

In the modern world, corporal punishment remains a common way of disciplining children; however its use has declined significantly since the 1950s. It has been outlawed in many countries such as Poland, Finland and Sweden however, some legal systems permit parents to use mild corporal punishment on their children although many parents do not choose to use it, or at least do so rarely.

Race and gender have a significant influence on corporal punishment in the western world. Black children and male children are much more likely to be hit at home and school and corporal punishment to boys tends to be more severe, more frequent and more aggressive than corporal punishment administered to girls. Ironically, while the research suggests that corporal punishment is potentially counterproductive for children, it is even more counterproductive for boys than girls.

In terms of punishment in educational settings, approaches vary throughout the world. School corporal punishment is banned in most western nations and in industrialized nations outside the west. All of Western Europe, most of Eastern Europe, New Zealand, Japan and South Africa have banned school corporal punishment, as have many other countries. Corporal punishment is legal in some parts of Canada. In Australia, Corporal punishment is banned in all state schools but continues in private schools in a couple of states. In the United States, 23 states allow corporal punishment in schools. There is some disagreement about how much paddling occurs in US schools. Some estimates place the number of paddling at approximately 350,000 a year, while the national association of school psychologists places the number at 1.5 million cases a year. Evidence suggests that in the United States, racial and sexual discrimination play a large role in school corporal punishment, with black students being much more likely to be hit than

white students, and male, students being much more likely to be hit than female students for the same infractions.

Corporal punishment of male students also tends to be more severe and more aggressive. In some places, this sexual discrimination has the force of law. For instance in Queensland, Australia, school corporal punishment of boys in private schools is still legal as at 2007.

When used in the home as a form of domestic punishment for children, smacking (Spanking in American English) is the most common form of corporal punishment, although this form of punishment of children is in declining use and or banned in many countries.

2.4 Effects of Corporal Punishment upon Children

Those who strongly oppose corporal punishment do not normally act on the basis of a single argument. Rather, they delineated various reasons and the effect of corporal punishment on children.

The critics are sustained by a number of life- learning experiences. The following are just to mention the very few:

2.4.1 Corporal Punishment Leads To Abuse

Opponents of corporal punishment make regular reference to the frequency and severity of physical punishments that are inflicted upon children. They suggest that corporal punishment “escalates into battering” or at least increases the risk that those who punish will cross the line to physical abuse.

Clearly there are instances of abuse and of abusive physical punishment. But that is insufficient to demonstrate even a correlation between corporal punishment and abuse, and a causal relationship. Research on possible links between corporal punishment and abuse has proved in

conclusive so far some studies have suggested that abusive parents use corporal punishment more than non abusive parents, but other studies have shown this not to be the case.

2.4.2 Corporal Punishment Is Degrading

One argument that is intended as an attack on both mild and severe cases of corporal punishment makes the claim that physically punishing people degrades them. I understand degradation to involve a lowering of some body's standing, where the relevant sense of standing has to do with how others regard one, and how one regards one self. It is the interplay between the way we understand how others view us and the way that we view our selves that produces feelings such as shame. Thus one way in which one might be degraded is by being shamed.

In order to respond satisfactorily to the objection that corporal punishment is degrading, clarification is required about whether the term "degrade" is taken to have a normative content, or, in other words, whether it is taken to embody a judgment of wrongfulness. If it is not, then it will not be sufficient to show that corporal punishment is degrading. It will have to be shown that it is unacceptably so before it can be judge to be wrong on those grounds. If, by contrast, "degrade" is taken to embody a judgment of wrong fullness then a demonstration that corporal punishment is degrading will suffice to show that it is wrong. But then the argumentative work will have to be done in showing that corporal punishment is degrading. Because it will have to be shown that it amounts to an unacceptable lowering of some body's standing.

2.4.3 Corporal Punishment Is Psychologically Damaging

Although there is evidence that excessive corporal punishment can significantly increase the chances of such psychological harm, most of the psychological data are woefully inadequate to the task of

demonstrating that mild and infrequent corporal punishment has such consequences. One opponent of corporal punishment who has provided data on even mild and infrequent physical chastisement is Murray Straus according to his research which is much more sophisticated than most earlier investigation in to corporal punishment, does lend support to the view that even infrequent non injurious corporal punishment can increase one's chances of being depressed. For instance, the increase of depression, according to his study, is not substantial for rare physical punishment. The increments on his mean symptoms index of depression are only slight for one or two instances of corporal punishment during one's teen years.

2.4.4 Corporal Punishment Stems From and Causes Sexual Deviance

Those who want to outlaw corporal punishment often argue that there is disturbing sexual under currents in the practice. This objection is, in part, special instance of the argument about advertise psychological effects. In part it is a separate, but related objection. The argument is that corporal punishment stems from some sexual perversity (on the part of the person punished inflicting the punishment) and can in turn causes sexual deviance (in the person punished). In some version of this argument, it is claimed that Sadomasochistic relationships can develop between the beater and the beaten. In other versions, only one party usually but not always the beater may experience sexual excitement though the beating. The beaten person may become sexually repressed. It is no accident, the argument goes, and that the buttocks are often chosen as the site on the body to which the punishment is administered. Studies show that most people have been sexually aroused either in fantasy or in practice, by at least some mild masochistic activity, such as restraint or play fights. Thus, some masochistic tendencies seem to be

statistically normal. The available evidence linking corporal punishment and masochism makes the connection only with milder forms of masochistic fantasy and practice.

It is, of course, a concern that some parents or teachers might derive sexual gratification from beating children, but is it a reason to eliminate or ban the practice?

Some one might suggest that it is, if the anticipated sexual pleasure led to beatings that were inappropriate either because children were beaten when they should not have been, or if the punishment were administered in an improper manner. However, if this is the concern, surely the fitting response would be to place limitations on the use of the punishment and, at least in schools, to monitor and enforce compliance.

2.4.4 Corporal Punishment Teaches the Wrong Lesson

It is often said that punishing a wrong doer by inflicting pain conveys the message that violence is an appropriate way to settle differences or to respond to problems. One teaches the child that if one dislikes what somebody does, it is acceptable to inflict pain on that person.

This implicit message is believed to reach the level of a contradiction in those cases where the child is hit for having committed some act of violence like assaulting another child. Where this happens, it is claimed, the child is given the violent message that violence is wrong. The child is told that he was wrong to commit an act of violence and yet the parent or the teacher conveys this message through violence.

Not only are such messages thought to be wrong in them selves, but it is claimed that they are then acted up on by the child who is hit. In the short term, those who are physically punished are alleged to commit violence against other children, against teachers and against school property. As far as long term effects are concerned, it is alleged that

significant numbers of people who commit crimes were physically punished as children.

2.4.5 Corporal Punishment, Pupils, Teachers, and Authority

Next there is a cluster of arguments about the relationship between corporal punishment and teacher – pupil relations. These arguments make reference to what physical punishment says about such relations, what it does to them, and the impact that this has on education.

First, it is claimed that for a teacher to employ corporal punishment indicates that the teacher has failed to discourage pupil wrong doing in other ways by moral authority, by a system of rewards, or by milder punishments.

I am sympathetic to the claim that far too many teachers fail to foster an atmosphere of mutual respect between their pupils and them selves. They lack the ability or the inclination verbally to communicate expectations to children first gently and then more strenuously. They do not first employ milder forms of punishment but rather resort to the cane in the first instance. Some might not believe in rewarding good behavior, only in punishing bad. However, from the claim that corporal punishment often indicates teacher failure, we can not infer that it necessarily demonstrates such failure or even that as a matter of fact it always does. It is true that when the teacher resorts to corporal punishment this indicates that his prior efforts to discourage the wrong doing failed. However, there is a big difference between this, a failure in the pupil, and a failure in the teacher. In either case it is true, in some sense that the teacher failed to discourage the child from doing wrong failed to prevent failure in the child. However, it is not a failure for which the teacher necessarily is responsible. It is well aware that the responsibility for children's wrong doing is all too often placed exclusively at the door of children themselves, without due attention to the

influences to which they are subjected. However, there is a danger that in rejecting this in correct evaluation, teachers (and parents) will be blamed for all short coming in children.

If we say that corporal punishment indicates the failure of prior efforts, then we must concede that the immediately prior efforts say, detaining the child equally indicate the failure of the still earlier efforts a domination that indicate the failure of yet earlier efforts moral example. Once we see this, it becomes clearer why, although it is the case that earlier efforts may have failed, it is not sufficient to say that the failure is in the teacher. Just as school corporal punishment is seen by its opponents as originating in failed pedagogical relationships, so it is believed to compromise them further. Thus it is perceived as exacerbating the very problems from which it a rises. The pupils it is said begin to fear their teachers and view them as enemies rather than concerned custodians changed with featuring their well-being and development both mental and other wise.

Education does not thrive in an atmosphere in which children live in fear of those who teach them. If children fear their teachers they are unlikely to ask questions or challenge views that their teachers present to them.

2.4.6 Corporal Punishment Does Not Deter

Some opponents of corporal punishment have suggested that it is not an effective form of punishment because it does not deter those punished from further wrong doing. If the argument were sound it would be significant for those whose justification of punishment is consequentiality.

Some of the arguments for why corporal punishment does not deter draw on research that suggests that for punishment to be effective it must meet certain conditions. Conditions that would be impossible (and

perhaps also undesirable) to fulfill. Thus, it is argued that effective punishment must follow wrong doing instantaneously. It is also claimed that for punishment to be effective it would have to follow every (or, at least, nearly every) act of wrong doing and therefore would have to be inflicted even more regularly than it already is. It has been suggested that punishment that is inflicted by surprise is more effective than punishment that is expected.

Deference is not an all – or nothing matter. A punishment might have some deferent effect with our being extremely effective. Once this is recognized, the mere continued existence of wrong doing does not demonstrate the failure of punishment as a deterrent as many have thought. To know how effective punishment is one must know what the incidence of the wrong doing would be if prior punishment for it had not been inflicted. To establish this, much more research needs to be done. However, there is already some evidence of the deterrent effect of corporal punishment, at least with very young children.

2.5 Critics by Various Countries Pediatricians and Psychologists on Corporal Punishment

Academic studies have established that under some circumstances, corporal punishment of children can increase short term compliance with partial commands, although compassions in the same studies with alternative punishments such as one- minute time outs did not establish that corporal punishment was more effective.

The American Academy of pediatrics (AAP), however, in an official policy statement (7) 10114/723 (reaffirmed in 2004) states that “corporal punishment is of limited effectiveness and has potentially deleterious side effects. The American Academy of Pediatrics recommends that parents be encouraged and assisted in the development of methods other

than spanking for managing underside behavior. ” In particular the AAP believes that any corporal punishment methods other than open hand spanking on the buttocks or extremities “are un acceptable” and “should never be used” The policy statement points out, summarizing several studies that “The more children are spanked, the more anger they report as adults, the more likely they are to spanking there own children the more likely they are approve of hitting a spouse, and the most marital conflict the experience as adults. Spanking has been associated with higher rates of physical aggression, more substance abuse, and increased risk of crime and violence when used with older children and adolescents.

The American psychological Association opposes the use of corporal punishment in schools, juvenile facilities, child care nurseries, and all other institutions, public or private where children are cared for or educated (Conger 1975). They state that corporal punishment is violent unnecessary , may lower self esteem, is likely to train children to use physical violence, and is liable to in still hostility, and rage without reducing the undesired behavior.

The Canadian pediatric society policy on corporal punishment states “The psychosocial pediatrics committee of the Canadian pediatric society has carefully reviewed the available research in the controversial area of disciplinary spanking. The research and other forms of physical punishment are associated with negative child out comes.

The Canadian pediatric society, therefore recommends that physicians strongly discourage disciplinary spanking and all other forms of physical punishment.

England’s Royal College of pediatrics and child Health and Royal College of physiatrists have called for a complete ban or all corporal punishment stating “we believe it is both wrong and impracticable to seek to define

acceptable forms of corporal punishment of children. Such an exercise is unjust. Hitting children is a lesson in bad behavior and that “it is never appropriate to hit or beat children”.

The Australian psychological society holds that physical punishment of children should not be used as it has very limited capacity to deter unwanted behavior, does not teach alternative desirable behavior, often promotes further undesirable behaviors such as defiance and attachment to “delinquent” peer groups encourages an acceptance of aggression and violence as acceptable responses to conflicts and problems.

UNESCO states “During the commission on human rights UNESCO launched a new report entitled” “Eliminating corporal Punishment. The way forward to constructive child discipline”. The United Nations committee on the Rights of the child has consistently recommended state parties to the convention on the rights of the child to prohibit corporal punishment and other forms of violence against children in institutions, in schools and in the homes. To discipline or punish through physical harm is clearly a violation of the most basic of human rights. Research on corporal punishment has found it to be counter productive and relatively ineffective as well as dangerous and harmful to physical, psychological and social well being. While many states have developed child protection laws and systems violence still continues to be inflicted up on children.

The United Nations Committee on the right of the child recommends that states parties to the convention on the rights of the child to prohibit corporal punishment in institutions, in schools and in the home.

Many opponents of corporal punishment argue that any form of violence is by definition abusive.

Psychological research indicates that corporal punishment causes that corporal punishment causes the deterioration of trust bonds between parents and children. Children subjected to corporal punishment may grow resentful, shy, insecure or violent. Adults who report having been slapped or spanked by their parents in childhood have been found to experience elevated rates of anxiety disorder, alcohol abuse or dependence and externalizing problems as adults. Some researchers believe that corporal punishment actually works against its objective (normally obedience) since children will not voluntarily obey an adult they do not trust. A child who is physically punished may have to be punished more often than a child who is not.

Researcher Elizabeth Gershoff Ph.D. in a 2002 meta-analytic study that combined 60 years of research on corporal punishment found that the only positive outcome of corporal punishment was immediate compliance; however, corporal punishment was associated with less long-term compliance. Corporal punishment was linked with nine other negative outcomes, including increased rates of aggression, delinquency, mental health problems, in relationships with their parents and likelihood of being physically abused. Opponents claim that much child abuse begins with spanking: a parent accustomed to using corporal punishments may find it all too easy, when first tempted, to step over the line into physical abuse. One study found that 40% of 111 mothers were worried that they could possibly hurt their children. It is argued that frustrated parents turn to spanking when attempting to discipline their child, and then get carried away (given the arguable continuum between spanking and hitting). This "continuum" argument also raises the questions of whether a spank can be "too hard" and how (if at all) this can be defined in practical terms.

Before 1997, although there were many studies linking spanking with higher levels of misbehavior in children, people could argue that it was the misbehavior that caused the spanking. However, since that time several studies have examined changes in behavior over time and propose a link between corporal punishment and increasing relative levels of misbehavior compared to similar children who were not corporally punished. Reason for corporal punishment possibly causing increased misbehavior in the long run may include: children imitating the corporally - punishing behavior of their parents by hitting other people; acting out of resentment stemming from corporal punishment; reduced self esteem; loss of opportunities to learn peaceful conflict resolution; punishing the parents for the acts of corporal punishment; and assertion of freedom and dignity by refusing to be controlled by corporal punishment.

The problem with the use of corporal punishment is that, if punishments are to maintain their efficacy, the amount of force required may have to be increased over successive punishments. This was observed by the American Academy of Pediatrics; (101 14/723) which stated that

“The only way to maintain the initial effect of spanking is to systematically increase the intensity with it is delivered, which quickly escalates into abuse”. Additionally, the Academy noted that: “parents who spank their children are more likely use other unacceptable forms of corporal punishment. Another problem with corporal punishment, according to the skeptics, is that it polarizes the parent child relationship, reducing the amount of spontaneous cooperation on the part of the child. The AAP policy statement says “reliance on spanking as a discipline approach makes other discipline strategies less effective use.” Thus it has an addiction – like effect: the more one spans, the more one feels a need to spank, possibly escalating until the situation is out of control.

CHAPTER THREE

3. INTERNATIONAL PERSPECTIVES:

The development of the international laws focusing on children reflects the evolution in the concept of child hood which has occurred since the beginning of the twentieth century. These developments give rise to the growing of international recognition that children are vulnerable, innocent victims of social practices that can be cruel and harmful to proper human development. The principal international concern has been to prohibit societal abuse of children by traditional practices and to establish standards for the child's basic needs so that she/he will be able to enter adult hood with the basis for a productive life children's rights have been discussed debated and proclaimed. Now in this chapter I will try to see major international and national legal instruments which provide protection towards children against corporal punishment.

3.1.1 The 1989 Convention on the Rights of the Child

As we know the 1989 Convention on the Rights of Child had received a great positive response, much greater than any human right treaties. This may be justified in different ways.

This convention has in it detailed provisions which discuss about children's right. Those rights enshrined under the convention can be summarized as.

The United Nations Conventional the Rights of the child, since its adoption in November 1989. The convention is the most highly ratified human rights agreement in history. The convention is important because it serves to focus attention on children's issues and it provides the legal basis for improving the living conditions for children worldwide. The convention seeks to establish certain minimum standards that all

movements that sign the doctrine agree to follow, which guarantee a child's basic needs, protections, and freedoms.

Article 19 of the CRC specifies that state parties (i.e., governments that ratify the convention) must take appropriate measures to protect children from "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or expiation". In most countries/states, laws are already in place that spell out what kinds of discipline are considered excessive or abusive, although the convention does not specifically address what forms of discipline should be used in the home, it strongly supports parents providing nonviolent guidance and direction to their children. In school, administrators are expected to take into account the child's "human dignity" and eliminate any discipline practices that may cause physical or mental harm.

Enduring Needs of Children

Childhood is a unique and critical stage of life children the world over share the same basic needs for safety, health, nurturance, and dignity. ACEI is committed to supporting children's development; respecting individual differences; helping children learn to live and work cooperatively; and promoting children's physical and mental health, self-worth, resiliency, education, academic competence, self-control, and responsibility. Corporal punishment conflicts with these goals and has no place in any child's life.

- ❖ The right of children to be protected from a abused, neglect and exploitation including the right to special protection in the time of war;
- ❖ The right of the child to survival through the provisions of a adequate food, shelter, clean water and primary health care and;
- ❖ The right of the child to develop in a safe environment through the provisions of formal education, constructive play, advanced

health care and the opportunity to participating social, economic, religious and political life of culture free from discrimination. For the purpose of this research paper more emphasis is given to the category of rights that protect children from corporal punishment.

The convention provides minimum standards for the protection of children. Including clear confirmation of their right to protection from all forms of interpersonal violence, as per article 19(1) states:

States, parties shall 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 mal treatment or exploitation including sexual abuse, while in care of parent(s) legal guardian(s) or any other person who has the care of the child.

In adopting this article, the general assembly of the UN take in to consideration the fact that corporal punishment of any form, which is a common habit in most countries of the world, confirms their law status as lesser people than adults and passes from one generation to other the dangerous message that is acceptable to use violence to solve inter personal conflict.

Further explanation of the convention provides art 28(2) that is specifically as to school disciplining. It states

State parties shall take all appropriate measure to ensure that school discipline is administered in a manner consistent with the child's human dignity and inconformity with the present convention.

Art 37(a) also provides:

No child shall be subjected to torture or other cruel in human or degrading treatment or punishment.

And finally, under Art 39, it requires state parties to take steps to assist children who are victims of violence in their recovery and social reintegration.

3.1.2 The 1990 African Charter on the Rights and Welfare of the Child.

The African charter on the rights and welfare of the child was adopted by the assembly of head of states and government of the organization of African unity in July 1990. In its preamble it was expressed that, the charter is adopted to promote and protect the rights and welfare of African children. The provisions of the ACRWC are all the reflection of the CRC.

In its Art 16 acknowledges the right of the child stipulated on the convention and it further intends to protect the child from any possible child abuse and torture, in human or degrading treatment and in particular physical or mental injury of abuse, neglect or maltreatment including sexual abuse while in care of parent, legal guardian or school authority or any other person who has the care of the child. It imposes duty on the member states, to protect the child from all forms of torture, inhuman or degrading treatment, especially physical or mental abuses neglect or maltreatment including sexual abuse. In order to achieve this charter that state parties to take specific legislative, administrative, social and educational action in their jurisdiction.

The charter further condemns those harmful cultural and social practices which is prejudicial to their wellbeing of the child. This is incorporated under Art 21 of the charter it stresses that, measures to eliminate harmful social and cultural practices affecting the health, dignity normal growth and development of the to be take in to consideration by the state parties.

Both the CRC and the African charter take the right of the child to be free from corporal punishment as the most important right that could be given to the child since this right is the base of the child's well being. These instruments further stipulate that children should have the same right to enjoy their rights as adult. In different occasions children are denied of many rights that are considered to be basic human rights to adult.

3.1 The legal status and the right of child in light of international and national perspectives in selected countries

In the following section for comparative purpose the researcher will consider the perspectives in selected countries.

3.1.3 National perspectives:

Kenya

In Kenya corporal punishment is lawful in the home .With regard to the children act (2001 in force 2002) makes no mention of " reasonable chastisement" but it is presumed that is acceptable. According to the stated children act legislation, it does not clearly specify that reasonable corrective of children from their mistake and this children act encourage parents would corporally punish their children.

According to a landmark 2004 judgment by the Kenya high court (Issac Mwangi Wachirau republic high court of Kenya (Nakuru) criminal Application No. 185 of 2004, concerning a man convicted of subjecting his 3- year- old daughter to torture under the children's act., did not condemn all corporal punishment of children but it did reject the appellant's argument that he was a parent disciplining his child as a mitigating factor. It also affirmed that a parent's behavior under the appearance of discipline can constitute cruel, in human and degrading

can constitute cruel, inhuman and degrading treatment (traditionally seen to be committed by the state and not private individuals). However, In July 2006, the government announced it was set to review the children act 2001 to strengthen children's protection from violence.

In Kenya corporal punishment is prohibited in school, though it continues to be used. In a 2004 survey by population communication Africa, over 60% of children reported that they had been or were being physically abused at school, including being slapped in the face, being hit on the body with a cane or stick, and being beaten on the body with a cane or stick, and being beaten, kicked or punished or otherwise physically bullied.

In a survey on the childhood experiences of 500 young women aged 18-24, 99% reported experiencing physical violence at home and school, most commonly beating with an object (88.8%); other forms of physical violence were punching (60%) Kicking (40%) hard work (44%) being choked burned stabbed (21%) having spicy bitter substances put in mouth (12%) being locked or tied up (14%) and being denied food (35%). In 52% of cases, the hitting punching resulted in "bruises or scratches broken bones or teeth, or bleeding" the figure for beating with an object was 64.6%. In other research involving around 300 adults and children, the most frequent forms of physical discipline used on children were smacking (79%) pulling ears (69%) and cuffing (62%) other corporal punishments included forcing a child to kneel on a hard floor (46%) tapping (44%) forcing a child to stand in the sun (33%) and burning fingers (20%).

In the penal system, corporal punishment is unlawful as a sentence for crime and as a disciplinary measure in penal institutions. Legislation allowing for "disciplinary" (corporal punishment of young offenders (the prisons Act

and Rules) no longer applies, but as at March 2007 had yet to be repealed. Corporal punishment is prohibited in institutions but there is no explicit prohibition in relation to all other alternative care settings.

The above stated research report shows that children are being corporally punished in Kenya and the legislation is not that much strong hence, children are being suffering from the abuses.

International perspective:

3.1.4 Finland

In Finland, the ban on physical punishment formed part of a comprehensive reform of children's law. The child custody and right of access act 1983 begin with a statement of positive principles or care for children, continue: "A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted." This reform in family law puts beyond doubt that the criminal law applies equally to assaults committed against children by parents and other caregivers.

Matti Savolainen of the Ministry of Justice in Helsinki, who was responsible for drafting the 1983 Act, describes section 1 of the act as incorporating three strategies: "Firstly the Act attempts to establish certain 'Positive' guidelines for the upbringing of the child. Secondly the Act makes it absolutely clear that all violations against the child's integrity (whether 'physical' or 'spiritual') which would constitute a criminal offence if committed by a third person (e.g. assault, unlawful imprisonment, libel, slander, etc.) are equally punishable even when committed by a parent with the intent to discipline the child. And under the Criminal code even a petty assault committed against a child under

15 is subject to public prosecution when committed by a parent at home. Thirdly the Act explicitly forbids also any degrading treatment ('the child shall not be humiliated') even where such an act would not constitute a criminal offence and even if there are no other direct legal remedies available."

A public information campaign was launched by the ministry of Justice and National Board of Social Affairs, including a leaflet entitled what is a good upbringing? Made available through health clinics, social welfare offices and so on. A large-scale campaign was also launched by the central union for child welfare, an NGO, together with the National Boards of Health and social Affairs, including a leaflet when you can't cope, find help: don't hit the child.

A. Home

Corporal punishment is prohibited in the home. Article 1.3 of the child custody and rights of access act (198., effective 1984) states: "A child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged, supported and assisted." Parents who use corporal punishment are liable to prosecution for assault, including petty assault for children under the age of 15 years, under the criminal code. They may also be sued for damages under the code of judicial procedure and the compensation for Damages act. The defense of "lawful chastisement" in the criminal code, which stated that petty assault was not punishable if committed by parents or others exercising their lawful right to chastise a child, was removed in 1629.

Section 6 of chapter 2 of the constitution (1999) states: "children shall be treated equally and as individuals they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level

of development.” Section 7 protects the dignity of every person and states: “No one shall be ... tortured or otherwise treated in a manner violating human dignity.”

B. Schools

Corporal punishment has been unlawful in schools since 1872. the prohibition was reinforced in legislation in 1914 and continued in the Act on primary schools (1957) and the Act on comprehensive schools (1985).

C. Penal system

Corporal punishment was abolished as a sentence for crime in 1889. it is unlawful as a disciplinary measure in penal institutions. The criminal code, the code of judicial procedure, the compensation for damages act and the constitution apply (see above).

D. Alternative care

Corporal punishment is unlawful in other institutions and forms of care. The criminal code, the code of judicial procedure, the compensation for Damages act and the constitution apply (see above).

E. Workplace

Corporal punishment is prohibited. The criminal code, the code of judicial procedure, the compensation for damages act and the constitution (see above) apply.

Recommendations by human rights treaty bodies

Committee on the rights of the child

“Although the state party was the second state in the world to prohibit all corporal punishment of children in the family in its child custody and rights of access act of 1983, the committee is concerned at the number of cases of violence against children, including sexual abuse in their homes. It also regrets the lack of information on this phenomenon.”

“The committee recommends that the state party consider taking additional measures to prevent and, where this has not been possible, to identify in a timely manner instances of violence against children within families, to intervene at an early stage, and to develop child friendly programmes and services for prevention, treatment and rehabilitation with personnel specially trained to work with children.” (16 October 2000, CRC/C/15/Add.132, concluding observation on second report, para. 39 and 40)

European committee of social rights

The committee recalls that the situation, which was found to be in conformity with the charter, has not changed. The child custody and right of access act (No. 361/1983) provides that a child must not be subdued, corporally punished or otherwise humiliated. (2007, conclusions XVIII-1, vol.1)

“The committee recalls that the child custody and right of access act 1984 prohibits the abuse of children and that this includes the corporal punishment of children and other humiliating treatment ...” (1 January 2001, conclusions XV-2 vol.1, pages 169-172)

“As regards measures taken to prevent the ill-treatment of children, the report stated that corporal punishment under any circumstances had been prohibited since 1984 ...” (1 January 1996, conclusions XIII-3, pages 386-387)

CHAPTER FOUR

CORPORAL PUNISHMENT OF CHILD AND THE LEGAL PROTECTION IN ETHIOPIA

4.1 The legal protection of children to be free from corporal punishment in the federal laws of Ethiopia

By the 1992 “Negarit gazette” proclamation number 10, the CRC has been ratified and has become part of the Ethiopian legal system, as it is provided under art 9(2) of the FDRE constitution. There are different policy documents issued to the protection of children from corporal punishment. These documents are discussed as follows.

4.1.1 FDRE Constitution

The constitution of the Federal Democratic Republic of Ethiopia provides children with the necessary legal protection. Article 36(1) of the FDRE constitution states that:

“Every child has the right to be free from corporal punishment or cruel and inhuman treatment in schools and other institutions responsible for the care of children”

From the above stated article, it is understood that the protection of children from corporal punishment is available to children in both the family and school environment or in any other institutions that have having direct contact with the child. This implies that the Ethiopian government has acknowledged children’s right to be free from corporal punishment which is a step forward for the full realization of their right to full personal integrity. This clearly shows the intention of the Ethiopian legislators to surround the child with every possible protection by putting the child in the center and considerable resources at disposal.

4.1.2 The 2004 Criminal Code

At present, in many countries, the use of corporal punishment on children and young people is prohibited in their penal system. As seen in the previous chapter for instance, Finland in 1983, Norway and Austria in 1987 legislated a law that ban corporal and humiliating punishments against children. The purpose and effect of these laws was not intended to increase prosecution of parents or state intervention in families, but to change attitudes towards children and reduce violence.

When we come to the 2004 Criminal Code of Ethiopia, different provisions referred corporal punishment as a right to parents or care givers. For instance Article, 68(8) refers it as:

“Acts reasonably done in exercising the right of correction or discipline.”

These acts, such as corporal punishment, are considered as acts required or authorized by law and they do not constitute an offence and hence are not' punishable. This provision of the Criminal Code seems to value freedom of parents, that is the freedom of parents or caregivers of children to administer corporal punishment as a freedom that may result in adverse effect on the child. This provision seems to follow the norm that parents or other care givers may use punishment to discipline children which is quite a tradition in our country. As seen above, the FDRE Constitution clearly, prohibits of children in schools and other institution, but say nothing as to punishment inflicted on children in the family. The only limitation laid down on the use of corporal punishment is under Article 576, for such, punishment be 'lawful' and 'reasonable' as:

“Whoever, having the custody or charge of a' minor, ill treats, neglects, over tasks or beats him for any reason or, in any manner, is punishment with simple, imprisonment not exceeding three month. When the crime causes

grave injury to the health, wellbeing, education or physical or psychological development of the minor, the punishment shall be in addition to the, deprivation of family rights of the criminal, simple imprisonment for not less than one month. The taking, by parents or other person having similar responsibilities, of a disciplinary measure that does not contravene the law, for proper upbringing is not subject to this provision”.

The right to discipline children through the use of corporal punishment and its limitation, that is, 'lawful' and 'reasonable' measures, although seems in harmony with the very purpose of corporal punishment, it is contradictory when the rule applied to practical cases. The contradictory nature appears when society begins to safe guard children against the peril of physical abuse. Parents or other caregivers use is right which is granted by the law as a justification for the use of violence against children. The right of to discipline their children is misunderstood as a right to inflict corporal punishment, that is parents or caregivers may not distinguished between. Unlawful bodily injuries and disciplining In this kind of cases therefore is not possible to charge parents or caregivers under the Criminal Code provisions dealing with offences, such as article: 576 since the very basic element of intention is lacking.

Another important point under this article Art 576 (1) as to the penalty the penalty under this provision, that is simple imprisonment not greater than three month, is making the damage caused by the caregivers or parents on their children, as a non serious matter since simple imprisonment is to be applicable to those crimes that are not very serious. This by it self is undermining the abuse on the child's as compared to the damage it causes on the child's present and future wellbeing

4.1.3 The 1960 Civil Code of Ethiopia and the Revised Family Code

Under this section, we will see how the Civil Code and the Revised Family code treat, the right of children from corporal punishment.

The Revised Family Code article 258(2) which reads as:

“It gives a right to a guardian to use corporal punishment on a minor, The term ‘proper upbringing’ may refer to those accepted necessary measures to be used so that the minor’s psychological and social wellbeing is protected, that are assumed to be fit to the social values of the society. The 1960 Civil Code similarly exempts a 2039 (c), that reads as:”

The act consists in reasonable corporal punishment inflicted by the defendant on his child, ward, pupil or servant;

The have two provisions article 258(2) and 2039(c) of the Revised Family Code and the Civil Code respectively, giving the infliction of reasonable bodily punishment on the child as a right to a parent is ambiguous and are in effect violating the spirit of the FDRE and the CRC that stipulate states must take all the necessary steps to the FDRE and the CRC that stipulate states must take all the necessary steps to protect the right of children from corporal punishment. Article 258(2) of the family code justifies the power of the guardian to take disciplinary measures by using the term, necessary as the case is the Criminal Code provision. Beside, the reasonable standard as envisaged under article 2039(c) holds the defendant to an external standard of what is reasonable under the circumstance, and imposes liability for the use of excessive force as an abuse on the child that is inflicted knowingly or negligently.

Is to be exercised by parent and caregivers, and when it is to be considered as an abuse. In most cases parents or other caregivers who has grossly maltreated their Children flee justice without being subject to punishment. Article 68(b) of the criminal Code also in general contrary

to the right of children under the FDRE Constitution Art 36(1)(e) and the spirit of the CRC to which Ethiopia is a party.

The Civil Code and also the Revised Family Code provisions also justify the power the parents or caregivers to take disciplinary measure and also exempt them from civil liability. In this case when a parent inflicts corporal punishment on the child, it is assumed to be necessary or reasonable to discipline their children. This implies that it is the very idea that corporal punishment of children is legitimate that opens the way to all excesses and even makes the use of such punishment acceptable by the victims.

In general the provision under the Constitution confirms with the CRC but the 2004 criminal Code, the Revised Family Code and the Civil Code provisions regarding corporal punishment as seen above appears to be in contradiction with article 19 and 37 of (l) e CRC. The UN Convention and other international human right instruments made it clear that the world consider that right, one by which neither culture realign tradition nor any circumstance should limit. The concern over the prevalence of corporal punishment and other forms of violence against children in the name of discipline is important because it breaches their fundamental rights their human dignity and physical integrity. Since in this case its not just breach of human right but their right to be human for their right to be fully recognized and respected. Unless a mechanism is devised by which they are protected children in this situation are not only defenseless but also incapable of raising their voice against various forms of ill treatment to which they may be subjected. The first but not the only steps believe to end corporal punishment including maltreatment of children.

4.2 The Gaps in the laws Of the right of children from corporal Punishment on children In Ethiopia

Laws have the power in bringing up attitudinal changes among the society. Even if almost all legal systems have a number of legal mechanisms to secure child wellbeing from possible parental maltreatment, the scope and extent to which these, legal provisions extend and the efficiency of procedural mechanism used to make the rule operational varies from one state to another. The law by itself has the power of reforming the society from practices of child abuses such as corporal punishment. The existence of gaps in the laws or where there is no clear prohibition it would be difficult to ensure ones right in general and the right of the child in particular. In this section the gaps in the laws protecting children from corporal punishment in brief.

As we have, seen in section 4.1, there are different laws protecting children from corporal punishment. The FDRE Constitution prohibits any form of corporal punishment on the child and also as per article 9(4) of the Constitution the CRC is part of the Ethiopian legal system which further prohibits all forms of physical violence inculcating in the family. But when we take a close look at the different laws applicable in the present we can see that corporal punishment is not fully banned in the Ethiopian legal system. Those acts not prohibited or as in our case where one law prohibit\$ it and permitted in other applicable laws, are' taken by the society as a permitted act, therefore corporal punishment on children since there is no clear ban in our laws it is continued to be used as a legitimate violence against children and justified as a disciplinary measure.

For instance, in the Criminal Code article 576 is used by parents and other care givers to defend them selves when prosecuted for maltreating children. This makes it difficult to implement the laws on

those who violate the right of the child. In such a case it would not be an easy task to the court to decide on the Issue of to what extent they are privileged to impose corporal punishment and how this privilege family or home, that is by reforming the existing laws that legalize the use of violence on the child.

4.3 Problems faced by Governmental and Nongovernmental institutions in implementation of child rights from corporal punishment

In the above section we have seen the gaps in the laws that make implementation of child rights to be free from corporal punishment difficult. But the, making of new laws and repeal of the old laws that permit corporal punishment against children is not the only measure to ensure child rights, effort have to be made by governmental and non governmental organs so as to fully protect children in the exiting legal system. Law operates with people, the participation from the, society at large and the responsible organs have to work to the realization of child rights in general. In this section we will consider those problems faced by governmental and non governmental organization in implementation of child rights to be from corporal punishment.

From the interviews I conducted from governmental and non governmental organizations, the basic problem in implementation of child rights from corporal punishment has give little concern awarded to the effects of corporal punishment on children, When the question of the right of children from corporal punishment is raised, It he responses show that almost no specific attention or work done as to this.

One of the reason I believe is not only, the lack awareness of the society but those working in the organizations, as to whether to be free from corporal punishment is a right to children, or a proper measure used by

parents to discipline children. This is as well the result of the present laws that allow the use of corporal punishments as a disciplinary method. This however does not mean that there are no efforts taken by the government and non governmental organizations as top the protection of child rights.

Lack of awareness of the society, problem of coordination among the different, organs working on children and budget problems are some of the major problems faced by these organs. In most cases parents or teachers or caregivers who physically punish children don't even consider it as an abuse nor as a criminal act. Even when these are reported to the police also does not consider it as an abuse since the Civil Code and the Criminal Code have by themselves devised a defense to parents to see justice, which makes it difficult to implement the constitutionally guaranteed right of the child.

Parents have a desire and also a responsibility to raise their children in a safe and better way, so they use different disciplinary measures to discipline and rear their children to make them ready for future responsibility and wellbeing. Most of the parents, who use corporal punishment, use it because they might not know any other way to discipline their children. We all have responsibility to guide parents to use positive methods of disciplining and to fully achieve their parental role. Especially in the organizations established making their goal to support and protect children shall work to create the awareness of the society in upbringing their children. The awareness problem is not only regarding parents but children too. It is when the children know their right and there exist a mechanism by which they can go to when they face this kind of abuse that they 'can say no to the violations of their rights. Without the knowledge of it being an abuse, the victim himself/herself accepts it as proper of have no way out but be silent. The other problem faced by the governmental and non governmental financial

problem. In implementing child rights and in giving protection to those children who are victims of this abuse, the organs face financial constraints. I believe it is not too much to ask, to fund these kinds of organizations to overcome the problems faced in implementation of child rights, those who take the responsibility of today's leaders.

In our country the current legal provisions do not impose a duty to report upon parents or other care givers have direct contact with the child. Children due to their maturity, their voices are not given the proper credit and there is a problem of, reporting this violence on children, children are being silently abused since the mechanism of reporting is not even there in a separate legislation that requires reporting. This statement is well confirmed by Inspector Edire Eseye Addis Ketema Sub city Police Commission.

Generally, CRC recognizes that children have specific needs that have been historically neglected or overlooked by societies, neglect that is both a cause and a result of the specific forms of discrimination children suffer. Many of the interdependent and interrelated children's human rights that the CRC codifies are based on needs, such as the right to the highest attainable standard of health, to education and to protection from abuse and neglect. The Ethiopian government has, ratified the CRC and other human right instruments, and also gone further in enacting legislations to ensure the protection and realization of the rights of children. These efforts are encouraging but we need to further modernize and humanize our laws in relation to child abuse, in particular those as to corporal punishment.

In fact the value of any law adopted or enacted depends upon its enforceability and practical applicability. In order to implement the laws the efforts made by the governmental and non governmental organizations through awareness creation and protection provided to

victims is very important. It is with the of intuitions that supervise the right of parents in upbringing of children and assess the environmental conditions of the child upbringing this not to threaten the power of parents to raise their children freely but to intervene in their right to secure the welfare of children and this is to be done in and organized legislation and judicial system and in coordination with other governmental and non governmental organizations to ensure the protection of child rights guaranteed under the CRC and the FDRE constitution.

Case Analysis and Comment

In the following subsection a selected two cases will be analyzed.

Case1

Federal First Instance Court, Lideta Bench Eight Jury.

The plaintiff public prosecutor versus Defendant Hikma Hussien Ahmed
Annex No. 1

The Issue of the crime

Violation of the 2004 criminal code of FDRE on the provisions 576 (2&3)

The Nature of the Crime

It was 8:30 A.M January 9, 2008 G.C the defendant W/ro Hikma Hussien Ahmed was in her house that is found in 'Kolfe Keranio' Sub City, 'Kebele' or specially called Medhaniale square. The victim, a six year old baby girl, was also in this same house. The defendant injured this baby girl by severely scratching her entire body with her finger nails. The reason she gave for committing such a crime has that the little baby girl annoyed her. Thus, the plaintiff, the public prosecutor, accused W/ro Hikima for counting the aforementioned criminal act. After examining the

case, the federal First instance court, Bench eight jury, passed the following judgment.

The defendant will be subject to a two years suspension of the one year imprisonment verdict of the case. Explaining the reason for passing the judgment, the jury expressed the fact that the defendant is the mother of two children and imprisoning her would affect the children. Besides, the defendant was reported to be illiterate.

Let's now analyze the case in relation to article 576 sub 2 of the Criminal Code of FDRE. It states that whoever is charged of a crime that causes grave injury to the health, well being, education or physical or psychological development of the minor, the punishment shall be, in addition to the deprivation of family rights of the criminal simple imprisonment for not less one year. Hence, the verdict passed on the defendant does not seem to be fair. It is also in contradiction with the FDRE constitution and the law of international instruments like CRC and FRCW.

Moreover, the victim had a psychiatric problem, which should have been considered in making the crime severe.

Case 2

Federal First Instance Court, Lideta Bench eight Jury Crime court Addis Ababa, File No 1981/2000

Applicant public prosecutor Vs defendant Henock Eshetu Feyisa

Annex No II

The Issue of the Crime

Violation of the 2004 criminal code of the FDRE on the provision 555 (a, b, c)

Nature of the Crime

The applicant public prosecutor claimed that respondent Henock Eshetu had intentionally committed the act on October 27, 2008 at 4:00 pm in a particular place at Gulele sub city Kebele 09/15 around Tsion Hotel. On this day the victim the 8 year child Abrham Eshetu younger brother of the accused had been corporally punished by the defendant as the result the applicant (public prosecutor) claimed this accusation. Therefore the court gave judgment as follows Defendant Henock Eshetu Feyisa is elder brother of the victim Abrham Eshetu though, the Court argued that the accused admitted his act so that the court rendered decision by the provision 556 (2) c with common willful injury.

In the above stated case the act had happened among the same family however, the eldest brother cruelly inflicted on his younger brother back and in his leg with electric wire. According to the respondent justification he has done it intentionally because the victim was disturbed him while he was studying. The respondent admitted his wrongful act and the court gave the decision. However, the decision of the court not satisfactory in terms of the act done by the provision 556(2)c with common willful injury.

According to the researcher's opinion, the court's decision is not fair because as we can see from the empirical evidence the victim was gravely injured by the respondent hence, the case should be entertained by the right provision i.e. Article 555(a), (b) and (c) so that the researcher don't support the decision and even if the respondent has direct blood relation with the victim the court should have considered the act not their relations other wise we can't protect children from this kind of inhuman treatment.

CONCLUSION AND RECOMMENDATION

Children are subjects of right this research paper has attempted to examine one of the rights of the child, the right of the child to be free from corporal punishment. In history, parents have accepted corporal punishment as a means of disciplinary measure. As we have seen in the previous chapter in our country the practice shows that corporal punishment has been utilizing by parents at home, school and other institution.

At present, almost in the globe many countries have devised a number of legal mechanisms to secure the child's well being from possible abuse or violence in general and from corporal punishment in particular. As briefly discussed in this paper parents use corporal punishment in disciplining their child, its use is deeply rooted in our culture.

It is normally take as a basic and necessary method of correcting children. Corporal punishment may be on easy measure that is always available and takes no effort or technique to use.

To many perpetrators of corporal the use of alternative measures of disciplining are time taking and close follow up to get the children behave as they wanted them to.

However, if one thinks of the effects of this punishment in the family relation ships child's self esteem, future response to relation ships and decision making, physical and mental well being and others discussed in chapter two. The degree of ones self esteem or lack of it impacts every major aspect of child's present and future.

The uses of corporal punishment contribute to virtually all psychological problems and a psychological problem leads to lowered self esteem.

As the recognition of child abuse as a serious problem is growing currently that states are taking different to have role in the care and protection of the child. This is to ensure the needs and protection of child rights which is done through effective legislations. As a result of this, different international instruments like CRC and ACRWC has realized the need to protect children from any abuse.

Ethiopia is both Signatory and ratifying state of CRC and the government has taken measures to confirm domestic legislative in line with the conventions. The FDRE constitution has embodied all the principles and spirit of the convention in its provisions. However, the rest of the domestic legislative such as the 1960 Civil Code, the Revised Family Code and the 2004 Criminal Code are contrary to the provisions of the CRC and ACRWC as the previous chapter discussed thoroughly.

Besides, efforts made by FDRE government, other governmental and non governmental institution has made a number of efforts to realization of protection of child from abuse and maltreatment.

Recommendations

The following are some of suggested alternative use of disciplinary measures for parents.

I. Alternatives to Corporal Punishment

- Set firm, consistent, age-appropriate, and acceptable limits. For example, although a 5- years-old child may be able to resist the urge to touch things, it is not reasonable to expect that a 2 year- old will be able to handle such limits. Therefore, parents may need to childproof their homes to protect breakable items, and to keep children away from dangerous objects.
- Teach children conflict resolution and mediation skills, including listening actively, speaking clearly, showing trust and being trustworthy, accepting differences, setting group goals, negotiating, and mediating conflicts.
- Reasons and talk with children in age-appropriate ways. Verbal parent-child interactions enhance children's cognitive ability.
- Model patience, kindness, empathy, and cooperation. Parents and teachers should be aware of the powerful influence their actions have on a child's or group's behavior.
- Provide daily opportunities for children to practice rational problem solving, and to study alternatives and the effect of each alternative.
- Encourage and praise children. A nonverbal response such as a smile or a nod, or a verbal response such as "good" or "right" not only provides incentives for

accomplishment, but also builds primary grade children's confidence.

- Allow children to participate in setting rules- identifying consequences for breaking them. This empowers children to learn how to manage their own behavior.
- Provide consistency, structure, continuity, and predictability in children's lives.
- Encourage children's autonomy – allow them to think for themselves, and to monitor their own behavior, letting their conscience guide them.

II. Strategies for parents, Schools, and the Community

- Expose Children to a variety of sources –including the internet, television, movies, radio programs, puppet shows-that model alternatives to corporal punishment.
- Provide parents with information on child development and behavior management through workshops, mentoring, conferences, library books, newsletters, brochures, flyers, and bulleting board materials.
- Make parents aware of parenting classes that stress behavior management strategies as alternatives to corporal punishment, or make parenting courses available at school.
- Provide education classes for couples that recently have become parents
- Improve pre service and in service programs for teachers, principals, and other school staff that teach techniques for building better interpersonal relations, positive guidance in the classroom, and new strategies for maintaining student interest.

- Help establish ties between the school and community programs serving young children and their families.
- Develop a comprehensive and unified system of advocacy on behalf of children.

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ANNEX

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1. Do you think that corporal punishment is the right mechanism of disciplining children? Is corporal punishment an effective means of discipline?
2. Would you please explain the effects of corporal punishment upon children?
3. Is there any other positive way to discipline children?
4. What would be the role of the society to protect corporal punishment upon children?
5. What do you know of corporal punishment and its effects on children?
6. Is corporal punishment an issue to your company?
7. If so, what have your activities been in fighting the practice?
8. What other corrective measures do you propose to be in disciplining children?
9. In your view, what should the roles of the Ethiopian society be in the fight against corporal punishment?

I here by declare that this paper is my original work and I take full responsibility from my failure to be observe the conventional rule of citation.

Name: Yared Taddese

Signature _____

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